

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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Paul Stepnes, *et al*,

Plaintiffs,

v.

Peter Ritschel, *et al*,

Defendants.

Civil Case No. 08-cv-5296 (ADM/JJK)

**AFFIDAVIT OF PAUL STEPNES,  
PLAINTIFF, IN SUPPORT OF  
PLAINTIFFS' MOTIONS FOR RELIEF  
FILED SEPTEMBER, 2009**

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I, Paul Stepnes, a Plaintiff in this action, being first duly sworn depose and state:

**A. ATTORNEY-CLIENT PRIVILEGE ISSUE**

1. I was also the plaintiff in Stepnes v. Ritschel, Minnesota State Court case, 27-CV-08-1518 (filed May 29, 2008). That action was necessary due to police abuse of search warrant authority, and to have property returned. The police had seized papers, including legal papers, and 2 computers. A significant issue in the filing of that emergency motion was also to protect my attorney-client privilege. See also the Affidavit of Jill Clark supporting this motion.

2. One of my attorneys in the past has been Clinton McLagan, Attorney at Law. He has performed various types of legal work for me. I have never waived my attorney-client privilege with him, and the communications have been confidential. I had no problem with him communicating with me via email, since I knew that to be

confidential. And, of course, I made a significant and specific effort to protect my privileged information, after Sgt. Ritschel seized legal documents from the Irving House, and from my personal car.

3. I have reviewed numerous pages from the Minneapolis Police Department (MPD) "Forensic report." The "M box" section of that report contained numerous, numerous emails, many of which are attorney-client privileged. These were confidential, and should never have been accessed. I did not waive this privilege(s), and I did not acquiesce in the police overuse of the search warrant process which resulted in them obtaining this privileged information/documentation. Indeed, I took all steps that I could, and rightfully assumed that police followed the state court order.

a. **Process to search for attorney-client privileged emails.** I spent about 12 hours on Saturday, September 5, 2009, going through the "M box" of the Forensic Report that was produced to my attorney by the City of Minneapolis City Attorney's Office. She only recently received this disk. My review of the "M box" was a mammoth undertaking. I decided, due to the volume (when one of the 3 "M box" files was ported into a Microsoft Word document to facilitate searching, it was about 50,000 pages), to go through the first time and highlight those attorney-client privileged emails that were clearly attorney-client privileged. I located in excess of 45 such emails using this process. There were numerous additional emails

between me and my various attorneys (different emails), that I did not have time to go through in detail, but that, upon review, could well be attorney-client privileged.

**b. Clinton McLagan.**

i) The "M box" contained a 15 November 2007 email from my attorney Clinton McLagan, which attached a legal document that he drafted for me;

ii) **Exhibit A and B** to the McLagan affidavit were received by me in a law firm envelope, and containing an attorney-client privileged communication on the top – from Attorney McLagan. Those documents were in my black briefcase (police inventory number 2008-18675), when it was seized by police on May 29, 2008. After my attorney filed the state court motion, and it was clear that Judge Porter had a problem with police not working to protect my attorney-client privilege, the briefcase was returned to me ***but the law firm envelope(s) had been removed, as well as the written communication(s).*** It is my belief that police removed these because they realized that they would be in big trouble if we could prove that they seized them. Exhibits C and D to the McLagan Affidavit were also in my black briefcase, and also returned, and some of them *were not entered on the inventory created by Minneapolis Police.* It seems that police knew these were legal papers that had nothing to do with their alleged investigation into my conduct, and they were worried that if they inventoried them that we could prove that they seized attorney-client privileged communications. See paragraph 12 of this Affidavit, below. (Note that Judge Porter was looking at the police *inventory*).

c. **Paul Simonson.** I knew that Simonson was disbarred due to some chemical issues in his youth, and I am not suggesting that he was doing legal work, but I never knew that I would not have confidentiality/privilege in those communications. I would not have asked his advise if I had known that. I think my current attorney should at least have been able to research the issue and allow me to take a position on privilege issues (like the CBS and City attorneys are doing), before Simonson emails flowed into this litigation.

