



THE UNIVERSITY OF UTAH  
**S.J. QUINNEY  
COLLEGE OF LAW**

# **Teaching Ethics, Civility and Professionalism**

**Utah Prosecution Council  
April 27, 2017**

**Robert W. Adler, Dean**



# OUTLINE

- Challenges: teaching ethics, civility and professionalism
  - To the current generation of law students
  - In the current political and social climate
- What we are doing to meet that challenge
  - Generally
  - In criminal law



THE UNIVERSITY OF UTAH  
S.J. QUINNEY  
COLLEGE OF LAW



# Challenge: Attention Deficit Society



THE UNIVERSITY OF UTAH  
**S.J. QUINNEY  
COLLEGE OF LAW**

# Challenge: Attention Deficit Society

## Symptoms

Declining attention spans

## Actions

Longer classes?  
Simulation exercises  
Flipped classrooms  
Active learning methods





THE UNIVERSITY OF UTAH  
**S.J. QUINNEY  
COLLEGE OF LAW**



# Challenge: Device Mania



THE UNIVERSITY OF UTAH  
S.J. QUINNEY  
COLLEGE OF LAW

# Challenge: Device Mania

## Symptoms

Glued to screens

Rote copying of slides

Exclusively online research

## Actions

Ban laptops in class

Prohibit unauthorized uses

Post slides; handouts

Advanced legal research

Research mentoring



THE UNIVERSITY OF UTAH  
**S.J. QUINNEY  
COLLEGE OF LAW**

© MARK ANDERSON

WWW.ANDERSTOONS.COM



"What about Instagram?"

# Challenge: The Instagram Syndrome



THE UNIVERSITY OF UTAH  
**S.J. QUINNEY**  
**COLLEGE OF LAW**

# Challenge: The Instagram Syndrome

## Symptoms

“Just give me the answer”

“How much do I actually  
have to read/do?”

## Actions

Don't always give the answer!

Don't tell them!





THE UNIVERSITY OF UTAH  
**S.J. QUINNEY  
COLLEGE OF LAW**



# Challenge: Snowplow Parenting



# Challenge: Snowplow Parenting

## Symptoms

“It’s your job to find me a job”

Manage my time for me

Tell me exactly what to do

Shouldn't we all get A's?

