

STATE OF NORTH CAROLINA
ORANGE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
CASE NO. _____

THE NEWS AND OBSERVER)
PUBLISHING COMPANY; DTH)
MEDIA CORP; THE CHARLOTTE)
OBSERVER PUBLISHING COMPANY;)
TIME-WARNER ENTERTAINMENT-)
ADVANCE/NEWHOUSE PARTNERSHIP;)
WTVD TELEVISION, LLC; CAPITOL)
BROADCASTING COMPANY,)
INCORPORATED; THE ASSOCIATED)
PRESS; and MEDIA GENERAL)
OPERATIONS, INC.,)

Plaintiffs

v.

RICHARD A. BADDOUR, as Director)
of Athletics for The University of North)
Carolina at Chapel Hill; PAUL HILTON)
"BUTCH" DAVIS, JR., as Head Football)
Coach at UNC-CH; JEFF B. McCRACKEN,)
as Director of Public Safety at UNC-CH;)
and HOLDEN THORP, as Chancellor at)
UNC-CH,)

Defendants.

COMPLAINT
[COMP]

Pursuant to Rules 3, 7 and 8 of the North Carolina Rules of Civil Procedure the plaintiffs,
complaining of the defendants, allege and say:

Introduction

This is an action pursuant to the North Carolina Public Records Law, Chapter 132 of the
General Statutes. As described more specifically in the numbered allegations set out below, the
plaintiffs seek:

- (1) an order compelling the defendant to permit the inspection and copying of public
records pursuant to N. C. Gen. Stat. § 132-9(a);

(2) an order in the nature of a writ of mandamus requiring the defendants to comply with the Public Records Law including, but not limited to, G.S. § 132-6(a); and

(3) an order awarding the plaintiffs their reasonable attorney fees pursuant to G.S. § 132-9(c)(1).

The Plaintiffs

1. The News and Observer Publishing Company is a North Carolina corporation that maintains its principal place of business in Raleigh, Wake County, North Carolina. Among other things, the company publishes *The News & Observer*, a general interest newspaper that is published in Wake County and distributed throughout the surrounding area of North Carolina. *The News & Observer* also publishes an online edition at www.newsobserver.com.

2. DTH Media Corp. is a North Carolina non-profit corporation that maintains its principal place of business in Chapel Hill, Orange County, North Carolina. Among other things, the company publishes *The Daily Tar Heel*, a general interest newspaper that is published in Chapel Hill by students at the University of North Carolina and distributed on campus and throughout the surrounding area. *The Daily Tar Heel* also publishes an online edition at www.dailytarheel.com.

3. The Charlotte Observer Publishing Company is a Delaware corporation that maintains its principal place of business in Mecklenburg County, North Carolina. Among other things, the company publishes *The Charlotte Observer*, a general interest newspaper that is published in Mecklenburg County and distributed throughout the surrounding areas of North Carolina and South Carolina. The Observer also publishes an online edition at www.charlotteobserver.com.

4. "News 14 Carolina" is an assumed name of Time Warner Entertainment-Advance/Newhouse Partnership ("TWEAN"), a New York general partnership with its principal place of business in New York, N.Y. TWEAN is an indirect subsidiary of Time Warner Cable Inc. and part of a group of entities doing business as Time Warner Cable -- the second largest

cable operator in the U.S. Time Warner Cable serves approximately 14 million customers who subscribe to one or more of its video, high speed data and voice services. TWEAN is the legal entity that provides local programming services under the name of "News 14 Carolina" in its Charlotte, Greensboro, Raleigh and Wilmington, N.C. service areas. "News 14 Carolina" also disseminates its news coverage online at www.news14.com.

5. WTVD Television, LLC (WTVD-TV) is a Delaware corporation with its principal place of business in Durham, North Carolina. It owns and operates the television station WTVD ABC 11 in Raleigh-Durham, North Carolina. WTVD ABC 11 gathers and disseminates news to the public, serving a twenty-three county viewing area in central and eastern North Carolina.

