



# Working With Victims in Criminal Prosecutions

- ERIK M. SCRAMLIN, JD
- Attorney-Advisor (Instructor)
- Tactical Legal Solutions, LLC
- [TacticalAttorney.com](http://TacticalAttorney.com)

TACTICAL

# Disclaimer

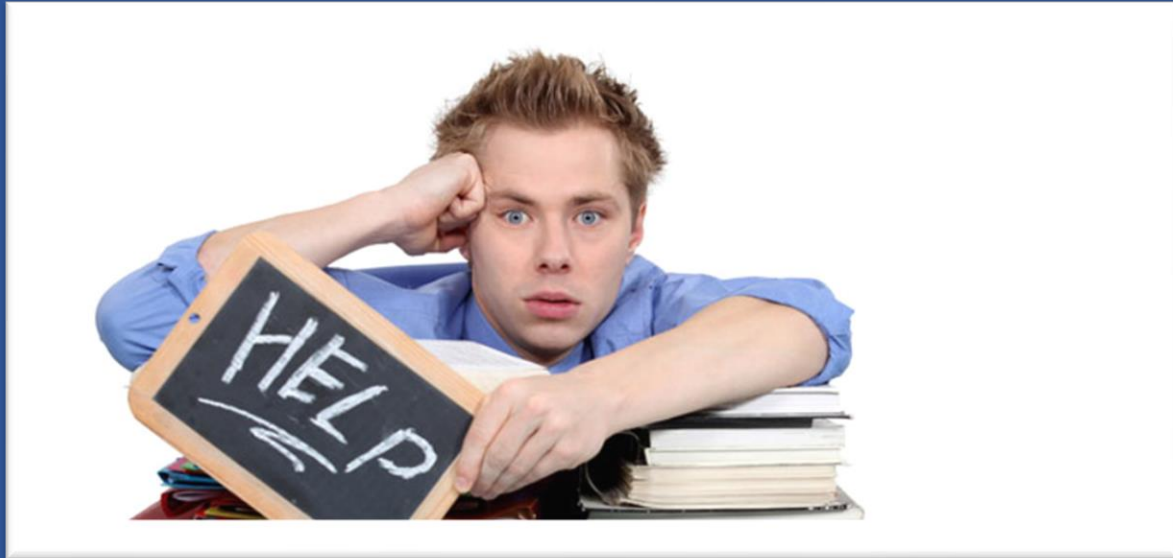
- **The information provided in this course does not, and is not intended to, constitute legal advice; instead, all information, content, and materials are for general informational purposes only.**
- **You should contact your attorney to obtain advice with respect to any particular legal matter. No attendee should act or refrain from acting on the basis of information in this presentation without first seeking legal advice from counsel in the relevant jurisdiction.**
- **You should consult with your city attorney, county attorney, district attorney or personal attorney regarding any information contained in this presentation.**