## Actions

Teach career skills

Time management skills

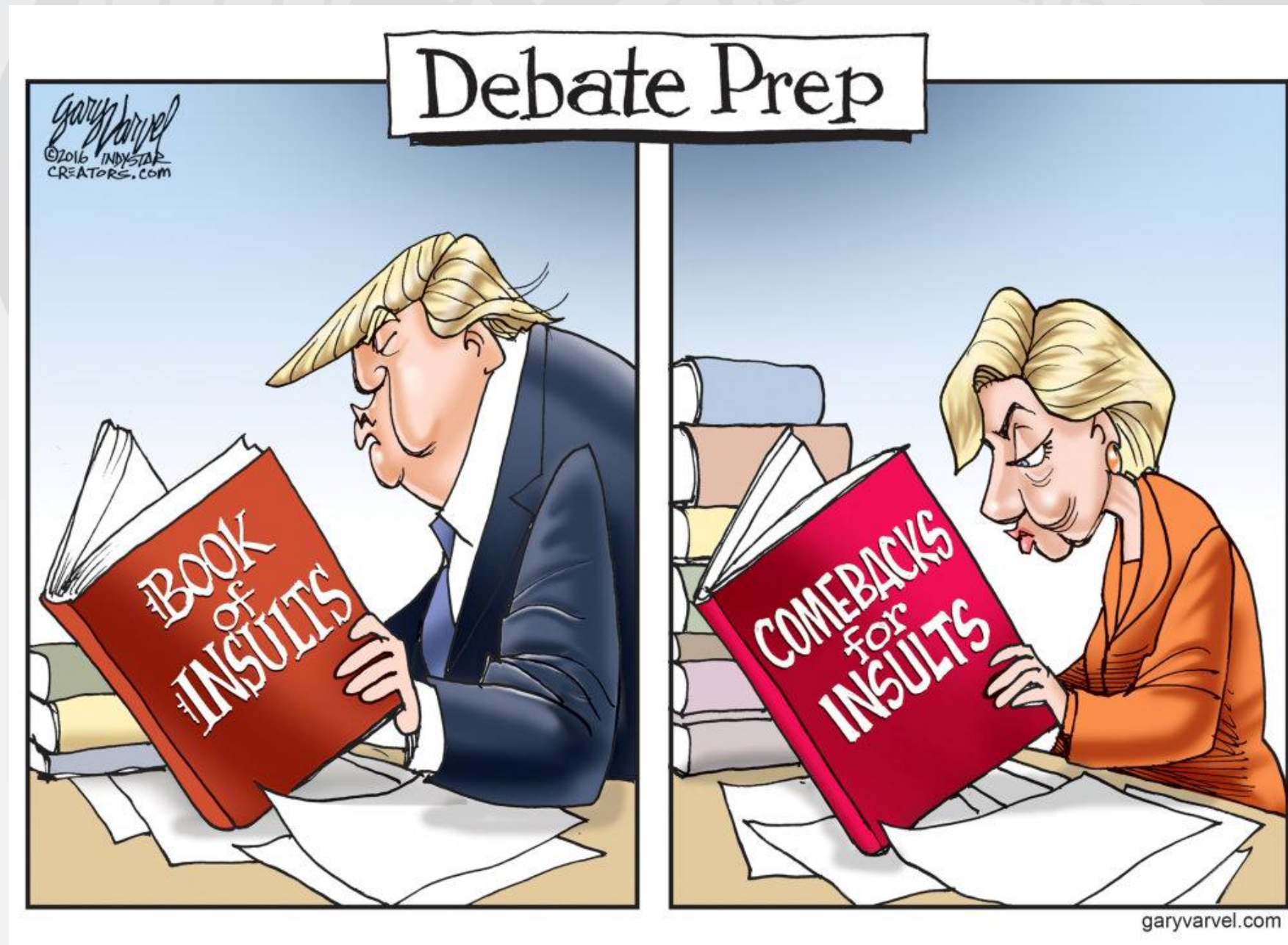
Problem solving skills

No!





