

10 Q: Okay. All right. Now, let's look back at
11 what was Exhibit 1, and to page 8. And these are
entries
12 for March 31, 2006. If you look at the entry for 1500
13 hours, or 3 p.m., it says, "Investigator Smith and
14 Stotsenberg from Duke police" -- oh, do you see where
I'm
15 reading?

16 A: What time?

17 Q: Sorry. 3 p.m., 1500.

18 A: Okay.

Duke

19 Q: "Investigator Smith and Stotsenberg from
20 police drove up to the District 2 Substation as I was
21 leaving. And they had three reports they delivered,
22 reports to me requested by us. Two were for staff at
23 Duke who were being harassed due to this case (Duke
24 reports 2006-1548 and 2006-1515), and one is a key card
25 report for the team members on March 13, 2006, to

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1 March 14, 2006."

2 Is this an accurate statement of what
3 happened at 3 p.m. on March 31st?

4 A: I recall giving a key card report. I
5 honestly don't remember giving them anything else.

6 Q: Okay. So you don't recall what these other
7 two reports were?

8 A: I don't recall, no.

9 Q: I'd like to -- you can put Smith 1 to the
10 side, sir.

court

11 MR. THOMPSON: I'd like to ask the

12 reporter to mark as Smith 3 the following document.

13 [SMITH EXHIBIT NO. 3 WAS MARKED FOR

14 IDENTIFICATION]

15 BY MR. THOMPSON:

16 Q: Thank you. So, sir, this is an e-mail from
17 Aaron Graves dated July 25, 2007, to Kemel Dawkins,
18 subject "Confidential." Who is -- is Dawkins a man or a
19 woman?

20 A: A man.

21 Q: Who is Mr. Dawkins?

22 A: At that time, he was Aaron Graves' boss.

23 Q: Okay.

24 A: I don't recall the position.

25 Q: Is he still in that position?

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1 A: No.

2 Q: Okay. Has he left Duke?

3 A: Yes.

4 Q: Okay. Where is he now?

5 A: I have no idea.

6 Q: Okay. Let us continue. This e-mail starts,
7 "Today I met with Investigator Gary Smith along with
8 Major Michael Snellgrove of the DUPD."

9 Is that Duke University Police Department?

10 A: Excuse me?

11 Q: Is DUPD --

12 A: Yes.

13 Q: Okay. And who was Mr. Snellgrove?

14 A: He was a major at the time this was written.

15 Q: Okay. And why was he involved in this
16 conversation?

17 A: He was a major, and you'd have to ask Aaron
18 Graves.

19 Q: Okay. "The purpose of this meeting was to
20 hear for myself Investigator Smith's role in releasing
21 the card access information to members of the Durham
22 Police Department investigating the Duke lacrosse rape
23 case. In our conversation, he advised me that they
24 offered and obtained this information as a resource to
25 DPD Investigator Gottlieb."

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1 So you offered to Mr. Gottlieb to get this

2 key card information for him. Is that true?

3 A: Yes.

4 Q: And why did you do that?

5 A: I had in the past used key card information
6 in the course of my investigations, and it occurred to
me
7 that it might be helpful to Gottlieb, so I asked him if
8 he wanted it, and he said yes.

9 Q: And it might be helpful because it indicates
10 whether a student was in Durham at the time of the
11 alleged crime?

12 A: Yes.

13 Q: All right. And it also helps to pinpoint
the
14 time of their movements. Is that right?

15 A: If they've used their card, yes.

16 Q: And it was particularly important here where
17 you had a witness who couldn't accurately identify who
18 was at the party, correct?

19 A: I never spoke to Crystal Mangum. I wasn't
20 privy to the contents of her interviews, and I don't
21 remember ever having a conversation with Gottlieb about
22 what she told him, so in reference to that point, I
don't
23 know.

24 Q: Well, with the benefit of hindsight, you
know

25 that she, Ms. Mangum, had significant problems

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1 identifying who was at the party, right?

2 A: With the benefit of hindsight, all I can say
3 is I've done my best to avoid the Duke lacrosse case.

4 Q: You've been -- you were an investigator for
5 many years. If you had wanted to find out whether these
6 individuals were in Durham that night to make sure that
7 someone who was gone for spring break wasn't indicted,
8 the key cards would have been a very important piece of
9 corroborative evidence, correct?

10 A: The key card would have allowed --
11 information would have allowed them to -- should have
12 allowed them to know who was -- no, that's not quite
13 correct. It would have provided them with information
14 who was on campus, where they were on campus, within a
15 certain time frame.

16 Q: And that's critical information in an
17 investigation.

18 A: It's helpful information.

19 Q: And it's particularly helpful if you have a

on

20 witness who is impaired and can't remember who was the
21 alleged perpetrator.

22 A: In my mind, particularly helpful
irregardless

23 of the condition of the witness.

24 Q: Why is it particularly helpful?

25 A: It's -- if you've got a time and a place

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1 where something happened, then if people are using their
2 cards at other places at that time or within a time
frame
3 around that time, it says they were or they weren't at a
4 specific location.

5 Q: Had you ever provided key card access
6 information to the Durham police on any other occasion?

7 A: I could not give you a specific instance. I
8 have at times provided the Duke -- excuse me -- Durham
9 police with reports that would have included key card
10 information.

11 I have been told by another investigator
that
12 she has, in fact, and other investigators have, in fact,
13 provided key card information to Durham on occasion.

14 Q: Which investigator is that?

15 A: That would have been Sara-Jane Raines.

16 Q: And in the instances where you provided this
17 information, was that before March of 2006?

18 A: Yes.

19 Q: And after March of 2006, have you ever again
20 provided key card access information to the Durham
21 police?

22 A: Not that I'm aware of.

23 Q: Okay. All right. Now, if we go to the last
24 sentence of this first full paragraph, it says, "He,"
25 meaning you, "provided him," meaning Gottlieb -- so

Smith

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1 provided Gottlieb a copy of a report containing access
2 information for a specified period of time.

