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October 18, 2007

Grayson G. Kelley, Esquire  
Chief Deputy Attorney General  
Box 629  
Raleigh, NC 27602

Re: Evans, et al. v The City of Durham, et al.  
No. 1:07 CV 739 (MDNC)

Dear Mr. Kelley:

Thanks for my copy of your October 16 letter to Mike Nifong, faxed this morning. Obviously we are disappointed in your decision, and disagree with it. It is certainly not a decision that provides much comfort for state employees threatened with civil liability for actions taken in the course of their employment and on behalf of the State. In this case, it was surely the Eleventh Amendment which kept the State from being among the 16 defendants. The available case law is sparse and not helpful really to Mike Nifong or to the State:

Houck & Sons, Inc. v. Transylvania County  
852 F. Supp. 442 (WDNC 1993)  
36 F.3d 1092 (4th Cir. 1994)

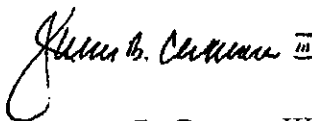
Cates v. North Carolina Department of Justice  
121 N.C. App. 243, 465 S.E. 2d 64 (1996)  
346 N.C. 781, 487 S.E. 2d 723 (1997)

Even Allstate and Nationwide, neither known for their generosity, would have provided a defense here under a reservation of rights. I hope

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you will reconsider, if for no other reason than to provide some comfort to other potential defendants in similar cases. Otherwise a District Attorney in North Carolina can only rest assured that the State may or may not be behind him or her, in this instance way behind him. As Mike Nifong said to me this morning, "I don't know why I continue to expect people to do the right thing."

Very truly yours,



James B. Craven III

cc: Mr. Michael B. Nifong