

STATE OF NORTH CAROLINA

WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING
COMMISSION
NORTH CAROLINA STATE BAR
06 DHC

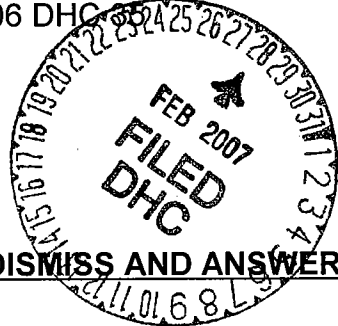
THE NORTH CAROLINA STATE BAR,

Plaintiff,

vs.

MICHAEL B. NIFONG,

Defendant.



MOTION TO DISMISS AND ANSWER

NOW COMES the defendant, by and through counsel, and answers the Amended Complaint of the plaintiff and alleges and says:

FIRST DEFENSE
MOTION TO DISMISS
N.C. RULE OF CIVIL PROCEDURE 12(b)(6)
FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

The defendant moves the court for entry of an Order dismissing the portions of the plaintiff's Amended Complaint as more specifically outlined in paragraphs (c) and (d) of the "Therefore" clause of said Amended Complaint. Plaintiff cannot establish as a matter of law that the defendant violated the provisions of the United States Constitution; N.C.G.S. § 15A-282, N.C.G.S. § 15A-903(a)(1) and N.C.G.S. § 15A-903(a)(2); or the June 22, 2006 Order. In support of said Motion, defendant alleges as follows:

1. The allegations of the Amended Complaint establish that the defendant did in fact provide the "Duke lacrosse defendants," through discovery, a report of the results of all tests and examinations performed by DSI as of October 27, 2006 (Amended Complaint, paragraphs 254, 259, 261). The Amended Complaint fails to allege as of October 27, 2006, or as of the date of the filing of the Amended Complaint, that a trial was held or that a trial date had been scheduled. Consequently, plaintiff cannot establish that the "Duke lacrosse defendants'" due process rights to a fair trial were affected, and therefore plaintiff cannot establish as a matter of law that the "Duke lacrosse defendants'" constitutional rights were violated. "For unless the omission deprived the defendant of a fair trial, there was no constitutional violation requiring that

the verdict be set aside; and absent a constitutional violation, there was no breach of the prosecutor's constitutional duty to disclose. . . . But to reiterate a critical point, the prosecutor will not have violated his constitutional duty of disclosure unless his omission is of sufficient significance to result in the denial of the defendant's right to a fair trial." See: United States v. Agurs, 427 U.S. 97, 108, 96 S.Ct. 2392; 2399, 49 L.Ed 2d 342, 352 (1976). (See also: State v. Elliott, 360 N.C. 400, 415, 628 S.E.2d 735 (2006); State v. Spivey, 102 N.C.App. 640, 645, 404 S.E.2d 23, (1991));

2. N.C.G.S. § 15A-903(a)(2) provides that if the state reasonably expects to call an expert witness at trial, it shall give notice of this fact to the defendant. It further provides that a state's expert shall furnish to the defendant a report of the results of any examination or test conducted by said expert. Like the June 22, 2006 Order, which plaintiff contends was violated by the defendant, the statute further states: "The State shall give the notice and furnish the materials required by this subsection within a reasonable time prior to trial, as specified by the court." (Emphasis added)

The plaintiff's Amended Complaint specifically alleges that at the hearing of September 22, 2006, the Duke lacrosse defendants stated that they were seeking the results of any tests finding DNA, even if the DNA did not match any of the Duke defendants or other individuals from whom the State had obtained DNA samples (Amended Complaint, paragraph 246). The Amended Complaint further alleges that the court entered an Order for the defendant to provide the complete file and underlying data from both the SBI and DSI (Amended Complaint, paragraph 253).

On October 27, 2006, Nifong provided 1844 pages of underlying documents and materials to the Duke defendants pursuant to the court's September 22, 2006 Order (Amended Complaint paragraph 254). After an extensive and exhaustive review of the documentation provided on October 27, 2006, counsel for the Duke defendants determined that DSI's report did not include the results of all DNA tests that DSI had performed and that the report excluded potentially exculpatory DNA test results and evidence (Amended Complaint, paragraph 259). The Duke defendant's filed a motion which set forth in detail the potentially exculpatory DNA test results and evidence not contained in the DSI report. "The focus of this motion was the existence of the potentially exculpatory DNA test results and their exclusion from DSI's report." (Emphasis added; Amended Complaint, paragraph 261). At the December 15, 2006 hearing, Dr. Meehan was examined about the results of his testing and his report (Amended Complaint, paragraph 267).

In short, the allegations contained in plaintiff's Amended Complaint reveal that the State had been provided an initial report of Dr. Meehan's examination of certain DNA evidence. Thereafter, consistent with N.C.G.S. § 15A-903(a)(2) and the June 22, 2006 Order of the Judge Ronald L. Stephens, and pursuant to the terms of the Order of September 22, 2006, the State provided the underlying data contained in the DSI file including reports of the results of all tests and examinations performed by DSI. From this information, the Duke defendants determined that these reports of the results of

tests and examinations revealed evidence that had potential exculpatory value. Counsel for the Duke defendants thereafter were allowed to examine Dr. Meehan about the results of the tests performed by DSI. Thus, the allegations of the Amended Complaint establish that at a reasonable time prior to trial, the Duke defendants knew of the existence of the "potentially exculpatory evidence".

"The purpose of the discovery procedure is to protect the defendant from unfair surprise. State v. Alston, 307 N.C. 321, 331, 298 S.E.2d 31 (1983). The allegations of the plaintiff's Amended Complaint conclusively establish that Nifong fully complied with the N.C.G.S. § 15A-903(a)(2) and the June 22, 2006 Order, and that the purpose of the discovery statutory procedures was accomplished. The discovery information was provided before a trial date had been set in accordance with the September 22, 2006 Order of Judge W. Osmond Smith, III.

3. Any allegations relating to plaintiff's claim that the defendant was required to provide a memorialization of the substance of his conversations with Dr. Meehan is contrary to the provisions of N.C.G.S. § 15A-903 (a)(1) and N.C.G.S. § 15A-904. Furthermore, the Amended Complaint fails to allege that the defendant was required by the June 22, 2006 Order or any other Order of the trial court to memorialize the oral statements made to him by Dr. Meehan.

4. N.C.G.S. §15A-282 only requires that the subject of a Nontestimonial Identification Order be provided "a copy of any reports of tests results as soon as the reports are available." However, said statute does not require the report to be in any particular format.

Based upon the foregoing, defendant submits that he is entitled to the entry of an Order dismissing the claims for relief requested in paragraphs (c) and (d) of the "Therefore" clause of plaintiff's Amended Complaint, as the allegations of the Amended Complaint establish as a matter of law that plaintiff is not entitled to the relief requested.

SECOND DEFENSE **ANSWER**

The defendant answering the like numbered paragraph of the Amended Complaint alleges and says:

1. The allegations contained in paragraph 1 of the plaintiff's Amended Complaint are admitted.
2. The allegations contained in paragraph 2 of the plaintiff's Amended Complaint are admitted.

3. The allegations contained in paragraph 3 of the plaintiff's Amended Complaint are admitted.
4. The allegations contained in paragraph 4 of the plaintiff's Amended Complaint are admitted.
5. The allegations contained in paragraph 5 of the plaintiff's Amended Complaint are admitted.
6. The allegations contained in paragraph 6 of the plaintiff's Amended Complaint are admitted.
7. The allegations contained in paragraph 7 of the plaintiff's Amended Complaint are admitted.
8. Defendant admits that he did not learn of the case until after the NTO was granted and served on the forty-six Duke Lacrosse players. However, he denies that the Order was granted on March 22, 2006, as he believes the date was March 23, 2006.
9. The allegations contained in paragraph 9 of the plaintiff's Amended Complaint are admitted.

Improper Pretrial Public Statements and Misrepresentations

10. Defendant admits that from March 27, 2006 until approximately April 3, 2006, that he granted interviews to various news organizations, both print and television, about the "Duke lacrosse case". After April 3, 2006, the defendant attempted to limit comments about said case to arguments he made in open court, press releases issued from his office and responses to questions directed to him at public forums which he attended in Durham County. Furthermore, defendant may have made some comments about the case to local print media while discussing other matters. Defendant made the statements outlined in paragraphs 12 through 175 of the Amended Complaint at a time when there was an ongoing investigation relating to the facts contained in the Affidavit attached to the Application for Nontestimonial Identification Order, a copy of which is attached hereto and incorporated herein by reference as Exhibit "A". The statements made between March 27, 2006 and April 3, 2006, were made at a time when no individual suspects had been identified and were an effort by the defendant to reassure the community that the case was being actively investigated by the Durham Police Department in an effort to obtain assistance in receiving evidence and information necessary to further the criminal investigation. Defendant further admits that at the time he made said statements that he did not fully understand the extent of the national

media interest in this particular investigation and as such, he did not comprehend the effect said statements may have on any matters related to the case. Defendant denies that any statements he made as further alleged in plaintiff's Amended Complaint were made with the intent of materially prejudicing an adjudicative proceeding which has resulted from said investigation. Defendant further denies that when he made the statements as alleged in the Amended Complaint, that he intended to heighten the public condemnation of an accused or that his actions were intended to heighten the public condemnation of an accused. Any remaining allegations contained in paragraph 10 of plaintiff's Amended Complaint are denied.

11. The allegations contained in paragraph 11 of the plaintiff's Amended Complaint are admitted. Defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 11.
12. It is admitted that in an effort to request assistance in obtaining evidence and information related to the investigation of the Duke lacrosse case, that defendant made comments relating to the Duke lacrosse team members' failure or refusal to cooperate with or make statements to law enforcement authorities. The defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 12. Any remaining allegations contained in paragraph 12 of plaintiff's Amended Complaint are denied.
13. Defendant admits he made statements to members of the news media consistent with the allegations contained in paragraph 13. Defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 13. Any remaining allegations contained in paragraph 13 of plaintiff's Amended Complaint are denied.
14. Defendant admits he made comments consistent with those outlined in paragraph 13 to a member or members of the news media. However, the defendant is without sufficient information at this point in time with which to form a belief as to the truth of the allegation that he made the statements outlined in paragraph 13 to a reporter for WRAL or whether they were made to another member of the news media and as such, that allegation is denied.
15. Defendant at the present time has no specific recollection of the date on which the statements referenced in paragraph 13 were made to a member or members of the news media. However, he believes that any statements would have been made between March 27, 2006 and April 3, 2006 as outlined in paragraph 10 of the answer contained herein.

