

UNITED STATES DISTRICT COURT

for the

District of Maine

CARRINGTON, et al.

Plaintiff

v.

DUKE, et al.

Defendant

Civil Action No. 1:08 v 119

(If the action is pending in another district, state where: Middle District of North Carolina)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

Dr. Robert David ("KC") Johnson

To: 5 Shipwreck Road Scarborough, ME 04074

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: See Exhibit "A" attached.

Table with 2 columns: Place (PretiFlaherty, One City Center, Portland, ME 04112-9546) and Date and Time (July 30, 2012 4:00 p.m.)

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Table with 2 columns: Place and Date and Time (empty)

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: July 9, 2012

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's Signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) DUKE UNIVERSITY DEFENDANTS, who issues or requests this subpoena, are:

Thomas H. Segars tom.segars@elliswinters.com Ellis & Winters LLP, 1100 Crescent Green, Suite 200 Cary, NC 27518

J. M. [Signature] 7/17/12

## EXHIBIT A

### INTRODUCTION

1. The plaintiffs in the Carrington Action (defined below) have brought claims against Duke (defined below) related to the Lacrosse Incident (defined below).

2. References to You (defined below), to Your Durham-in-Wonderland blog (defined below), and to Your book, Until Proven Innocent (defined below), during depositions taken in the Carrington Action and in Documents (defined below) produced by parties in the Carrington Action suggest that You possess information and Documents that are relevant to the claims and defenses alleged in the Carrington Action.

3. Moreover, a September 1, 2008 post on the Durham-in-Wonderland blog refers to "discovery files" and "author interviews" with Duke Lacrosse Players (defined below), attorneys for certain of those players, and Duke employees as "source notes" for accounts of events that relate to claims in the Carrington Action.

4. Accordingly, Documents likely to be uniquely within Your possession and information likely to be uniquely within Your knowledge appear to be directly relevant to the claims and/or defenses alleged in the Carrington Action.

## DEFINITIONS

1. The term "Communication" means any writing, or oral conversation, including, but not limited to, telephone conversations and meetings, letters, e-mails, facsimiles, or memoranda.
2. The terms "You" and "Your" refer to Dr. Robert David ("KC") Johnson.
3. The phrase "Carrington Action" means the case captioned *Carrington, et al. v. Duke University, et al.*, 1:08-cv-119-JAB-FEP, proceeding in the Middle District of North Carolina, and all the allegations contained in the Carrington Complaint. The term "Carrington Complaint" means the First Amended Complaint filed in the Carrington Action. The Carrington Complaint is available online through the PACER website (<https://pacer.login.uscourts.gov/cgi-bin/login.pl>). Alternatively, if You would like a copy of the Carrington Complaint, You may contact the undersigned attorney who will provide You with a copy.
4. The term "Duke" means Duke University, its employees, ~~agents,~~ representatives, attorneys and all persons acting on its behalf.
5. The phrase "Duke Lacrosse Player" means any member of the 2005-2006 Duke University men's lacrosse team. These members include Breck Archer, Edward Carrington, Casey Carroll, Michael Catalino, Thomas Clute, Kevin Coleman, Joshua Coveleski, Edward Crotty, Matt Danowski, Edward Douglas,

Kyle Dowd, David Evans, Collin Finnerty, Daniel Flannery, Richard Fogarty, Zachary Greer, Erik Henlekman, John Jennison, Ben Koesterer, Fred Krom, Peter Lamade, Adam Langley, Christopher Loftus, Daniel Loftus, Kevin Mayer, Anthony McDevitt, Ryan McFadyen, Glenn Nick, Nicholas O'Hara, Daniel Oppedisano, Sam Payton, John Bradley Ross, Kenneth Sauer, Steve Schoeffel, Robert Schroeder, Reade Seligmann, Devon Sherwood, Daniel Theodoridis, Bret Thompson, Christopher Tkac, John Walsh, Michael Ward, Robert Wellington, Matthew Wilson, William Wolcott, Michael Young, Matt Zash.

6. The term "Lacrosse Incident" refers to the investigation, and ultimate exoneration, of members of the 2005-2006 Duke men's lacrosse team stemming from false allegations of rape made by Crystal Mangum relating to a party taking place at 610 North Buchanan in Durham, North Carolina on March 13, 2006.

7. The phrase "Until Proven Innocent" refers to the book: Stuart Taylor Jr. & KC Johnson, UNTIL PROVEN INNOCENT, Tomas Dune Books/St. Martin's Griffin (2008).

8. The term "Durham-in-Wonderland" refers to the blog You maintain at <http://durhamwonderland.blogspot.com>.

9. The term "DukeCard Data" means information associated with the use by any Duke Lacrosse Player of his DukeCard between March 13, 2006 and March 14, 2006 inclusive, as referenced in Count 8 of the Carrington Complaint.