3 A: I'm sorry, where are we at?

4 Q: Okay. sorry. It's the first full paragraph.

5 A: Okay.

6 Q: And last sentence. And there are a lot of
7 pronouns here. You can read it -- I mean, if you think
8 I'm wrong, that's fine. But I think the "he" refers to

9 you and the second -- and the "him" refers to Gottlieb
10 because it says, "He provided him a copy of a report" --
11 and the "he" is you, correct?

12 A: Right.

13 Q: And the "him" is Gottlieb, correct?

14 A: Yes.

15 Q: -- "containing access information for a
16 specified time period of all men's lacrosse players
17 entering their campus residences." Is this accurate?

18 A: I provided Mark Gottlieb with a card reader
19 report for card reader activity for members of the men's
20 lacrosse team for a time frame.

21 Q: Okay.

22 A: That would have included any card reader
23 activity.

24 Q: Okay. For all the members of the lacrosse
25 team?

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1 A: I'm trying to recall what I used as the
2 basis. And if it was the roster, then it would have
been
3 for the men's lacrosse players listed on the roster.

4 Probably with one exception. Maybe not. I don't
5 remember. I remember I used the roster as my guide. I
6 would have used the roster as my guide.

7 Q: Is the one possible exception the
8 African-American player, Mr. Sherwood?

9 A: Well, I know I did not provide his picture.

10 Q: Okay.

11 A: I don't recall if his name was among those

on

12 the key card information or not. I don't recall.

13 Q: All right. But all the white members of the
14 team, you provided their key card information to
15 Mr. Gottlieb. Is that right?

16 MR. SUN: Objection.

17 THE WITNESS: I -- again, I don't
18 remember counting how many names were on the roster. If
19 they were on the roster, I provided it. If they weren't
20 on the roster, I probably didn't. I don't know.

21 BY MR. THOMPSON:

22 Q: All right. Now, let's go to the next
23 paragraph. It says, "Investigator Smith was asked why

he

24 voluntarily provided such information and if at the time
25 he was aware that such information was protected under

1 FERPA." That's F-E-R-P-A.

2 "He stated that information of this type was
3 provided in the past and he thought it would aid in the
4 investigation by the Durham police. He also stated that
5 he was not trained upon FERPA requirements, and felt it
6 was appropriate to share with another law enforcement
7 agency based on past practices. Nevertheless, he had
8 some concerns and queried DUPD Major Minnis and Captain
9 Raines for guidance after he turned over the report and
10 was advised it was permissible."

11 Let's start. What was the nature of the
12 concerns you had -- or strike that. Let me ask this.

13 How did you come to have concerns?

14 A: I'm not -- well, I did -- one, I don't
recall

15 the contents exactly of my conversation with Aaron
Graves

16 and Michael Snellgrove, though I will -- yes, I had --
17 concerns developed.

18 Q: Yeah.

19 A: Why, I couldn't pin it on any particular
20 incident or something happening or whatever. I just --
21 after I had given Gottlieb the information, I grew a

22 little uneasy with it and asked some questions.

23 Q: Now, were you a little uneasy because you
24 were aware that this was private information?

25 A: It was information -- no. Because this was

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1 information I accessed as a police officer on a regular
2 basis.

3 Q: Yeah. Like you access private information
4 all the time as a police officer, don't you?

5 A: In this particular instance, this
6 information, the card reader information regarding

Duke's

7 students or anyone who uses the card system, I access on
8 a regular day-to-day -- as an investigator, access on a
9 regular day-to-day basis.

10 Q: Sure. And if someone walks into your office
11 in the beginning of 2006 and said, "Investigator Smith,
12 I'd like the key card information on this student," you
13 would say, "No, sorry."

14 A: No, you're right, I would.

15 Q: Right. And that's because you understood
16 even before this incident that this information,

although

17 you had access to it by virtue of your authority has a
18 police officer, was private information.

19 A: And like our reports where I wouldn't
20 necessarily give it to Joe Citizen walking in off the
21 street, I wasn't necessarily uncomfortable or wrong to
22 provide it to another police agency.

23 Q: So you knew it was private, but you thought
24 you were maintaining the confidentiality and privacy
25 though you were giving it to Gottlieb.

even

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1 A: I don't even -- I can't even say I thought
2 about it on those terms.

3 Q: Okay. But you knew at some level which gave
4 rise to this uneasiness that this was sensitive
5 information.

6 A: If I could express to you specifically, or
7 everybody else specifically, why I grew concerned or
8 uncomfortable about it, I would. I can't -- it was just
9 a feeling that maybe I better ask some questions.

10 Q: Okay. And I just want the record to be

clear

11 because I'm not sure it is. But if someone had walked
12 into your office off the street in February of 2006 and
13 said, "Officer Smith, please give me the key card
14 information for this Duke University student," you would
15 have said no.

16 A: I'd ask them, "Who are you," and depending
17 their answer and their reasons, made a decision.

18 Q: Right. And if it was just a member of the
19 public who said I'm curious, you would not have turned
20 over.

21 A: I would have referred them to the card
22 office.

23 Q: To the guard office.

24 A: Card office.

25 Q: Card office. But you wouldn't have given

on

it

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1 that information.

2 A: No.

3 Q: Okay. And why not?

4 A: It's none of their business.

5 Q: Okay. Now, you say that you -- according to

6 this, it indicates that you said you weren't trained on
7 FERPA requirements, but you were aware that there were
8 laws relating to the privacy of this key card
9 information, correct?

10 A: I was aware in a very general sense, real
11 general sense, about FERPA. Beyond that, no.

12 Q: Now, you spoke to Major Minnis and Captain
13 Raines. Do you recall when that was?

14 A: I don't remember. My recollection is I
spoke
15 to them after I had released the key card information.

16 But that's six years after the fact. This may be
correct

17 and I don't know. But it would have --

18 Q: Well, that's consistence with this, sir,
19 because it says, "Nevertheless, he had some concerns and
20 queried Major Minnis and Captain Raines for guidance
21 after he turned over the report" --

22 A: Okay. I didn't catch that.

23 Q: -- "and was advised it was permissible."

24 In conversation, did you tell them, "I've
25 turned over this information and I have concerns whether

1 I did the right thing"?

2 A: No. I just asked them in general about
3 whether it was -- and -- well, whether we released card
4 reader information.