16. Defendant admits that he made statements to members of the news media consistent with the quoted portion of paragraph 16. Defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 16. Any remaining allegations contained in paragraph 16 are denied.
17. Defendant admits that he made comments consistent with those outlined in paragraph 16 to a member or members of the news media. However, the defendant is without sufficient information at this point in time with which to form a belief as to the truth of the allegations that he made the statements outlined in paragraph 16 to a reporter for ABC 11 TV News or whether they were made to another member of the news media and as such, that allegation is denied.
18. Defendant at the present time has no specific recollection of the date on which the statements referenced in paragraph 16 were made to a member or members of the news media. However, he believes that any statements would have been made between March 27, 2006 and April 3, 2006 as outlined in paragraph 10 of the answer contained herein.
19. Defendant admits that the allegations contained in paragraph 19 of plaintiff's amended complaint are consistent with statements he made to the news media in the period of time from March 27, 2006 to April 3, 2006. Defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 19. Any remaining allegations contained in paragraph 19 of plaintiff's Amended Complaint are denied.
20. Defendant admits that he made comments consistent with those outlined in paragraph 19 to a member or members of the news media. However, the defendant is without sufficient information, at this point in time, with which to form a belief as to the truth of the allegations as to whether the statements outlined in paragraph 19 were made to a reporter for the New York Times or whether they were made to another member of the media and as such, that allegation is denied.
21. Defendant at the present time has no specific recollection of the date on which the statements referenced in paragraph 19 were made to a member or members of the news media. However, he believes that any statements would have been made between March 27, 2006 and April 3, 2006 as outlined in paragraph 10 of the answer contained herein.
22. Defendant admits that the allegations contained in paragraph 19 of plaintiff's amended complaint are consistent with statements he made to the news media in a period from March 27, 2006 to April 3, 2006. Defendant further incorporates his answer to paragraph 10 above in

response to the allegations of paragraph 22. Any remaining allegations contained in paragraph 22 of plaintiff's Amended Complaint are denied.

23. Defendant admits that he made comments consistent with those outlined in paragraph 22 to a member or members of the news media. However, the defendant is without sufficient information, at this point in time, with which to form a belief as to the truth of the allegations as to whether the statements outlined in paragraph 22 were made to a reporter for NBC 17 News or whether they were made to another member of the media and as such, that allegation is denied.
24. Defendant at the present time has no specific recollection of the date on which the statements referenced in paragraph 22 were made to a member or members of the news media. However, he believes that any statements would have been made between March 27, 2006 and April 3, 2006 as outlined in paragraph 10 of the answer contained herein.
25. Defendant admits that he made statements consistent to those outlined in paragraph 25 to the extent that he would consider charging individuals with aiding and abetting if the evidence supported said charges. Defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 25. Any remaining allegations contained in paragraph 25 are denied.
26. Defendant admits that he made comments consistent with those outlined in paragraph 25 to a member or members of the news media. However, the defendant is without sufficient information, at this point in time, with which to form a belief as to the truth of the allegations as to whether the statements outlined in paragraph 25 were made to a reporter for NBC 17 News or whether they were made to another member of the media and as such, that allegation is denied.
27. Defendant at the present time has no specific recollection of the date on which the statements referenced in paragraph 25 were made to a member or members of the news media. However, he believes that any statements would have been made between March 27, 2006 and April 3, 2006 as outlined in paragraph 10 of the answer contained herein.
28. Defendant admits that he made statements to members of the news media consistent with the allegations contained in paragraph 28. Defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 28. Any remaining allegations contained in paragraph 28 of plaintiff's Amended Complaint are denied.

29. Defendant admits that he made comments consistent with those outlined in paragraph 28 to a member or members of the news media. However, the defendant is without sufficient information, at this point in time, with which to form a belief as to the truth of the allegations as to whether the statements outlined in paragraph 28 were made to a reporter for The Herald Sun Newspaper or whether they were made to another member of the media and as such, that allegation is denied.
30. Defendant at the present time has no specific recollection of the date on which the statements referenced in paragraph 28 were made to a member or members of the news media. However, he believes that any statements would have been made between March 27, 2006 and April 3, 2006 as outlined in paragraph 10 of the answer contained herein.
31. Defendant admits that he made statements to members of the news media consistent with the allegations contained in paragraph 31. Defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 31. Any remaining allegations contained in paragraph 31 of plaintiff's Amended Complaint are denied.
32. Defendant admits that he made comments consistent with those outlined in paragraph 31 to a member or members of the news media. However, the defendant is without sufficient information, at this point in time, with which to form a belief as to the truth of the allegations as to whether the statements outlined in paragraph 31 were made to a reporter for CNN or whether they were made to another member of the media and as such, that allegation is denied.
33. Defendant at the present time has no specific recollection of the date on which the statements referenced in paragraph 31 were made to a member or members of the news media. However, he believes that any statements would have been made between March 27, 2006 and April 3, 2006 as outlined in paragraph 10 of the answer contained herein.
34. Defendant admits that he made statements to members of the news media consistent with the allegations contained in paragraph 34. Defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 34. Any remaining allegations contained in paragraph 34 of plaintiff's Amended Complaint are denied.
35. Defendant admits that he made comments consistent with those outlined in paragraph 34 to a member or members of the news media. However, the defendant is without sufficient information, at this point in time, with which to form a belief as to the truth of the allegations as to whether the statements outlined in paragraph 34 were made to Rene Syler of CBS

News or whether they were made to another member of the media and as such, that allegation is denied.

36. Defendant at the present time has no specific recollection of the date on which the statements referenced in paragraph 34 were made to a member or members of the news media. However, he believes that any statements would have been made between March 27, 2006 and April 3, 2006 as outlined in paragraph 10 of the answer contained herein.
37. Defendant admits that he made statements to members of the news media consistent with the allegations contained in paragraph 37. Defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 37. Any remaining allegations contained in paragraph 37 of plaintiff's Amended Complaint are denied.
38. Defendant admits that he made comments consistent with those outlined in paragraph 37 to a member or members of the news media. However, the defendant is without sufficient information, at this point in time, with which to form a belief as to the truth of the allegations as to whether the statements outlined in paragraph 37 were made to Rene Syler of CBS News or whether they were made to another member of the media and as such, that allegation is denied.
39. Defendant at the present time has no specific recollection of the date on which the statements referenced in paragraph 37 were made to a member or members of the news media. However, he believes that any statements would have been made between March 27, 2006 and April 3, 2006 as outlined in paragraph 10 of the answer contained herein.
40. Defendant admits that he made statements to members of the news media consistent with the allegations contained in paragraph 40. Defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 40. Any remaining allegations contained in paragraph 40 of plaintiff's Amended Complaint are denied.
41. Defendant admits that he made comments consistent with those outlined in paragraph 40 to a member or members of the news media. However, the defendant is without sufficient information, at this point in time, with which to form a belief as to the truth of the allegations as to whether the statements outlined in paragraph 40 were made to George Smith of ESPN or whether they were made to another member of the media and as such, that allegation is denied.
42. Defendant at the present time has no specific recollection of the date on which the statements referenced in paragraph 40 were made to a member

or members of the news media. However, he believes that any statements would have been made between March 27, 2006 and April 3, 2006 as outlined in paragraph 10 of the answer contained herein.

43. Defendant incorporates his answers to paragraphs 13 through 42 in response to any allegations contained in paragraph 43. Any remaining allegations contained in paragraph 43 of plaintiff's Amended Complaint are denied.
44. Defendant admits that during the time period outlined in plaintiff's Amended Complaint that the results of tests performed during the investigation became a subject of media attention and defendant believes that he made statements to the news media in response to questions they asked about information received by them from other sources. Any remaining allegations contained in paragraph 44 of plaintiff's Amended Complaint are denied.
45. Defendant admits that he made statements to members of the news media consistent with the allegations contained in paragraph 45. Defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 45. Any remaining allegations contained in paragraph 45 of plaintiff's Amended Complaint are denied.
46. Defendant admits that he made comments consistent with those outlined in paragraph 45 to a member or members of the news media. However, the defendant is without sufficient information, at this point in time, with which to form a belief as to the truth of the allegations as to whether the statements outlined in paragraph 45 were made to a reporter for WRAL or whether they were made to another member of the media and as such, that allegation is denied.
47. Defendant at the present time has no specific recollection of the date on which the statements referenced in paragraph 45 were made to a member or members of the news media. However, he believes that these statements would have been made in May, 2006.
48. Defendant admits that he made statements to members of the news media consistent with the allegations contained in paragraph 48. Defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 48. Any remaining allegations contained in paragraph 48 of plaintiff's Amended Complaint are denied.
49. Defendant admits that he made comments consistent with those outlined in paragraph 48 to a member or members of the news media. However, the defendant is without sufficient information at this point in time, with

which to form a belief as to the truth of the allegations as to whether the statements outlined in paragraph 48 were made to a reporter for WRAL News or whether they were made to another member of the media and as such, that allegation is denied.

50. Defendant at the present time has no specific recollection of the date on which the statements referenced in paragraph 48 were made to a member or members of the news media. However, he believes that these statements would have been made in May, 2006.
51. Defendant admits that he made statements to members of the news media consistent with the allegations contained in paragraph 51. Defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 51. Any remaining allegations contained in paragraph 51 of plaintiff's Amended Complaint are denied.
52. Defendant admits that he made comments consistent with those outlined in paragraph 51 to a member or members of the news media. However, the defendant is without sufficient information, at this point in time, with which to form a belief as to the truth of the allegations as to whether the statements outlined in paragraph 51 were made to a reporter for WRAL News or whether they were made to another member of the media and as such, that allegation is denied.
53. Defendant at the present time has no specific recollection of the date on which the statements referenced in paragraph 51 were made to a member or members of the news media. However, he believes that these statements would have been made in May, 2006.
54. Defendant incorporates his answers to paragraphs 45 through 53 in response to any allegations contained in paragraph 54. Any remaining allegations contained in paragraph 54 of plaintiff's Amended Complaint are denied.
55. Defendant admits that he made statements to the news media about the facts contained in the Affidavit attached to the Application for Nontestimonial Identification Order while attempting to obtain assistance and evidence in relation to the investigation being undertaken by the Durham Police Department. Defendant further admits that the underlying facts outlined in that affidavit would be consistent with the testimony expected to be presented at trial. The defendant denies that he was discussing the facts in said affidavit with the intent of materially prejudicing an adjudicatory proceeding. Any remaining allegations contained in paragraph 55 of plaintiff's Amended Complaint are denied.