d. **Attorney Jill Clark.**

I can state that I sought legal advice from Attorney Jill Clark (see also her Declaration), and we did transmit some emails that were private, confidential, and were communications for the purpose of obtaining legal advice. I did not disclose these communications to anyone else. I have not waived the privilege. I located emails between me and this Attorney in the "M box" in the MPD Forensic Report. Some of the emails with Attorney Clark were specifically in seeking legal advice about my arrest by Sgt. Ritschel. Ms. Clark has both criminal defense experience and civil litigation experience, and that is why she was the appropriate person to represent me at the end of May, beginning of June 2008. I have a Fifth Amendment right not to talk to police about any matters where they are potentially going to charge me criminally. That right was trampled upon by Sgt. Ritschel in this process. I am extremely troubled that Sgt. Ritschel has reviewed these emails with Jill Clark. They *clearly* knew that Jill Clark was my attorney – she appeared in court with me.

Note that Dale Hanson, the police officer that did the computer work to copy the drives, and create the Forensic Report, indicated that he reviewed the emails with Jill Clark and he decided they were not attorney-client privileged. This is appalling. This is yet another sign that these police officers have no regard for the law, and in this case, no regard for a court order. Finally, Ms. Clark has a reputation for being willing to take on the Minneapolis Police Department, and show its warts. Now that Department has numerous emails between me, and her, and others, criticizing Minneapolis Police. They would not have gotten those in discovery. And yet they now have them. I am terribly concerned that no matter what court order is issued now, it is essentially too late, because police have had full access to this data for so long.

e. **Ralph Mitchell**. I sought legal advice from Raph Mitchell, Esq., of Lapp, Libra, Thomson, Stoebner & Pusch, Chartered. We did transmit some emails that were private, confidential, and were communications for the purpose of obtaining legal advice. I did not disclose these communications to anyone else. I have not waived the privilege. I located emails between me and this Attorney in the "M box" in the MPD Forensic Report. There were at least 43 emails<sup>1</sup> to and/or from this Attorney, all for the purpose of obtaining legal advice. Based on what I know, these emails had nothing to do with this case, and would not have been produced in response to any requests from CBS or the City. I believe that they were not

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<sup>1</sup> For a list of all of the dates of these 41 emails, see Appendix I to this Affidavit.

requested by any of their written requests for documents. Even if the Defendants can make an argument that they should be produced, my current attorney would have (should have) had the opportunity to research and argue the issue. There was no cause, ever, from what I can tell, for these emails to be in the hands of police.

It should be noted that the email address for Ralph Mitchell specifically used the words "LappLibra." And, he had his full signature at the bottom of numerous emails:

Ralph V. Mitchell  
Lapp, Libra, Thomson, Stoebner  
& Pusch, Chartered  
120 South Sixth Street, Suite 2500  
Minneapolis, MN 55402  
OFFICE: (612) 338-5815  
FAX: (612) 338-6651

Any attorney in this town would have (should have) have known that this was a law firm address. We never got any disclosure from Sara Lathrop about her having encountered attorney-client privileged emails during her review.

e. **Priscilla Lord Faris**. I sought legal advice from Priscilla Lord Faris, Esq., of Faris & Faris Law Firm. and we did transmit some emails that were private, confidential, and were communications for the purpose of obtaining legal advice. I located emails between me and this Attorney in the "M box" in the MPD Forensic Report. There were at least 26 emails<sup>2</sup> to and/or from this Attorney, all for the purpose of obtaining legal advice. Based on what I know, these emails had nothing

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<sup>2</sup> For a list of all of the dates of these 26 emails, see Appendix II to this Affidavit.

to do with this case, and would not have been produced in response to any requests from CBS or the City. I believe that they were not requested by any of their written requests for documents. Even if the Defendants can make an argument that they should be produced, my current attorney would have (should have) had the opportunity to research and argue the issue. There was no cause, ever, from what I can tell, for these emails to be in the hands of police.