6. Capitol Broadcasting Company, Incorporated ("Capitol Broadcasting") is a North Carolina corporation whose principal place of business is located in Raleigh, Wake County, North Carolina. Capitol Broadcasting is a diversified communications company which, among other things, owns and operates five television stations in North Carolina, including WRAL-TV in Raleigh which covers news in the Research Triangle and surrounding areas of Piedmont and Eastern North Carolina, including Wake County and its surrounds. WRAL-TV also disseminates its news coverage online at www.wral.com. Capitol Broadcasting also owns and operates radio station 99.9 The Fan (WCMC-FM), an all-sports-all-the-time station serving the Research Triangle area that provides extensive coverage of area college athletics, including UNC football; radio station 1550 ESPN Deportes (WCLY-AM), an ESPN affiliate, all-sports, all-Spanish radio station serving the Research Triangle area; and 620 The Buzz (WDNC-AM), an ESPN affiliate, all-sports radio station serving the Research Triangle area.

7. The Associated Press is a not-for-profit news cooperative that has its principal place of business in New York, New York, and maintains a North Carolina bureau in Wake County, North Carolina. As the world's largest news-gathering organization, the AP provides coverage of international, national, state and local news in conjunction with more than 1,700 newspapers and 5,000 radio and television outlets. The AP's North Carolina bureau regularly covers news of

interest in all 100 counties of North Carolina, including news about state government, higher education and public policy.

8. Media General Operations, Inc. is a Delaware corporation whose principal place of business is located in Richmond, Virginia. Media General is a diversified communications company which, among other things, publishes *Winston-Salem Journal*, *Independent Tribune*, *The News Herald*, *the Hickory Daily Record*, *Statesville Record & Landmark*, *Mooreville Tribune*, and *The McDowell News*. Media General also disseminates its news coverage online at www.journalnow.com and <http://nbc17.mync.com/site/nbc17>. Media General Operations, Inc. also owns and operates WNCN-TV in Raleigh, North Carolina and WNCT-TV in Greenville, North Carolina.

9. In the course of gathering information about the workings of state and local government for dissemination to their readers and viewers, the plaintiffs' news operations regularly make use of and rely on the North Carolina Public Records Law to gain access to government documents, records and information.

The Defendants

10. Defendant Richard A. Baddour is the Director of Athletics for the University of North Carolina at Chapel Hill ("UNC-CH"), is a public agency of North Carolina government as defined by G.S. § 132-1(a) and is the custodian of records that are public under the Public Records Law.

11. Paul Hilton "Butch" Davis, Jr. is the head football coach at UNC-CH, is a public agency of North Carolina government as defined by G.S. § 132-1(a) and is the custodian of records that are public under the Public Records Law.

12. Chief Jeff B. McCracken is the Director of Public Safety at UNC-CH, is a public agency of North Carolina government as defined by G.S. § 132-1(a) and is the custodian of records that are public under the Public Records Law.

13. Holden Thorp is the Chancellor of UNC-CH, is a public agency of North Carolina government as defined by G.S. § 132-1(a) and is the custodian of records that are public under the Public Records Law.

The North Carolina Public Records Law

14. The North Carolina Public Records Law ("the Public Records Law") is codified at N.C. Gen. Stat. §§132-1 through 132-10. The public policy underlying the Public Records Law is set out in G.S. § 132-1(b), which provides:

The public records and public information compiled by the agencies of North Carolina government or its subdivisions are the property of the people. Therefore, it is the policy of this State that the people may obtain copies of their public records and public information free or at minimal cost unless otherwise specifically provided by law. As used herein, 'minimal cost' shall mean the actual cost of reproducing the public record or public information.

15. The Public Records Law provides, in G.S. §132-1(a), that public records are defined as:

all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, *made or received* pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions.

