

Objectives

1. To identify & understand common issues to expect in criminal court
2. To learn & practice the application of language used in presiding over criminal cases

Your First Day on the Bench

- ☐ What issues will I encounter?
- ☐ How do I recognize & determine these issues?
- ☐ What do I say?
- ☐ Where do I start?

An Essential Resource

The Survival Guide: Superior Court Judges' Bench Book

www.judges.unc.edu



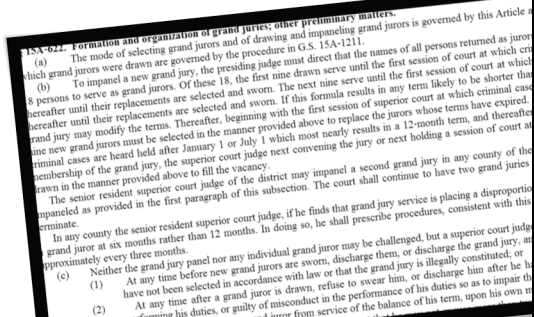
When Court Opens

- Arrive and open court on time
- Remain standing until Bailiff finishes with the court opening
- Smile and greet the court personnel and attorneys
- Be pleasant and courteous
- Learn the names of your court personnel

Exercise 1: Seating a New Grand Jury



Grand Jury



Grand Jury

- ☐ Selection of Foreperson
 - ☐ Selection process must be racially neutral
- ☐ Criteria:
 - ☐ Leadership ability
 - ☐ Fairness
 - ☐ Prior Grand Jury Experience
 - ☐ Ability to Follow Instructions
 - ☐ Education

Grand Jury

- ☐ Removing/replacing grand jurors

Exercise 2: Calling out a Defendant

- How do you respond to this situation?

Exercise 2: Calling out a Defendant

Practice Pointer:

Create a callout list, address callouts at a "logical" time

Calling Out a Defendant

Judge directs bailiff to call defendant in open court.

Bailiff: "[__ Name defendant three times __]
come into court this day as you are bound to do
or your forfeiture will be recorded and an order
of arrest will issue."

Calling Out a Defendant

If defendant fails to answer, judge orders issuance and service of Order of Forfeiture and Notice. AOC-CR-213 (formerly called "Sci. Fa.").

Judge: "Let an order of forfeiture be entered and served. Issue an order for the arrest of the defendant. Issue notice to obligors. [Bond is set at \$(__amount__).]"

In General: Practical Suggestions

- Be aware of the record
- Call for Clerk's file in every case
- Review charging document; index it so you can return to it
- Read the applicable statute
- Review the file for other pertinent history
- Proceed at your pace
- Provide equal opportunity to both sides
- Ask questions whenever necessary
- Listen!

Exercise 3: Capacity to Proceed

How do you respond to this issue (despite a lack of concern by the attorneys)?



Capacity to Proceed

- Standard:
 - Defendant must be able to:
 - 1. understand nature & object of proceedings
 - 2. comprehend his own situation in reference to proceedings; and
 - 3. assist in defense in a rational or reasonable manner

Capacity to Proceed

- If issue is raised, there must be a hearing.
- If there has been an examination, there must be a hearing.
- Judge has a duty to raise the issue of capacity
- Determine the issue with specific findings
- Beware of *Indiana v. Edwards* issues

Capacity of Proceed

Address Defendant personally on the three elements of capacity to proceed:

Capacity of Proceed

Do you understand the nature of these proceedings, ("Do you know why you are here?")

Do you know the difference between pleading guilty and going to trial before a jury?

Do you understand the role of (name the prosecutor and defense attorney) with respect to your case? What is it?

Capacity of Proceed

What does a jury do? How many people are on a jury?

What does a judge do?

Do you understand the possible outcomes of this case? That is, if you are found guilty, do you know what the possible range of punishment might be? What is it?

Do you understand what happens if you are found not guilty?

Capacity to Proceed

Have you talked with your lawyer about possible defenses to these charges? For example, do you understand the possible defenses of (then recite defenses that might apply to the charge, e.g., consent, self defense, alibi, inability to form a specific intent)?

Have you been able to tell your lawyer about your case and assist in preparation of your case? For example, have you been able to tell your lawyer about witnesses who might be helpful to your case?