5 Q: And why didn't you tell them? Were you
6 afraid you were going to get in trouble if they knew
that
7 you had turned it over?

8 A: Well, at that point, that wasn't even a --
9 that wasn't even a thought. I was just seeking
10 information.

11 Q: But you made a decision not to tell them
that
12 you had turned it over already.

13 A: Yes.

14 Q: Okay. And what do you recall them telling
15 you? Was it in that conversation that Captain Raines
16 told you, well, I've turned it over in the past, key
card
17 information?

18 A: Again, all I remember -- with Raines --
let's
19 see, I remember -- all I remember is she didn't have a
20 problem with it. And it may have been in that
21 conversation she mentioned that there's been
22 conversations since where she's clearly said that.

23 Q: Did they ask you why are you asking this
24 question?

25 A: No.

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1 Q: Did you mentioned that this was part of the
2 lacrosse situation? That, Gee, I've been thinking about
3 this and wanted to know whether this would be okay?

4 A: I don't recall if I mentioned specifically
5 the lacrosse incident and the release.

6 Q: Okay. "He also stated that he contacted
7 Sergeant Gottlieb and expressed his concern and
suggested
8 that they obtain a subpoena if they plan to use any
9 information derived from the report in court
10 proceedings."

11 If you were told it was permissible, why did
12 you go ahead and e-mail Gottlieb and tell him you better
13 get a subpoena or a court order?

14 A: I didn't e-mail him; I called him. And I
was
15 concerned that my giving him the information without a
16 subpoena or the way I had given him the information
might

17 cause him difficulties in his investigation in using the
18 information.

19 Q: Now, where did that concern come from? Your
20 understanding of FERPA?

21 A: I was afraid that I had -- at that point I
22 came to the -- despite this, I came to a conclusion that
23 I had more than likely violated FERPA, and I did not

know

24 whether that would cause a problem for Gottlieb or not,
25 so I contacted him and made that suggestion.

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1 Q: And what did Gottlieb say to you?

2 A: He would obtain a subpoena.

3 Q: So he immediately understood what you were
4 saying and realized, yeah, I better get this information
5 through a subpoena?

6 A: You know what? I don't have a clue what
7 Gottlieb understood or what he didn't understand.

8 Q: Okay.

9 A: All I know is that he eventually did apply
10 for a subpoena.

11 Q: Now, I'd like to -- keep this Smith 3 in

12 front of you, sir, but I'd like to have the court
13 reporter mark this document as Smith 4.

14 [SMITH EXHIBIT NO. 4 WAS MARKED FOR
15 IDENTIFICATION]

16 Q: Now, this is an e-mail from Kemel Dawkins to
17 Susan Taylor, copy to Aaron Graves, Denise Evans and
18 T3@duke.edu.

19 Do you know T3 is Tallman Trask, III?

20 A: I've heard him referred to as that, yes.

21 Q: All right. And who is Ms. Taylor?

22 A: Where?

23 Q: The person who sent this e-mail, Suzanne
24 Taylor.

25 A: I don't know who she is.

62

1 Q: Okay. And this is -- if we look at the
2 e-mail, it's dated August 20, 2007. It starts
3 "Confidential Memorandum" to Kemel Dawkins from H. Clint
4 Davidson, Jr. Do you know who he is, Mr. Davidson?

5 A: No, I don't.

6 Q: Okay. Let's look at this document. And it
7 says, "Question on disciplinary action for Duke police

Supplements - Case #: 06-008310

Supplemental Case Notes for:

Sergeant M.D. Gottlieb

06-8310



3/15/2006 1640

I was working off duty at Durham City Hall when I received a call from Inv. B. Jones in reference to a case she was handling. She stated there was a rape reported at 610 N. Buchanan which is in District 2. She received the case on the morning of 3/14/06 while on call. She stated she had very little information on the case due to the victim's condition while she was at Duke ER. She stated the victim did have a rape kit done while she was at the hospital. She stated the victim had left her a message that she received when she woke up on the afternoon of 3/14/06 around 1400 hours, and was suppose to meet with the victim later that night at 1900, however, the victim had gone back to be seen by a doctor again due to medical problems. She stated the victim's boyfriend had contacted her on the evening and let her know the victim was being seen and that is why she missed her 1900 hour appointment. She stated she had set up a new appointment for 1900 hours today (3/15/06) and wanted to know if the District 2 Investigations wanted to adopt this case since she had not had a true interview with the victim to this point. I asked if any canvass had been conducted, a search warrant done on the crime scene, or identification of any potential suspects had been done up to this point. I explained to Inv. Jones that District 2 Investigations could take over the case if she needed our assistance, however, I explained to her it would be in the best interest of the victim to limit the number of interviews of the traumatic event. I advised her we should first consult with Sgt. Fansler and see if she agreed on this decision to transfer this case to District 2 from the On-Call Team. If in fact District 2 adopted this case, the interview for this evening would need to be cancelled and the District 2 Investigator who would be assigned in the morning would interview the victim then. Inv. Jones stated she would discuss this with her Sergeant and get back to me. I told her to give the victim my pager and office number and have her call me at 8:30am on 3/16/06 so we could set up the interview. She agreed.

1649

I sent out a basic email asking for information on the event from the community on the PAC 2 list serve / Trinity Park Websites.

1720

I had a telephone conversation with Sgt. Fansler concerning this case. She advised me she thought it would be a good idea if District 2 was able to continue with this case. I agreed to adopt it, and told her to have Inv. Jones cancel the interview as we discussed earlier, and to have the victim contact me in the morning.

1725

I made contact with Inv. Jones and notified her we would reassign the case to District 2. I asked her to cancel her appointment and explain what was going on to the victim as discussed earlier.

3/16/06 0800

I conducted the morning roll call with the District 2 Investigators. The rape case was assigned to Inv. B. Himan. I asked each Investigator to coordinate with Inv. Himan so that we could obtain as much information as possible during the day.

0820

I spoke to Crystal Mangum by telephone. She stated she could see us at her home anytime this morning. She stated she lived at 909 Davinci. I advised Inv. Himan of same.

