

**SMITH, RODGERS & STRICKLAND, PLLC**

**REECE TRIMMER**

Senior Geezer and Cumberland County Sheriffs Office  
Legal Advisor, Fayetteville, N.C.

**SPECIAL TO CLIENTS OF SMITH, RODGERS & STRICKLAND, PLLC**

**FEBRUARY 19, 2003**

**FIRST:** “GEE, OFFICER, I’M SURPRISED TO SEE YOU HERE!”  
“WELL, I DON’T KNOW WHY. YOU CALLED AND TOLD US YOU  
WERE COMING!”

THE LAW OF TRESPASS IN BUILDINGS PUBLIC AND PRIVATE, WITH AND  
WITHOUT WARNINGS FROM THE TRESPASSERS.

**By:** Reece Trimmer & Ralph B. Strickland, Jr. Co-Geezers of the Month

**The Case:** *State v. Marcopolos, Et. al.*, North Carolina Court of Appeals, December 17, 2002, NO.  
COA01-1518

**Et. al.:** Latin for “and others.” Thus, accomplices accompanied Mr. Marcopolos to his trespass location.

**The Trespass Location:** The Lobby at 411 Fayetteville Street Mall, Raleigh.

**Importance of the Trespass Location:** The Carolina Power & Light Building (CP&L being a  
subsidiary of the good folks at Progress Energy)

**The Players:** 25 demonstrators (Marcopolos and his et. al.), CP&L security and administrators, 12 Raleigh  
police officers and some members of the general public going about the course of their daily lives.

**Interesting Note:** The demonstrators called Raleigh PD and told them of their plans prior to entering  
the building.

**Our Thoughts on the Aforementioned Interesting Note:** Chortle. Guffaw. Wink.

**Other Facts, More or Less Directly From the Official Reporter:** The State's evidence tended to show  
defendants entered during business hours the lobby of CP&L. That sounds about right. Their stated  
intent was to address Carolina Power & Light, Inc.'s chief executive officer, Mr. William Cavanaugh, to  
protest what they believed was a lack of open hearings about CP&L's storage of used nuclear fuel at the  
Shearon Harris nuclear power plant in Wake County. The lobby of the CP&L Building is open during  
business hours in order to allow for public access to various stores and restaurants located contiguous to  
the lobby as well as CP&L offices located on other floors of the building. So far, so good.

After being met by a company representative **outside of the building** who informed them he would hear their requests and accept any documents, but that they would not be able to meet with the Mr. Cavanaugh, a group of approximately 25 demonstrators went inside of the CP&L lobby anyway. The defendants met 12 Raleigh police officers there, which was no surprise to them, you see, since they knew then as you know now, the defendants' organization had contacted that agency prior to going to the building. The defendants separated themselves from the larger group and were met by a security officer. They requested to see Mr. Cavanaugh. Being told they could not meet with him, they were asked to leave. No go. They repeated their demand. Ultimately, the defendants were told three more times, once by the security officer and twice by the police sergeant, that they could not see the Mr. Cavanaugh. They refused to leave. They were arrested. They were convicted. They appealed. They lost their appeal.

### **The Law As The Court of Appeals Saw It:**

1. The Court recognized that Hawthorne Associates leased the entire building, including the lobby, to Progress Energy Services, L.L.C. and its subsidiary, CP&L.
2. The Court further recognized that although the lobby contained several businesses, CP&L and Progress Energy retained control over the lobby and held the lobby open to the public for certain legitimate purposes, which included patronizing the businesses located in the lobby.
3. The Court, assuming the defendants had implied consent to enter the lobby area held open to the public (which is a valid assumption in most similar cases of private property open to the public), ruled that once they were made aware they could not meet with the CEO (and because they did not have any intention of patronizing the other businesses) the defendants no longer had a legitimate purpose for being in the lobby.
4. **The court thus held that one with lawful authority may order a person to leave the premises of a privately owned business held open to the public when that person no longer has a legitimate purpose for being upon the premises. Which is, of course true – but it is not the full picture.**

**Reece & Ralph Opine on the Law of Trespass:** We do not read the law so narrowly for private property, even private property, as here, open to the public.

There are four types of real property recognized by the law.

**Firstly, there is private property not open to public access.** An example would be a personal residence - a home, apartment or condo. Everybody knows you have no right to enter another person's residence without permission. It might even be unimproved property such as a vacant lot or a tract of land. If the property is private and not open to the public, the owner or tenant may deny access to the public – no reason is necessary. “No Trespassing” signs may be posted at the lot and the tract of land may be posted as described in N.C.G.S. 14-159.7. But the property is simply not accessible to any member of the public without consent.