THE UNIVERSITY OF UTAH  
**S.J. QUINNEY  
COLLEGE OF LAW**



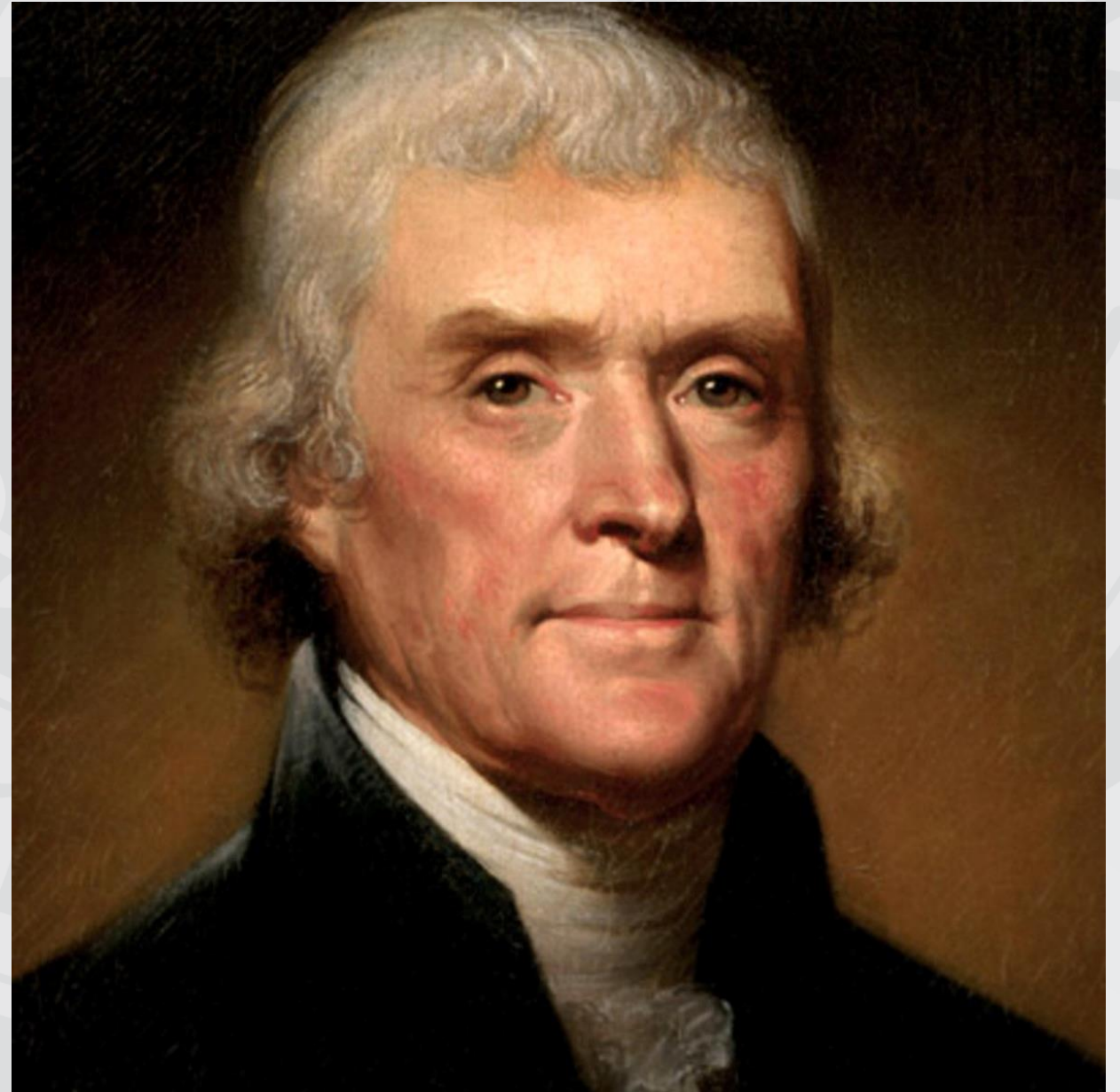
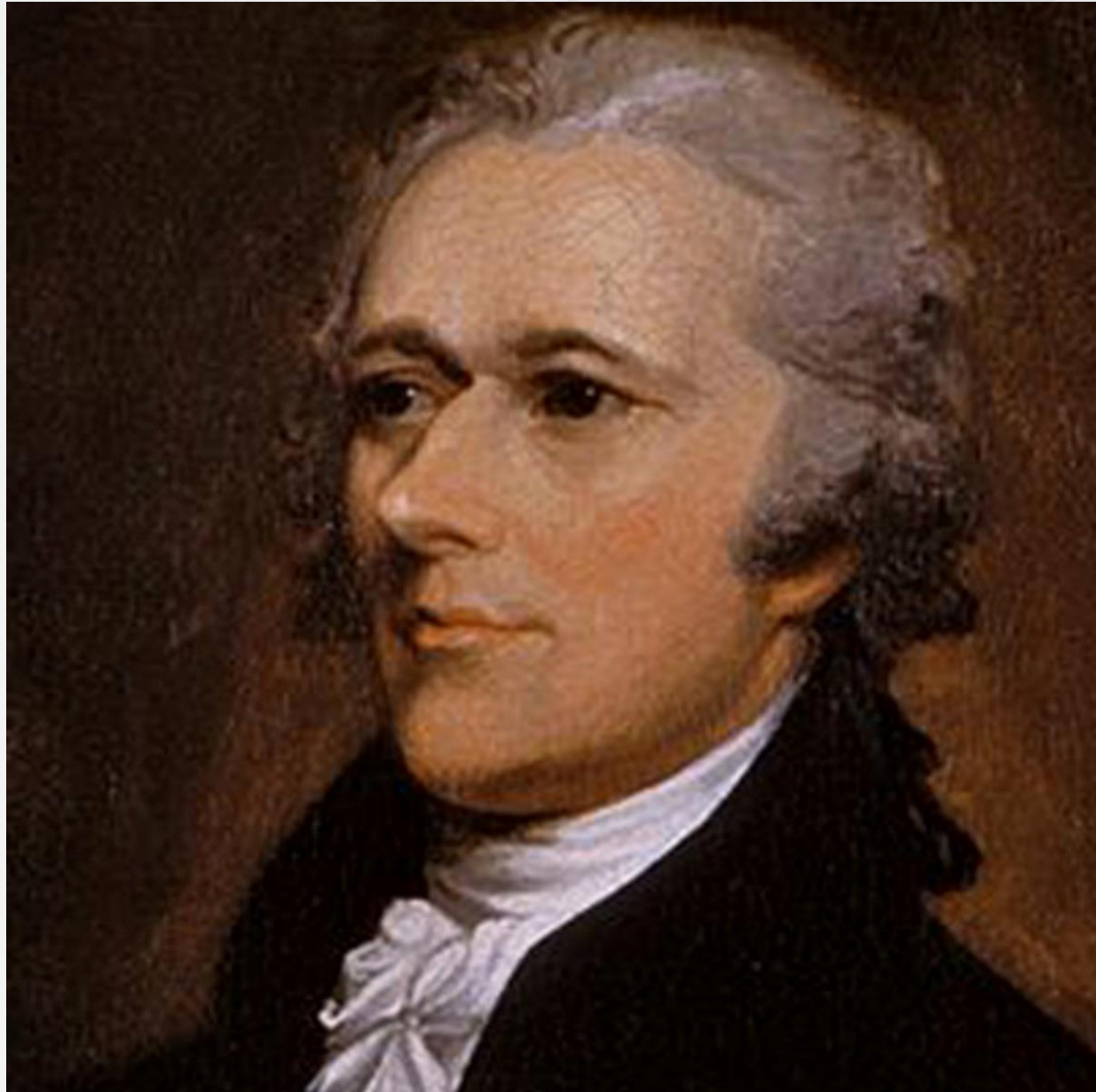
# Challenge: The “Crossfire” Society





