

EXHIBIT A

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

No. 1:07-CV-00953

RYAN MCFADYEN, et al.,)
)
Plaintiffs,)
)
vs.)
)
DUKE UNIVERSITY, et al.,)
)
Defendants.)
_____	/

*** ATTORNEYS' EYES ONLY ***

VIDEOTAPED DEPOSITION OF BRECK BERNARD ARCHER

(Taken by Defendants)

Durham, North Carolina

Thursday, April 19th, 2012

Reported in Stenotype by
Sophie Brock, RPR, CRR
Transcript produced by computer-aided transcription

1 **A. Uhm, just from word of mouth, theories that**
2 **it was released through a Duke police officer to -- it**
3 **was Sergeant Smith -- to, like, an IT -- an IT guy in**
4 **the DukeCard office. Basically, it came through the**
5 **ID guy -- I think it was Mr. Gettlief -- and it was**
6 **taken from Mr. Gettlief to Sergeant Smith, and from**
7 **there it went to the Durham Police Department.**

8 **Q. As of June 2nd, 2006, do you have any reason**
9 **to believe that Matthew Drummond knew that Sergeant**
10 **Smith had delivered that DukeCard information to**
11 **Durham?**

12 **A. Uhm, I'm not sure. I mean, I believe it**
13 **was -- I believe information was already released, but**
14 **I'm not -- I really ...**

15 **Q. Do you know someone named Kate Hendricks?**

16 **A. Yes.**

17 **Q. Okay, who is Kate Hendricks?**

18 **A. She was a legal -- like, a legal counsel for**
19 **the university.**

20 **Q. Okay.**

21 **MR. SEGARS: We're going to mark the**
22 **next document as Exhibit 36.**

23 **(EXHIBIT NUMBER 36 WAS MARKED FOR IDENTIFICATION)**

24 **THE WITNESS: Thanks.**

25

1 I think it should be reopened for.

2 MS. SMITH: You recognize that
3 depositions are supposed to be a total of seven hours?

4 MR. SEGARS: I understand that.

5 MS. SMITH: Okay.

6 We're just going to take two minutes to see
7 if we have anything.

8 MR. SEGARS: Okay.

9 THE VIDEOGRAPHER: Going off record.
10 The time on the monitor is 7:30.

11 The tape has stopped.

12 (RECESS TAKEN FROM 7:30 P.M. TO 7:39 P.M.)

13 THE VIDEOGRAPHER: Going back on record.
14 The time on the monitor is 7:39. Please begin.

15 MS. SMITH: Mr. Archer, just a couple of
16 questions.

17 EXAMINATION

18 BY MS. SMITH:

19 Q. Were you convicted of trespassing?

20 A. No.

21 Q. What is the disposition of that charge?

22 A. It's dismissed.

23 Q. And also, if you could turn to
24 Exhibit No. 35.

25 A. I'm sorry. There we go. Got it.

1 Q. In the examination, you were asked questions
2 about this document?

3 **A. Yes, ma'am.**

4 Q. At the time of the motion to quash the
5 subpoena, did you have knowledge that Matthew Drummond
6 knew that the DukeCards had already been given to the
7 Durham police?

8 **A. No.**

9 Q. What do you know about that since --

10 **A. I know that -- I know that at the time that**
11 **he wrote this letter, he'd already known that his**
12 **assistant had given that information to the police.**

13 Q. And what's your source of that information?

14 **A. Just basic -- uh, just rumors, talking;**
15 **I mean, just heard it.**

16 Q. Are you aware that Mr. Gettlief has been
17 deposed?

18 **A. Yes. It's -- I'm sorry -- well, I mean,**
19 **rum -- obviously rumors from the deposition. The**
20 **deposition was the source, but ...**

21 MS. SMITH: No more further questions
22 from us at this time.

23 MR. SEGARS: Some short redirect.

24 EXAMINATION

25

1 Q. Did you listen to any part of an audio file
2 of Mr. Gettlief's deposition?

3 **A. I don't think so.**

4 Q. Do you know anything about the content of the
5 voicemail that you described in your testimony today?

6 MS. SMITH: Objection, asked and
7 answered.

8 THE WITNESS: It's the only thing
9 I know, what I said before.

10 BY MR. SEGARS:

11 Q. Other than what you know from the testimony
12 of Mr. Gettlief, do you know of any other facts that
13 support your contention that as of June 2nd, 2006,
14 Mr. Drummond knew that Sergeant Smith had turned over
15 DukeCard information to Durham?

16 MS. SMITH: Objection.

17 To the extent that it would reveal legal
18 theories of counsel, I'd instruct you not to answer.

19 THE WITNESS: It's the -- I mean,
20 there's theories within counsel, but ...

21 BY MR. SEGARS:

22 Q. Okay, and I'd like to know what they are.

23 MS. SMITH: Objection. You can't ask
24 about theories of counsel.

25 MR. SEGARS: You've opened the door by

1 asking the question, without qualification, on
2 cross-examination, and it's my contention that that
3 has waived any privilege --

4 MS. SMITH: And it's my contention that
5 the privilege has not been waived.

6 MR. SEGARS: Very well.

7 I -- I believe that what occurred just now
8 was a waiver of the privilege, at least with respect
9 to his basis of knowledge about Matt Drummond knowing
10 of the DukeCard information being given to Durham as
11 of June 2nd, 2006, because he was asked that
12 unqualified question, a question to which we routinely
13 receive attorney-client privilege instructions when we
14 ask that question. And based on that contention, it's
15 my position that he needs to answer that question, and
16 as an additional reason for leaving this deposition
17 held open, I would mark that.

18 And subject to that, I have no further
19 questions.

20 MS. SMITH: And I would assert that we
21 are making privilege objections based on work product
22 and attorney-client communications. If he has facts
23 that are not legal theories or interpretation of
24 facts, he can very well answer the question. And we
25 do not think that any privilege was waived.