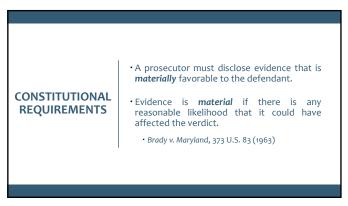
# CONSTITUTIONAL & STATUTORY DISCOVERY REQUIREMENTS

New Prosecutors School November 2022

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TIMING CONSIDERATIONS• No constitutional requirement to disclose impeachment information before entering into plea agreement • United States v. Ruiz, 536 U.S. 622 (2002)• United States v. Ruiz, 536 U.S. 622 (2002)• Unclear whether Brady right to exculpatory information applies to pleas • United States v. Moussaoui, 591 F.3d 263 (4th Cir. 2010) • State v. Allen, 222 N.C. App. 707 (2012)
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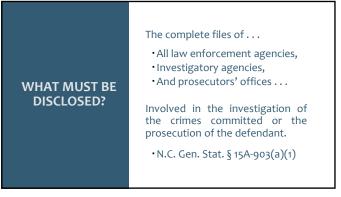


### TIMING CONSIDERATIONS

If defendant is represented by counsel, request must be made no later than 10<sup>th</sup> working day after probable cause hearing or waiver of hearing

•N.C. Gen. Stat. § 15A-902

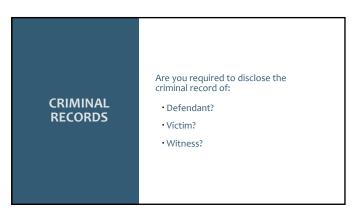
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WHAT IS "THE FILE"?	Any and all statements from: • Defendant • Co-Defendant • Victim • Witness
	Officers' notes
	Results of examinations / tests
	Any other matter or evidence obtained in the investigation
	Basically, EVERYTHING.





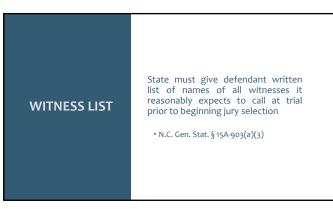


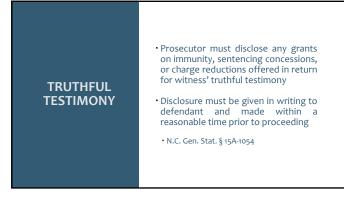
#### RIGHT TO INSPECT AND COPY

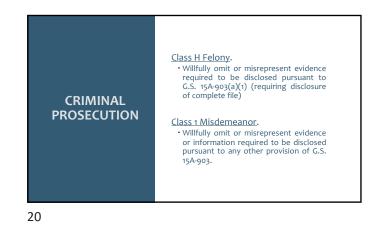
Defendant has the right to inspect and copy or photograph any materials in the file and to inspect, examine and test any physical evidence

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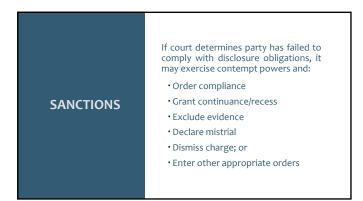
EXPERT WITNESSES	<ul> <li>State must give notice to defendant of any expert witness it reasonably expects to call as a witness at trial</li> </ul>
	<ul> <li>Expert must prepare report of results of any examinations or tests he/she conducted</li> </ul>
	<ul> <li>State must give defendant expert's CV, opinion, and basis for opinion</li> </ul>
	<ul> <li>State must give notice and furnish required materials within a reasonable time before trial or as specified by the court</li> </ul>
	• N.C. Gen. Stat. § 15A-903(a)(2)

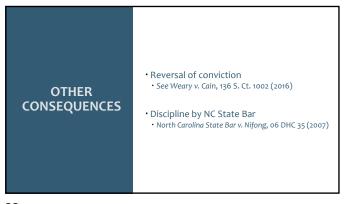












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### ETHICAL REQUIREMENTS

Rule 3.8(d) of the NC Rules of Professional Conduct requires:

1. Reasonably diligent inquiry

- 2. Timely disclosure to defense of all evidence or information
- Known to prosecutor that tends to negate the guilt of accused or mitigate the offense

### **COMMENT TO RULE 3.8**

Every prosecutor should be aware of the discovery requirements established by statutory law and case law

#### **COMMENT TO RULE 3.8**

A prosecutor should not intentionally avoid pursuit of evidence merely because he or she believes it will damage the prosecutor's case or aid the accused.

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#### POST CONVICTION DISCLOSURE

Prosecutors must disclose new, credible evidence or information creating a reasonable likelihood that a convicted defendant did not commit an offense for which the defendant was convicted

To whom must you disclose?

- In your jurisdiction
- Outside your jurisdiction

## ETHICAL REQUIREMENTS

A lawyer shall not fail to disclose evidence or information that the lawyer knew, or reasonably should have known, was subject to disclosure under applicable laws, rules of procedure or evidence, or court opinions

• Rule 3.4(d)(3)

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### CONCLUDING THOUGHTS

"My job as a prosecutor is to do justice, and justice is served when a guilty man is convicted and an innocent man is not."

#### Sonia Sotomayor

Associate Justice of the Supreme Court of the United States

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