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EDWARD BENNETT WILLIAMS (1920-1988)  
PAUL R. CONNOLLY (1922-1978)

May 2, 2008

**VIA ELECTRONIC & U.S. MAIL**

Robert James King, III  
Brooks, Pierce, McLendon, Humphrey & Leonard  
P.O. Box 26000  
Greensboro, NC 27420-6000

Re: *Evans et al. v. City of Durham et al.*, No. 1:07cv739

Dear Robert:

I am writing to memorialize Plaintiffs' understanding of the efforts by DNA Security, Inc. ("DSI") and Richard Clark to identify and preserve electronically stored information ("ESI") that may be relevant to the above-referenced litigation, based on our conference call of this morning, and to request further information about certain matters discussed on our call. I am also writing to request that DSI take immediate steps to preserve the computer hard drives and e-mail accounts that were used by relevant DSI employees during the time period at issue in the Amended Complaint.

1. Summary of DSI's ESI Systems.

a. E-mail Items. You informed us that DSI uses an e-mail system. Please let us know (1) what e-mail program (e.g., Microsoft Outlook) DSI uses; (2) whether e-mails are automatically deleted from the system (e.g., from in-boxes, sent items folders, trash folders, etc.), and on what schedule; and (3) whether DSI employees are able to archive e-mail to their hard drive or to a network location. In addition, please let us know whether potentially relevant information may exist in any personal e-mail accounts, including accounts of Richard Clark.

b. Network Server Files. You informed us that DSI has at least one file-sharing server. You were not aware, and agreed to inform us, about how these file-sharing server(s) are organized: for example, the number and location of these servers; and whether particular employees, departments, or matters have specified storage locations on these server(s). Please also let us know whether information is automatically deleted from the server(s) and on what schedule.

c. Backups of E-mail and Network Server Files. You were not aware whether DSI has created backup files. Please let us know (1) whether any back-up copies of the

e-mail system and network servers have been made since March 2006 and, if so, on what dates; (2) the schedule, if any, on which such backup files are, or have been, overwritten, deleted, or recycled; (3) the dates of any backup files that have not been deleted; (4) the type of media (e.g., tapes, hard drives) that was used to store any backup files; and (5) the current location of such media.

d. Computer hard drives. You informed us that (1) some DSI employees use dedicated computers; (2) DSI removed Brian Meehan's dedicated computer from use when he left DSI; (3) DSI is in possession of that computer; and (4) DSI has not imaged or removed from operation any other computers used during the time period at issue in the Amended Complaint. In addition, please let us know whether potentially relevant information may exist on any other dedicated computer, including any dedicated or personal computer of Richard Clark.

e. Voicemail. You did not have information about DSI's telephone/voicemail system(s). You agreed to inform us about how these system(s) are organized, including whether voicemails or telephone calls are logged in any manner, whether voicemails are preserved or backed up (and, if so, the current status of preserved voicemails or backups), and whether the voicemail system(s) provides e-mail notice of voicemail.

f. Portable devices. You did not have information, and agreed to inform us, whether DSI issued Blackberries, personal digital assistants ("PDAs"), or other electronic storage devices to any of its employees during the time period at issue in the Amended Complaint. In addition, please let us know whether Richard Clark, Brian Meehan, or any other DSI employee might have potentially relevant information on any such device, regardless of whether DSI issued them.

2. Summary of DSI's Efforts to Preserve ESI.

a. Efforts in 2006. You informed us that in 2006 DSI collected certain documents in response to a subpoena by criminal defense attorneys. Please let us know whether e-mails were collected, and whether any potentially relevant documents or ESI were withheld or otherwise not produced at that time. In addition, please let us know whether the information collected still exists in native format.

b. Litigation Hold. By letter dated August 17, 2007, Plaintiffs' counsel requested that DSI and Clark take immediate steps to preserve all potentially relevant ESI to the extent they had not already done so (the "Preservation Letter"). You informed us that no later than August 2007 DSI instructed all personnel to preserve potentially relevant documents and ESI. DSI has not taken any additional steps to preserve potentially relevant ESI, such as imaging hard drives, converting network files to "read-only" format, or suspending the automatic deletion of e-mails, network server files, or backup files.

3. Request for Information on Richard Clark's Efforts to Preserve ESI.

Please let us know of any steps taken by or on behalf of Richard Clark to preserve potentially relevant ESI, including ESI on personal computers or e-mail accounts.