56. Defendant admits that he made statements to members of the news media consistent with the allegations contained in paragraph 56 which allegations are consistent with matters of public record as outlined in the affidavit attached to the Application for Nontestimonial Identification Order. The defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 56. Any remaining allegations contained in paragraph 56 of plaintiff's Amended Complaint are denied.
57. Defendant admits that he made comments consistent with those outlined in paragraph 56 to a member or members of the news media. However, the defendant is without sufficient information, at this point in time, with which to form a belief as to the truth of the allegations as to whether the statements outlined in paragraph 56 were made to a reporter for MSNBC or whether they were made to another member of the media and as such, that allegation is denied.
58. Defendant at the present time has no specific recollection of the date on which the statements referenced in paragraph 56 were made to a member or members of the news media. However, he believes that any statements would have been made between March 27, 2006 and April 3, 2006 as outlined in paragraph 10 of the answer contained herein.
59. Defendant admits that he made statements to members of the news media consistent with the allegations contained in paragraph 59 which allegations are consistent with matters of public record as outlined in the Affidavit attached to the Application for Nontestimonial Identification Order. The defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 59. Any remaining allegations contained in paragraph 59 of plaintiff's Amended Complaint are denied.
60. Defendant admits that he made comments consistent with those outlined in paragraph 59 to a member or members of the news media. However, the defendant is without sufficient information, at this point in time, with which to form a belief as to the truth of the allegations as to whether the statements outlined in paragraph 59 were made to a reporter for MSNBC or whether they were made to another member of the media and as such, that allegation is denied.
61. Defendant at the present time has no specific recollection of the date on which the statements referenced in paragraph 59 were made to a member or members of the news media. However, he believes that any statements would have been made between March 27, 2006 and April 3, 2006 as outlined in paragraph 10 of the answer contained

herein.

62. Defendant admits that he made statements to members of the news media consistent with the allegations contained in paragraph 62 which allegations are consistent with matters of public record as outlined in the Affidavit attached to the Application for Nontestimonial Identification Order. The defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 62. Any remaining allegations contained in paragraph 62 of plaintiff's Amended Complaint are denied.
63. Defendant admits that he made comments consistent with those outlined in paragraph 62 to a member or members of the news media. However, the defendant is without sufficient information, at this point in time, with which to form a belief as to the truth of the allegations as to whether the statements outlined in paragraph 62 were made to a reporter for CBS News or whether they were made to another member of the media and as such, that allegation is denied.
64. Defendant at the present time has no specific recollection of the date on which the statements referenced in paragraph 62 were made to a member or members of the news media. However, he believes that any statements would have been made between March 27, 2006 and April 3, 2006 as outlined in paragraph 10 of the answer contained herein.
65. Defendant admits that he made statements to members of the news media consistent with the allegations contained in paragraph 65 which allegations are consistent with matters of public record as outlined in the Affidavit attached to the Application for Nontestimonial Identification Order. The defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 65. Any remaining allegations contained in paragraph 65 of plaintiff's Amended Complaint are denied.
66. Defendant admits that he made comments consistent with those outlined in paragraph 65 to a member or members of the news media. However, the defendant is without sufficient information, at this point in time, with which to form a belief as to the truth of the allegations as to whether the statements outlined in paragraph 65 were made to a reporter for Newsweek Magazine or whether they were made to another member of the media and as such, that allegation is denied.

67. Defendant at the present time has no specific recollection of the date on which the statements referenced in paragraph 65 were made to a member or members of the news media. However, he believes that any statements would have been made between March 27, 2006 and April 3, 2006 as outlined in paragraph 10 of the answer contained herein.
68. It is admitted that the defendant made statements consistent with the statements outlined in paragraph 68 at a forum at NC Central University prior to the time that any indictments were obtained. The defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 68. Any remaining allegations contained in paragraph 68 of plaintiff's Amended Complaint are denied.
69. Defendant does not recall making the statements consistent with those outlined in paragraph 68 to any particular reporter as he recalls those statements being made at a public forum attended by various news organizations.
70. Defendant admits that the statement outlined in paragraph 68 was made in April, 2006 before any indictments were returned.
71. As admitted previously, defendant admits that he made statements concerning factual matters outlined in the Affidavit attached to the Application for Nontestimonial Identification Order which included an allegation that the SANE nurse concluded that the victim's injuries and behavior were consistent with a sexual assault. The defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 71. Any remaining allegations contained in paragraph 71 of plaintiff's Amended Complaint are denied.
72. Defendant admits the statements outlined in paragraph 71 would have been made in March or April of 2006.
73. Defendant admits that he made statements to a reporter from MSNBC consistent with those statements outlined in paragraph 73 which statements relate to facts contained in the Affidavit attached to the Application for Nontestimonial Identification Order. The defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 73. Any remaining allegations contained in paragraph 73 of plaintiff's Amended Complaint are denied.
74. The allegations contained in paragraph 74 of plaintiff's Amended Complaint are admitted.

75. The allegations contained in paragraph 75 of plaintiff's Amended Complaint are admitted.
76. Defendant incorporates his answers to paragraphs 56 through 75 in response to any allegations contained in paragraph 76. Any remaining allegations contained in paragraph 76 of plaintiff's Amended Complaint are denied.
77. Defendant admits that he made statements to members of the news media concerning his opinion that a crime had occurred. Defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 77. Any remaining allegations contained in paragraph 77 of plaintiff's Amended Complaint are denied.
78. Defendant admits that he made statements to members of the news media consistent with the allegations contained in paragraph 78. The defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 78. Any remaining allegations contained in paragraph 78 of plaintiff's Amended Complaint are denied.
79. Defendant admits that he made comments consistent with those outlined in paragraph 78 to a member or members of the news media. However, the defendant is without sufficient information, at this point in time, with which to form a belief as to the truth of the allegations as to whether the statements outlined in paragraph 78 were made to a reporter for NBC 17 News or whether they were made to another member of the media and as such, that allegation is denied.
80. Defendant at the present time has no specific recollection of the date on which the statements referenced in paragraph 78 were made to a member or members of the news media. However, he believes that any statements would have been made between March 27, 2006 and April 3, 2006 as outlined in paragraph 10 of the answer contained herein.
81. Defendant admits that he made statements to members of the news media consistent with the allegations contained in paragraph 81. The defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 81. Any remaining allegations contained in paragraph 81 of plaintiff's Amended Complaint are denied.
82. Defendant admits that he made comments consistent with those outlined in paragraph 81 to a member or members of the news media. However, the defendant is without sufficient information, at this point in time, with which to form a belief as to the truth of the allegations as to

whether the statements outlined in paragraph 81 were made to a reporter for NBC 17 News or whether they were made to another member of the media and as such, that allegation is denied.

83. Defendant at the present time has no specific recollection of the date on which the statements referenced in paragraph 81 were made to a member or members of the news media. However, he believes that any statements would have been made between March 27, 2006 and April 3, 2006 as outlined in paragraph 10 of the answer contained herein.
84. Defendant admits that he made statements to members of the news media consistent with the allegations contained in paragraph 84. The defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 84. Any remaining allegations contained in paragraph 84 of plaintiff's Amended Complaint are denied.
85. Defendant admits that he made comments consistent with those outlined in paragraph 84 to a member or members of the news media. However, the defendant is without sufficient information, at this point in time, with which to form a belief as to the truth of the allegations as to whether the statements outlined in paragraph 84 were made to a reporter for MSNBC or whether they were made to another member of the media and as such, that allegation is denied.
86. Defendant at the present time has no specific recollection of the date on which the statements referenced in paragraph 84 were made to a member or members of the news media. However, he believes that any statements would have been made between March 27, 2006 and April 3, 2006 as outlined in paragraph 10 of the answer contained herein.
87. The allegations contained in paragraph 87 of plaintiff's Amended Complaint are admitted. The defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 87.
88. Defendant admits that he made comments consistent with those outlined in paragraph 87 to a member or members of the news media. However, the defendant is without sufficient information, at this point in time, with which to form a belief as to the truth of the allegations as to whether the statements outlined in paragraph 88 were made to a reporter for CBS Early Show or whether they were made to another member of the media and as such, that allegation is denied.

89. Defendant at the present time has no specific recollection of the date on which the statements referenced in paragraph 87 were made to a member or members of the news media. However, he believes that any statements would have been made between March 27, 2006 and April 3, 2006 as outlined in paragraph 10 of the answer contained herein.
90. Defendant admits that he may have made a statement to members of the news media consistent with the allegations contained in paragraph 90. The defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 90.
91. Defendant admits that he may have made a comment consistent with those outlined in paragraph 90 to a member or members of the news media. However, the defendant is without sufficient information, at this point in time, with which to form a belief as to the truth of the allegations as to whether the statements outlined in paragraph 91 were made to a reporter for CBS Early Show or whether they were made to another member of the media and as such, that allegation is denied.
92. Defendant at the present time has no specific recollection of the date on which the statements referenced in paragraph 90 were made to a member or members of the news media. However, he believes that any statements would have been made between March 27, 2006 and April 3, 2006 as outlined in paragraph 10 of the answer contained herein.
93. Defendant admits that he made statements to members of the news media consistent with the allegations contained in paragraph 93. The defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 93. Any remaining allegations contained in paragraph 93 of plaintiff's Amended Complaint are denied.
94. Defendant admits that he made comments consistent with those outlined in paragraph 93 to a member or members of the news media. However, the defendant is without sufficient information at this point and time with which to form a belief as to the allegations as to whether the statements outlined in paragraph 94 were made to a reporter for CBS Early Show or whether they were made to another member of the media and as such, that allegation is denied.
95. Defendant at the present time has no specific recollection of the date on which the statements referenced in paragraph 93 were made to a member or members of the news media. However, he believes that any statements would have been made between March 27, 2006 and

April 3, 2006 as outlined in paragraph 95 of the answer contained herein.

