

# **Exhibit 1**

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

McFADYEN, et al.,

v.

DUKE UNIVERSITY, et al.,

CIVIL ACTION  
NO. 2:12-mc-00196-JHR

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CARRINGTON, et al.,

v.

DUKE UNIVERSITY, et al.,

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**AFFIDAVIT OF ROBERT DAVID JOHNSON**

The undersigned, Robert David “KC” Johnson, being duly sworn, hereby deposes and says as follows:

1. I am a professor of history at Brooklyn College and the CUNY Graduate Center, where I have taught since 1999. I received my Ph.D. degree from Harvard University in 1993.
2. I live at 5 Shipwreck Road, Scarborough, Maine, 04074; and commute to New York City when I teach.
3. I started Durham-in-Wonderland (<http://durhamwonderland.blogspot.com/>), a blog devoted solely to the Duke lacrosse case, on 11 August 2006. My first post on the lacrosse case came on another blog, on 16 April 2006. I had no connection of any type to any party in the case at that time.

4. Between 25 August 2006 and 5 October 2007, Durham-in-Wonderland had (at least) one daily post. The blog remains active, and the most recent post appeared on 20 September 2012.

5. There have been 1,544 posts at Durham-in-Wonderland. As of 10 September 2012, the blog has received 5,369,910 unique visitors and 8,752,207 page views.

6. All posts at Durham-in-Wonderland were written by me. I retained sole editorial control over all material that I wrote on the blog.

7. Between September 2006 and September 2007, I traveled to Durham eight times to cover various proceedings related to the case. I met with sources on each occasion. Outside of these trips, I have no firsthand knowledge of any of the events that took place in Durham.

8. The blog has been heavily based on documents. Beyond publicly-available material, I have relied on confidential sources to obtain relevant documents, e-mails, and internal Duke communications.

9. Unless I otherwise indicated in advance or obtained a source's agreement, communications with me for the blog were kept confidential, and I did not reveal their identities.

10. It was not uncommon for a source who agreed to be identified for purposes of some information and to provide me with other information on a confidential basis.

11. From its inception, the blog was critical of then-powerful figures in Durham and on the Duke campus, chiefly ex-district attorney Mike Nifong and the Group of 88 Duke professors who published a guilt-presuming advertisement regarding the case on 6 April 2006. As events transpired, the blog also grew more critical of certain Duke administrators, certain members of the Durham Police Department, and certain national or local media entities, chiefly the *New York Times* and Durham's largest newspaper, the *Herald-Sun*.

12. Being identified with a blog that had adopted these positions carried considerable risk for many of my sources. Some worked at Duke and risked retaliation or other difficulties if their identities became known. Some went to school at Duke and risked in-class retaliation from professors who were publicly hostile to the lacrosse players. Some had business or other professional dealings with Duke or the city of Durham that they wanted to avoid jeopardizing. A few had important professional reasons to avoid any public association with the blog.

13. Many of these confidential sources are either Duke employees or Duke alumni/ae, as defined in Items 6 and 7 of Duke's *Carrington* documents subpoena.

14. Since I was not based in Durham, the blog utilized on-the-ground sources to keep me informed of immediate developments relevant to the case. Unless I otherwise indicated in advance or obtained a source's agreement, communications with me for the blog were kept confidential, and I did not reveal their identities.

15. Some sources explicitly requested confidentiality for individual emails, while others presumed it based upon our prior interactions.

16. The blog continues to rely on confidential sources for information, especially involving Duke.

17. From December 2006 through April 2007, I served as a consultant to the Law & Justice Unit at ABC News, both appearing on screen to discuss the case and working behind the scenes with ABC's reporters.

18. In January 2007, Stuart Taylor, Jr. approached me about co-authoring a book on the case. Our joint work, *Until Proven Innocent*, was published by St. Martin's later that year. A revised and extended version of the book was published in paperback in 2008.

19. With the exception of fact-checking matters involving St. Martin's in-house counsel, Stuart and I retained full editorial control of the book. Although I solicited feedback from various sources on full or partial drafts of the manuscript, the decision on whether to accept, reject, or modify these recommendations was solely Stuart's and mine.

20. The book cited several documents from the criminal case discovery file, which I had obtained from confidential sources. I did not retain these documents after I moved to Tel Aviv, Israel, on 5 October 2007.

21. Every discovery-file document that I came to possess was originally created by Duke or by one of the university's co-defendants in the civil case.

22. In researching the book, Stuart and I conducted numerous on-the-record interviews. With the exception of one interview involving two figures who are not parties to this case or named in the subpoena, all interviews for the book were conducted by only one of us. Stuart and I did not share our individual interview notes with each other.

23. Beyond these on-the-record interviews, documents, and other primary sources, the book used material that both Stuart and I had obtained from various confidential sources, including in off-the-record or on-background interviews.

24. To the extent that I conducted on-the-record interviews for the book with people who also served as confidential sources for the blog, neither the subject nor I considered the interview to waive confidentiality for all other communications between us. I have never revealed which (if any) of the people interviewed on-the-record for the book served as (or continue to serve as) confidential sources for the blog.

25. I did not make audio recordings of interviews.

26. In interviewing students, I took hand-written notes on a pad of paper. To ensure accuracy of the quotes, I then reached out again to each student that I had interviewed. Of that group, I met individually with the former Duke students then based in New York to discuss quotes that might appear in the book. To the students who remained in Durham, I sent a list of quotations from the interviews, with appropriate interview context, that I thought might be useful for the book.

27. Based on Exhibit V of the Duke motion to compel, parties to the civil case already appear to possess these communications.

28. I did not retain the hand-written notes from these interviews after I moved to Tel Aviv, Israel, on 5 October 2007.

29. No party to this case ever indicated to me that their interview excerpts in *Until Proven Innocent* had inaccurately reflected, in any way, what we discussed in their on-the-record interviews.

30. I did not interview Tom Clute, Fred Krom, Dan Oppedisano, Kevin Coleman, or Steve Schoeffel about any matter, in any form, including whatever communications they might or might not have had with any member of the Ekstrand & Ekstrand Law Firm.

31. If forced to comply with the subpoena and disclose the identity of sources and my unpublished communications with them, it will disrupt my ability to obtain information from sources in the future as I continue to blog and write about this case.

I hereby swear, under penalty of perjury, that the foregoing statements are true and correct to the best of my knowledge.

Dated at Portland, Maine this 21st day of June 2012.

s/ Robert David Johnson

Robert David Johnson

Subscribed and sworn to before me this 20th day of June 2012

s/ Patrick Strawbridge

Attorney at Law