4. Request for Immediate Preservation of Hard Drives, E-Mail Accounts, and Backup Media. We hereby request that DSI and Clark take immediate steps to preserve any computers, whether dedicated or shared, or e-mail accounts that were used by DSI personnel in connection with the Duke Lacrosse case. We also request that DSI take immediate steps to identify and suspend the deletion or recycling of any backup media that may contain e-mail or network backup files created after March 2006 that have not yet been deleted or that still contain data that might be retrieved with forensic assistance. Please let us know whether DSI agrees to these requests.

Please inform us if our understanding of DSI's ESI systems or DSI's efforts to preserve potentially relevant ESI is incomplete or incorrect. So that we can resolve any issues expeditiously, I request that we speak again soon about these matters. We are available at any time on May 7, 13, or 14.

Sincerely,

A handwritten signature in black ink, appearing to read 'Charles Davant IV', written in a cursive style.

Charles Davant IV

cc: David S. Rudolf (by e-mail)  
Barry C. Scheck (by e-mail)  
Richard D. Emery (by e-mail)  
Ilann M. Maazel (by e-mail)

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EDWARD BENNETT WILLIAMS (1920-1986)  
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May 15, 2008

**VIA E-MAIL**

Robert James King, III  
Brooks, Pierce, McLendon, Humphrey & Leonard  
P.O. Box 26000  
Greensboro, NC 27420-6000

Re: *Evans et al. v. City of Durham et al.*, No. 1:07cv739

Dear Robert:

I am writing to summarize the sources of electronically stored information (“ESI”) in the possession, custody, or control of David Evans and Collin Finnerty that might be potentially relevant to their claims in the above-referenced litigation and, where necessary, the steps taken to preserve them. Please note that the fact that a particular item has been identified or preserved does not necessarily mean that it contains ESI that is potentially relevant to Mr. Evans’s or Mr. Finnerty’s claims, or that it is discoverable. Moreover, certain of this ESI is privileged. The efforts to identify and preserve this ESI began prior to our receipt of DNA Security, Inc.’s (“DSI”) letter of December 20, 2007, which requested preservation of information relating to the investigation and prosecution of Ms. Mangum’s allegations, and prior to our letter to DSI of August 17, 2007 requesting the same.

1. E-mail Accounts. Since March 2006, Mr. Evans and Mr. Finnerty have had several different e-mail accounts, either through their academic institution (Duke or Loyola), a Web-based e-mail service (AOL, Gmail, or Hotmail), or Mr. Evans’s employer (Morgan Stanley or CyrenCALL Communications). Not all of these accounts contain potentially relevant e-mails. For those that do, such e-mails have been retained online in electronic form since before the August 17 and December 20, 2007 letters and, in some cases, also are retained in hard copy, with the following exceptions. In the case of Duke e-mail, Duke University has been preserving Mr. Evans’s and Mr. Finnerty’s accounts and at our request provided us with electronic copies of these e-mails in January 2008, which we are preserving. In the case of Mr. Evans’s CyrenCALL e-mail, any such e-mail in Mr. Evans’s possession, custody, or control would be stored on a personal computer and possibly a Motorola Q device that have been preserved as described below. Mr. Finnerty’s AOL e-mail account does not contain potentially relevant e-mail; because this account automatically deleted e-mails after 30 days, any e-mails from the relevant period would already have been deleted before the August 17 and December 20, 2007 letters.

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Robert James King, III  
May 15, 2008  
Page 2

2. Computer Data. The Durham Police Department seized and imaged Mr. Evans's computer data in March 2006. In the summer of 2006, Mr. Evans purchased a new laptop computer. In January 2008, we retained a third-party vendor to image this computer's hard drive, and we are preserving the imaged data. Prior to that time, Mr. Evans undertook not to alter or delete intentionally any data on this computer that might be potentially relevant to his claims. Mr. Finnerty used a Dell laptop computer until last summer; we are in possession of the computer, and we also retained a third-party vendor to create an image of the computer's hard drive, which we are also preserving. Since last summer, Mr. Finnerty has used an Apple laptop computer; although the only potentially relevant data on this computer is privileged, Mr. Finnerty will not intentionally alter or delete such data.

3. Portable Devices. Mr. Evans has used two portable e-mail devices, both for work: a Motorola Q device used during his employment with CyrenCall Communications (beginning Fall 2006); and a Blackberry issued by Morgan Stanley (in or around May 2007). Any e-mail on these devices should be duplicative of other sources of e-mail identified above, and we have not determined whether the Motorola Q device still contains any CyrenCall e-mail. However, Mr. Evans is preserving the Motorola Q device. Neither Mr. Evans nor Mr. Finnerty used portable media storage, such as a flash drive or CD-ROM, to store potentially relevant ESI.