**Secondly, there is private property that is, as here, open to the public.** Generally speaking people have an implied authorization to enter and conduct business there. Of course, shopping malls are the best example – private property where owners and tenants invite and entice the general public to enter onto the property and spend money! Although the owner or tenant is prohibited and cannot order a person to leave the property (whether a building or land only) simply because of their *race, creed, color, or national origin*, it is our opinion that property law gives that person the right to deny access for any reason other than those protected classes previously mentioned. In other words, the demonstrators at CP&L could have been trespassed from the building and not allowed to enter solely because they were demonstrators and whether or not they had any other business there. You've seen the signs in private restaurants open to the public: No shoes, no shirt, no service. CP&L could post a sign reading: NO DEMONSTRATORS ON PROPERTY. That is a legal right the company has as tenants in a private building, open to the public or not. [CP&L could even deny access to 411 Fayetteville Street mall to any attorney who is at least six feet tall,

weighs more than 200 pounds, formerly held positions in the Durham Police Department and the North Carolina Justice Academy, and currently serves as a legal advisor to a sheriff (**leaving both of us on the sidewalk!**)]

**Thirdly, there is public property open to the public.** The best examples are courthouses, city halls, public libraries and local and state parks. Even here there is some limited right to deny access to the public. You should know that there must be a “sufficient reason” supporting an order given a member of the public to leave such property. If the reason is sufficient, the order to leave will be legal. But you or some other public official must have a very good reason before you order someone from a truly public building; a mere unsupported reason is never good enough. Now, what about the clearly “disturbed” person who comes to the courthouse or city hall on frequent occasions with some quasi-legitimate business and scares the \*\*\*\* out of the clerks and secretaries? Can he be trespassed? Certainly he can be required to notify the clerk’s office (or city/county manager) before physically arriving and be escorted by officers to and from the office to which he desires access. And, he must intend to use the public facility for the very purpose it exists. You are allowed to use the toilet facilities in a public building during business hours, but not for a bath. The chairs in the public library are for reading/relaxing but not for sleeping the day away. Where the person exhibits dangerous or troubling behavior, it is generally easier to legally order him from the public building.

**Fourthly, there is public property closed to the public.** Every county jail, Central Prison, and certain parts of all military installations are closed to the public. The taxpaying public “own” those places but cannot generally visit them. Yes, you can get into the jail – on an order or warrant for arrest. People drop by Central Prison on Western Boulevard in Raleigh all the time to serve out judgments for felony convictions, or await executions (as of January 2003 there are over 200 people on death row there). Take a military oath of allegiance to the good old US of A (it looks like now would be as good a time as any) and we’ll let you spend quite a bit of your time on federal property closed to just about everybody else. As a bonus, we’ll dress you appropriately, too.

**The North Carolina General Statutes: G.S. 14-159.12** prohibits first-degree trespass and **G.S. 14-159.13** prohibits second-degree trespass. We suggest that you familiarize yourself with both charges and read the sections on trespass in **North Carolina Crimes – A Guidebook on the Elements of Crime**, edited and Revised by Robert L. Farb, Fifth Edition, 2001, Institute of Government (and any supplements).

**R & R’s Final Thoughts:** There is no substitute for knowing the law, thinking ahead, and seeking legal advice in these trespass situations. Keep in mind the four types of real property recognized at law, and the rights of owners and tenants of such property. Of course, it never hurts if a person intent on violating the trespass law calls you in advance to warn you of his planned trespass.

And giving as many warnings about leaving or being arrested as is reasonable under your particular set of circumstances is a good idea as well. Although one warning is sufficient, you are viewed in a better light in the courtroom when the person or persons are given three or four chances just to leave, walk away, and not be arrested. We once spoke on a filmed program with a judge of the North Carolina Court of Appeals, discussing a case for which he wrote the unanimous majority opinion. He told us he and the other judges were very impressed by the number of times the official record revealed that the officer warned the defendant before arresting him for resist, delay and obstruct (GS 14-223). How many times did that officer warn the defendant? Oh, about three or four times.

We wish you the best of luck now and in the future.

**SMITH, RODGERS & STRICKLAND PLLC PROVIDES 24-HOUR REAL-TIME LEGAL SUPPORT FOR CLIENT LAW ENFORCEMENT AGENCIES.**