96. The allegations contained in paragraph 96 of plaintiff's Amended Complaint are admitted. The defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 96. Any remaining allegations contained in paragraph 96 of plaintiff's Amended Complaint are denied.
97. The allegations contained in paragraph 97 of plaintiff's amended Complaint are admitted.
98. Defendant does not recall making the statement outlined in paragraph 96 to any particular reporter as he recalls those statements being made at a public forum attended by various news organizations.
99. The allegations contained in paragraph 99 of plaintiff's Amended Complaint are admitted.
100. Defendant admits that he made statements to members of the news media consistent with the allegations contained in paragraph 100. The defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 100. Any remaining allegations contained in paragraph 100 of plaintiff's Amended Complaint are denied.
101. Defendant admits that he made comments consistent with those outlined in paragraph 100 to a member or members of the news media. However, the defendant is without sufficient information, at this point in time, with which to form a belief as to the allegations as to whether the statements outlined in paragraph 100 were made to a reporter for the Raleigh News and Observer or whether they were made to another member of the media and as such, that allegation is denied.
102. Defendant at the present time has no specific recollection of the date on which the statements referenced in paragraph 100 were made to a member or members of the news media. However, he believes that any statements would have been made between March 27, 2006 and April 3, 2006 as outlined in paragraph 10 of the answer contained herein.
103. Defendant admits that he made statements to members of the news media consistent with the allegations contained in paragraph 103. The defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 103. Any remaining

allegations contained in paragraph 103 of plaintiff's Amended Complaint are denied.

104. Defendant denies that he made any statements to a reporter for a publication called The Devil's Advocate. Defendant admits that he spoke to a reporter for The Duke Chronicle during the week of March 27, 2006 and in that conversation he might have made a statement consistent with that outlined in paragraph 103.
105. The allegations contained in paragraph 103 of plaintiff's Amended Complaint are denied.
106. Defendant admits that he issued a press release on June 19, 2006 in response to a Newsweek article which bore the date June 29, 2006, copies of which press release and attachments are attached hereto and incorporated herein by reference as Exhibit "B", the terms of which speak for themselves. However, he believed that he was entitled to respond to the Newsweek Article pursuant to comment [7] to Rule 3.6 of the Rules of Professional Conduct. The defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 106. Any remaining allegations contained in paragraph 106 of plaintiff's Amended Complaint are denied.
107. Defendant denies that the statements made in paragraphs 78 through 95 and 100 through 105 were made at a time that any individual suspects had been identified. Defendant admits the statement referenced in paragraphs 96 through 99 was made after the victim had identified individual suspects, but before any charges were filed. Defendant admits that at the time the statement was made in paragraph 106 that it was after charges were filed. However, he believed that he was entitled to respond to the Newsweek Article pursuant to comment [7] to Rule 3.6 of the Rules of Professional Conduct. The defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 107. Any remaining allegations contained in paragraph 107 of plaintiff's Amended Complaint are denied.
108. Defendant denies that the statements made in paragraphs 78 through 95 and 100 through 105 were made at a time that any individual suspects had been identified. Defendant admits the statements referenced in paragraphs 96 through 99 was made after the victim had identified individual suspects, but before any charges were filed. Defendant admits that at the time the statement was made in paragraph 106 that it was after charges were filed. However, he believed that he was entitled to respond to the Newsweek Article

pursuant to comment [7] to Rule 3.6 of the Rules of Professional Conduct. The defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 108. Any remaining allegations contained in paragraph 108 of plaintiff's Amended Complaint are denied.

109. Defendant admits that he made statements that he believed that a crime had occurred. However, defendant denies that he expressed his opinion about the guilt of any individual. Defendant denies that at the time the statements were made in paragraphs 78 through 95 and 100 through 105 that any individual suspects had been identified. Defendant admits the statements referenced in paragraphs 96 through 99 was made after the victim had identified individual suspects, but before any charges were filed. Defendant admits that at the time the statement was made in paragraph 106 that it was after charges were filed. However, he believed that he was entitled to respond to the Newsweek Article pursuant to comment [7] to Rule 3.6 of the Rules of Professional Conduct. The defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 109. Any remaining allegations contained in paragraph 109 of plaintiff's Amended Complaint are denied.
110. Defendant admits that various individuals in the media questioned him concerning the circumstances of the case which included requests for him to respond to hypothetical questions. The defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 110. Any remaining allegations contained in paragraph 110 of plaintiff's Amended Complaint are denied.
111. Defendant admits that in responding to a question that he did not want to answer directly that he made statements to a member of the news media consistent to the allegations contained in paragraph 111. The defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 111. Any remaining allegations contained in paragraph 111 of plaintiff's Amended Complaint are denied.
112. The allegations contained in paragraph 112 of plaintiff's Amended Complaint are admitted.
113. Defendant at the present time has no specific recollection of the date on which the statements referenced in paragraph 51 were made to a member or members of the news media. However, he believes that any statements would have been made between March 27, 2006 and April 3, 2006 as outlined in paragraph 10 of the answer contained

herein.

114. Defendant admits that he made statements to a member of the news media consistent with the allegations contained in paragraph 114. The defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 114. Any remaining allegations contained in paragraph 114 of plaintiff's Amended Complaint are denied.
115. Defendant admits that he made comments consistent with those outlined in paragraph 114 to a member or members of the news media. However, the defendant is without sufficient information, at this point in time, with which to form a belief as to the allegations as to whether the statements outlined in paragraph 114 were made to a reporter for MSNBC or whether they were made to another member of the media and as such, that allegation is denied.
116. Defendant at the present time has no specific recollection of the date on which the statements referenced in paragraph 114 were made to a member or members of the news media. However, he believes that any statements would have been made between March 27, 2006 and April 3, 2006 as outlined in paragraph 10 of the answer contained herein.
117. Defendant admits that he made statements to members of the news media consistent with the allegations contained in paragraph 117. The defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 117. Any remaining allegations contained in paragraph 117 of plaintiff's Amended Complaint are denied.
118. Defendant admits that he made comments consistent with those outlined in paragraph 117 to a member or members of the news media. However, the defendant is without sufficient information, at this point in time, with which to form a belief as to the allegations as to whether the statements outlined in paragraph 117 were made to a reporter for The Charlotte Observer or whether they were made to another member of the media and as such, that allegation is denied.
119. Defendant at the present time has no specific recollection of the date on which the statements referenced in paragraph 117 were made to a member or members of the news media. However, he believes that any statements would have been made between March 27, 2006 and April 3, 2006 as outlined in paragraph 10 of the answer contained herein.

120. Defendant admits that he made statements to members of the news media consistent with the allegations contained in paragraph 120. The defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 120. Any remaining allegations contained in paragraph 120 of plaintiff's Amended Complaint are denied.
121. The defendant is without sufficient information, at this point in time, with which to form a belief as to the truth of the allegations relating to whether he made the statement consistent with those outlined in paragraph 120 to a reporter for WRAL TV News or whether they were made to another member of the media and as such, that allegation is denied.
122. Defendant at the present time has no specific recollection of the date on which the statements referenced in paragraph 120 were made to a member or members of the news media. However, he believes that any statements would have been made between March 27, 2006 and April 3, 2006 as outlined in paragraph 10 of the answer contained herein.
123. Defendant admits that the initial medical report indicates that the victim advised that a condom had not been used. However, based upon defendant's experience, he has learned that a complaining witness rarely ever knows whether a condom was used in a sexual assault and as such, he denies any allegations contained in paragraph 123 that his comments were misleading and furthermore, defendant alleges that his comments are consistent with the opinion of the SANE nurse who examined the victim on the night of the alleged attack. The defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 123. Any remaining allegations contained in paragraph 123 of plaintiff's Amended Complaint are denied.
124. Defendant incorporates his answers to paragraphs 114 through 117 in response to any allegations contained in paragraph 124. Any remaining allegations contained in paragraph 124 of plaintiff's Amended Complaint are denied.
125. The allegations contained in paragraph 125 of plaintiff's Amended Complaint are denied.
126. Defendant incorporates his answers to paragraphs 111 through 119 in response to any allegations contained in paragraph 126. The defendant further incorporates his answer to paragraph 10 above in response to

the allegations of paragraph 126. Any remaining allegations contained in paragraph 126 of plaintiff's Amended Complaint are denied.

127. To the extent that paragraph 127 refers to the allegations further outlined in paragraphs 128 through 139, the defendant incorporates his answers to those paragraphs in response to the allegations of paragraph 127. The defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 127. Any remaining allegations contained in paragraph 127 of plaintiff's Amended Complaint are denied.
128. Defendant admits that he made statements to members of the news media consistent with the allegations contained in paragraph 128. The defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 128. Any remaining allegations contained in paragraph 128 of plaintiff's Amended Complaint are denied.
129. Defendant admits that he made comments consistent with those outlined in paragraph 128 to a member or members of the news media. However, the defendant is without sufficient information, at this point in time, with which to form a belief as to the allegations as to whether the statements outlined in paragraph 129 were made to a reporter for USA Today or whether they were made to another member of the media and as such, that allegation is denied.
130. Defendant at the present time has no specific recollection of the date on which the statements referenced in paragraph 128 were made to a member or members of the news media. However, he believes that any statements would have been made between March 27, 2006 and April 3, 2006 as outlined in paragraph 10 of the answer contained herein.
131. Defendant admits that he made statements to members of the news media consistent with the allegations contained in paragraph 131. The defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 131. Any remaining allegations contained in paragraph 131 of plaintiff's Amended Complaint are denied.
132. Defendant admits that he made comments consistent with those outlined in paragraph 131 to a member or members of the news media. However, the defendant is without sufficient information, at this point in time, with which to form a belief as to the truth of the allegations as to whether the statements outlined in paragraph 131 were made to a

reporter for MSNBC or whether they were made to another member of the media and as such, that allegation is denied.

133. Defendant at the present time has no specific recollection of the date on which the statements referenced in paragraph 131 were made to a member or members of the news media. However, he believes that any statements would have been made between March 27, 2006 and April 3, 2006 as outlined in paragraph 10 of the answer contained herein.
134. Defendant admits that he made statements to members of the news media consistent with the allegations contained in paragraph 134. The defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 134. Any remaining allegations contained in paragraph 134 of plaintiff's Amended Complaint are denied.
135. Defendant admits that he made comments consistent with those outlined in paragraph 134 to a member or members of the news media. However, the defendant is without sufficient information, at this point in time with which to form a belief as to the truth of the allegations as to whether the statements outlined in paragraph 134 were made to a reporter for ABC 11 TV News or whether they were made to another member of the media and as such, that allegation is denied.
136. Defendant at the present time has no specific recollection of the date on which the statements referenced in paragraph 134 were made to a member or members of the news media. However, he believes that any statements would have been made between March 27, 2006 and April 3, 2006 as outlined in paragraph 10 of the answer contained herein.
137. Defendant admits that he made statements to members of the news media consistent with the allegations contained in paragraph 137. The defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 137. Any remaining allegations contained in paragraph 137 of plaintiff's Amended Complaint are denied.
138. Defendant admits that he made comments consistent with those outlined in paragraph 137 to a member or members of the news media. However, the defendant is without sufficient information, at this point in time, with which to form a belief as to the allegations as to whether the statements outlined in paragraph 137 were made to a reporter for the Raleigh News & Observer or whether they were made to another

member of the media and as such, that allegation is denied.

