

Media and the Courts

Paul C. Ridgeway, Senior Resident Superior Court Judge (Wake County)



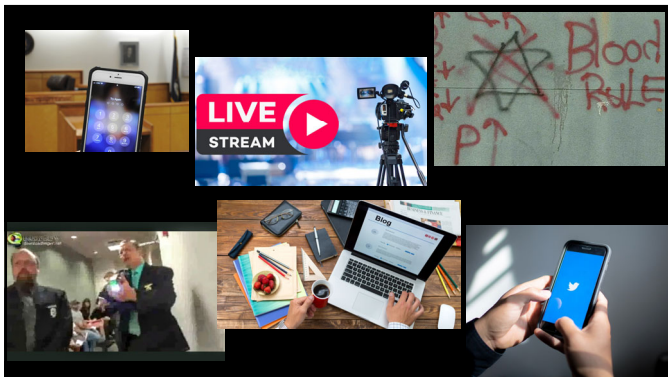
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Rule 15 – NC General Rules of Practice

- “Electronic media and still photography coverage of public judicial proceedings shall be allowed in the appellate and trial courts of this state, subject to the conditions below.”
- “1. The presiding justice or judge shall at all times have authority to prohibit or terminate electronic media and still photography coverage of public judicial proceedings . . . (1992)”



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Revisions to Rule 15 underway

- Chief Justice’s Rules Advisory Commission
- Simplifying Rule 15 – eliminating outdated equipment requirements
- Preserving policy of allowing media coverage in trial courts of NC
- Recording of remote proceedings (e.g. WebEx)
- Preserving discretion of the court to limit/prohibit
- Deference to local rules

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NC Code of Judicial Conduct, Canon 3(A)(7)

- A judge should exercise discretion with regard to permitting broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during civil or criminal sessions of court or recesses between sessions, pursuant to the provisions of Rule 15 of the General Rules of Practice for the Superior and District Courts.

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- **US Const. 1st Amendment:** Congress shall make no law . . . abridging the freedom of speech, or of the press
- **NC Const. Art. 1, Sec. 14:** Freedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained, but every person shall be held responsible for their abuse.
- **NC Const. Art. 1, Sec. 18:** All courts shall be open
- **US Const. 6th Amendment:** In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial

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Closing Courtroom to Public/Media

- Right to open court may give way to other rights or interests, but only in rare circumstances. *Waller v. Georgia*, 467 U.S. 39 (1984)
- **Waller Test:**
 - Movant must advance overriding interest likely to be prejudiced if courtroom not closed - Rape Shield (Rule 412); testimony of child or vulnerable witness; undercover; prevent disruption, etc.
 - Ensure closure is no broader than necessary
 - Consider reasonable alternatives
 - Make adequate findings of fact

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1935 – Lindbergh Baby



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- 1937 – ABA adopted Canon 35 prohibiting broadcasting and photography from courtroom
- Broadcasting distracts from essential dignity, distracts attorneys, witnesses, and creates misconceptions in the mind of the public
- Amended in 1952 to prohibit TV broadcasting

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Sheppard v. Maxwell
384 US 333 (1966)



- The trial began two weeks before a hotly contested election at which the chief prosecutor and the trial judge were candidates for judgeships.
- 20 reporters assigned seats within bar and in close proximity to jury and counsel
- A broadcasting station was assigned space next to the jury room.

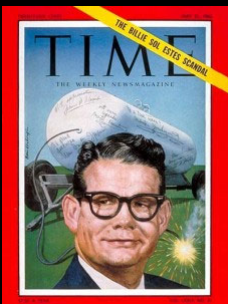
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- "Trial judge failed to take effective measures against the massive publicity."
- "Freedom of discussion ...must not be allowed to divert a trial from its purpose of adjudicating controversies."

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Estes v. Texas 381 US 532 (1965)



- At least 12 cameramen were engaged in the courtroom throughout the hearing
- Cables and wires were snaked across the courtroom floor,
- Three microphones were on the judge's bench and others were beamed at the jury box and the counsel table.

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Estes v. Texas



- CJ Warren: Televising of criminal trials is inherently a denial of due process.
- Concurring: J. Harlan – States should be allowed to pursuing a novel course of procedural experimentation with media coverage.