16. The Public Records Law further provides that "Every custodian of public records shall permit any record in the custodian's custody to be inspected and examined at reasonable times and under reasonable supervision by any person, and shall, as promptly as possible, furnish copies thereof upon payment of any fees as may be prescribed by law." G.S. §132-6(a).

17. The Public Records Law further provides, in G.S. §132-6(c), that

(c) No request to inspect, examine, or obtain copies of public records shall be denied on the grounds that confidential information is commingled with the requested nonconfidential information. If it is necessary to separate confidential from nonconfidential information in order to permit the inspection, examination, or copying of the public records, the public agency shall bear the cost of such separation . . .

Defendants' Violations of the Public Records Law

18. Beginning in July 2010, the plaintiffs made requests for records from various UNC-CH officials. Among other documents, the plaintiffs requested the following records:

- a. All documents and records of any investigation conducted by the University related to any misconduct by any UNC-CH football coach, any UNC-CH football player, any sports agent, any UNC-CH booster and/or any UNC-CH academic tutor.
- b. Names of all individuals or organizations that provided impermissible benefits to any UNC football players.
- c. Unredacted phone numbers on telephone bills for phones provided to and used by defendants Baddour and Davis and by former associate football coach John Blake.
- d. Parking tickets issued by UNC-CH relating to 11 players.
- e. Names, employment dates and salaries of all individuals employed as tutors/mentors for UNC-CH student athletes since January 1, 2007, including any documents mentioning former tutor Jennifer Wiley.
- f. Names of recipients of athletic scholarships.

19. Citing state personnel laws and/or the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, the Defendants have steadfastly refused to produce the requested documents, in whole or in part.

20. In certain instances, the University could have but has refused to provide the documents in redacted form with confidential information removed.

21. The defendants' failure or refusal to produce the requested records is in violation of G.S. § 132-6, and the plaintiffs are entitled to an order compelling their disclosure and copying pursuant to N. C. Gen. Stat § 132-9.

WHEREFORE, the plaintiffs respectfully pray that the court:

1. set the matter down for an immediate hearing pursuant to G.S. § 132-9(a);
2. order the defendants to produce the identified records for the court to perform an *in camera* review with regard to their status as public records;

3. enter an order in the nature of a writ of mandamus requiring the defendants and all persons acting at their direction or in concert with them to comply with the Public Records Law, including G.S. § 132-6(a);

4. enter an order pursuant to G.S. § 132-9(a) compelling the defendants to make available for inspection and copying any public records requested by any of the plaintiffs that are determined by the court to be within their custody or control and that have not been previously made available for inspection and copying in compliance with G.S. § 132-6;

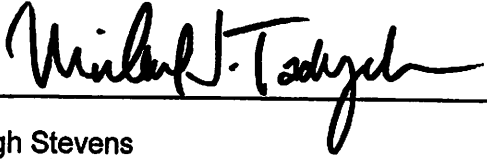
5. enter an order in the nature of a writ of mandamus requiring the defendants to take all measures available to them to retrieve any public records that they deleted, disposed of, lost or failed to preserve in violation of the Public Records Law; and,

6. enter an order awarding the plaintiffs their reasonable attorney fees pursuant to G.S. § 132-9(c)(1).

The plaintiffs further pray that the court provide them with such further and additional relief as the court shall deem to be just, proper and authorized by law, and that the costs of this action be taxed against the defendant.

Respectfully submitted this the 28th day of October, 2010.

STEVENS MARTIN VAUGHN & TADYCH, PLLC

By:  _____

Hugh Stevens
N.C. State Bar No. 4158
C. Amanda Martin
N.C. State Bar No. 21186
Michael J. Tadych
N.C. State Bar No. 24556
Attorneys for Plaintiffs
1101 Haynes Street, Suite 100
Raleigh, NC 27604
919.582.2300 telephone
866.593.7695 facsimile