139. Defendant at the present time has no specific recollection of the date on which the statements referenced in paragraph 137 were made to a member or members of the news media. However, he believes that any statements would have been made between March 27, 2006 and April 3, 2006 as outlined in paragraph 10 of the answer contained herein.
140. Defendant incorporates his answers to paragraphs 128 through 139 in response to any allegations contained in paragraph 140. The defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 140. Any remaining allegations contained in paragraph 140 of plaintiff's Amended Complaint are denied.
141. The allegations contained in paragraph 141 of plaintiff's Amended Complaint are admitted.
142. Defendant admits that he made statements to members of the news media consistent with the allegations contained in paragraph 142, which statements were made with the knowledge that the investigation had revealed that racial comments had been made. The defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 142. Any remaining allegations contained in paragraph 142 of plaintiff's Amended Complaint are denied.
143. Defendant admits that he made comments consistent with those outlined in paragraph 142 to a member or members of the news media. However, the defendant is without sufficient information, at this point in time with which to form a belief as to the truth of the allegations as to whether the statements outlined in paragraph 142 were made to a reporter for ABC 11 TV News or whether they were made to another member of the media and as such, that allegation is denied.
144. Defendant at the present time has no specific recollection of the date on which the statements referenced in paragraph 142 were made to a member or members of the news media. However, he believes that any statements would have been made between March 27, 2006 and April 3, 2006 as outlined in paragraph 10 of the answer contained herein.
145. Defendant admits that he made statements to members of the news media consistent with the allegations contained in paragraph 145, which statements were made with the knowledge that the investigation had revealed that racial comments had been made. The defendant

further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 145. Any remaining allegations contained in paragraph 145 of plaintiff's Amended Complaint are denied.

146. Defendant admits that he made comments consistent with those outlined in paragraph 145 to a member or members of the news media. However, the defendant is without sufficient information, at this point in time, with which to form a belief as to the truth of the allegations as to whether the statements outlined in paragraph 145 were made to a reporter for ABC 11 TV News or whether they were made to another member of the media and as such, that allegation is denied.
147. Defendant at the present time has no specific recollection of the date on which the statements referenced in paragraph 145 were made to a member or members of the news media. However, he believes that any statements would have been made between March 27, 2006 and April 3, 2006 as outlined in paragraph 10 of the answer contained herein.
148. Defendant admits that he made statements to members of the news media consistent with the allegations contained in paragraph 148. The defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 148. Any remaining allegations contained in paragraph 148 of plaintiff's Amended Complaint are denied.
149. Defendant admits that he made comments consistent with those outlined in paragraph 148 to a member or members of the news media. However, the defendant is without sufficient information, at this point in time, with which to form a belief as to the truth of the allegations as to whether the statements outlined in paragraph 148 were made to a reporter for ABC News or whether they were made to another member of the media and as such, that allegation is denied.
150. Defendant at the present time has no specific recollection of the date on which the statements referenced in paragraph 148 were made to a member or members of the news media. However, he believes that any statements would have been made between March 27, 2006 and April 3, 2006 as outlined in paragraph 10 of the answer contained herein.
151. Defendant admits that he made statements to members of the news media consistent with the allegations contained in paragraph 151, which statements were made with the knowledge that the investigation had revealed that racial comments had been made. The defendant

further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 151. Any remaining allegations contained in paragraph 151 of plaintiff's Amended Complaint are denied.

152. Defendant admits that he made comments consistent with those outlined in paragraph 151 to a member or members of the news media. However, the defendant is without sufficient information, at this point in time, with which to form a belief as to the truth of the allegations as to whether the statements outlined in paragraph 151 were made to a reporter for the New York Times or whether they were made to another member of the media and as such, that allegation is denied.
153. Defendant at the present time has no specific recollection of the date on which the statements referenced in paragraph 151 were made to a member or members of the news media. However, he believes that any statements would have been made between March 27, 2006 and April 3, 2006 as outlined in paragraph 10 of the answer contained herein.
154. Defendant admits that he made statements to members of the news media consistent with the allegations contained in paragraph 154, which statements were made with the knowledge that the investigation had revealed that racial comments had been made. The defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 154. Any remaining allegations contained in paragraph 154 of plaintiff's Amended Complaint are denied.
155. Defendant admits that he made comments consistent with those outlined in paragraph 154 to a member or members of the news media. However, the defendant is without sufficient information, at this point in time, with which to form a belief as to the truth of the allegations as to whether the statements outlined in paragraph 154 were made to a reporter for NBC 17 News or whether they were made to another member of the media and as such, that allegation is denied.
156. Defendant at the present time has no specific recollection of the date on which the statements referenced in paragraph 154 were made to a member or members of the news media. However, he believes that any statements would have been made between March 27, 2006 and April 3, 2006 as outlined in paragraph 10 of the answer contained herein.
157. Defendant admits that he made statements to members of the news media consistent with the allegations contained in paragraph 157, which statements were made with the knowledge that the investigation

had revealed that racial comments had been made. The defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 157. Any remaining allegations contained in paragraph 157 of plaintiff's Amended Complaint are denied.

158. Defendant admits that he made comments consistent with those outlined in paragraph 157 to a member or members of the news media. However, the defendant is without sufficient information, at this point in time, with which to form a belief as to the truth of the allegations as to whether the statements outlined in paragraph 157 were made to a reporter for NBC News 17 or whether they were made to another member of the media and as such, that allegation is denied.
159. Defendant at the present time has no specific recollection of the date on which the statements referenced in paragraph 157 were made to a member or members of the news media. However, he believes that any statements would have been made between March 27, 2006 and April 3, 2006 as outlined in paragraph 10 of the answer contained herein.
160. Defendant admits that he made statements to members of the news media consistent with the allegations contained in paragraph 160, which statements were made with the knowledge that the investigation had revealed that racial comments had been made. The defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 160. Any remaining allegations contained in paragraph 160 of plaintiff's Amended Complaint are denied.
161. Defendant admits that he made comments consistent with those outlined in paragraph 160 to a member or members of the news media. However, the defendant is without sufficient information, at this point in time, with which to form a belief as to the truth of the allegations as to whether the statements outlined in paragraph 160 were made to a reporter for CBS News or whether they were made to another member of the media and as such, that allegation is denied.
162. Defendant at the present time has no specific recollection of the date on which the statements referenced in paragraph 160 were made to a member or members of the news media. However, he believes that any statements would have been made between March 27, 2006 and April 3, 2006 as outlined in paragraph 10 of the answer contained herein.

163. Defendant admits that he made statements to members of the news media consistent with the allegations contained in paragraph 163, which statements were made with the knowledge that the investigation had revealed that racial comments had been made. The defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 163. Any remaining allegations contained in paragraph 163 of plaintiff's Amended Complaint are denied.
164. Defendant admits that he made comments consistent with those outlined in paragraph 163 to a member or members of the news media. However, the defendant is without sufficient information, at this point in time, with which to form a belief as to the truth of the allegations as to whether the statements outlined in paragraph 163 were made to a reporter for CBS News or whether they were made to another member of the media and as such, that allegation is denied.
165. Defendant at the present time has no specific recollection of the date on which the statements referenced in paragraph 163 were made to a member or members of the news media. However, he believes that any statements would have been made between March 27, 2006 and April 3, 2006 as outlined in paragraph 10 of the answer contained herein.
166. Defendant admits that he made statements to members of the news media consistent with the allegations contained in paragraph 166, which statements were made with the knowledge that the investigation had revealed that racial comments had been made. The defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 166. Any remaining allegations contained in paragraph 166 of plaintiff's Amended Complaint are denied.
167. Defendant admits that he made comments consistent with those outlined in paragraph 166 to a member or members of the news media. However, the defendant is without sufficient information, at this point in time, with which to form a belief as to the truth of the allegations as to whether the statements outlined in paragraph 166 were made to a reporter for WRAL TV News or whether they were made to another member of the media and as such, that allegation is denied.
168. Defendant at the present time has no specific recollection of the date on which the statements referenced in paragraph 166 were made to a member or members of the news media. However, he believes that any statements would have been made between March 27, 2006 and April 3, 2006 as outlined in paragraph 10 of the answer contained herein.

169. Defendant admits that he made statements to members of the news media consistent with the allegations contained in paragraph 169, which statements were made with the knowledge that the investigation had revealed that racial comments had been made. The defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 169. Any remaining allegations contained in paragraph 169 of plaintiff's Amended Complaint are denied.
170. Defendant admits that he made comments consistent with those outlined in paragraph 169 to a member or members of the news media. However, the defendant is without sufficient information, at this point in time, with which to form a belief as to the truth of the allegations as to whether the statements outlined in paragraph 169 were made to a reporter for WRAL TV News or whether they were made to another member of the media and as such, that allegation is denied.
171. Defendant at the present time has no specific recollection of the date on which the statements referenced in paragraph 169 were made to a member or members of the news media. However, he believes that any statements would have been made between March 27, 2006 and April 3, 2006 as outlined in paragraph 10 of the answer contained herein.
172. The defendant denies that he ever intended to compare the underlying circumstances of the homicides at Alpine Road and the multiple cross burnings on I-85 in 2005 to the Duke lacrosse case. He did, however, indicate in a conversation with Ben Niolet that due to the nature of the publicity received by this case as well as those other two cases that he felt it was important for him as the District Attorney to handle the prosecution of said case. Any remaining allegations contained in paragraph 172 are denied.
173. The allegations contained in paragraph 173 of the plaintiff's Amended Complaint are admitted.
174. Defendant at the present time has no specific recollection of the date on which the statements referenced in paragraph 174 were made to a member or members of the news media. As such, said allegations are denied.
175. Defendant admits that he made statements to members of the news media consistent with the allegations contained in paragraph 175. The defendant denies that at the time he made said statements that he

intended to materially prejudice an adjudicative proceeding which resulted from the investigation of the Duke lacrosse case. Defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 175. Any remaining allegations contained in paragraph 175 of plaintiff's Amended Complaint are denied.