THE UNIVERSITY OF UTAH  
**S.J. QUINNEY**  
**COLLEGE OF LAW**

# The First Crossfire Generation





THE UNIVERSITY OF UTAH  
**S.J. QUINNEY  
COLLEGE OF LAW**

# Challenge: The Crossfire Society

## Symptoms

Decline of civil discourse

Social media “etiquette”

## Actions

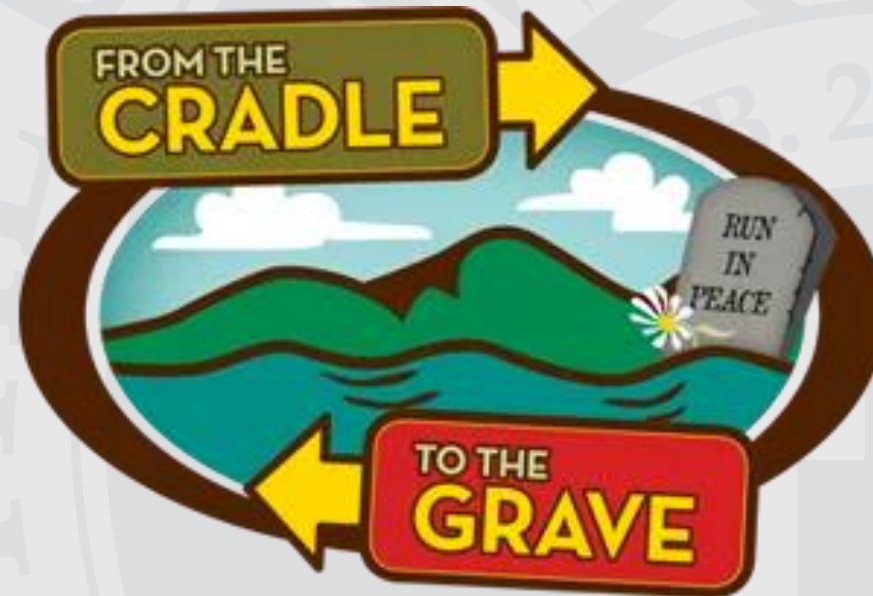
Role model – our events

Rules for law school  
discourse





THE UNIVERSITY OF UTAH  
**S.J. QUINNEY  
COLLEGE OF LAW**



## **Beyond the MPRE: Teaching ethics and professionalism throughout the curriculum**

Intro to Law

SYNK program

Every course

Legal Profession

Clinics and PBI

Commencement



THE UNIVERSITY OF UTAH  
S.J. QUINNEY  
COLLEGE OF LAW

# Flipped Classroom: Legal Profession (Prof. Linda Smith) Model Rules 3.1 – 3.5

<https://youtu.be/27MmJlivpMo>



THE UNIVERSITY OF UTAH  
**S.J. QUINNEY  
COLLEGE OF LAW**

# **Truth-Telling in Advocacy**

Rules 3.1-3.5



# Truth and Lies in Advocacy I

Bill and Betty represent Guy Crim who is charged with murder. Guy stabbed a drug dealer during an argument when Guy was trying to buy drugs. At one point, the dealer told her girl friend to “get my piece” and right before Guy stabbed him, the dealer was reaching under a pillow. Guy told Bill and Betty that he was afraid the dealer was reaching for his gun and he stabbed him in self-defense. No gun was ever found on the premises. As they are preparing for trial, Guy tells his lawyers that he now remembers that he saw something metallic glinting under the pillow as the dealer was pulling his hand out. Bill asks Guy why he hadn’t mentioned that before, and Guy says: “If I don’t say I saw a gun, then I’m out of luck.”

What should Bill and Betty do in preparing Guy to testify?