Sincerely,

A handwritten signature in black ink, appearing to read 'CD IV', written in a cursive style.

Charles Davant IV

**BROOKS, PIERCE, McLENDON, HUMPHREY & LEONARD, L.L.P.**

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May 20, 2008

VIA E-MAIL

Charles Davant, IV  
WILLIAMS & CONNOLLY LLP  
725 Twelfth Street, N.W.  
Washington, DC 20005

Re: Letters of May 2 and May 15

Dear Charles:

I am writing in response to your letter of May 2, 2008. Provided below are responses to many of the questions that you have asked. I also have several questions about the information contained in your letter of May 15.

A couple of preliminary comments:

First, your letter of May 2 is not entirely accurate regarding our conversation, I am sure unintentionally. However, I don't see any reason to get into a back-and-forth as to who said what, since the point is to exchange information about ESI and we seem to be making progress on this. Responses to your questions are below. We would, in turn, appreciate written responses to our questions.

Second, I want to be clear about Brian Meehan. To the extent that Dr. Meehan generated relevant ESI at DSI using DSI equipment, then the information below would apply to Dr. Meehan. However, this firm does not represent Dr. Meehan, and I cannot respond to questions about Dr. Meehan's personal e-mails or other personal ESI (if any) while at DSI, nor can I answer for actions once Dr. Meehan left DSI. You should take that up with his attorneys.

Regarding the questions posed in your letter of May 2:

- a. DSI uses Microsoft Outlook Exchange. E-mails are not automatically deleted from the system, and DSI employees can only archive e-mails to their hard drive. Employees have been instructed not to delete any potentially relevant e-mails.
- b. DSI maintains an e-mail server and two network servers, all of which are located at DSI. No particular employees or departments have specified storage locations on the servers.

DSI employees do create folders for organizing documents. Information is not automatically deleted from the servers.

c. DSI backs up its servers each week night to one of five rotating hard drives. The backup files are overwritten as storage capacity requires, which typically is every two or three weeks. The hard drives are stored at DSI. As noted, however, absent a crash of the servers, all original data should still be on the servers. The back ups are simply a precaution.

d. DSI duplicated Dr. Meehan's hard drive once he left DSI and preserved the duplicate hard drive. DSI has not imaged or removed from operation any hard drive on any other computer. We do not believe relevant information exists on any other "dedicated" computer.

e. DSI did not log or preserve voicemails or telephone calls during the relevant time period. DSI's voicemail system does not provide e-mail notice of voicemail.

f. DSI does not issue personal digital assistants ("PDAs") or other electronic storage devices to its employees.

g. With respect to DSI's other efforts to preserve ESI, DSI is in the process of copying all of its files on its servers to a hard drive that will be preserved. To our knowledge, no relevant ESI has been lost or deleted.

Turning to your letter of May 15, I have several questions. First, you mention at least eight e-mail accounts for your clients: Duke (presumably for both clients), Loyola, AOL, Gmail, Hotmail, Morgan Stanley, and Cyrencall. It is unclear if Evans had an AOL account or who had the Gmail and Hotmail accounts. I would appreciate a clarification on that. Please also tell me the time periods during which each of these accounts was used.

Second, I was confused as to which accounts have been preserved and which have not. It is my understanding that the e-mails from the two Duke accounts have been preserved, as have Evans' Cyrencall e-mails. Please confirm this. It is not clear whether all e-mails have been preserved for the Loyola, Gmail, Hotmail, and Morgan Stanley accounts. Please confirm that these e-mails have been preserved, from March 2006 forward. If they have not been preserved in whole, please let me know which have not been preserved and for which periods.

Third, you state that "[n]ot all of these accounts contain potentially relevant e-mails". Does this mean that some documents have been deleted based upon a determination of non-relevance? If so, which accounts/documents, and who made the determination of non-relevance?

Fourth, I was disturbed to learn that Finnerty has allowed his AOL e-mails to be deleted. Presumably, Finnerty knew for some time that he was going to file suit, and he had an obligation to preserve e-mails in this account. I gather that there is nothing that can be done about this now (other than to have Finnerty stop deleting documents), and we will have to deal with the issue of this document destruction later in the appropriate forum.

Finally, while I understand that the computer used by Evans in March 2006 was seized by the police, I do not understand where that computer now resides or if you have preserved or copied its contents. Please clarify this.

I look forward to receiving this additional information.