**TACTICAL**  
ATTORNEY





**Met 15 minutes  
before trial**

**VS**



**Met weeks  
before trial**

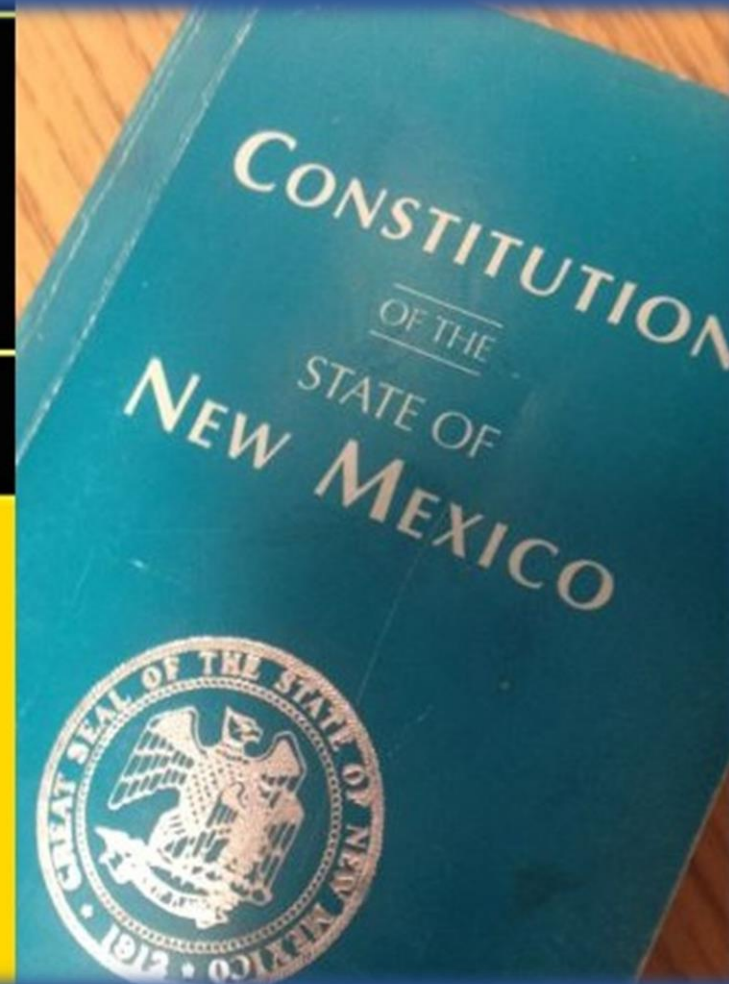


**TACTICAL  
ATTORNEY**

# Victims of Crime Act

## Constitution of the State of New Mexico

(Adopted January 21, 1911)





**I want to share  
some of my  
experiences**

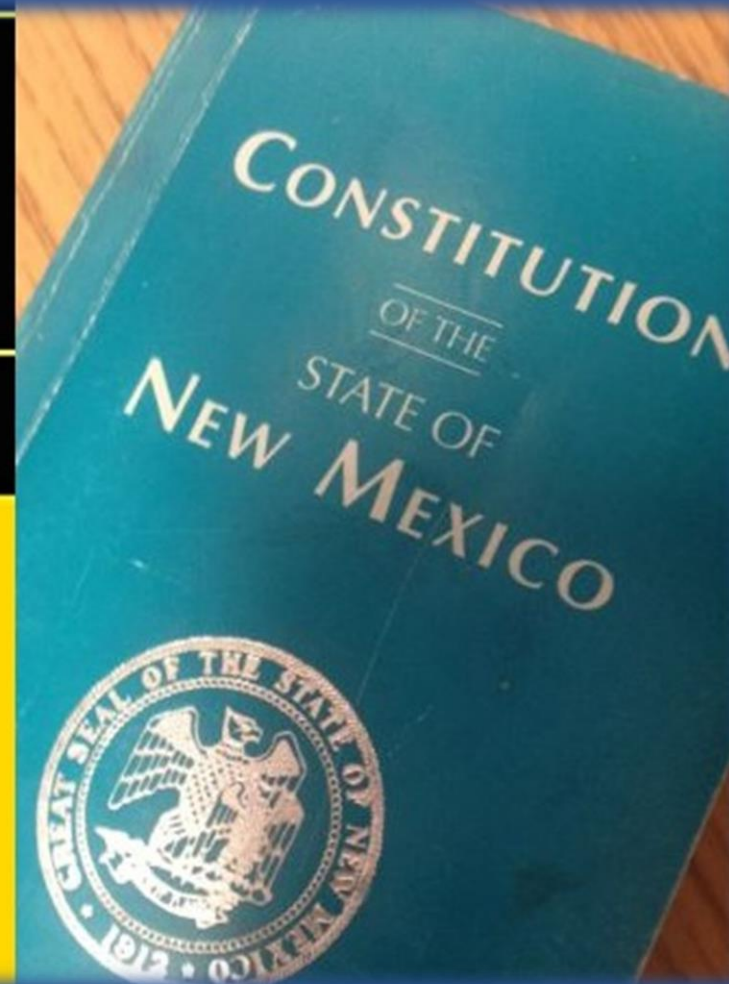
**What worked  
and what did  
not work**



# Understanding The Victims of Crime Act

Constitution  
of the  
State of New Mexico

(Adopted January 21, 1911)





