



## Technology, Ethics and Professionalism

Prosecutorial Ethics

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## The World at Your Fingertips

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So much information, so little time

ACIS

CIPRS

CJ LEADS

DCI

CCIS DA

NCAWARE

Others

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## The Law

### • NCGS § 14-454.1. Accessing government computers.

- It is unlawful to willfully, directly or indirectly, access or cause to be accessed any government computer for the purpose of:
  - Devising or executing any scheme or artifice to defraud, or
  - Obtaining property or services by means of false or fraudulent pretenses, representations, or promises. A violation of this subsection is a Class F felony.
- Any person who willfully and without authorization, directly or indirectly, accesses or causes to be accessed any government computer for any purpose other than those set forth in subsection (a) of this section is guilty of a Class H felony.



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## Authorized Purpose – ACIS/CIPRS

"The User shall not share with unauthorized personnel information that is exempt from the Public Records Act (G.S. Chapter 132), including, but not limited to, juvenile offender information or information regarding unreturned criminal processes. Officials, employees, contractors, and agents of a government agency or subdivision of such agency are granted access to NCAOC information systems only for the performance of their official duties. Use of the access granted to NCAOC information systems for any purpose outside the scope of those duties may result in disciplinary action (including termination) and civil and/or criminal liability. The User further agrees that any violation of the security policies of NCAOC and/or ITS or of any federal, state, or local law regarding access to or security of NCAOC information systems may result in the immediate and irrevocable termination of the User's access to NCAOC information systems at the sole discretion of the NCAOC's chief information officer or his/her designee."



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## A Word on "Public Records"

- Most information on ACIS and CIPRS is considered "public"
- BUT that does not mean your access to it using a username and password provided to you because of your office and title is not limited to "official purpose"
- Additionally, even if that were not true, ADAs should consider the impact of misuse of this information on the public trust and the reputation of the NC justice system

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### Authorized Purpose - CJLEADS

"[A]ccess to or use of the CJLEADS information system for any purpose outside the scope of those duties will result in disciplinary action up to and including termination as determined by the AGENCY, and civil and/or criminal liability."



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### "Big Brother" is Watching You

"ANY USE OF THIS SYSTEM MAY BE INTERCEPTED, MONITORED, RECORDED, COPIED, AUDITED, INSPECTED AND DISCLOSED TO AUTHORIZED North Carolina STATE GOVERNMENT SECURITY AND LAW ENFORCEMENT PERSONNEL AS WELL AS AUTHORIZED OFFICIALS OF OTHER AGENCIES BOTH DOMESTIC AND FOREIGN."



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### The Perils of Being in the Know

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**The Prosecutor's Dilemma**

**Scenario 1:** There is a case in the headlines being handled by your office. Your group of friends is fascinated by it and pumping you for information over drinks one night.

**Scenario 2:** Over family dinner one Sunday, your dad asks you to find out some information about a break in at his friend's local store.

**Scenario 3:** Your local news outlet is constantly getting facts wrong when they report criminal cases and the comment section is full of bone-headed trolls saying stuff that is even MORE wrong.

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**The Rules**

**Rule 3.8 – Special Responsibilities of Prosecutors**

*"[E]xcept for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule."*

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**Public Comments by Prosecutors**

- Notes from the State Bar:
  - "[A]void comments which have no legitimate law enforcement purpose"
  - Some public comments are unavoidable (that fact that a defendant has been charged or indicted and with what, for example) even though they might lead the public to condemn a person.
  - But what we are talking about here is sharing otherwise avoidable comments
- Responsibility for others
  - [P]aragraph (f) requires a prosecutor to exercise reasonable care to prevent persons assisting or associated with the prosecutor from making improper extrajudicial statements, *even when such persons are not under the direct supervision of the prosecutor*. Ordinarily, the reasonable care standard will be satisfied if the prosecutor issues the appropriate cautions to law-enforcement personnel and other relevant individuals.

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### But Wait! There's More!

#### Rule 3.6 - Trial Publicity

- A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.
- Examples of subjects that should be avoided:
  - Character, reputation, or record of a witness, victim, or defendant
  - Possibility of a plea or existence of a confession, statement, or lack thereof
  - Results of a test or examination
  - Guilt or innocence of the accused
  - Evidence likely to be presented at trial OR inadmissible at trial
  - A statement that the defendant is charged without an accompanying statement that he is innocent until proven guilty

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### What's OK to Talk About?

Identified as unlikely to be prohibited by this rule:

- The offense and the people involved
- General information available by public record
- The fact that an investigation is ongoing
- Scheduling and result of any plea, motion hearing, etc.
- In cases where someone poses a likelihood of substantial harm to someone or the public, can warn of behavior by this person
- The identity, residence, family status, and occupation of the accused
- Information needed to apprehend an uncaught perpetrator
- Time and place of an arrest
- Identity of investigating officers and how long their investigation took




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### Another Word about Public Records

- The comments on this Rule note that even though public information is deemed unlikely to pose a problem here, the fact that information is public does not make it ok to use to influence public opinion or other things prohibited by this rule

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### A Balancing Test

- The Bar notes that to allow public comments before and during a trial with no restriction would make the jury process as well as the rules of evidence somewhat pointless
- But they also note that there is some information that can (and sometimes should) be shared with the public
- In the end, the point is that, while the media and civilians may want to try a case in the court of public opinion, comments by the lawyers involved carry a special gravitas and lawyers must try to hold themselves above that fray

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### Criminal Investigation Files



