

Demonstrator or Defendant?



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Right to Assemble, Free Speech...



▪ **First Amendment:**
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or **abridging the freedom of speech**, or of the press; or **the right of the people peaceably to assemble**, and to **petition the Government for a redress of grievances**.



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...But There Are Limits

- Incite Violence
- Threats
- Slander/Libel
- Obscenity/Pornography
- Perjury
- Copyright Rules
- Time, Place, Manner Restrictions



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Not Always Peaceful



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Roadmap for Today



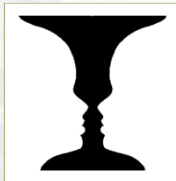
- Identify appropriate charges for protest/demonstration offenses
- Recap elements and requirements
- Flag/discuss key issues and potential problems in context of protests, offer a few "Protest Pointers" to consider

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Distinguish: "At" vs. "As"

- Arson
- Assault
- Breaking/Entering
- Larceny
- Injury to Property
- Graffiti/Vandalism
- Mask Violations
- Weapon Offenses
- Drugs/Alcohol



- Local Ordinances
- Obstructing Traffic
- Trespassing
- RDO/Fail to Disperse
- Communicating Threats
- Unlawful Assembly
- Riot/Disorderly Conduct
- Ethnic Intimidation
- Armed to Terror of Public
- Guns/Militias

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#1: Local Ordinances

- Wake County Examples:
 - 12-1051: Parade Permit Required
 - 12-1053: Standards for Conducting
 - 12-1054: Revocation of Permit
 - 12-1056: Picketing Permit Required
 - 12-1057: Standards for Conducting
 - 12-1058: Interference Prohibited Orders to Leave
 - 12-1060: Firearms/Weapons Prohibited
- G.S. 14-4(a), Class 3 misdemeanor
- G.S. 166A-19.30 - .31, Class 2 misdemeanor

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#2: Obstructing Traffic




- G.S. 20-174.1
- Class 2 misdemeanor
- Offense:

“No person shall wilfully stand, sit, or lie upon the highway or street in such a manner as to impede the regular flow of traffic.”

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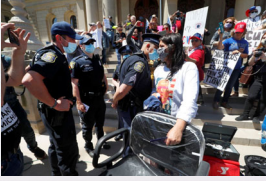
#3: Trespassing

- 1st Degree, G.S. 14-159.12
- 2nd Degree, G.S. 14-159.13
- Forcible Trespass, Common Law
- **Trespass/Looting in Emergency, G.S. 14-288.6**
- Picketing Courthouse, G.S. 14-225.1
- Trespassing at Certain Places:
 - Airport, G.S. 63-26.1
 - Railroad, G.S. 14-280.1
 - School bus, G.S. 14-132.2
- Public buildings?



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#4: Disorderly Conduct



- G.S. 14-288.4(a), Class 2 misdemeanor
 - (1) Fighting
 - (2) Provoking violence
 - (3), (4) Seizing/blocking school
 - (7) Disrupting religious service
- G.S. 14-132, Class 2 misdemeanor
 - Public Building

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#5: Failure to Disperse



- G.S. 14-288.5, Class 2 misdemeanor
- Elements:
 - (1) fails to comply with a command to disperse
 - (2) given in a manner reasonably calculated to be heard by those assembled
 - (3) by a law enforcement officer or public official responsible for keeping the peace
 - (4) when that officer reasonably believes that a riot or disorderly conduct by three or more persons is occurring.

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#6: Resist, Delay, Obstruct (RDO)

- G.S. 14-223, Class 2 misdemeanor
- Elements:
 - (1) willfully and unlawfully
 - (2) resists, delays, or obstructs
 - (3) a public officer
 - (4) knowing or having reasonable grounds to believe that the victim is a public officer and
 - (5) while the officer is discharging or attempting to discharge a duty of his or her office.



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#7: Assault on an Officer

▪ G.S. 14-33(c)(4), Class A1 misdemeanor

▪ Elements:

- (1) commits an assault
- (2) on an officer or employee of the state or any political subdivision of the state
- (3) who is discharging or attempting to discharge his or her official duties.