10. The term "Document" means all items subject to discovery pursuant to Rule 34 of the Federal Rules of Civil Procedure. Without limiting the generality of the foregoing, the term "Document" shall have its customary, broad sense to include written or graphic matter of every kind or description, including hard copy materials and electronically stored information. "Document" also includes the original of any document in whatever medium it may exist and any copy of such original differing in any way from such original.

11. The term "Information Concerning Pending Claims" means information regarding, concerning, discussing, or reflecting any one or more of the following subjects: (a) the disclosure of DukeCard Data to the Durham Police Department, the subsequent subpoena that was issued to Matthew Drummond on May 31, 2006, seeking production of DukeCard Data by Duke, or the responses to that subpoena; (b) Communications between Tallman Trask and the co-captains of the 2005-2006 Duke men's lacrosse team on March 24, 2006, or any subsequent discussions regarding those Communications; (c) Communications between Richard Brodhead and the co-captains of the 2005-2006 Duke men's lacrosse team on March 28, 2006, or any subsequent discussions regarding those Communications; (d) Communications between Suzanne Wasiolek and one or more of the co-captains on March 15, 2006, and thereafter or any subsequent discussions regarding those Communications; or (e) the job performance of

Richard Brodhead, Robert Dean, Matthew Drummond, Aaron Graves, Kate Hendricks, Tallman Trask, and Suzanne Wasiolek.

### INSTRUCTIONS

1. Any singular form of any word shall be construed to include the plural and any plural form shall be read to include the singular. Any past tense of a verb shall be construed to include the present tense and any present tense shall be construed to include the past tense.

2. To the extent that You consider any of the following requests or questions objectionable, respond to as much of each and every part thereof which is not objectionable in Your view, and separately state the part that is objectionable and the ground for each objection.

3. If You object to any discovery request on the basis of attorney-client privilege, work-product doctrine, or any other privilege, state the privilege claimed, and identify the Document or Communication for which such privilege is claimed, stating the following:

- a) The date of the Communication;
- b) The description of the Document or Communication protected, including the identity of all persons present or all persons who authored, transmitted or received a copy of such Communication, and the number of pages, if written;

- c) The subject matter of the Document or Communication;
- d) The basis on which the privilege is claimed, including with regard to any claim of attorney-client privilege the identity of the attorney(s) with whom You contend You engaged in a privileged Communication.

### DOCUMENTS AND TANGIBLE THINGS REQUESTED

1. All notes, including written Documents, audio recordings, and/or any other forms of memorialization, from interviews with the following individuals that are identified as "source notes" for portions of Until Proven Innocent in the September 1, 2008 Durham-in-Wonderland blog post titled "Paperback Source Notes" during which any Information Concerning Pending Claims was discussed: Bo Carrington, Michael Catalino, Daniel Flannery, John Jennison, Anthony McDevitt, John Bradley Ross, Devon Sherwood, Robert Wellington, William Wolcott, Robert Ekstrand, Samantha Ekstrand, Stephanie Sparks Smith, Christopher Kennedy, Peter Lange, Kerstin Kimel, and Michael Pressler.
2. All Documents constituting "discovery files," as such term is used in the September 1, 2008 Durham-in-Wonderland blog post titled "Paperback Source Notes," that contain any Information Concerning Pending Claims.

3. All Documents reflecting correspondence with Robert C. Ekstrand, Stefanie Sparks Smith, or any other attorney or employee of Ekstrand & Ekstrand LLP that contain any Information Concerning Pending Claims.

4. All Documents reflecting correspondence with Charles J. Cooper, Peter A. Patterson, David H. Thompson, Nicole J. Moss, or any other attorney or employee of Cooper & Kirk, PCCL that contain any Information Concerning Pending Claims.

5. All Documents reflecting correspondence with any Duke Lacrosse Player that contain any Information Concerning Pending Claims.

6. All Documents reflecting correspondence with any Duke employee that contain any Information Concerning Pending Claims.

7. All Documents reflecting correspondence with any Duke alumnus that contain any Information Concerning Pending Claims.

8. All Documents that concern, discuss, or reflect any payments made to a Duke Lacrosse Player for that person's time or information relating to the Lacrosse Incident.

9. All Documents that concern, discuss, or reflect any payments made to Robert C. Ekstrand, Stefanie Sparks Smith, or any other attorney or employee of Ekstrand & Ekstrand LLP for that person's time or information relating to the Lacrosse Incident.

10. All policies or contractual agreements that concern, discuss, or reflect the management of Durham-in-Wonderland.

11. All policies or contractual agreements that concern, discuss, or reflect the removal of comments posed on the Durham-in-Wonderland.