# Article II, Sec. 10

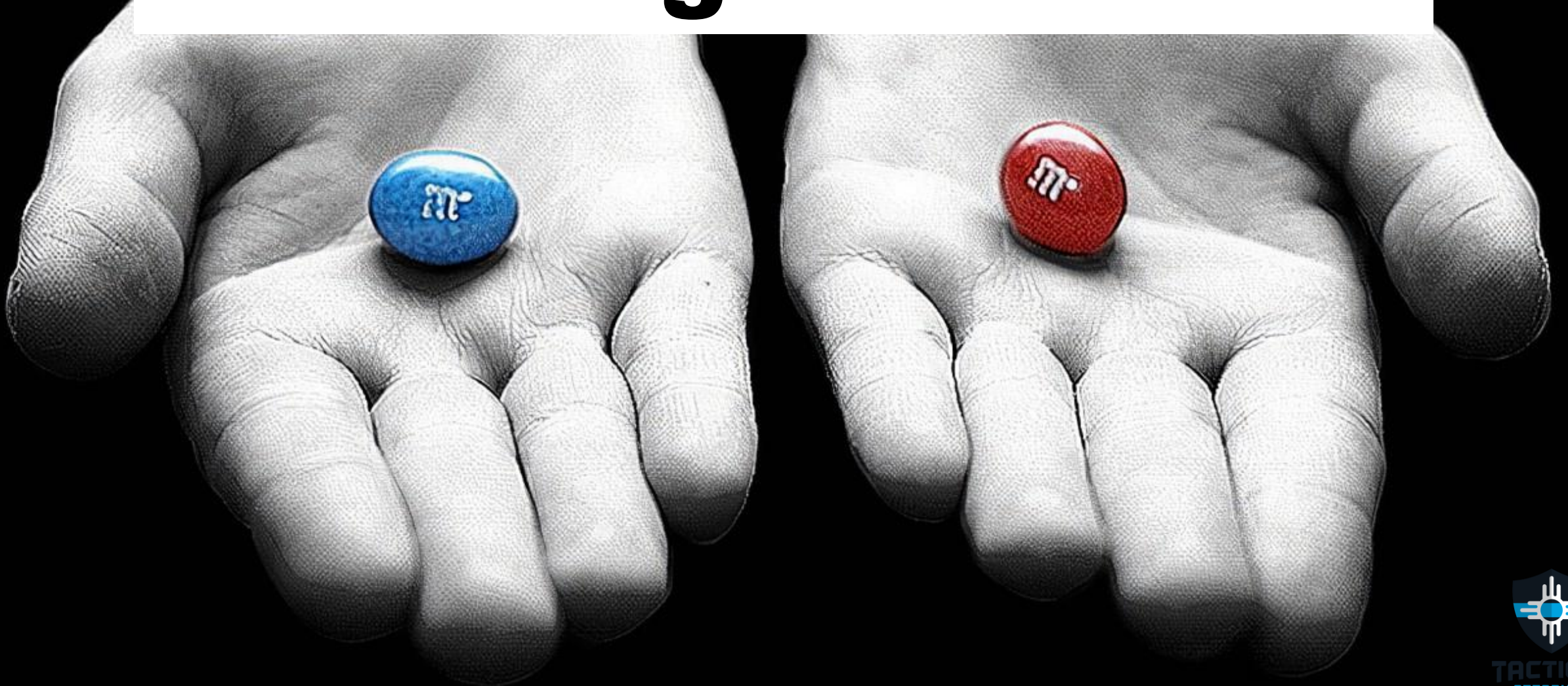
- **Codified in 31-26-1**
- **Applies to the prosecution team**



# Victims of Crime Act



# Choice is Essential to Being Human



# Who is a Victim?

- **31-26-3 Definitions**
- **(B) Defines “criminal offenses”**
- **(D) & (F) Defines victim and family member.**



# Important Rights

- **31-26-4**
- **Treated with fairness and respect**
- **Protection from the accused**
- **Attend proceedings**
- **Confer with the prosecution**



A scenic sunset over a rocky coastline. The sun is low on the horizon, casting a warm orange and yellow glow across the sky and reflecting on the water. The sky is a mix of blue and orange, with some clouds. The foreground is filled with large, smooth, dark rocks. The text 'I am NOT a victim' is overlaid in a white, stylized font with a black outline.

