

## The Magistrate's Contempt Power

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## Objectives

- By the end of this session you will:
  - Know the definition of direct criminal contempt
  - Understand when you can and cannot hold a person in contempt
  - Know the procedure for holding a person in contempt
  - Know the proper punishments for contempt
  - Know some alternatives to using contempt



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## Three Questions

- Can you?
- Should you?
- How do you?

Do you?



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### Can you?

- You only deal with *criminal* contempt, not civil
- What's the difference?
  - Criminal contempt is to *punish* past conduct
  - Civil contempt is to *coerce* compliance with an order
    - The civil contemnor "holds the keys to the jail"



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### Criminal Contempt Defined

- Behavior that interrupts the court's proceedings
- Behavior that impairs the respect due the court



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### Direct Criminal Contempt

- You can only punish *direct* criminal contempt
- What's that? Must meet three criteria:
  - In your sight or hearing
  - In or near the room where you conduct proceedings
  - Likely to interrupt matters then before you
- All other criminal contempt is *indirect*



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### Is this direct criminal contempt?

- In a small claims matter, you order the defendant to pay the plaintiff money owed. He doesn't.
  - NO (not in your presence; arguably civil)



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### Is this direct criminal contempt?

- Walking into your office, you hear someone say a *really* dirty word
  - NO (no interruption or interference)



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### Is this direct criminal contempt?

- A police officer tells you a defendant is standing outside telling dirty jokes... about you.
  - NO (not in your presence; not in the courtroom; not likely to interrupt)



"I'm not sure it was worth it, but it certainly was the world's best judge joke."



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### Is this direct criminal contempt?

- During an initial appearance, you warn a defendant to stop mouthing off. He invites you to kiss his...you know.  
– YES



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### Should you?

- Assume a person's behavior is direct criminal contempt... It's decision time
- Do you want to punish this person for contempt?
- First, consider the alternatives



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### Alternatives to Contempt

- Do nothing
- Verbal reprimand
- If not a criminal defendant, ask the person to leave
- If an unruly criminal defendant, order confinement under 15A-511(a)(3)



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### Should you proceed *summarily*?

- Only if the following are all true:
  - It's *necessary* to act now to restore order or maintain the dignity and order of the court
  - You have given the person a warning
  - You respond "substantially contemporaneously"
- And... you *want* to proceed summarily
  - You could cite the person to district court for a plenary proceeding (AOC-CR-219)



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### How do you?

- The form is your friend: AOC-CR-390
- So is my handy checklist! Let's go through it



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### Cases

- Contempt upheld:
  - *Hooker*: "You're a common street loafer!"
  - *Wheeler*: "I don't give a damn, give me 90 days!"
- Contempt reversed:
  - *Randell*: "Come on up, sir." "For what?" "You're in custody. Thirty days."
  - *McGee*: "Shut up fellow, I don't have to hear this."
  - *Phair*: The cell phone case
  - *Greer*: What *not* to do



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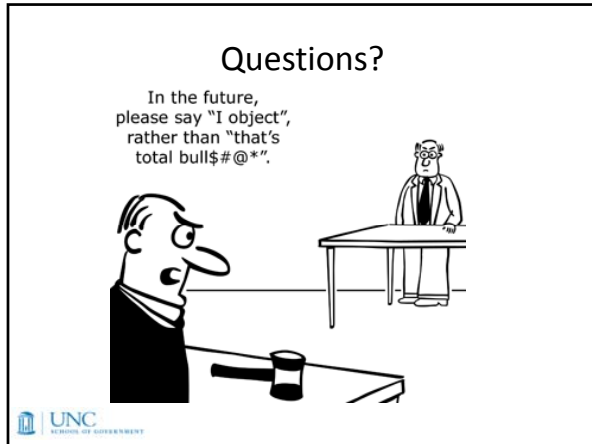
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