0844

I received a call from a potential witness who identified himself as Jason Bissey. He stated he lived next door to 610 N. Buchanan, and stated he had heard men at the party yelling racial slurs at the women in the car as they were pulling off to leave. He stated he was going to call the police earlier in the evening, but didn't as things at 610 N. Buchanan became rowdy. He stated when he saw the request for information on the PAC site, he knew he needed to call and give the information he knew. I took his name and

number and told him Inv. Himan. In addition, I gave Mr. Bissey Inv. Himan's contact information and thanked him for calling.

0930

Inv. Soucie and I met with Inv. Sgt. Gary Smith at Duke Police HQ. He compiled photographs onto a disc of the members of the Duke Lacrosse Team for line up's if needed at a later time. He was also able to provide us with the Duke PD report from that event.

1122

I returned to the station and turned over the information to Inv. Himan.

1147

Inv Himan and I went to 909 Davinci St. to meet with the victim. The victim was at home alone with her two young children. The victim had a very slow gate that was obviously painful while she was walking. Her facial expressions conveyed her pain as she ambulated. She moved extremely slow and had difficulty in turning from a direct line. She used the back of the sofa for assistance as she ambulated to sit down in the living room. The victim had to take time to position herself carefully on the sofa so that her exterior portion of either hip was making contact with the cushion. Anytime her bottom touched the sofa cushion while repositioning during our visit, she groaned and had a facial expression consistent with pain. The victim made an effort to console her kids when they would enter the room to see if she was ok for a brief minute, but was obviously having difficulty in moving to ensure them everything was fine. She stated the kids do not know what had happened to her and didn't know how she would speak to them about it when it came up. The victim became emotional when describing her attack. Tears ran down her face freely, and her nose began to run.

The victim discussed how she attended school at NCCU and was making a living as a stripper during the night time. She works in a club in Hillsborough (Platinum), and now has started working for Angels Escort Service recently. She stated she receives calls and is told when and where to go for a function.

She stated she was contacted on the evening of the 13th to go to a bachelor party at 610 N. Buchanan. She stated she was to be paid \$400.00 to perform with another female dancer and was to be paid by Dan Flanigan. She stated she arrived late just before 2330 hours. She stated she entered the residence through the back door where she had met Nikki and was handed a drink. She has drank before and believed this to be rum and coke. She stated she was paid and they went into the bathroom for approximately 10 minutes, got ready to dance, and discussed how they would perform the act. She stated once inside of the bathroom, she placed her drink on the sink. She stated she accidentally spilled her drink, so she began to drink Nikki's drink. She stated as soon as they came out of the bathroom and started to dance the men became aggressive in their language, and started to get very excited. She stated she was afraid because one of the men in the crowd started yelling about sticking a broomstick up into them. She stated that happened within 5 minutes of them beginning to dance, and that is what made them stop. Fearing for their safety. She stated they went back into the bathroom and got what they could find of their belongings and went outside. She stated a male named Adam came out to their vehicle immediately when they went out, was very nice to them, apologized, and talked them into returning. She stated they went into the house and were separated (Nikki and her). She stated she was led into the bathroom that she was originally in. There were three men inside there. She described the bathroom as being blue, believes the rug was blue, and it had a tall mirror that went up to the ceiling. She thinks it was the master bathroom. When she was inside of the bathroom, she recalled the door closing, but could not recall which one of the men closed the door. She stated one of the men, Adam stated, "I'm sorry sweetheart you can't leave". At the same time all three men who she could identify by a first name only grabbed her. The men were named "ADAM, BRETT, and MATT". She stated Matt grabbed her by her legs and then she stated they forced her head down beside the toilet and wall and began to rape her as she was on all fours. She stated Brett was behind her and was the first to sodomize and then to rape her. She stated Brett ejaculated and then stated, "I'm done it's your turn". She stated while the sexual assault was taking place they were yelling at her "Fuck this Nigger Bitch" and "Fucking Nigger". She stated that Matt was next to assault her. He attempted to "put it in my ass" but it was so sore he started to choke me from behind "because I was screaming so loud." She stated she could not breathe and remembered trying to get his arm off from around her throat. She stated she broke her fingernails off in the process. (False fingernails that were painted red.) I looked at her right hand and noticed four were missing. She stated Matt then penetrated her rectum, and at the same time Adam became excited while he was masturbating, off to the side he pulled her up and he stuck his penis around her lips and mouth. She stated she spit the fluid out on the side of the toilet. At that point Matt then moved around to her front side where he penetrated her vaginally. She described the three men as 1) W/M, young, blonde hair, baby faced, tall and lean, 2) W/M, medium height (5'8"+ with Himan's build), dark hair medium build, and had red (rose colored) cheeks, and the third suspect as being a W/M, 6+ feet, large build, with dark hair. She stated after the men raped her, one of the men took her purse from her, took out her money, and threw it back onto the floor. She stated of the \$400.00 only \$200.00 is hers, the other half is the escort services. She stated she does not have her purse, phone, and a shoe (while high heel) in addition to her money. She stated Matt drug

her out of the house and placed her in the car with Nikki. She stated Nikki drove her around for a little bit and then she recalls being at Kroger where the police arrived and saw her. She stated she did not take a shower, use the bathroom, brush her teeth, change her clothes, or have anything to eat or drink post attack. She stated she is not a prostitute, but stated she had been to one event in the past where she thought a male at a party was nice, so after the party they went out and had consensual sexual relations. She stated the last time she had consensual intercourse was about a week ago before this interview. She stated she did not receive any money for that other than the money she received before she started performing. The victim denied the use of any drugs and stated she had very little alcohol to drink that night.

She recalled becoming "fuzzy" about the time she started dancing. She stated she was fine when she arrived there.

1243

The victim stated she had bruising that was beginning to show up from the assault. ID was called to photograph her. CSI Reid (female) took her in private and took photographs. CSI Reid stated she had the onset of new bruises present.

1300

I returned to the station and asked Inv. Carnevale to take pictures of 610 N. Buchanan, to secure a key from the landlord so if no one was home at the time the search warrant was ready, we would not need to make a forced entry to the home, and to see if he could locate Angels. Inv. Himan began to put together a search warrant for the crime scene and I assisted him with same.