Sincerely,

A handwritten signature in black ink, appearing to read 'RJK', with a long horizontal flourish extending to the right.

Robert J. King III

RJK:mh

cc: Kearns Davis  
Clint Pinyan  
DJ O'Brien



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EDWARD BENNETT WILLIAMS (1920-1988)  
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May 21, 2008

**VIA E-MAIL**

Robert James King, III  
Brooks, Pierce, McLendon, Humphrey & Leonard  
P.O. Box 26000  
Greensboro, NC 27420-6000

Re: *Evans et al. v. City of Durham et al.*, No. 1:07cv739

Dear Robert:

We received your May 20, 2008 letter about the treatment of electronically stored information (“ESI”) by DNA Security, Inc. (“DSI”), in response to my May 2, 2008 letter to you. Your letter did not answer some of our questions, and raised others.

- a. E-mail. Your letter did not respond to our question about whether potentially relevant ESI had been stored in any non-DSI e-mail accounts of your client Richard Clark. Please inform us whether Mr. Clark has used any non-DSI e-mail accounts since March 2006, and what efforts, if any, have been made to preserve potentially relevant e-mails in any such accounts.
- b. Hard drives. Your letter states that DSI does not believe that relevant information exists on any “dedicated” DSI hard drive other than Brian Meehan’s. Please clarify whether there are other hard drives in the possession, custody, or control of DSI or Mr. Clark that may contain potentially relevant ESI. In particular, please let us know whether any computer that DSI or Mr. Clark considers to be “non-dedicated,” such as a computer shared by multiple DSI employees or a computer used by Mr. Clark or other DSI personnel for both business and personal/home use, has been used to record or communicate potentially relevant information or data. To the extent any such computers exist, we again request that DSI and Mr. Clark take immediate steps to preserve them.
- c. Portable devices. To clarify, my letter was intended to determine whether potentially relevant information had been stored by Mr. Clark, Dr. Meehan, or any other DSI employee on any portable electronic storage device—such as a Blackberry, personal digital assistant, or flash drive—regardless of whether DSI issued the device. Your letter responded as to DSI-issued devices. Please let us know the answer as to whether any non-DSI-issued devices were used by Mr. Clark or other DSI personnel to store potentially relevant information.

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Robert James King, III

May 21, 2008

Page 2

d. Efforts in 2006. Your letter did not respond to my inquiry about DSI's collection of materials in 2006 in response to a subpoena from criminal defense attorneys. Please let us know whether e-mails or other ESI were collected, whether any potentially relevant or responsive materials were withheld or otherwise not produced at that time, and whether such information still exists in native format.

Last, you wrote that my May 2 letter was "not entirely accurate." To the extent that your May 20 letter did not already do so, please inform us if our understanding of your clients' ESI systems or efforts to preserve potentially relevant ESI is in any respect incomplete or incorrect.

I will respond separately to the parts of your letter that concern David Evans's and Collin Finnerty's ESI.

Sincerely,

A handwritten signature in black ink, appearing to read "CD IV", written in a cursive style.

Charles Davant IV

cc: David S. Rudolf (by e-mail)  
Barry C. Scheck (by e-mail)  
Richard D. Emery (by e-mail)  
Ilann M. Maazel (by e-mail)

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May 29, 2008

VIA E-MAIL

Charles Davant, IV  
WILLIAMS & CONNOLLY LLP  
725 Twelfth Street, N.W.  
Washington, DC 20005

Re: Evans, Finnerty, Seligmann v. The City of Durham, North Carolina, et al.

Dear Charles:

Regarding your letter of May 21:

a. E-mail. No potentially relevant information exists on any personal e-mail accounts, including any personal e-mail accounts of Richard Clark. As previously mentioned, I cannot speak for any ESI generated by Dr. Meehan after he left DSI (or for any other employee after his or her separation from ESI).

b. Hard drives. No potentially relevant information exists on hard drives in the custody of DSI or Richard Clark, other than Dr. Meehan's former hard drive, which we have duplicated and preserved.

c. Portable devices. DSI does not issue personal digital assistants or other electronic storage devices to its employees. To the extent DSI employees use personal portable devices, those devices do not contain potentially relevant information.

Your question about what documents DSI may have produced in a prior proceeding does not go to the question of the current status of ESI or the protection of same, and therefore this question should be saved for the actual discovery process. As we have explained, DSI and Mr. Clark have taken appropriate steps to preserve ESI.

Sincerely,



Robert J. King III

RJK:mh

cc: Kearns Davis  
Clint Pinyan  
DJ O'Brien