

ATTACHMENT II

STEPTOE & JOHNSON LLP

ATTORNEYS AT LAW

Roger E. Warin
202.429.6280
rwarin@step toe.com

1330 Connecticut Avenue, NW
Washington, DC 20036-1795
Tel 202.429.3000
Fax 202.429.3902
step toe.com

September 26, 2007

Via HAND DELIVERY

Brendan Sullivan, Esq.
Williams & Connolly LLP
725 Twelfth Street, NW
Washington, DC 20005-5901

Re: Request to Preserve Documents, Electronically Stored Information, and Tangible Things

Dear Brendan,

As you know, Steptoe & Johnson LLP has been retained to represent the City of Durham (“the City”) with regard to any potential civil claims that your clients David Evans and Colin Finnerty might bring against the City or its employees. I am writing to request that you and your clients take all necessary steps to preserve documents, electronically stored information, and tangible things relevant to these potential civil claims against the City or its employees relating to the investigation and prosecution of your clients by the Durham Police Department and Durham District Attorney’s Office.

We received your August 16, 2007 letter to Henry D. Blinder regarding your “Request to Preserve Documents, Electronically Stored Information, and Tangible Things.” (“August 16th letter”). We request that you and your clients make similar efforts to preserve documents relating to the investigation and prosecution of kidnapping, rape, and sexual assault charges against your clients. For the purposes of this letter only, we will adopt the terminology of your August 16, 2007 letter and refer collectively to “the Allegations” as set forth in your letter.

This letter requests the preservation of evidence or material which could reasonably lead to evidence, in any form, including, without limitation, documents, electronically stored information, tangible things, such as writings, drafts, drawings, graphs, charts, photographs, sound recordings, video recordings, images, emails, instant messages, voicemails, and other data or data compilations stored in any medium from which information can be obtained that are in the possession, custody, or control of

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you, your clients, your clients' families, the criminal defense attorneys of your clients, or the agents of any of the aforementioned, in relation to the Allegations.

This would include, but is not limited to, all information, documents, or tangible things that your clients and their criminal defense attorneys would have received in the course of their defense of the allegations, such as:

- Copies of all or any portion of the files of the District Attorney, Michael Nifong;
- Copies of all or any portion of the files of the Durham Police Department.

In addition, we request that you, your clients, your clients' families, the criminal defense attorneys of your clients, and the agents of any of the aforementioned, preserve the following categories of documents in relation to the Allegations:

- All Documents and communications concerning the Allegations and the Durham Police Department's investigation of the Allegations;
- All Documents and communications with or concerning the role of Mike Nifong and Linwood Wilson with respect to the Durham Police Department's investigation of the Allegations;
- All reports and communications with or provided to supervisory officials in the Durham Police Department, the District Attorney's Office, the City Manager's Office, the Office of the Mayor, and/or the Durham City Council concerning the Allegations;
- All Documents and communications with or concerning DNA Security Inc., Brian Meehan, or Richard Clark;
- All Documents and communications with or relating to Crystal Mangum, Kimberly Pittman (a/k/a Kimberly Roberts), Angel's Escort Service, or the Platinum Club;
- All Documents and communications with or relating to Moezeldin Elmostafa;
- All public statement and draft public statements made by you, your clients, your clients' families, agents, or attorneys regarding the Allegations or the investigation or prosecution of the Allegations;
- All Documents and communications with or concerning you, your clients, your clients' families, agents, or attorneys to or with the news media in any outlet regarding the Allegations or the investigation or prosecution of the Allegations;

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- All Documents and communications relating to Durham CrimeStoppers, the relationship between Durham CrimeStoppers and the Durham Police Department, and public statements attributed to Durham CrimeStoppers concerning the Allegations;
- All Documents and communications concerning any Durham Police Department custom, policy, practice, procedure, or guideline concerning the supervision of criminal investigations;
- All Documents and communications concerning any Durham Police Department custom, policy, practice, procedure, or guideline concerning public statements by Durham Police Department personnel relating to an open investigation;
- All Documents and communications concerning any Durham Police Department custom, policy, practice, procedure, or guideline concerning the service of outstanding warrants;
- All Documents and communications concerning any Durham Police Department custom, policy, practice, procedure, or guideline concerning the conduct of eyewitness identifications;
- All Documents and communications concerning any Durham Police Department custom, policy, practice, procedure, or guideline concerning the preparation of police reports, investigator's notes, and/or reports of investigations;
- All Documents and communications concerning any Durham Police Department custom, policy, practice, procedure, or guideline concerning the retention of private companies to provide scientific testing or other services in connection with a police investigation;
- All Documents and communications concerning any Durham Police Department custom, policy, practice, procedure, or guideline concerning students attending Duke University;
- All Documents and communications concerning any Durham Police Department custom, policy, practice, procedure, or guideline concerning the Trinity Park neighborhood in Durham;
- All Documents and communications relating to internal or external review of the customs, policies, practices, procedures, or guidelines of the Durham Police Department;
- All Documents and communications from or provided to the District Attorney's Office, North Carolina State Attorney General's Office, or State Bureau of Investigation regarding the Allegations or investigation or prosecution of the Allegations;

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- All communications with the North Carolina State Bar or any Disciplinary Hearing Commission of the North Carolina State Bar, any attorney- or lay-member of the same, any member of the professional staff of the North Carolina State Bar, or any other attorney, witness or individual associated with the North Carolina State Bar relating to Michael Nifong, the Allegations, or the investigation and prosecution of the Allegations;
- All Documents and communications concerning the memorandum of Durham City Council Member Eugene Brown dated May 31, 2007, entitled "Questions concerning role of Durham Police Department in the Duke Lacrosse Case";
- All Documents and communications with Duke University, or any officials of the University concerning the Allegations.

As you set forth in your August 16th letter, the Federal Rules of Civil Procedure contain a duty to act in good faith to prevent the loss of any relevant information, including electronically stored information. We request that you employ reciprocal procedures to those you requested on page 7 of your letter with regard to the preservation of electronic documents in their original form with embedded data and metadata, regardless of any policy you or your clients may have for routine destruction of documents. This request remains in effect until the resolution of all potential claims against the City, its employees, and agents.

Similarly, we do not seek privileged information from any of the civil or criminal attorneys representing your clients, but request that you preserve any non-privileged information contained within those attorneys' files. We reserve the right to challenge, at the appropriate time, any assertions of privilege that you may make concerning any documents in your possession.

Thank you very much. Please contact me if you have any questions.

Regards,

Roger E. Warren
Roger E. Warren *by Anna H. Vese*