Capacity to Proceed

- What happens next?
- Finding Defendant capable of proceeding
- Finding Defendant incapable

Exercise 4: Arraignments

- Prosecutor asks to arraign Defendant: simple request, right?
- What are the potential problems here?

To Arraign or Not to Arraign?

- An arraignment may not be necessary:
 - An arraignment only is required if the defendant files a written request with the clerk. G.S. 15A-941(d). Failure to request an arraignment is a waiver of the right to arraignment.
 - A failure to conduct an arraignment is not reversible error absent a showing of prejudice. State v. Smith, 300 N.C. 71 (1980).

To Arraign or Not to Arraign?

- Arraignment during a trial week may create problems:
 - In counties with 20 weeks of Criminal Superior Court, arraignments must be on arraignment day;
 - No jury case may be scheduled during an arraignment day;
 - No Defendant may be arraigned and tried during the same week without consent
- *“Why do you need to arraign this Defendant at this time?”*

Mandatory Arraignments GS 15A-928(c)

- When a prior conviction makes an offense one of a higher grade, a special indictment is required;
- Judge must arraign Defendant on the special indictment prior to the close of the State’s evidence.

Exercise 5: Bill of Information?

- What is the issue here?
- How do you resolve this issue? Why is this issue important?

Charging Documents

- For cases originating in Superior Court
 - Bills of Indictment
 - Bills of Information

Charging Documents

- For cases appealed from District Court
 - Citations
 - Warrants
 - Misdemeanor Statements of Charges

Guilty Pleas: Practical Suggestions

- Indictment
- Determine if it was previously rejected
- Take your time
- Remember your role

Exercise 6: Motion for Recordation

- What is the issue presented by this Motion?
- How do you determine the issue?

Jury Orientation



Jury Orientation

Make sure you understand local practice

- Orientation
- Roll Call
- Requests for excusal/deferral
- Administration of juror oaths

Jury Orientation

Handling deferrals

- Illness
- Business and family travel
- Work conflicts
- Age

Jury Orientation

- Explain Call Back System
- Explain the role of the jury

Exercise 7: Starting a Jury Trial

- How do you get the ball rolling?



Informing Jurors of Case

Judge must:

- Identify the parties & counsel
- Inform the jurors of:
 - charge
 - date of offense
 - victim's name
 - defendant's plea
 - affirmative defenses
- Use of witness list

Informing Jurors of Case

Judge may not read the pleadings (or indictment) to the jury.



Jury Orientation

Members of the Jury, the case that is being called for trial at this time is State vs. _____, who may be referred to as the Defendant. The Defendant is accused of the crime of _____. These events are alleged to have occurred on (date) at (location). The alleged victim is _____. To these charges the Defendant has entered a plea of not guilty. Under our system, a Defendant is not required to prove innocence, but is presumed innocent. The State must prove guilt beyond a reasonable doubt.

Trial Jury Selection

Procedure

- State's challenges replaced immediately; defendant's are not
- State always examines jurors first, passes a full panel to Defendant
- Distinct differences in how challenges are exercised and how replacement jurors are called
- Re-opening questions to a juror previously accepted

Jury Selection

- Challenges for Cause

Jury Selection

- Peremptory Challenges
 - Non-capital: 6 per side for each Defendant
 - Capital: 14 per side for each Defendant
- Be prepared to deal with *Batson* issues

Exercise 8: Jury Selection

- “Questionable” questions to the jury



Jury Selection Hints

- Make jurors comfortable
- Preliminary instructions
 - Be careful about saying “too much”
- Overview of trial
- Empaneling the jury - timing

Exercise 9

- The Defendant Bolts

Exercise 10:

- Note taking by Jurors

Exercise 11: Taking a Recess

- What do you say?



Admonitions to Jury

Ladies and Gentlemen, during the time that you are serving on this jury, it is very important that you follow a number of rules:

Admonitions to Jury

First, you must not talk about the case amongst yourselves. The only place this case may be discussed is in the jury room and then only after you begin your deliberations.