# Truth and Lies in Advocacy I

Q: What should Bill and Betty do in preparing Guy to testify?

A: *Nix v. Whiteside*, 475 U.S. 157 (1986) (finding no Sixth Amendment right to assistance of counsel violation when attorney refuses to cooperate with defendant in presenting perjured testimony).





# Truth and Lies in Advocacy II

Frank is charged with robbery and first degree murder. Frank tells his attorney that his friend shot the man, but he took the man's wallet and divided the money with the shooter. Then he took the wallet home, tried to burn it, and discarded the burned wallet in a trash can behind his house. The attorney tells his investigator to check this out. The investigator finds the wallet and brings it to the attorney.

Q: What should the attorney do?



# Truth and Lies in Advocacy II

Q: What should the attorney do?

A: *People v. Meredith*, 631 P.2d 46 (Cal. 1981) (allowing testimony by prosecution identifying location of evidence removed by defense investigator, precluding prosecution from viewing evidence in situ).



# Criminal Law Problem 1

## The Witness Who Can't See Well

Defendant robs an elderly lady by ripping off her purse. Tells you he did it. Woman made an ID of the client on a show-up—police drove around the neighborhood and she spotted the client. Woman has very poor eyesight and lost her glasses in the scuffle. Can you cross examine the woman to show she couldn't see even when you know she's correct?



THE UNIVERSITY OF UTAH  
**S.J. QUINNEY**  
**COLLEGE OF LAW**

# Criminal Law Problem 1

## The Witness Who Can't See Well

Can you cross examine the woman to show she couldn't see even when you know she's correct?

Yes, this is justified by the defendant's constitutional right to a defense, so long as defense counsel does not present known false evidence.



# Criminal Law Problem 2

## (courtesy of Neil Kaplan)

### The Lost Prosecution Witness

You're the prosecutor in a routine buy-bust drug case, i.e., undercover cop has a hand to hand buy from defendant. He's the only witness. Defendant denies sale. The night before the trial you learn that the undercover cop was tragically killed in car accident. The morning of the trial the defense attorney (without knowledge of undercover cop's death) tells you the defendant is willing to plead guilty. You know you cannot successfully obtain a conviction given the undercover cop is deceased.

Can you take the plea?





THE UNIVERSITY OF UTAH  
**S.J. QUINNEY  
COLLEGE OF LAW**

# Criminal Law Problem 2

## (courtesy of Neil Kaplan)

### The Lost Prosecution Witness

Can you take the plea?

Although this could be argued both ways, the prosecutor in this case told the defense that the undercover police witness had died, to avoid any appearance of dishonesty, knowing a conviction at trial was not possible under the circumstances.



THE UNIVERSITY OF UTAH  
**S.J. QUINNEY**  
**COLLEGE OF LAW**

# Criminal Law Problem 3

## (courtesy of Neil Kaplan)

### Self Defense?

A hooker in a hotel stabs and kills her john. She did not know the john before. She claims self-defense running a classic "disappointed john" defense. Forensic evidence strongly refutes that and tends to prove she killed him when he caught her trying to steal his wallet literally with his pants down. Defense makes Brady request. The john had a prior criminal record for violence.

Do you have to turn the record over to the defense?



THE UNIVERSITY OF UTAH  
S.J. QUINNEY  
COLLEGE OF LAW

# Criminal Law Problem 3

## (courtesy of Neil Kaplan)

### Self Defense?

Do you have to turn the record over to the defense?

DA determined not to turn over evidence because prior record of violence would not have been known by defendant and therefore was not relevant to guilt. Upheld by U.S. Supreme Court in *United States. v. Agurs*, 427 U.S. 97 (1976).



THE UNIVERSITY OF UTAH  
S.J. QUINNEY  
COLLEGE OF LAW

# Flipped Classroom: Legal Profession (Prof. Linda Smith) Model Rules 3.6 – 3.9

<https://youtu.be/atlu9wDAHp8>



THE UNIVERSITY OF UTAH  
**S.J. QUINNEY  
COLLEGE OF LAW**

# **Advocacy, Part 2**

Rules 3.6 - 3.9





THE UNIVERSITY OF UTAH  
**S.J. QUINNEY  
COLLEGE OF LAW**

# Model Rule 3.8

Recently amended to require prosecutors to take action if they learn a convicted defendant is actually (factually) innocent.

Utah has not adopted the amendment. Why? Should it?



THE UNIVERSITY OF UTAH  
**S.J. QUINNEY  
COLLEGE OF LAW**

Thank You! – Any Questions?