It should be noted that Priscilla Lord Faris' email address contains the email address "faris-faris," and, her entire law firm name and address were at the bottom of numerous emails:

Very truly yours,  
Priscilla Lord Faris  
Faris & Faris

**Law Office**  
332 Minnesota Street, Suite W-3080  
St. Paul, Minnesota 55101  
651-641-1500/1-866-250-1786  
www.faris-faris.com

**MAKING A DIFFERENCE: CLIENT BY CLIENT**

(Emphasis added). How can anyone say with a straight face that they did not know that these emails were privileged, or at least potentially privileged?

5. In addition, in the "M box" emails, I found emails all the way back to 2006 (I am not sure if there are earlier ones, as the search for that would take longer than I had), and contain numerous private and confidential matters, matters about my private life, matters about the private lives of my friends, associates, political

associates, and attorneys, that never would have been disclosed in this case. These people thought they were having private communications with me, and some of what they said could embarrass or humiliate them if disclosed. They are not relevant, have not been requested by the Defendants in their written requests for documents, and even if they had been, I would have asked my attorney to seek a protective order due to their private, confidential or sensitive nature.

6. I do not trust Sgt. Ristchel and have not been given any reason to trust him. I believe that he has been all through the "M box," and who knows what he has done with these emails? Emails from people who are critics of the City, or of the police department - has he sent them around within the City? These are very serious issues, and based on what I know about Sgt. Ristchel, he does not obey court orders, and has destroyed documents rather than tell the truth (see below). Allowing these many years of emails to be in the hands of this man is quite troubling.

7. I very clearly understood Judge Porter, on June 2, 2008, to order that police could only keep an image of my 2 computer hard-drives if they gave him the disks. I did not at any time hear Judge Porter to tell police they could keep *additional* copies. I believe I am entitled to assume that police (who are supposed to enforce the law) are obeying a Judge's order. At this time I do know when police made the copies. I did not have the benefit of any of the information disclosed yesterday by Ms. Lathrop - 53 pages of emails between Dixon, Ristchel, Hanson and



some to the Judge's Clerk (without Mr. Dixon copying my attorney). As an example, a friend (who will go unnamed at this time) sent me an email about problems in her marriage. *Even if* she were a witness in this case (and I can't imagine how she would be), that information would not have been discoverable, or would have been subject to a protective order.

8. Further, in the "M box" there is an email from a Ms. Carole Bersin, dated 9 May 2008. At the Deborah Everson deposition, Sara Lathrop asked whether she knew who Carole Bersin was (Clark Aff. Exh. 5, p. 62). Plaintiffs did not disclose this name in discovery; she could not have known this name but for her perusal of the "M box" file.

9. Another example of the rape and pillaging of my life, is that Defense attorneys now have all kinds of emails about financial matters that are far beyond the bounds of discovery in this case. Some were, for example, proposed projects, and were never launched. Why would they ever get those? To my understanding, they would never have obtained these in discovery in this case (they were not sought, they are not relevant), and yet this part of my life is laid bare due to the way that police violated Judge Porter's order. Sara Lathrop, Attorney for Sgt. Ritschel, asked in the deposition of Deborah Everson, whether she knew who Lee Glover was, or what First Construction Finance, LLC was (Clark Aff. Exh. 5, p. 61). Plaintiffs did not disclose this information to the Defendants in this case. She *must* have gotten this information by perusing the "M box" file in the Forensic Report. There are

emails in that "M box" dated: 9-29-06, 5-16-07, 9-25-07, 9-24-07, 10-12-07, to/from Lee Glover and First Construction Finance, LLC. Clearly, the Attorney for Ritschel has accessed these. This shows that the City-defendants *fully perused* the "M box" and that "M box" contained numerous, numerous attorney-client privileged emails.

