

High Profile cases

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• *"Whatever you say, say nothing"*
-Belfast street saying, traditional



Every case is potentially high exposure



Every case is potentially high exposure

- Inform jurors
- Spectators and witnesses
- Order on door
- Ban?

Every case is potentially difficult

- **15A-1032. Removal of disruptive defendant.**
- (a) A trial judge, after warning a defendant whose conduct is disrupting his trial, may order the defendant removed from the trial if he continues conduct which is so disruptive that the trial cannot proceed in an orderly manner. When practicable, the judge's warning and order for removal must be issued out of the presence of the jury.
- (b) If the judge orders a defendant removed from the courtroom, he must:
 - (1) Enter in the record the reasons for his action; and
 - (2) Instruct the jurors that the removal is not to be considered in weighing evidence or determining the issue of guilt.
- A defendant removed from the courtroom must be given the opportunity of learning of the trial proceedings through his counsel at reasonable intervals as directed by the court and must be given opportunity to return to the courtroom during the trial upon assurance of his good behavior. (1977, c. 711, s. 1.)

Every case is potentially difficult (the disruptive defendant)

- State v. Leyshon 211 N.C.App 511 (2011)
- State v. Mee 233 N.C.App 542 (2014)

-we are now at the stage of the trial where _____

-you have the right to be present under our statutes, and the state and federal constitutions. You may forfeit these rights if you do not appear now and participate

-the Court is requesting you to return and participate

-your case and your rights may be prejudiced if you do not appear.

-will you now participate?

(these are asked outside presence of jury, jury is reminded at every stage of N.C.P.I. 101.32)

§ 15A-1242. Defendant's election to represent himself at trial.

A defendant may be permitted at his election to proceed in the trial of his case without the assistance of counsel only after the trial judge makes thorough inquiry and is satisfied that the defendant:

- (1) Has been clearly advised of his right to the assistance of counsel, including his right to the assignment of counsel when he is so entitled;
- (2) Understands and appreciates the consequences of this decision; and
- (3) Comprehends the nature of the charges and proceedings and the range of permissible punishments. (1977, c. 711, s. 1.)

Resources

- National Center for State Courts www.ncsc.org/hpc
- Ann Anderson www.judges.unc.edu past materials May 30, 2018, *Advanced Criminal Procedure*
- Blog posts:
 - Civil law blog (civil.sog.unc.edu):
 - *Gag Order? Punishment for Talking About a Case?* (Anderson 2017)
 - *Smartphones, YouTube, and Criminal Contempt* (Anderson 2017)
 - Criminal law blog (nccriminallaw.sog.unc.edu)
 - *Closing the Courtroom in Sex Crime Trials* (Welty 2012)

Rule 15- media coverage of public judicial proceedings

- Canon 3 of Judicial Code says judge should exercise discretion
- Prohibits audio pickup of bench, attorney-client, coverage of informants, minors, relocated witnesses, sex crime victims and families
- JURORS! N.C.P.I. 100.15; -no jury selection
- Can be terminated (FOFs? Make sure to say in exercise of discretion)
- Good relationship with the camera operator- make sure the voir dire proceedings and proceedings out of the presence of the jurors are muted!

Dealing with the crowd

- **§ 15A-1034. Controlling access to the courtroom.**
 - (a) The presiding judge may impose reasonable limitations on access to the courtroom when necessary to ensure the orderliness of courtroom proceedings or the safety of persons present.
 - (b) The judge may order that all persons entering or any person present and choosing to remain in the courtroom be searched for weapons or devices that could be used to disrupt or impede the proceedings and may require that belongings carried by persons entering the courtroom be inspected. An order under this subsection must be entered on the record. (1977, c. 711, s. 1.)

Dealing with the crowd

- **§ 15A-1033. Removal of disruptive witnesses and spectators.**
- The judge in his discretion may order any person other than a defendant removed from a courtroom when his conduct disrupts the conduct of the trial. (1977, c. 711, s. 1.)
- Findings of fact are not required State v. Dean 196 N.C.App. 180 (2009), but it would be wise to do so
- Remind spectators at recesses of cell phone rules- no filming, no stills, no audios, no youtubes, no phones on in courtroom; consequences- search- confiscation

Planning for the case

- Jury Clerk/Clerk of Court- expanded jury pool?
- Sheriff- extra security, equipment or officers? Special entry/exit for jurors?
- Sheriff- social media monitoring?
- Counsel and sheriff- separation of witness considerations? Separation of spectator considerations?