1415

I asked Inv. Soucie to put together several photo line ups based on the potential suspect names ADAM, BRETT, and MATT. I asked her when she was done to have Inv. Clayton show them to the victim to see if she could ID anyone.

2015

A briefing was held at Station 2 in reference to a search warrant for 610 N. Buchanan. CSI Ashby and Ryan Johnson were also in attendance with investigators and uniform officers from District 2.

2045

I notified communications District 2 CID was conducting a search warrant at 610 N. Buchanan Blvd.

2047

I assisted Inv. Himan at 610 N. Buchanan Blvd in the execution of the search warrant. Inv. Himan knocked and announced 5 times Durham Police search warrant open the door. This was over 45 sec to one minute. With no answer, Inv. Himan made a non forced entry using the key provided by the landlord. As entry was made two subjects approached the front room. They were identified as David Evans and Matt Zash. The home was cleared for possible threats, and Inv. Himan read the search warrant to the two occupants. In the front room in plain view was money on the coffee table (20 dollar bills) and the victim's purse, phone, and ID on a refrigerator in the south east corner of the living room. Inv. Himan explained to the men that they were not under arrest, but we were going to limit where they could go inside of the home during the time the search warrant was being executed. They were told they were free to go outside and do anything they wanted to do in that capacity. They were polite and agreed to sit on the sofa. Inv. Himan asked them if they were interested in going to District 2 to answer some basic questions about the party. Both men were equally cooperative and stated they would go with us. Inv. Himan asked me to transport Matt Zash to Station 2 where he could be interviewed. While inside the home still, I told the men I was hungry and asked them if they wanted me to stop and pick them up something to eat for them on me. Both men politely declined. I asked if the woman's belongings had been sitting where they were this entire time. Matt Zash stated, "No, I found them outside on the side of the house thrown everywhere the morning after the party." "I picked them up and brought them inside to keep them safe." I told Mr. Zash I would drive him to station 2 if he didn't mind stopping with me so I could pick up something to eat. He politely agreed.

2134

I left 610 N. Buchanan with Matt Zash in the front passenger seat of my unmarked vehicle. He did not have on handcuffs, but he did allow me to do a protective search of his person before he sat down inside of my vehicle for any weapon which might present harm to my person. We drove to 9th street where I stopped to go into Jimmy John's. I stopped 4 shops south of Jimmy Johns, parked the car, left the windows open, the vehicle running, and once again offered to purchase Mr. Zash anything he wanted. He again politely declined. I told him to make himself comfortable and feel free to turn on any music he wanted to listen to. I told him I would be back in a couple minutes. When I walked up to Jimmy Johns, the store was closed. When I returned to my vehicle, Mr. Zash had turned on the radio to an easy listening station. We drove back down Main Street to Duke and down to Station 2. Inv. Soucie met us there, and she interviewed him.

2248

As Inv. Soucie was completing the oral section of her interview prior to having the suspect fill out a written statement, I stepped in and asked Mr. Zash if I could go over a list of people from his team and see if he could tell me who was present at the party. I told him if he was not sure if they were there or not; do not include them on the list. He stated the only people there were lacrosse team members. We went down the list, and he wrote down the names of the people who he recalled were there.

2257

Inv. Himan asked me to go over a non custody form with Daniel Flannery

I then asked him if anyone was at the party who was not on the team. He stated no. I told him having that in mind; I wanted to go over the team roster to see who was there. I told him also; do not indicate someone was there unless you are completely sure. He completed the list of players who he knew were there. I told him it may be a while until someone interviews him. I told him he was free to use the rest room, get something to eat, or use the phone. He stated his cell didn't work in the building. I told him he was welcome to go outside. I instructed him to just use the doorbell when he was ready to reenter the building. I also told him he was free to use the city phone in the front lobby section if he desired.

2306

Mr. Flannery stated he wanted to call his girlfriend, and went up the lobby unescorted. I was walking around the building and David Evans asked to use the restroom. I gave him directions there also. Mr. Flannery asked me what I would do in this situation. I told him it is important for him and his roommates to consult with their parents and keep them informed on the situation. I told him he may want to consider speaking to an attorney also to get their input.

3/17/06 0010

I suggested to Inv. Himan he inquire if they wanted to participate in a suspect kit process to rule them out as potential suspects. He spoke to them and they all agreed.

0114

I returned to 610 N. Buchanan. Inv. Carnevale was still holding the scene as CSI processed it. I spoke to CSI Ashby and Inv. Carnevale and asked what type evidence had located to this point. In addition, I walked around the residence to see if there were any other clues present that could link the incident reported to this residence. I noticed in the rear center bedroom, a picture hanging on the wall. It has one of the residents in the photograph at what appears to be a party (unrelated to this incident) drinking alcohol. The interesting thing about the photograph is how the subject has red cheeks most likely due to the alcohol consumption. The cheeks are consistent with the subject who the victim alleged attacked her. The scene was secured when ID completed the processing.

0209

I arrived at Duke to assist Inv. Himan.

0215

I prepared three Voluntary Consent to Identity Procedures sheets. I placed check marks next to each spot where the people were going to initial and told Inv. Himan to have them initial each spot along with signing them.

3/20/06 1420

Inv Himan advised me he spoke to Duke Police Det. Stotsenberg to set up a voluntary meeting for the players to speak to Durham PD and give photographs, and DNA. The coach is arranging the meeting during the athletes practice time to ensure everyone will be there. None of the subjects would be required to participate if they did not want to.

1500

I spoke to CSI Felts. She stated it would be fine for them to assist us in the collection of DNA and photos of the players on the volunteer basis on 3/22/06 and they would take care of the staffing needs. She stated for the DNA on that number of people, they would only do a buccal swabbing. I agreed. The District 2 command was also notified.

I spoke to Sgt Shelton and Officer Stewart individually. Both of them responded to the noise complaint and walked around the home. Neither one of them recalled seeing anything on the ground other than beer cans and trash. When they were there, the residence appeared unoccupied. When asked if they saw anything like a woman's purse and belongings on the ground on the south side of the house, Sgt. Shelton stated he remembered walking up the alley right there. "There is no way anything like that was

there". Officer Stewart did not recall seeing anything like that either when walking around the home.