Admonitions to Jury

Second, you must not talk about this case with anyone else (including members of your families) or allow anyone else to talk with you or say anything in your presence about this case. If anyone communicates or attempts to communicate with you or in your presence about this case, you must notify the bailiff of that fact immediately.

Admonitions to Jury

In this age of instant electronic communication and research, I want to emphasize that in addition to not speaking face-to-face with anyone about the case, you should not engage in any form of electronic communication about the trial, including but not limited to: Twitter, blogging, Facebook, text messaging, instant messaging, and any other such means of electronic communication.

Admonitions to Jury

Third, you must keep all cell phones turned off when you are in the courtroom or the jury room.

Admonitions to Jury

Fourth, while you sit as a juror in this case, you are not to form an opinion about the guilt or innocence of the defendant, nor are you to express to anyone any opinion about the case until I tell you to begin your deliberations.

Admonitions to Jury

Fifth, you must not talk or communicate in any way with any of the parties, attorneys, or witnesses involved in the case. This rule applies inside as well as outside the courtroom, and it prohibits any type of conversation, whether about the evidence in this case or about the weather, or just to pass the time of day.

Admonitions to Jury

Sixth, you must not read or listen to any news media coverage of this case or trial, including television, newspaper, radio, or Internet accounts. Newspaper, radio, television, and Internet accounts may be inaccurate, or they may contain references to matters which are not proper for your consideration. Your verdict must be based solely on the evidence presented during this trial and no other source.

Admonitions to Jury

Seventh, you must not visit the scene or place that is the subject matter of this trial or make any independent inquiry or investigation about this matter. You may not conduct any research, including Internet research, to look for any information regarding the case.

Admonitions to Jury

Each of you must obey each of these rules to the letter. Unless you do so, there is no way the parties can be assured of absolute fairness and impartiality. It is your duty, while the trial is in progress, or while it is in recess, or while you are in the jury room, to see that you remain a fair and impartial trier of the facts. If you violate these rules, you violate an order of the court and this is contempt of court and could subject you to punishment as provided by law.

Practical Suggestions

- Anticipate problems
 - Family members of jurors
 - Family members of litigants
 - Cell phones and internet access
 - Juror curiosity about facts and law
- Address these matters up front

Sequestration of Witnesses

- The “norm”
 - Make order apply to both sides
 - Any exceptions from sequestration
- Specify what is ordered
 - Witnesses excluded
 - Communication between witnesses
- Consider (but not announce?) possible remedies for violation
 - Exclude evidence/strike testimony
 - Contempt and instruction

Presentation of Evidence

- Be sure jury can see & hear evidence
- Objections
- Reading back testimony
 - Exercise of *discretion*
- Taking notes
- Jury instructions during trial

Exhibits

Keep Your Own List

- Number
- Brief description
- Admitted or excluded
- Purpose
- Biological evidence

Clerk has a form for Exhibit List- AOCG-150

Exhibit List

Ex #	Desc	Desc	Purp	Auth	Offer	Recd	Bio?
S-1							
S-2							
S-3							

At Close of State's Evidence

- Motion to Dismiss

At Close of State's Evidence

- Examine Defendant on Right to Testify
 - *State v. Harbison*, 315 N.C. 175 (1985)
 - *State v. Ali*, 329 N.C. 394 (1991)

Exercise 12: Charge Conference

- What do you say?

Jury Instructions

- See G.S. 15A-1231(b): must have charge conference before jury arguments and must:
 - Be on the record, outside presence of the jury
 - inform the parties of the offenses, lesser included offenses, and affirmative defenses on which he will charge the jury and
 - inform them of what, if any, parts of tendered instructions will be given...

Charge Conference

Pursuant to G.S. 15A-1231, I am now convening a conference outside the presence of the jury for purposes of receiving input from counsel on the instructions that will be given to the jury in this case.

Charge Conference

What does the State contend are the possible verdicts in this case?

What, if any special instructions are requested on behalf of the State?

What does the Defendant contend are the possible verdicts in this case?

What, if any special instructions are requested on behalf of the Defendant?

