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July 7, 2003

Mark H. Newbold
Charlotte-Mecklenburg Police Department
601 East Trade Street
Charlotte, North Carolina 28202

Dear Mr. Newbold,

I have received a copy of your directive to officers regarding the charges under the “Soliciting a Crime Against Nature” statutes. I have great regard for your legal knowledge and skills. In my view, however, your analysis of the law is erroneous and unconstitutional. As an attorney representing several SOLCAN defendants, I ask that you reconsider your view on the subject.

I can appreciate the concern of local law enforcement authorities that the loss of the CAN statute leaves the state with no apparent statute to cover sexual activity (not involving commerce or indecent exposure to a member of the opposite gender) in public places. The remedy, however, lies with the legislature, not with attempts to enforce a clearly unconstitutional statute.

I suggest that local officials ask the legislature to amend the prostitution statute to cover acts other than intercourse, amend the indecent exposure law to cover sexually oriented exposure to members of the same gender, and perhaps consider a “public sex acts” law applicable to all sexual expressions. None of these changes would be called into question by recent Supreme Court decisions.

If time is of the essence, I suggest that the county (which has jurisdiction over parks in Mecklenburg County) and the city (within whose borders most of the parks are located) be approached about enacting local ordinances to offer some regulatory protection in the interim.

That is a far more reasonable approach than trying to informally transform the Crime Against Nature law to meet the requirements of the Constitution.

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During more than seven years as a Superior Court judge, my already high regard for the Charlotte-Mecklenburg Police Department was further enhanced. We have a department that is almost free of corruption and committed to good community relations. It is for that reason that the department's continued reliance on entrapment in SOLCAN sting operations is so distressing. Officers routinely get away with tactics in SOLCAN cases that would never survive in court in drug or other cases. The knowledge that most defendants will not challenge overreaching tactics in court has bred a climate of arrogance and disregard for individual rights among some vice officers.

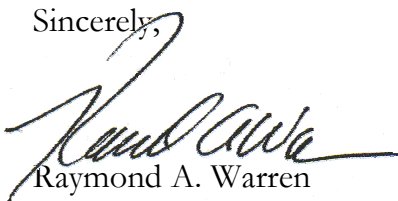
Clear and concise laws designed to target inappropriate public sexual activity, rather than attempts to resuscitate laws that unlawfully targeted specific groups, will have the salutary effect of removing a major point of contention between the Police Department and the local gay community. Once the law focuses on *actions* rather than the sexuality of the individual involved, a major source of conflict with the community will be removed.

I have enclosed a generic brief I have prepared on this issue. Should the state pursue pending prosecutions, I expect that it will become an actual brief filed on behalf of one or more of my clients. I hope, after reading my arguments, you will re-consider your view that SOLCAN is still a "valid charge" in light of *Lawrence v. Texas*.

I am sure that it is not the intent of the Charlotte-Mecklenburg Police Department to utilize an unconstitutional statute or violate the civil rights of our citizens. An open and honest reading of *Lawrence* (and the follow up case of *Limon v. Kansas*) indicates that neither the CAN law nor the ancillary SOLCAN charge can be utilized without violating those rights.

If I can assist you in your consideration in any manner, or if you would like to discuss this matter further, please let me know.

Sincerely,



Raymond A. Warren

cc: Darrell W. Stephens, Chief of Police