Trial Court Administrators are terrific

• **From:** Myers, Kellie Z.
Sent: Thursday, August 09, 2018 11:18 AM
To: A Stanfield; Amanda Martin; Anthony Aycock; Boniti, Loretta M; Bonner, Lynn ; Cathy Martin; clawson@wral.com; Colin Campbell; Craig Jarvis; Crump, Ed; Donahue, Tom; EducationNC; Emery (AP); F Boston; Gierwiel, Sharon; Hui, Keung; Jonah Kaplan; Kelly Hinchliffe ; Leo John; Leslie, Laura ; Liz Bell; Melissa Boughton; Michael Hyland; news@news14.com; Nick Lagrange; R Bradley; Robertson, Gary; Rusty Jacobs; Spearman, Mildred R.; Thomas Hartwell; Tiberi, Jeffrey J; TWC News; WNCN; WTVD; WTVD Assignment Desk; WVD Web; WUNC.
Subject: Notices of Hearing: Cooper v. Berger, et al (18 CVS 9805) and NC NAACP & Clean Air Carolina v. Moore, et al. (18 CVS 9806)

Please find attached the Notices of Hearing regarding the above-mentioned cases, which were served on counsel late yesterday afternoon.

Electronic media and still photography coverage of these public judicial proceedings will be permitted, subject to Rule 15 of the General Rules of Practice for the Superior and District Courts. Media and press will be permitted to use the jury box in Courtroom 10B.

Please share this information with anyone who may be interested, but did not receive this email.

Trial Court Administrators are terrific, cont.

The trial of *State v. Bradsher* (17 CRS 1878) is currently scheduled to begin at 10:00 a.m. on Tuesday, May 29, 2018, in Courtroom 704 of the Wake County Justice Center, the Honorable Paul C. Ridgeway, presiding.

The presiding judge will confer with counsel and the defendant, after the opening of court on Tuesday, the anticipated length of jury selection and anticipated length of the trial. Witness lists will be presented to the Court at that time, as well.

Judge Ridgeway will allow the media/press to be present during the trial so long as the media/press abide by the following:

- Adherence to Rule 15 of the General Rules of Practice (Electronic Media and Still Photography Coverage of Public Judicial Proceedings)
- When the jury is present in the courtroom, the Court prefers that video is captured via a pool feed (and with strict adherence to Rule 15 regarding jurors)
- When the jury is not present in the courtroom, the Court will be more lenient regarding the number of video cameras in the courtroom
- All cameras must be silent; no flash photography will be permitted
- If you intend to use a stand-alone audio recording device, you must first check-in with the courtroom Clerk to show your press credentials and notify him/her that you will be using an audio recording device; it may be helpful to also provide a copy of your business card to the Clerk
- If you disrupt the proceedings, you may be asked to leave the courtroom

Closing the trial

- Waller v. Ga. 467 U.S. 39 (1984)
- 1st amendment is implicated (public and press)
- 6th amendment is implicated (defendant’s right to open proceeding)
- Party seeking must have overriding interest likely to be prejudiced
- Closure is no broader than necessary
- Reasonable alternatives have been considered
- FOFs needed to support

Forbidding comment (gag orders)

- Nebraska Press v. Stuart 427 U.S. 539 (1976)
- 1st amendment again
- Publicity would necessarily impair defendant’s right to a fair trial
- No less restrictive measures (venue, continue, sequester, extra jury instructions, individual voir dire, etc...) would suffice
- Order would prevent the harm
- Beaufort County Bd. Education v. Beaufort Co. Commissioners (CoA 2007)

7A-276.1. Court orders prohibiting publication or broadcast of reports of open court proceedings or reports of public records banned.

No court shall make or issue any rule or order banning, prohibiting, or restricting the publication or broadcast of any report concerning any of the following: any evidence, testimony, argument, ruling, verdict, decision, judgment, or other matter occurring in open court in any hearing, trial, or other proceeding, civil or criminal; and no court shall issue any rule or order sealing, prohibiting, restricting the publication or broadcast of the contents of any public record as defined by any statute of this State, which is required to be open to public inspection under any valid statute, regulation, or rule of common law. If any rule or order is made or issued by any court in violation of the provisions of this statute, it shall be null and void and of no effect, and no person shall be punished for contempt for the violation of any such void rule or order. (1977, c. 711, s. 3.)