Charge Conference

Having considered all requests and arguments, I plan to instruct the jury substantially as follows:

NC Pattern Instructions numbered: __, __, __, etc

Special Instructions as follows:

The possible verdicts in the case will be:

Jury Arguments

- Order of arguments
- Waiver of final argument



Jury Arguments

- Limitations on number 7A-97
 - Two per side in non-capital cases

Jury Arguments

- Be careful about imposing time restrictions
- Limitations on time 7A-97
 - One hour/side in misdemeanors
 - Two hours/side in civil & felony
 - No limit in capital

Jury Argument

G.S. 15A-1230(a):

- Not become abusive
- Not inject “personal experiences”
- Not express personal belief re: truth/falsity of evidence or guilt/innocence
- Not make argument on basis of matters outside record

See also *State v. Jones*, 355 N.C. 117 (2002)

Jury Instructions

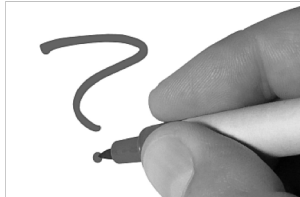
- Instruct in accord with Charge Conference
- Possible Verdicts
- Written Instructions?

Jury Instructions

- Excuse the jury to begin selection of their foreperson
- Remind them not to deliberate until they receive the verdict sheet
- Request from each party any objections to or claimed omissions from the charge
- Then send the verdict sheet to the jury room

Exercise 13: The Jury Knocks

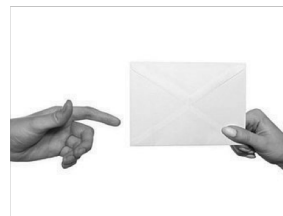
- Questions from the Jury
- Viewing Exhibits 15A-1233
 - Be aware of difference between criminal and civil rule of viewing exhibits and testimony (See G.S. 1-181.2)



The Verdict

- Preparation of verdict sheet
 - Are any special findings needed?
- Receiving the verdict
- Polling the jury 15A-1238
- Recording the verdict
- No comment on verdict
 - G.S. 15A-1239
 - Canon 3(A)(6) of Code of Judicial Conduct
- Talking with jury after discharge

Exercise 14: Taking the Verdict



Taking the Verdict

Would the foreperson of the jury please stand and state your name for the record?

Has the jury reached a unanimous verdict in this case?

Please hand the verdict sheet to the bailiff.

(Review the verdict sheet for marking of verdict, dating and signature of foreperson)

Taking the Verdict

You have indicated that the jury has returned as its verdict that you find the Defendant guilty of the offense of 1st Degree Murder. Was that the unanimous verdict of the jury?

Members of the jury, your foreperson has announced that you have found as your verdict that the Defendant is guilty of 1st Degree Murder. If that was your verdict, please raise your right hand.

Polling the Jury

- Begin with the foreperson, then proceed individually from Jurors 1 through 12, asking the following questions:
- Your foreperson has announced that you have returned as your unanimous verdict that you find the Defendant guilty of the 1st Degree Murder.
 - Was that your verdict?
 - Is that still your verdict?

Exercise 12: Sentencing



Entering Sentence

The Defendant, having (pled guilty to) (been found by a jury to be guilty of) the offense of _____, a Class ____ felony. Based upon evidence presented (and stipulation of the Defendant), I find that the Defendant has ____ prior record points and is a Prior Record Level ____.

Madam Clerk, the sentence will be entered in (a single judgment) (a total of ____ judgments).

Entering Sentence

The Judgment is that the Defendant is sentenced to a minimum of ____ and a maximum of ____ months in the N.C. Department of Correction. Commitment is to issue this day. Mr. Sheriff, he is in your custody; or

This sentence is to commence at the expiration of the sentence imposed in Case Number ____; or

This sentence is suspended and the Defendant is placed on supervised probation for a period of ____ months upon the following conditions:

General Advice

- Start on time and end on time (including breaks and lunch recess).
- Treat everyone with respect.
- Consider the robe– it changes everything
 - The robe does not make you smarter
 - But it does make your words more important.
- Take the time necessary on each matter.
- Never say more when less will suffice.
- Never lose your temper on the bench, unless you have planned it well in advance.

In Closing

- A plug for professionalism: needed both in the bar and on the bench
- Encourage professionalism in all that you do
- By what you say and do, you set the tone for the proceedings