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Nixon v. Warner Comm., 435 US 589 (1978)

- 1st Amendment affords the press no access to information superior to general public
- The Sixth Amendment does not require that the trial—or any part of it—be broadcast live or on tape to the public.
- The requirement of a public trial is satisfied by the opportunity of members of the public and the press to attend the trial and to report what they have observed.



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Conference of
CHIEF JUSTICES

- In 1978, the Conference of State Chief Justices, by a vote of 44 to 1, approved a resolution to allow states to promulgate standards regulating radio, television, and other photographic coverage of court proceedings.
- By 1980, 40 states either permitted coverage of trial and/or appellate courts or were actively studying the issue

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Chandler v. Florida (1981)



- Brief (90 second) portions of trial played on nightly news
- Appellants rested solely on *per se* precedent of *Estes*.

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Chandler v. Florida

- Lawyers will "grandstand";
- Judges will "posture"--particularly at election time;
- Witnesses will "ham it up"
- Witnesses will be intimidated;
- Jurors will be distracted
- Jurors may fear for their personal safety;
- Jurors will attempt to conform to community opinion;
- Sequestered witnesses will be contaminated;
- Jurors will view media unless sequestered;
- Impossible to have a later fair trial for co-defendant or retrial;
- Privacy interests of witnesses or jurors infringed.

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Chandler v. Florida

- Burger, C.J., These are concerns that any fair-minded person would share because they would, certainly in combination, be antithetical to a fair trial.
- The fact remains, however, that the assertions are but assumptions unsupported by any evidence.



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Chandler v. Florida



- We will not assume that witnesses and jurors will disregard their oath or instructions from the court
- Fears not borne out by studies in state pilot programs
- No appreciable difference in this regard between exposure to the electronic media as opposed to the print media

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Chandler v. Florida

- A trial is a public event and public property
- Coverage of all other branches of government informs the public
- Makes government act more responsibly
- Public can better monitor the judiciary
- Increased public scrutiny may improve trial process
- Judges may take more care in explaining rulings and avoid arbitrary rulings
- Judges will require less lax courtroom management
- Lawyers will act with greater decorum and do a better job when they believe colleagues, potential clients may be watching

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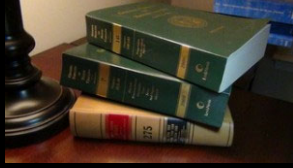
Chandler v. Florida

- American journalism, on the whole, does a poor job of accurately reporting court-doings.
- The resultant public ignorance is deplorable.
- Our courts are an immensely important part of our government. In a democracy, no portion of government should be a mystery.
- **Unanimous Ruling:** Absent a showing of prejudice of constitutional dimensions to these appellants, there is no reason for this Court either to endorse or to invalidate Florida's experiment.

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North Carolina Rule 15

- NC joined with many states immediately after *Chandler v. Florida*
- NC Supreme Court issued an order allowing electronic and still photography in the courtroom in 1982
- Codified as General Rules of Practice for the Superior and District Courts, Rule 15 in 1992



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Rule 15 (current & proposed) – Key Points

- Rule reflects policy that media recording shall be allowed in all trial courts subject to prior approval and enumerated exceptions
- Media (proposed rule): “Any entity regularly engaged in the business of publication or distribution of news via print, broadcast, or other electronic means accessible to the general public.” NCGS 8-53.11

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Rule 15

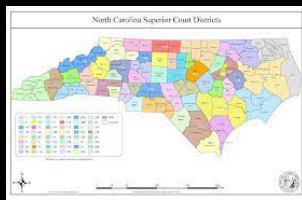
- No other recording allowed (unless permitted by presiding judge)
- Judicial approval must be obtained prior to any recording
- Judicial discretion to terminate all recording

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Rule 15

- No recording of certain categories of proceedings: juvenile, divorce, alimony, suppression motions, trade secrets, etc.
- No recording of certain categories of witnesses – minors, confidential informants, victims of sex offenses
- No recording of jurors at any stage of proceeding
- No recording of private conversations (bench, counsel, client)
- No recording of remote proceedings without prior approval of judge
- No use of recordings for appeal or subsequent proceedings

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- Local Rules:
 - Credentiailling process for members of media (NCGS 8-53.11)
 - Process for pre-approval
 - Single point of contact for media arrangements/credentiailling
 - Equipment requirements, mics, pooling arrangement

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