10. Also, Sara Lathrop, Attorney for the City, asked in the Deborah Everson deposition, whether she knew who Sally Kling was. Sally Kling's name was in the "noted emails" section of the Forensic Report prepared by police. Even that Section was obtained in violation of Judge Porter's order. But worse, by asking in the Deborah Everson deposition whether she knew who Bill Kling was (Clark Aff. Exh. 5, p. 61), Sara Lathrop showed that City-defendants had been all through the "M box" in the Forensic Report. And that "M box" contained numerous, numerous attorney-client privileged emails.

11. Also, in the Deborah Everson deposition, Sara Lathrop asked for the City-defendants, whether she knew who "Ember" was. (Clark Aff. Exh. 5, p. 63). Lathrop admitted that she did not know the last name of this person. This question was close to the question where she asked about Megan O'Hara. There is an email in the "M box" dated 19 February 2008, from Megan O'Hara to me, in which she mentions "Ember" - no last name. Clearly, Sara Lathrop got the information for her question from this email in the "M box" - and that "M box" contained numerous, numerous attorney-client privileged emails.

12. I had a black briefcase at the Irving House when Ritschel came in to execute the search warrant. Judge Porter commented on June 2, 2008 that he did not see any items on the belatedly-prepared inventory, that appeared to be attorney-client privileged. Now I know why. Sgt. Ritschel seized attorney-client-privileged documents that were in the black briefcase, removed the part that would identify them as having come from a lawyer, and only then entered the documents into his inventory. Look at police inventory 2008-18675, which police admit is a black briefcase, with documents in it. However, when I got it back, there were not law firm envelopes from Clinton McLagan: they had been removed while in possession of police. I have known this for some time, and we alleged this in the Complaint in this case. However, upon preparing for this motion, we took another look at the black briefcase. It contained additional documents that police seized, but which police *did not list on the inventory*. This was clearly designed to prevent Judge Porter from knowing that police had trampled on my attorney-client privilege. These documents are discussed more at length in Clinton McLagan's affidavit, which does attach some samples. I am not waiving my privilege, or even if there is a slight waiver, it is only for the purpose of this motion, designed to protect the privilege. (I did, however, authorize Clinton McLagan to attach those documents as exhibits).

13. Sgt. Ritschel was present in Judge Porter's Courtroom on May 30, 2008. I know, therefore, that he heard my Attorney (Jill Clark at that time) raise concerns about my attorney-client privilege. Ritschel was well on notice of this issue. I do not

recall whether Ritschel was present in person on June 2, 2008, but he had 2 attorneys there, Chris Dixon, and Patrick Marzitelli, both of whom should have relayed Judge Porter's order to him. Dixon even asked Judge Porter to repeat his order re the hard-drives, and Judge Porter did.

14. I never heard whether MPD had gotten Court IT the necessary equipment to view the hard-drive disks, that Judge Porter had reviewed the disks, or that anyone had filed an appeal of his orders.

15. I did not know that police made copies of my hard-drives. I did not know that in December, 2008, police went into those hard-drives and perused them, and prepared a "forensic report" – until late May 2009. I only learned yesterday that at least one Attorney at the City Attorney's Office was on notice that Judge Porter had not reviewed the hard-drive provided to him, as of November 11, 2008. I was *not* alerted by the City in December 2008 that Police Officer Hanson (their purported "forensic" investigator – clearly not neutral) was asking about whether Judge Porter had "returned" the hard-drive. I was simply not told what happened at that point. I have seen nothing to suggest that the Attorneys in the City Attorney's Office took care to follow Judge Porter's order, or made sure that their Client, Sgt. Ritschel obeyed it.

## B. SPOLIATION ISSUE


16. I was present on July 15, 2008 when Esme Murphy interviewed me and my attorney, Jill Clark. I relied on the videotape, in the event that legal action was required, to preserve a full account of what each person said, and when they said it (in what order), as well as the look on the faces, the tone of voice, all of those things that are *very* difficult to retell later. Now that CBS has destroyed the videotape (or at a bare minimum, allowed it to be destroyed), there will be a "he-said-she-said" dispute about who said what, when.