3/21/06 0900

I went to the Durham County Court House and received a Subpoena for Inv. Himan to pick up the SANE Nurse's documentation concerning this case.

1030

I took the subpoena to Duke ER and served it on Tara Levicy. Ms. Levicy took me into the secure custody file room for the Sane Nurses and turned over the report and photographs to me. I asked Ms. Levicy about the exam. She stated the victim came in and was very apprehensive around the officers. Once the officers left the room it took her approximately 15-20 minutes to get her to calm down and open up. She stated the victim from that point on never changed her statement for over the 6-7 hour time period they were together. She stated the victim would remain calm in her presence and even when she left the room, however, one time a male nurse walked into the room to get some supplies while she was just down the hallway, and the victim, Ms. Mangum began to scream hysterically. Ms. Levicy stated she had to run back down to the room to reassure her she was not going to be hurt. I asked her if the exam was consistent with blunt force trauma, and she replied yes. She stated the victim had edema and tenderness to palpation both anally and especially vaginally. She stated it was so painful for the victim to have the speculum inserted vaginally, that it took an extended period of time to insert same to conduct an examination. I asked her if the blunt force trauma was consistent with the sexual assault that was alleged by the victim. She stated the trauma was consistent with the victim's allegation. The paperwork was delivered to inv. Himan.

1545

Inv Himan asked if Inv. Clayton and I could go by 3347 Rose of Sharon to see if we could locate the second dancer who failed to show up for her appointment. It is the possible address of a boyfriend.

1601

We arrived at 3347 Rose of Sharon. The dancer and her boyfriend no longer stay there with his brother. We were directed to check at his mother's home on Cornwallis Rd.

3/22/06 0657

I stopped by 1507 E. Cornwallis Rd. and met the second dancer's boyfriend's mother. She did not want to give me his telephone number or address; however, she promised one of them would call me within a couple hours.

0818

I received a call from Kim Pitmann. She stated she would be in at or close to noon to meet with Inv. Himan. I advised Inv. Himan of same.

1240

Inv. Himan met with Kim Pittman, AKA Nikki. I sat in on and assisted with the interview. Inv. Himan has notes of same.

1330

I advised Inv. Himan that Andy Peterson (of the Wes Covington office) notified me the team members would not be attending the meeting previously scheduled.

1345

I contacted the Durham Police Attorney Toni Smith and discussed the possibilities of a non testimonial order for the athletes. I told her about the case, and also told her about how we plan on discussing this with the DA's Office.

1533

Inv. Himan advised me Duke Police Detective Stotsenberg had contacted him and said no one showed up for the meeting.

1600

I asked Inv. Himan to follow up with the DA's Office concerning the NTO. Inv. Himan contacted me after the meeting was completed and notified me the DA's Office wished to apply for the NTO. He stated they would like us to write it up for them to present.

1810

I spoke to Toni Smith and notified her that Inv. Himan spoke with ADA Tracy Cline. Ms. Cline asked him to draw up the NTO so the DA's Office could present it to a Judge in the morning. She stated follow the directions of the DA's Office sine they are the ones conducting the possible future prosecution.

1900

I assisted Inv. Himan in drawing up a NTO for the District Attorney's Office. The document was completed just before 0145 hours.

3/23/06 1005

Inv. Himan contacted me and stated the Judge signed the application. He stated the date to produce was as applied for. He stated the DA needed to write the complete application form for each person and those would be signed and completed by early afternoon. He stated the Attorney could be called now to notify them that they needed to contact the players and notify them the time and place to go to.

1010

I notified Wes Covington's Office (A. Peterson) about the application status. They advised they would begin making arrangements to have the players there since the application was signed. They stated they did not expect any difference with the actual orders. I gave him directions to the Forensics Unit on 213 Braodway.

1329

I received an email from A. Peterson stating the Lacrosse players would be available for questioning on 3/29/06 at 1500 hours. He stated in that email that Mr. Covington would be present for the Non-Testimonial Order.

1521

Inv. Himan notified me he had the NTO in hand signed by Durham Co. Superior Court Judge Stephens.

1600

Inv. Himan transported the order to the Forensics Unit. Inv. Clayton, Soucie, Bryant, and I were present to assist with the process. Attorney Wes Covington, Andy Peterson, and Robert Ekstrand were present. Mr. Ekstrand made it a point to state he represented every athlete present; however, several of the athletes stated he was not their attorney according to Inv. Himan and Clayton. I went to meet with the Attorneys and asked each of the people present to have a photographic ID. I set up several stations to ensure the process went smoothly and decreased the amount of time necessary for the individuals involved. Within a brief time period the press showed up and began filming and taking photographs. I asked everyone to come inside and set up security for the players to assist in protecting their privacy. I called for Patrol to stand by the gate of the parking lot to ensure no one who was unauthorized could make entry. I asked Inv. Bryant to stay with the individuals in the lobby and escort them by car pool groups to the back for processing so that their vehicles could be driven into the back of ID, the players get into the vehicles unseen. Once in the processing section of ID, the players would initially sign in (signature for ID). The second stage would be for an individual to go into a room with Inv. Himan and Inv. Clayton where their ID would be verified, the investigator would also look at goduke.com for each person and ensure the team line up photograph matched the ID/person present because a few of the participants forgot their ID's, and the Non-Testimonial was served (including placing name and address of said persons served. Mr. Ekstrand spent most of his time in this room observing the people. From there each person would individually go to a photographic station, a buccal swab station, and then be dismissed. Once each car pool group had completed, Mr. Ekstrand's assistant would drive their vehicle to the rear of ID and the men would enter the vehicle and leave without having to be stopped or harassed by the media. Due to this security the press left about half way through the event. The last person was served at 1835, and the last person left at 1858.

3/24/2006 0900

Captain Lamb met with me and advised me District Attorney Nifong was going to be running and prosecuting this case in the event criminal charges are sought. He stated to continue with our investigation, but to go through Mr. Nifong for any directions as to how to conduct matters in this case. Capt. Lamb also notified me to make sure the he was kept up to date so the Command Staff was kept up to date on the matter.