I am NOT a victim

anymore

I'm a SURVIVOR

# A Higher Calling



# **Meet the Victim(s) Early in the Process**

**Shows the victim that someone cares and will listen to their concerns**

**Establish rapport which becomes more difficult when you make them wait**

**Lay out the ground rules and boundaries early on**





# **Establish Ground Rules and Boundaries**

**31-26-5 – Requirements  
for victim**

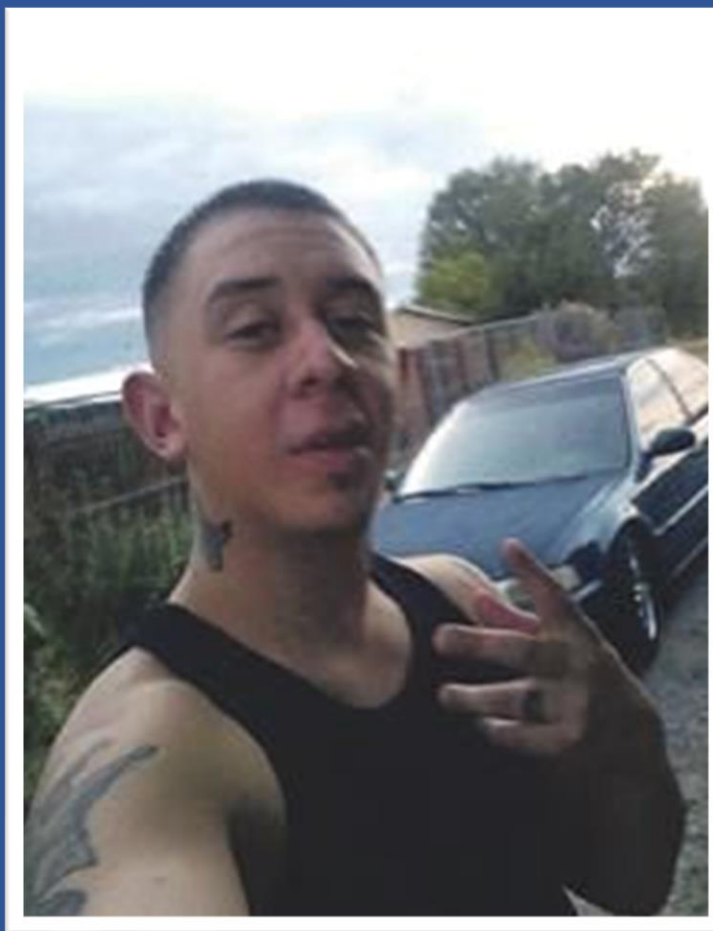
**Remember to give at  
least a sense of control**