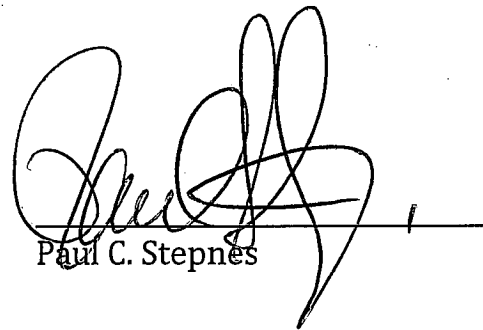
17. One of the reasons I had my attorney there that day, was because she can explain legal issues and the court proceedings in front of Judge Porter, better than I can. Due to CBS' handling of the case, we have lost the wonderful way in which she delivered what she said – she was very persuasive. She was educating Esme Murphy about the status of the situation, her delivery, how she looked when she talked. We also lost the way in which I interacted with Murphy, that I told her, point blank, this is a business. Several times, in several ways, we corrected Murphy's purported belief that some charity was holding a raffle (that is – that a non-profit corporation was the intake valve). And yet the WCCO broadcast still went forward with that debunked theory. It is my heartfelt opinion that someone at CBS/WCCO destroyed that videotape because it was such powerful evidence to prove my case. I attended Murphy's deposition, and she denies some statements were made, that I know *were* made in that interview (for example, Murphy denied

that Ms. Clark talked about Target, and I know that she did). We shouldn't have to be fighting about these facts, and have to have the possibility that the jury will believe Esme Murphy's version. Because if we had the videotape - the jury could just watch it and know for sure.

**THIS CONCLUDES** my affidavit of 14 pages.

Signed and sworn before me  
this 10 day of September, 2009.

  
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Notary Public

  
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Paul C. Stepnes



**APPENDIX I - dates of emails to/from attorneys Lapp Libra**

1. 5 07 07,
2. 5 22 07,
3. 6 01 07,
4. 6 27 07,
5. 6 27 07,
6. 6 28 07,
7. 6 28 07,
8. 7 02 07,
9. 7 05 07,
10. 7 05 07,
11. 7 05 07,
12. 7 05 07,
13. 7 11 07,
14. 7 12 07,
15. 7 15 07,
16. 7 16 07,
17. 7 17 07,
18. 7 17 07,
19. 7 18 07,
20. 7 18 07,
21. 7 18 07,
22. 7 26 07,
23. 7 30 07,
24. 8 01 07,
25. 8 01 07,
26. 8 07 07,
27. 8 08 07,
28. 8 15 07,
29. 9 05 07,
30. 9 20 07,
31. 9 24 07,
32. 9 25 07,
33. 9 26 07,
34. 10 29 07,
35. 11 1 07,
36. 11 02 07,
37. 11 09 07,
38. 11 12 07,
39. 11 12 07,
40. 11 27 07,
41. 11 28 07,

- 42. 1 29 08,
- 43. 2 01 08.



**APPENDIX II - dates of emails to/from attorneys Faris-Faris**

1. 11 21 07,
2. 12 28 07,
3. 12 28 07,
4. 12 28 07,
5. 12 29 07,
6. 12 29 07,
7. 12 31 07,
8. 12 31 07,
9. 12 31 07,
10. 12 31 07,
11. 12 31 07,
12. 12 31 07,
13. 12 31 07,
14. 01 02 08,
15. 01 10 08,
16. 01 16 08,
17. 02 05 08,
18. 02 07 08,
19. 02 11 08,
20. 02 13 08,
21. 03 07 08,
22. 04 02 08,
23. 04 25 08,
24. 04 26 08,
25. 04 26 08,
26. 05 07 08