3/27/06 1020

While I was attending a Police Department OSSF Training class, I was summonsed by Cpl. David Addison of CrimeStoppers. Cpl. Addison received an email from a source via CrimeStoppers that had a disturbing message. The email was written in a manner that

indicated the possibility of two or more people may have conspired to kill someone. A few things in the email that stood out were the use of a double period (..)at the end of a sentence or phrase. The email address listed showed ryan.mcfadyen.edu and was dated March 14, 2006 shortly after the party.

1030

I returned to the classroom and pulled Inv. Himan out who happened to be scheduled for class on that day also. I gave him a briefing, and the two of us went to the Courthouse to see Mr. Nifong.

1040

Inv. Himan and I met with District Attorney Nifong. He was shown the email and briefed to date. The decision to do a search warrant was discussed and agreed upon. We returned to Station 2 and I assisted Inv. Himan in completing the document.

1735

I advised communications we were going to be executing papers on Duke Campus. Duke PD Inv. Smith assisted in the service at Edens 2C room 204.

1801

Inv. Himan, Soucie, Smith, Ryan Johnson (MIS), CSI Ashby, and I went to the room. Inv. Himan served the search warrant to the subject's roommate John Brad Ross who was home. He opened the door upon knocking and announcing. He was polite and cooperative. I listened to Inv. Himan tell him he was not under arrest and was free to leave the room or our presents if he desired. Inv. Himan read the search warrant to him in our presence. He was told his movement in the extremely small room would be limited since we were trying to process the scene. He was polite and went into the hallway. He stated he was not at the party. He stated he had a document showing his whereabouts the night of the incident and could provide names of people who were with him if it was necessary. I went through a garbage can in the room and needed somewhere to empty it to keep the room as clean as possible. As Inv. Himan continued to ask questions to Mr. Ross questions, I asked if I could empty the contents of the garbage can in the room into the hallway trash can. I told him I could return the trash to the original can if he wanted it back in the room. He politely told me I could leave the trash in the hallway trash can when I was done. At one point Mr. Ross stated he felt he should consult with his attorney. Mr. Ross contacted his attorney and minutes later Robert Ekstrand showed up. Mr. Ekstrand asked to see the search warrant and was handed the copy given to Mr. Ross. Mr. Ekstrand questioned the signature, not believing it was Judge Stephens signature. He was shown the original, but was still asking questions concerning the judge's signature. Inside the room were a number of hand drawn penises on the wall with team member's nicknames, jersey numbers, and questionable racial/ethnic things written on same. There was a small hangman's noose on the light fixture. Inside the room were also some emails on hard copy with the same.. markings as on the email sent out on 3/14/06 listed in Inv. Himan's search warrant. I left prior to the warrant service being completed.

1915

Inv. Himan and Soucie called me and stated Mr. McFadyen returned to his room. They stated he was read the search warrant in front of Mr. Ekstrand's assistant. They stated he would not tell them where his car was parked or turn over the keys. They asked me to speak to him for a minute. I spoke to Mr. McFadyen and explained to him that the investigator had placed his vehicle on the search warrant. I told him if the investigators had to go outside, walk car to car and locate the vehicle in the large parking facility, and not have the key; they would make a forced entry to the vehicle. I told him it is not our intention to destroy belongings, however, we intend on carrying out the order and would take the necessary steps to do so. I told him it was up to him if he wanted the vehicle entered in a non forceful manner or not, because we were going to locate it and enter it. He agreed to voluntarily turn over the keys and disclose the location of the vehicle to the Investigators.

3/28/06 1720

I followed Inv. Himan to the home of William Boehmler located at 1107 Urban Ave. Mr. Boehmler agreed to come back to the station with Inv. Himan and answer questions.

3/29/06 0830

I checked my voice mail at work after roll call and listened to a voice mail from Attorney A. Peterson. He stated his firm has been terminated and therefore the interviews with the team members scheduled for 3/29/06 were cancelled. I notified Inv. Himan.

1300

Inv. Himan and I were summonsed to a meeting at Police HQ to discuss the case with the Durham Police Command Staff, Duke

Police Command Staff, City Manager, and the Police Department Legal Advisor.

1405

Inv. Himan and I met with District Attorney Nifong. Mr. Nifong was pleased with the investigation to date, and asked for us to attempt to make contact with the individuals on the team to try to see if any of them will speak to us concerning the case. I told him we would try to speak to the individuals in as timely of a manner that was permitted.

3/31/2006 1223

Investigator Himan and I met with Durham Co. DA Michael Nifong in reference to doing a photographic line up with the new mug shot style photographs obtained during the Non-Testimonial Order procedures conducted on March 23, 2006 at the Durham Police Forensics Unit. Mr. Nifong suggested we put together the mug shot type photographs into a group since we are under the impression the players at the party were members of the Duke Lacrosse Team and instead of doing a line up or photographic array, we would merely ask the victim to look at each picture and see if she recalled seeing the individuals at the party. If in fact she could recall, just let us know how she recalled seeing them from that night, what they were doing, and any type of interactions she may have had or observed with a particular individual.

1340

I arrived back at District 2 and gave Capt. Lamb and Lt. Ripberger an overview of the conversation with the DA. I also discussed with them my idea to take the photographs and place them into a Power Point presentation. I explained to them that I would assign the set up of the presentation to Investigator Williams and Himan. Capt. Lamb asked me to confirm with the second dancer that she is the one who made the call about the racial slurs at 610 N. Buchanan to ensure there was not a second incident needing to be looked at.

1437

I sat down with Investigators Williams and Himan and taught them how to put together a power Point presentation since neither one of them had that experience. I asked them to set it up by using the IR number, create blank item number slides in between corresponding photographic slides. They had access to each of the mug shots with the Lacrosse Players names on a copy of a CD provided by the Durham Police Department Forensics Unit.

1445

I contacted Kim Pittman to confirm she was the caller to 911 about the racial slurs. She stated she made the calls, and said it was definitely her.

1500

Inv. Smith and Stotsenberg from Duke Police drove up to the District 2 substation as I was leaving. They had three reports they delivered reports to me requested by us. Two were for staff at Duke who are being harassed due to this case (Duke reports #2006-1548 and 2006-1515), and one is a key card report for the team members on 3/13/06 to 3/14/06.