176. Defendant does not recall making the statements consistent with those outlined in paragraph 175 to any particular reporter as he recalls those statements being made at a public forum attended by various news organizations.
177. The allegations contained in paragraph 177 of the plaintiff's Amended Complaint are admitted.
178. In relation to paragraphs 142 through 174, at the time said statements were made no individual suspects had been identified and no individual defendants had been charged. As such, the defendant denies any allegations contained in paragraph 178 that alleges that said statements heightened or were made with the intent to heighten the public condemnation of an accused. In relation to the allegations contained in paragraphs 175 through 177 defendant denies that he was making a comment about any particular defendant and as such, he denies that said comment heightened the public condemnation of any particular individual or was intended to do so. Defendant denies any remaining allegations contained in paragraph 178 of plaintiff's Amended Complaint which contend that at the time that he made any statements outlined in paragraph 142 through 177 that he made said statement with the intent of materially prejudicing an adjudicative proceeding which has resulted from the investigation of the Duke lacrosse case, or that said statements heightened or were intended to heighten the public condemnation of an accused. Defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 178. Any remaining allegations contained in paragraph 178 of plaintiff's Amended Complaint are denied.
179. Defendant admits that he made statements consistent with those outlined in paragraphs 142 through 177 and he incorporates his response to those like numbered paragraphs in responding to paragraph 179. The defendant denies that the comments as alleged in paragraph 142 through 177 constitute an expression of his personal opinion about the guilt of any particular suspect or accused and said allegations are therefore denied. Defendant admits that he made statements contained in paragraph 142 through 177 that he believed that a crime occurred. However, defendant denies any allegations contained in paragraph 179 which contends that any statements

referenced in paragraph 142 through 177 were made by the defendant with the intent to materially prejudice an adjudicative proceeding or to heighten the public condemnation of an accused or were intended to heighten the public condemnation of an accused. Defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 179. Any remaining allegations contained in paragraph 179 of plaintiff's Amended Complaint are denied.

180. The allegations contained in paragraph 180 of plaintiff's Amended Complaint are admitted, however, at the time he made said statements he did not comprehend the effect said statements may have on any matters related to any subsequent criminal proceedings. As such, defendant denies any inference that he intended through said statements to materially prejudice an adjudicative proceeding or to heighten the public condemnation of an accused. Defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 180.

181. Defendant denies that in making any statements referenced in paragraphs 12 through 177 of the Amended Complaint that he intended to prejudice any criminal adjudicative proceeding or to heighten the public condemnation of an accused. Defendant further denies that at the time he made said statements that he fully understood the extent of the national media interest in this particular investigation and as such, he did not comprehend the effect said statements may have on any matters related to any subsequent criminal proceedings. Defendant further incorporates his answer to paragraph 10 above in response to the allegations of paragraph 181. Any remaining allegations contained in paragraph 181 of plaintiff's Amended Complaint are denied.

Withholding or Failing to Provide Potentially Exculpatory DNA evidence

182. The allegations contained in paragraph 182 of plaintiff's Amended Complaint are admitted.

183. The allegations contained in paragraph 183 of plaintiff's Amended Complaint are admitted.

184. The allegations contained in paragraph 184 of plaintiff's Amended Complaint are admitted.

185. The allegations contained in paragraph 185 of plaintiff's Amended Complaint are admitted.

186. The allegations contained in paragraph 186 of plaintiff's Amended Complaint are admitted.
187. The allegations contained in paragraph 187 of plaintiff's Amended Complaint are admitted.
188. The allegations contained in paragraph 188 of plaintiff's Amended Complaint are admitted.
189. It is admitted that Assistant District Attorney, David Saacks, included the language on the Application seeing the NTO as stated in paragraph 189.
190. It is admitted that on March 24, 2006, Nifong assumed primary responsibility for prosecuting any criminal charges resulting from the investigation of the "Duke lacrosse case". Defendant further admits that he advised the Durham Police Department that any request for assistance from the office of the District Attorney be directed to him and that he be kept advised of the progress of the investigation being performed under the supervision of the Durham Police Department.
191. The defendant is uncertain whether the date of March 27, 2006 is correct, but the remaining allegations contained in paragraph 191 are admitted.
192. The defendant is uncertain whether the date of March 28, 2006 is correct, but the remaining allegations contained in paragraph 192 are admitted.
193. It is admitted that defendant had more than one conversation with various representatives of the SBI lab during the period of time they were conducting tests, one of which conversations may have been March 30, 2006. Any remaining allegations contained in paragraph 193 are denied.
194. It is admitted that after the defendant received word from Mike Budzynski at the SBI that additional more sensitive testing may be appropriate in this case, both he and the Durham Police Department began contacting laboratories to determine whether they could conduct Y-STR testing and the cost of such testing and that investigator Soucie contacted Dr. Meehan at DSI. Any remaining allegations contained in paragraph 194 are denied.
195. The allegations contained in paragraph 195 of plaintiff's Amended Complaint are admitted.

196. The allegations contained in paragraph 196 of plaintiff's Amended Complaint are admitted.
197. The allegations contained in paragraph 197 of plaintiff's Amended Complaint are admitted.
198. The allegations contained in paragraph 198 of plaintiff's Amended Complaint are admitted.
199. The allegations contained in paragraph 199 of plaintiff's Amended Complaint are admitted.
200. The allegations contained in paragraph 200 of plaintiff's Amended Complaint are admitted.
201. With respect to the items in the rape kit, the allegations contained in paragraph 201 are admitted.
202. Defendant only recalls two meetings with Dr. Meehan occurring April 21st and May 12th, 2006. Defendant is however aware that Officers Gottlieb, Himan and Dr. Meehan indicate that there was an initial meeting occurring on April 10, 2006. Any remaining allegations contained in paragraph 202 are denied.
203. Defendant admits discussing with Dr. Meehan the analysis performed by DSI including those referenced in paragraph 199 through 201. The defendant believes that those conversations occurred on April 21, 2006, rather than April 10, 2006 as alleged. Any remaining allegations contained in paragraph 203 are denied.
204. The allegations contained in paragraph 204 of plaintiff's Amended Complaint are admitted.
205. Defendant admits the allegations contained in paragraph 205, but denies any inference that he was bound by representations made by subordinates in his office prior to his having knowledge of the case.
206. The allegations contained in paragraph 206 of plaintiff's Amended Complaint are denied.
207. The allegations contained in paragraph 207 of plaintiff's Amended Complaint are admitted.

208. It is admitted that as of April 21, 2006 that DSI had performed tests which indicated the matters outlined in paragraph 211 of the Amended Complaint and that the items and the times said items were tested are more specifically outlined in the documents produced by DSI and provided to the Duke defendant's counsel through discovery in the underlying "Duke lacrosse case", the terms of which speak for themselves. Any remaining allegations contained in paragraph 208 are denied.
209. As it relates to the rape kit items of evidence, the allegations contained in paragraph 209 are admitted.
210. Defendant admits that on April 21, 2006 he met with Dr. Meehan and two Durham Police Department Officers to discuss the results of the DNA testing and the analysis of DSI. Any remaining allegations contained in paragraph 210 are denied.
211. The allegations contained in paragraph 211 of plaintiff's Amended Complaint are admitted.
212. At the time that defendant met with Dr. Meehan, he was focused on the question of whether evidence had been discovered that corroborated the victim's photographic identification of the two indicted Duke lacrosse players as her assailants and whether there was any evidence to corroborate her near certain photographic identification of a third Duke lacrosse player as a third assailant. As such, as of the time of the meeting with Dr. Meehan as alleged in paragraph 212, his attention was not focused on whether trace DNA from individuals not members the Duke lacrosse team which was found on certain items tested would be material evidence which would affect the outcome of any subsequent trial. Defendant therefore denies that he made any conscious decision, at the times referenced in paragraph 212 of the Amended Complaint, as to whether trace DNA of individuals not members of the Duke lacrosse team was potentially exculpatory, as a trial date had not yet been scheduled in this matter and he was still investigating the facts of his underlying case and had not focused on whether this information was exculpatory. Furthermore, at this time the defendant knew that he would be required to produce the underlying data from any forensic test performed by DSI in the course of discovery. Any remaining allegations contained in paragraph 212 of plaintiff's Amended Complaint are denied.
213. Defendant admits that he knew that the summary report being prepared by Dr. Meehan would not include the underlying documents reflecting the results and tests of all examinations performed by DSI, as the

defendant knew he would be required to produce this documentation through the discovery process. Defendant denies any inference raised in the allegations contained in paragraph 213 of plaintiff's Amended Complaint that he agreed to have the summary report include only positive results in an effort to prevent the Duke defendants from knowing this information as the underlying results of the tests and examinations performed by DSI would clearly provide that information to the Duke defendants. Any remaining allegations contained in paragraph 213 are denied.

214. Defendant admits that he knew that the summary report being prepared by Dr. Meehan would not include the underlying documents reflecting the results and tests of all examinations performed by DSI, as the defendant knew he would be required to produce this documentation through the discovery process. Defendant denies any inference raised in the allegations contained in paragraph 214 of plaintiff's Amended Complaint that he agreed to have the summary report include only positive results in an effort to prevent the Duke defendants from knowing this information as the underlying results of the tests and examinations performed by DSI would clearly provide that information to the Duke defendants. Any remaining allegations contained in paragraph 214 are denied.
215. The defendant incorporates his answer to paragraph 214 of the Amended Complaint in responding to the allegations contained in paragraph 215 of plaintiff's Amended Complaint. Any remaining allegations contained in paragraph 215 are denied.
216. The allegations contained in paragraph 216 of plaintiff's Amended Complaint are admitted.
217. Defendant incorporates his answer to the allegations contained in paragraph 214 of the Amended Complaint in responding to the allegations contained in paragraph 217 of the Amended Complaint. The defendant is without sufficient information with which to form a belief as to the truth of any remaining allegations contained in paragraph 217 of plaintiff's Amended Complaint other than the fact that Dr. Meehan provided the report identified therein, the terms of which speak for itself, and as such, any remaining allegations are denied.
218. The allegations contained in paragraph 218 of plaintiff's Amended Complaint are admitted.
219. Defendant incorporates his answer to the allegations contained in paragraph 214 of the Amended Complaint in responding to the

allegations contained in paragraph 219. The defendant is without sufficient information with which to form a belief as to the truth of the remaining allegations contained in paragraph 219, and as such, said allegations are denied.