▪ Elevated Offenses

- Firearm, deadly weapon
- Serious/bodily injury

▪ Other Victims

- Firefighters
- Emergency personnel



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#8: Communicating Threats

▪ G.S. 14-277.1, Class 1 misdemeanor

▪ Elements:

- (1) without lawful authority
 - (a) willfully threatens to physically injure
 - (i) another person or
 - (ii) that person's child, sibling, spouse, or dependent or
 - (b) willfully threatens to damage another's property and
- (2) communicates that threat to the other person
- (3) in a manner that would make a reasonable person believe it is likely to be carried out and
- (4) the threat is believed by the threatened person.

▪ Type of Victim? True Threat?



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#9: Ethnic Intimidation

▪ G.S. 14-401.14, Class 1 misdemeanor

▪ Elements:

- (1) because of race, color, religion, nationality, or country of origin
- (2)...
 - (a) assaults another person,
 - (b) damages property of another,
 - (c) defaces property of another, or
 - (d) threatens to do (a), (b), or (c)

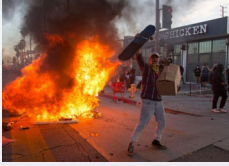
▪ Sentencing enhancement, G.S. 14-3(c)



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#10: Riot

- G.S. 14-288.2
- Class 1 Misdemeanor:
 - (1) willfully assembles
 - (2) with two or more other persons and
 - (3) engages in a public disturbance
 - (4) that by (a) disorderly and violent conduct or (b) the imminent threat of disorderly and violent conduct
 - (5) (a) causes injury or damage to persons or property or (b) creates a clear and present danger of such injury or damage.
- Class F Felony:
 - (5) (a) results in property damage in excess of \$1,500, (b) results in serious bodily injury, or (c) (i) results in damage or injury to persons or property or creates a clear and present danger such of damage or injury, and (ii) the defendant possesses a dangerous weapon or substance.
- Inciting to Riot – G.S. 14-288.2(d)



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#11: Unlawful Assembly

- Common Law, Class 1 Misdemeanor
- Elements:
 - (1) assembles with two or more other persons
 - (2) with the common intent to commit disorderly acts that will interfere with the rights of others and
 - (3) for the purpose of committing the acts in such a manner as would cause a firm person to apprehend a breach of peace



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Right to Armed Protest?

1st Amendment:

Expressive Conduct

vs.

Chilling/Intimidation



2nd Amendment:

Right to Bear Arms

vs.

Reasonable Restrictions

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#12: Armed to the Terror of the Public



- Common Law, Class 1 misdemeanor
- Elements:
 - (1) arms himself or herself with an unusual and dangerous weapon
 - (2) for the purpose of terrifying others and
 - (3) goes about on public highways
 - (4) in a manner to cause terror to the people.

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#13: Demonstrating With Guns

- G.S. 14-277.2, Class 1 Misdemeanor
- Offense:

“It shall be unlawful for any person participating in, affiliated with, or present as a spectator at any parade, funeral procession, picket line, or demonstration upon any private health care facility or upon any public place owned or under the control of the State or any of its political subdivisions to willfully or intentionally possess or have immediate access to any dangerous weapon.”



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#14: Militias

- G.S. 127A-151, Class 1 Misdemeanor
- Offense:
 - “if any person shall organize a military company, or drill or parade under arms as a military body, except under the militia laws and regulations of the State, or shall exercise or attempt to exercise the power or authority of a military officer in this State, without holding a commission from the Governor, the person shall be guilty of a Class 1 misdemeanor.”
- See also G.S. 14-288.20 (practice, training)



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Charging: Who and How?



- Covered by Principal Charge:
 - Aid/abet
 - Acting in concert
 - Accessory before the fact
 - Attempt
- Must Be Specifically Alleged/Pled:
 - Conspiracy
 - Accessory after the fact
 - Solicitation
 - Compounding a felony

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Questions/Discussion?

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