- N.C.G.S. § 132-1.4. Criminal investigations; intelligence information records; Innocence Inquiry Commission records.**
- Records of criminal investigations conducted by public law enforcement agencies, records of criminal intelligence information compiled by public law enforcement agencies, and records of investigations conducted by the North Carolina Innocence Inquiry Commission, are not public records as defined by G.S. 132-1.
  - Exceptions for the release of certain information: name of arrestee, name of complaining witness, some 911 calls, information necessary to avoid public threat

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### Criminal Investigation Files



- Of course, exception for sharing with a DAs office
- Confidentiality does not include court documents like search warrants and indictments
- If you want to protect the information that IS public record, you may ask a judge to seal it
- These rules apply to prosecutors too except for allowances for discovery and trial
- Body Cam Law (NCGS § 132-1.4A. Law enforcement agency recordings)

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- Some matters have extra confidentiality requirements (juvenile, documents or information held under seal, medical information)
- And some just call for common sense
  - Remember who you represent
  - Remember the power you hold
  - Remember the trust victims and witnesses have given you

**Sensitive Matters and Common Sense**

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**The Rules of Social Media**

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**1) Clean it up**

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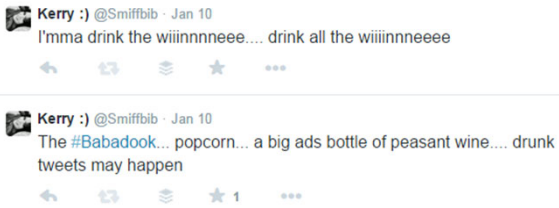
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## 2) Don't post/message drunk



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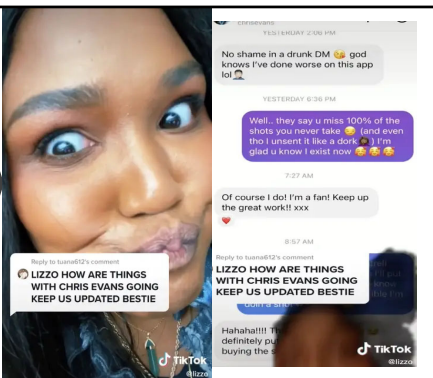
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Unless You are Lizzo



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## Facebook post lands Torrance special-education teacher in hot water



## 3) Don't rage post

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4) Remember, you are not as funny as you think



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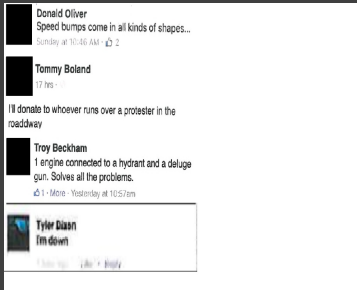
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5) Nothing is "just between friends" online



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6) The internet remembers



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This would be so much clearer if I had my slides.

Cool PowerPoint, Dude!

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### Using Technology in the Courtroom

- Every county and every courthouse is different
- The Basics:
  - Ask – ask colleagues, ask the clerk, ask the judge, ask AOC
  - Be reasonable – don't overthink it
  - Test it out!!
  - Be prepared – don't be too reliant, have a back up plan

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## The Rules

Local rules

Demonstrative Evidence Rules

- Trial court's discretion
- Sufficiently explains or illustrates relevant, admissible testimony
- Clarifies issues in a case
- Must be within the scope of the evidence
- Cannot be more prejudicial than probative
- Depending on nature of evidence, may still need to lay a foundation
- If used to illustrate witness testimony, witness needs to affirm that this evidence will help them illustrate their testimony

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Examples

Technology and witnesses

- Experts may use computer animations or graphics
- Expert should be ready to explain how the animation or graphic is a fair and accurate depiction of the events or conditions it purports to show. See [State v. Carrillo, 149 N.C. App. 543 \(2002\)](#)
- Expert may need to explain how the graphic is produced.

Technology and Trial Organization

- There may be an app for that:
  - iJuror, TrialPad, etc.
  - Use with caution!
- Computers in the courtroom
  - Take notes as you feel most comfortable but remember to be cautious of distraction, professionalism.

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## PowerPoint During Argument

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Attorneys can “properly display items during closing argument where the item was actually introduced into evidence and is not used in an improper manner.” [State v. Call, 349 N.C. 382 \(1998\)](#)

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You can even use enhancements and enlargements of photos/videos to make your point. See [State v. Johnson, 214 N.C. App. 436 \(2011\)](#)

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May even be possible during opening (no case law in NC)

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A presentation must be based on “facts in the record and any reasonable inference that may be drawn from any facts in the record.” [State v. Cummings, 361 N.C. 438 \(2007\)](#); quoting [State v. Allen, 360 N.C. 297 \(2006\)](#)

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## Cautions

- Don't go outside the scope of the evidence. See [State v. Jolly, 230 N.C. App. 145 \(2013\)](#)
- Don't be more prejudicial than probative
- Consider giving notice to the defense along with a copy of the presentation
  - The presentation is a part of argument so it is not evidence covered under discovery statute
  - BUT providing the material could help avoid an objection that could at the least break up your “flow” and at the worst, require scrapping some or all of your argument
- You may also wish to file a notice with the court of your intent to use an illustrative aid (especially if this is something new in your county)
- If you are worried something might be objectionable or problematic, consider filing a motion in limine

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Other  
Courtroom  
Friendly Tech

Office 365 – Allows you to work from home and access your work from your office or the courtroom

CJ LEADS mobile - Allows you to look up an offender in the courtroom

Tiny Scanner – Allows you to take a pic from your phone and turn it into a pdf

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Remember that tech can be your friend as long as you know the rules, use caution, and never rely on it to take the place of hard work and common sense



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Questions?

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