220. Defendant incorporates his answer to the allegations contained in paragraph 214 of the Amended Complaint in responding to the allegations contained in paragraph 220. The defendant is without sufficient information with which to form a belief as to the truth of the remaining allegations contained in paragraph 220, and as such, said allegations are denied.
221. The allegations contained in paragraph 221 of plaintiff's Amended Complaint are admitted.
222. Defendant admits that he received DSI's report and immediately provided it to counsel for the Duke lacrosse defendants. Defendant incorporates his answer to the allegations contained in paragraph 214 of the Amended Complaint in responding to the allegations contained in paragraph 222. The remaining allegations contained in paragraph 222 are denied.
223. The allegations contained in paragraph 223 of plaintiff's Amended Complaint are admitted.
224. The allegations contained in paragraph 224 of plaintiff's Amended Complaint are admitted.
225. The allegations contained in paragraph 225 of plaintiff's Amended Complaint are admitted.
226. The defendant admits the first sentence contained in paragraph 226 because the underlying data including documentation reflecting the results of all tests and examinations performed was still in the possession of DSI and as such, the defendant did not have said documentation in his possession as of May 18, 2006. Defendant incorporates his answer to the allegations contained in paragraph 214 of the Amended Complaint in responding to the allegations contained in paragraph 226. Any remaining allegations contained in paragraph 226 are denied.
227. Defendant denies that he is required to provide a "complete report . . . containing the results of all . . . test and examinations" pursuant to the statutes identified in paragraph 227, as he provided the underlying data which revealed the results of all tests and examinations performed by

DSI which underlying data included the findings of trace DNA from other individuals not members of the Duke lacrosse team. Any remaining allegations contained in paragraph 227 of plaintiff's Amended Complaint are denied.

228. Defendant denies that he was required to make a memorialization of Dr. Meehan's oral statements made to him, as the Duke lacrosse defendants' request for this memorialization was denied by the Honorable Ronald L. Stephens in an Order dated June 22, 2006 (June 22, 2006 Transcript, pp. 20-23) and the Honorable W. Osmond Smith, III in open court on September 22, 2006 (Transcript page 29). As such, he admits that he did not provide a copy of such memorialization to the Duke lacrosse defendants as alleged in paragraph 228. Defendant further denies that he is required to provide said memorialization pursuant to N.C.G.S. § 15A-903. Any remaining allegations contained in paragraph 228 of plaintiff's Amended Complaint are denied.
229. The allegations contained in paragraph 229 of plaintiff's Amended Complaint are denied.

Misrepresentations and False Statements to Court and Opposing Counsel

230. At the time the defendant made the representation referenced in paragraph 230, he had not analyzed whether trace DNA from individuals not members of the Duke lacrosse team which was found on certain items tested would be material evidence which would effect the outcome of any subsequent trial and as such, as of the date of said representation, he had not considered whether this evidence was possibly exculpatory evidence. Any remaining allegations contained in paragraph 230 of plaintiff's Amended Complaint are admitted.
231. Defendant incorporates his response to allegations contained in paragraph 230 in responding to the allegations of paragraph 231 of plaintiff's Amended Complaint. Defendant admits that at the time that defendant served his initial discovery responses on May 18, 2006, he was aware that the underlying data of the tests performed by DSI would reveal that trace amounts of DNA not matching the members of the Duke lacrosse team was found on certain items of evidence tested by DSI. The defendant further admits that the underlying data and reports from DSI would be available to the "Duke lacrosse defendants" upon request through discovery and they would be provided with the underlying data revealing this information. It is further admitted that he knew that the DSI report was a summary report which outlined positive matches between DNA found on items of evidence and the Duke lacrosse players. Any remaining allegations contained in paragraph

- 231 of plaintiff's Amended Complaint are denied.
232. Defendant denies that at the time that he made the representation in his May 18, 2006 discovery response that he was required to memorialize Dr. Meehan's oral statements pursuant to N.C.G.S. § 15A-903(a)(1). Any remaining allegations contained in paragraph 232 of plaintiff's Amended Complaint are denied.
233. The allegations contained in paragraph 233 of plaintiff's Amended Complaint are denied.
234. Defendant denies that the court on May 18, 2006 asked him if he had provided "all the Duke discovery materials". Attached hereto as Exhibit "C" is a true and accurate copy of the May 18, 2006 hearing transcript, the terms of which speak for itself relating to the questions of the court as alleged in paragraph 234. Any remaining allegations contained in paragraph 234 of plaintiff's Amended Complaint are denied.
235. Defendant admits that he advised the court that he had turned over "everything I have", but he denies that at the time he made that response that he had in his possession the underlying data resulting from the tests performed by the SBI and DSI.
236. The allegations contained in paragraph 236 of plaintiff's Amended Complaint are denied.
237. The allegations contained in paragraph 237 of plaintiff's Amended Complaint are admitted.
238. The allegations contained in paragraph 238 of plaintiff's Amended Complaint are admitted. However, defendant specifically denies that he was required to provide a report or written statement of the meeting between he and Dr. Meehan by any statute or subsequent court Order. Any remaining allegations contained in paragraph 238 of plaintiff's Amended Complaint are denied.
239. The allegations contained in paragraph 239 of plaintiff's Amended Complaint are admitted.
240. It is admitted that at the June 22, 2006 hearing defendant discussed his meetings with Dr. Meehan as is more particularly outlined in a transcript of said hearing, the terms of which speak for itself, a true and accurate copy of which is attached hereto and incorporated herein by reference as Exhibit "D". Any remaining allegations contained in paragraph 240 of plaintiff's Amended Complaint which are inconsistent with statements

in said transcript are denied.

241. The allegations contained in paragraph 241 of plaintiff's Amended Complaint are admitted.
242. The allegations contained in paragraph 242 of plaintiff's Amended Complaint are denied.
243. It is admitted that the defendant consented an Order being entered on June 22, 2006, a copy of which is attached hereto and incorporated herein by reference as Exhibit "E", the terms of which speak for itself. It is further admitted that pursuant to the terms of said Order, defendant was required to produce the reports of any examinations or tests conducted by the expert and the underlying basis for the expert's opinion "within a reasonable time prior to trial, as specified by the court". (emphasis added) Any remaining allegations contained in paragraph 243 which are inconsistent with the terms of the June 22, 2006 Order are denied.
244. It is admitted that on August 31, 2006 the defendants filed a joint Omibus Motion to Compel Discovery, a copy of which is attached hereto and incorporated herein by referenced as Exhibit "G", the terms of which speak for itself. Any remaining allegations contained in paragraph 244 of plaintiff's Amended Complaint which are inconsistent with the terms of said Motion are denied.
245. The allegations contained in paragraph 245 of plaintiff's Amended Complaint are admitted.
246. It is admitted that the counsel for the Duke defendants specifically stated that they were seeking results of any test findings of any DNA found on the items tested not just positive matches to the Duke lacrosse defendants, as is more particularly outlined in a transcript of the September 22, 2006 hearing, a true and accurate copy of which is attached hereto and incorporated herein by reference as Exhibit "F". Any remaining allegations contained in paragraph 246 of plaintiff's Amended Complaint which are inconsistent with statements in said transcript are denied.
247. Defendant incorporates his statements, as more particularly outlined, in the transcript of the hearing before the court on September 22, 2006 in response to the allegations raised in paragraph 247. Any allegations contained in said paragraph which are inconsistent with said transcript are denied.

248. Defendant incorporates his statements, as more particularly outlined, in the transcript of the hearing before the court on September 22, 2006 in response to the allegations raised in paragraph 248. Any allegations contained in said paragraph which are inconsistent with said transcript are denied.
249. The allegations contained in paragraph 249 of plaintiff's Amended Complaint are denied.
250. The allegations contained in paragraph 250 of plaintiff's Amended Complaint are admitted.
251. Defendant incorporates his statements, as more particularly outlined, in the transcript of the hearing before the court on September 22, 2006 in response to the allegations raised in paragraph 251. Any allegations contained in said paragraph which are inconsistent with said transcript are denied.
252. Defendant incorporates his statements, as more particularly outlined, in the transcript of the hearing before the court on September 22, 2006 in response to the allegations raised in paragraph 252. Any allegations contained in said paragraph which are inconsistent with said transcript are denied.
253. The defendant admits that the court entered an Order on September 22, 2006 directing the SBI and DSI to provide him with a copy of the complete file and the underlying data (with certain exceptions as more particularly outlined in the transcript of said hearing) from both the SBI and DSI to ultimately be provided to the defendant.
254. The allegations contained in paragraph 254 of plaintiff's Amended Complaint are admitted.
255. The allegations contained in paragraph 255 of plaintiff's Amended Complaint are denied.
256. The defendant denies that he is required pursuant to the statutes outlined in paragraph 256 to provide a "complete report" from DSI, as the underlying data produced contained a report or the results of all tests or examinations conducted by said company. Any remaining allegations contained in paragraph 256 of plaintiff's Amended Complaint are denied.
257. It is admitted that the defendant did not provide a written or recorded memorialization of Dr. Meehan's oral statements to him. Defendant

denies that he was required to produce such a memorialization as both The Honorable Ronald L. Stephens in the June 22, 2006 hearing (See: June 22, 2006 Transcript, page 20-23) and The Honorable W. Osmond Smith, III in the September 22, 2006 hearing denied defendant's request for said relief. (See: September 22, 2006 Transcript, page 29) Defendant further denies that he is required to make a memorialization of his communications with Dr. Meehan pursuant to N.C.G.S. § 15A-903. Defendant submits that the conversations between he and Dr. Meehan are protected from discovery pursuant to N.C.G.S. § 15A-904.

258. The allegations contained in paragraph 258 of plaintiff's Amended Complaint are denied.
259. Defendant admits that the documents provided to the Duke lacrosse defendants on October 27, 2006 pursuant to the Orders of the trial court dated June 22, 2006 and September 22, 2006 contained the reports and results of all tests and examinations performed by DSI from which counsel for the Duke lacrosse defendants were able to determine that trace amounts of DNA from other individuals not members of the Duke lacrosse team was found on evidentiary items tested. The defendant is without sufficient information with which to form a belief as to the truth of the remaining allegations contained in paragraph 259 of plaintiff's Amended Complaint, as such, said allegations are therefore denied.
260. The allegations contained in paragraph 260 of plaintiff's Amended Complaint are admitted.
261. Defendant incorporates the allegations of defendant's Motion to Compel Discovery: Expert DNA Analysis, a copy of which is attached hereto and incorporated herein by reference as Exhibit "G" in response to the allegations in paragraph 261. Any allegations contained in said paragraph which are inconsistent with said Motion are denied.
262. Defendant admits that although the motion did not specifically state that there had been an attempt or agreement to conceal potentially exculpatory DNA evidence, defendant's reading of said motion which asserted the failure of Dr. Meehan's initial report to include certain information, in light of the fact that the Duke lacrosse defendants had been provided with the underlying reports and results of all tests and examinations performed by DSI, was that the defendants were asserting some improper action on the part of Dr. Meehan and/or the State. As such, the defendant denies any inference raised in paragraph 262 that said motion was not alleging or asserting some active concealment by Dr. Meehan and/or the State.