1515

I went to Duke IT Security at the request of Inv. Himan and picked up information that was required by a court order from Chris Cramer.

1538

The information collected by me from Chris Cramer was delivered to Ryan Johnson at EIS. I completed a property form and turned it over to Inv. Himan.

4/3/2006 1235

Investigator Himan made contact with me and advised me the Power Point presentation was completed.

4/4/2006 0800

I made telephone contact with Crystal Mangum and made an 11:30am appointment for her to view the presentation.

0900

I spoke to Vice President Graves at Duke University Police via telephone.

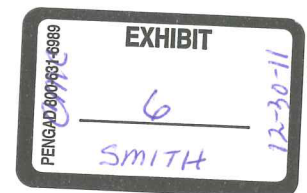
1011

I set up a desk in the briefing room of the District 2 Substation and placed Investigator Williams laptop computer on top of that desk.

From: Gary Smith <CN=Gary Smith/OU=Police/OU=Admin/OU=Univ/O=Duke>
Sent: Thursday, March 30, 2006 6:08 PM (GMT)
To: roland.gettliffe@duke.edu
Subject: The 46
Attach: lacrosse dulce ids.doc

Times
3/13/06 @ 2100 to 3/14/06 @ 0400

Student ID Name Duke Unique
Archer,Breck Bernard
Carrington VII,Edward Codrington
Carroll,Casey Joseph
Catalino,Michael Paul
Clute,Thomas Vinson
Coleman,Kevin Patrick
Coveleski,Joshua Reihm
Crotty,Edward James
Danowski,Matthew Edward
Douglas,Edward Sholto
Evans,David Forker
Finnerty,Collin Henry
Flannery,Daniel
Fogarty,Richard Gibbs
Greer,Zachary R.
Henkelman,Erik Steven
Jennison,John Erskine
Koesterer,Benjamin George
Krom,Frederick B.
Lamade,Peter Jameson
Langley,Adam Scott
Loftus,Christopher ..
Mayer,Kevin Michael
McDevitt,Anthony Edward
McFadyen,Ryan John
Nick,Glenn William
O'Hara,Nicholas Alexander
Oppedisano,Daniel Christopher
Payton,Sam Charles
Ross,John Bradley
Sauer,Kenneth J.
Schoeffel,Stephen Dearnley
Schroeder,Robert Rancke
Seligmann,Reade William
Theodoridis,Daniel
Thompson,Bruce Edward
Tkac,Christopher James
Walsh,John Thomas
Ward,Michael Christopher



Wellington IV,Robert Hall
Wilson,Matthew P.
Wolcott,William Eldon
Young,Michael Spencer
Zash,Matthew

thanks

F/SGT Gary Smith
Criminal Investigations Division
Duke University Police
502 Oregon Street
Durham NC 27708
919-684-6424 = ME
919-684-8155 = FAX

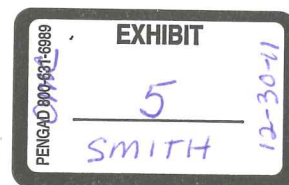
From: Gary Smith <CN=Gary Smith/OU=Police/OU=Admin/OU=Univ/O=Duke>
Sent: Friday, April 14, 2006 10:09 PM (GMT)
To: m.gottlieb@durhamnc.gov
Cc: James L Schwab; Leila Humphries
Bcc: Robert Dean
Subject: Card Reader Records

Sgt Gottlieb,

Per your request for card reader records on the Lacrosse team from 0900 on 3/13/06 to 0400 on 3/14/2006, the release of that information will require a court order. The order should be directed to Matt Dummond at the Duke Card Office. Please call me if I can be of further assistance.

Thanks

F/SGT Gary Smith
Criminal Investigations Division
Duke University Police
502 Oregon Street
Durham NC 27708
919-684-6424 = ME
919-684-8155 = FAX



From: Suzanne Taylor
Sent: Monday, August 20, 2007 11:04 AM
To: Kemel Dawkins
Cc: t3@duke.edu; Aaron Graves; Denise Evans
Subject: Question on Disciplinary Action for a Duke Police Office

CONFIDENTIAL

Memorandum

TO: Kemel Dawkins

FROM: H. Clint Davidson, Jr.

DATE: August 20, 2007

SUBJECT: Question on Disciplinary Action for a Duke Police Officer

I am writing to summarize my understanding of the disciplinary action question you, Aaron Graves and I recently discussed, as well as to recommend a course of action.

The circumstance, as I understand it, is as follows:

In the early stages of the lacrosse investigation, a member of the Duke Police staff was approached by a Durham Police Department investigator. In the course of their discussion regarding the identification of possible perpetrators, the Duke police officer indicated that swipe card records of Duke dorm entrance and egresses might be helpful. The Duke police officer requested this data from the Duke card office and provided it to the Durham Police investigator.

The Duke Police officer had some uneasiness about the matter and checked with his supervisor, as well as one additional higher level supervisor, to confirm that the appropriate action had been taken. The supervisor and the higher level authority confirmed that the action taken was appropriate. While specific operating procedures existed on this matter, there was confirmation that this approach has been the accepted practice and reflects cooperating efforts between Duke and Durham Police.

Based on the understanding I've described above, it does not appear to me that any policy or procedure was violated. Given questions that have been raised regarding

FERPA and information confidentiality, specific operating procedures and approval guidelines should be established and appropriate training provided. Absent a violation of policy or departmental operating guidelines, I do not see the basis for a disciplinary action, particularly after a year later from when the incident occurred.

I understand the delicateness of this matter and the risk management questions raised. It appears that some considerable training and orientation around FERPA for a number of different offices would be helpful.

I've discussed this matter with Dr. Trask, and he indicates he will communicate with John Burness in an attempt to bring this matter to closure. If it would be helpful, certainly I would be willing to join with you, Aaron, Dr. Trask and John Burness to assure we are all on the same page. I also think it would be helpful to bring a group together to better understand roles, rules and responsibilities around FERPA.

Please let me know if you have questions or need additional information.

Thank you.

cc: Tallman Trask

Aaron Graves

Denise Evans