263. The allegations contained in paragraph 263 of plaintiff's Amended Complaint are admitted.
264. Defendant incorporates his statements, as more particularly outlined, in the transcript of the hearing before the court on December 15, 2006, a true and accurate copy of said transcript is attached hereto and incorporated herein by reference as Exhibit "H" in response to the allegations raised in paragraph 264 of plaintiff's Amended Complaint. Any allegations contained in said paragraph which are inconsistent with said transcript are denied.
265. Defendant incorporates his statements, as more particularly outlined, in the transcript of the hearing before the court on December 15, 2006, a true and accurate copy of said transcript is attached hereto and incorporated herein by reference as Exhibit "H" in response to the allegations raised in paragraph 265 of plaintiff's Amended Complaint. Any allegations contained in said paragraph which are inconsistent with said transcript are denied.
266. Defendant denies that he made any misrepresentation or false statements of material fact to the Court at the December 15, 2006 hearing. Defendant further incorporates his statements, as more particularly outlined, in the transcript of the hearing before the court on December 15, 2006, a true and accurate copy of said transcript is attached hereto and incorporated herein by reference as Exhibit "H" in response to the allegations raised in paragraph 266 of plaintiff's Amended Complaint. Any allegations contained in said paragraph which are inconsistent with said transcript are denied.
267. Defendant incorporates Dr. Meehan's testimony, as more particularly outlined, in the transcript of the hearing before the court on December 15, 2006, a true and accurate copy of said transcript is attached hereto and incorporated herein by reference as Exhibit "H" in response to the allegations raised in paragraph 267 in plaintiff's Amended Complaint. Any allegations contained in said paragraph which are inconsistent with said transcript are denied.
268. Defendant admits that he made statements to members of the news media consistent with the allegations contained in paragraph 268 of plaintiff's Amended Complaint.
269. The allegations contained in paragraph 269 of plaintiff's Amended Complaint are denied.

270. Defendant denies that he is required to provide "a complete report" setting forth the results of all of the tests and examinations performed by DSI when he has provided the underlying data which reports the results of all tests and examinations performed. Defendant further denies that he is required to make a memorialization of his oral conversations with Dr. Meehan concerning the results of the tests performed by DSI. As such, defendant admits that he did not provide a memorialization of Dr. Meehan's statements prior to December 15, 2006.
271. The allegations contained in paragraph 271 of plaintiff's Amended Complaint are admitted.
272. It is denied that N.C.G.S. § 15A-903(a)(1) requires the defendant to produce in discovery his attorney work product generated in relation to his interviews with potential witnesses prior to trial, as said documents are not statements within the meaning of said statute and they are protected from discovery pursuant to the provisions of N.C.G.S. § 15A-904. Any remaining allegations contained in paragraph 272 of plaintiff's Amended Complaint are hereby denied.
273. The allegations contained in paragraph 273 of plaintiff's Amended Complaint are admitted.
274. The allegations contained in paragraph 274 of plaintiff's Amended Complaint are admitted.
275. Defendant denies that he is required pursuant to the provisions of the United States Constitution or the North Carolina discovery statutes to provide "a complete report setting forth the results of all examinations and tests conducted" when he has provided the underlying data and results of all tests and examinations performed by an expert to a criminal defendant through discovery. As such, the allegations contained in paragraph 275 of plaintiff's Amended Complaint are denied.
276. Defendant denies that he is required pursuant to the provisions of the United States Constitution or the North Carolina discovery statutes to provide "a complete report setting forth the results of all examinations and tests conducted" when he has provided the underlying data and results of all tests performed by an expert to a criminal defendant through discovery. As such, the allegations contained in paragraph 276 of plaintiff's Amended Complaint are denied.

277. Defendant admits that he did not provide the Duke defendants with a memorialization of Dr. Meehan's oral statements made to him at any time prior to his recusal, as he was not required to create said memorialization pursuant to the provisions of the United States Constitution, N.C.G.S. § 15A-903, and that said information is not discoverable pursuant to the provisions of N.C.G.S. § 15A-904. In addition, the Duke defendants' request to the court for an Order directing that defendant memorialize his interview with Dr. Meehan were denied by the Honorable Ronald L. Stephens in the hearing of June 22, 2006 and the September 22, 2006 hearing before W. Osmond Smith, III. Any remaining allegations contained in paragraph 277 of plaintiff's Amended Complaint are denied.
278. The allegations contained in paragraph 278 of plaintiff's Amended Complaint are denied.

Misrepresentation and False Statements to State Bar's Grievance Committee

279. The allegations contained in paragraph 279 of plaintiff's Amended Complaint are admitted.
280. The allegations contained in paragraph 280 of plaintiff's Amended Complaint are admitted and attached hereto and incorporated herein by reference are copies of the responses identified in paragraph 280.
281. Defendant incorporates his responses to the Grievance Committee in response to the allegations contained in paragraph 281 of the Amended Complaint. Any remaining allegations contained in paragraph 281 of which are inconsistent with the terms of Exhibit "I" are denied.
282. Defendant incorporates his responses to the Grievance Committee in response to the allegations contained in paragraph 282 of the Amended Complaint. Any remaining allegations contained in paragraph 282 of which are inconsistent with the terms of Exhibit "I" are denied.
283. Defendant incorporates his responses to the Grievance Committee in response to the allegations contained in paragraph 283 of the Amended Complaint. Any remaining allegations contained in paragraph 283 of which are inconsistent with the terms of Exhibit "I" are denied.
284. The allegations contained in paragraph 284 of plaintiff's Amended Complaint are admitted.

285. The allegations contained in paragraph 285 of plaintiff's Amended Complaint are admitted.
286. Defendant incorporates his responses to the Grievance Committee in response to the allegations contained in paragraph 286 of the Amended Complaint. Defendant denies knowingly making a false statement of material fact as alleged in paragraph 286. Any remaining allegations contained in paragraph 286 of which are inconsistent with the terms of Exhibit "I" are denied.
287. Defendant incorporates his responses to the Grievance Committee in response to the allegations contained in paragraph 287 of the Amended Complaint. Any remaining allegations contained in paragraph 287 of which are inconsistent with the terms of Exhibit "I" are denied.
288. Defendant incorporates his responses to the Grievance Committee in response to the allegations contained in paragraph 288 of the Amended Complaint. Defendant specifically denies knowingly making a false statement as alleged in paragraph 288. Any remaining allegations contained in paragraph 288 of which are inconsistent with the terms of Exhibit "I" are denied.
289. Defendant incorporates his responses to the Grievance Committee in response to the allegations contained in paragraph 289 of the Amended Complaint. Any remaining allegations contained in paragraph 289 of which are inconsistent with the terms of Exhibit "I" are denied.
290. Defendant incorporates his answers to the allegations contained in paragraph 262 of the Amended Complaint and the transcript of the December 15, 2006 hearing in response to the allegations contained in paragraph 290. To the extent that any remaining allegations are contrary to the matters contained in the December 15, 2006 hearing, said allegations are denied.
291. The allegations contained in paragraph 291 of plaintiff's Amended Complaint are denied.

THIRD DEFENSE
AFFIRMATIVE DEFENSES

Now by way of a further defense, and by way of Affirmative defense defendant alleges and says:

FIRST AFFIRMATIVE DEFENSE

In the event it is determined that the defendant violated any Rule of Professional Conduct as alleged in the Amended Complaint, which defendant specifically denies, defendant's violations of any of the Rules of Professional Conduct was not the result of his intentional conduct. Rather, any violation of the Rules of Professional Conduct was the result of the defendant's mistaken belief that any actions taken by him as alleged in the Amended Complaint was not prohibited by the North Carolina Rules of Professional Conduct.

WHEREFORE, the defendant respectfully prays that Disciplinary Hearing Commission as follows:

1. That an Order be entered dismissing any claims for relief as raised in paragraphs (c) and (d) of the "Therefore" portion of plaintiff's Amended Complaint;
2. That the Amended Complaint of the plaintiff be dismissed and that the plaintiff be denied any requested disciplinary action against the defendant as a result of any claims raised in plaintiff's Amended Complaint;
3. In the event the panel finds that defendant violated any Rules of Professional Conduct, that the panel find that defendant's violation of any Rule of Professional Conduct was not intentional, nor the result of a dishonest or selfish motive, but rather that any discipline entered be based upon a finding that the defendant's violation of any Rule of Professional Conduct was the result of the mistaken belief that any of the action taken by defendant were not prohibited by said rules;
4. That the costs of the action be taxed against the plaintiff;
5. For such other and further relief as the Court may deem just and proper.

This the 28th day of February, 2007.

CRUMPLER FREEDMAN PARKER & WITT
Attorneys for the Defendant

David B. Freedman by DAW

David B. Freedman

Dudley A. Witt

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STATE OF NORTH CAROLINA
WAKE COUNTY

BEFORE THE
DISCIPLINARY HEARING
COMMISSION
NORTH CAROLINA STATE BAR
06 DHC 35

THE NORTH CAROLINA STATE BAR,

Plaintiff,

vs.

MICHAEL B. NIFONG,

Defendant.

CERTIFICATE OF SERVICE

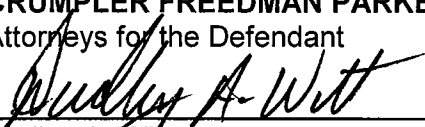
The undersigned hereby certifies that he is an attorney at law licensed to practice in the State of North Carolina, is attorney for the defendant and is a person of such age and discretion as to be competent to serve process.

That on the 28th day of February, 2007, he served a copy of the attached **MOTION TO DISMISS AND ANSWER** by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and its contents in the United States Mail at Winston-Salem, North Carolina.

ADDRESSEE: Ms. Katherine Jean
North Carolina State Bar
208 Fayetteville Street
Raleigh, NC 27601

Mr. Doug Brocker
The Brocker Law Firm
5540 Centerview Drive, Suite 200
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