**Clearly establish what is  
expected of each party and do  
not make unrealistic promises**

**What are some dangers  
of failing to establish  
boundaries?**



**Juanito Martinez murdered  
August 5<sup>th</sup>, 2012, in Chimayó**

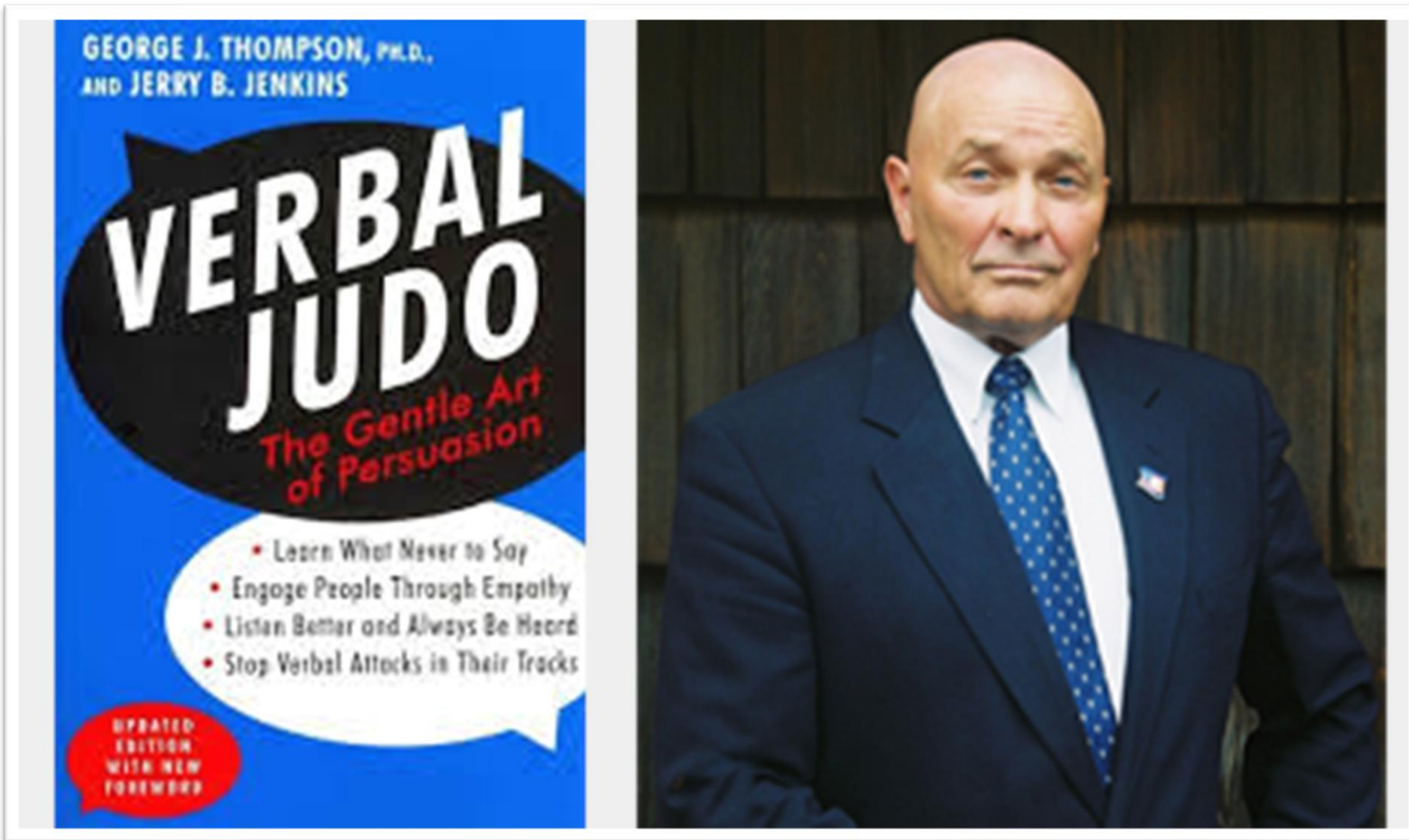




- 1. Explain**
- 2. Listen**
- 3. Empathize**

**The angry victim is easier to diffuse early on in the process**





- 1. Explain**
- 2. Listen**
- 3. Empathize**

# **William Jimerson Murdered December 18<sup>th</sup>, 2017 in Rio Chama**



# Choose Your Words Carefully



**VS**





**1. Give the victim(s) a sense of control over the outcome**

**2. Plea offers**

**3. Hearings and statements**

# Dixon, NM








## **Discussing Plea Offers**

# 31-26-4(F) - Victim has the right to “confer” with the prosecution

**confer** verb

 Save Word

con·fer | \kən-'fər  \

**conferred; conferring**

**Definition of confer**

*intransitive verb*

: to compare views or take counsel : CONSULT



**Promised to  
discuss plea**

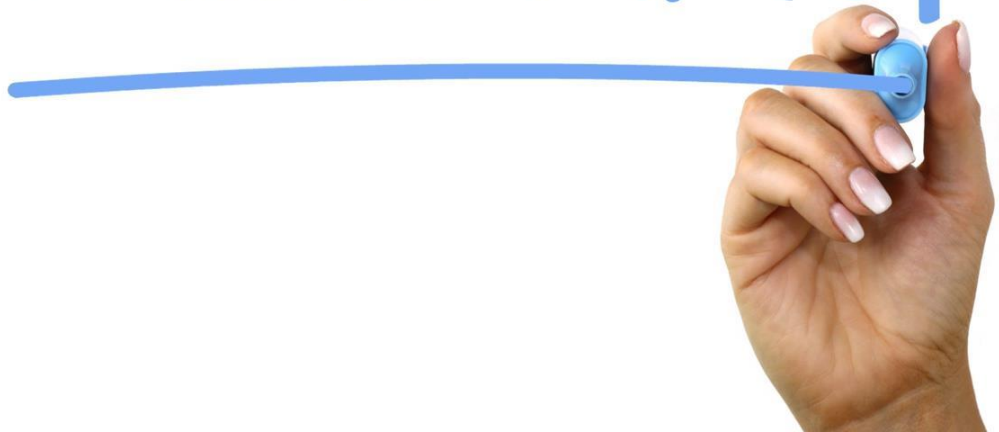
**We want the  
victim to agree**



**LET'S  
DISCUSS**



# MEETING



# Explaining why the plea is necessary is the key



# presentation zen

**Explaining why the plea  
is necessary is the key**



# Do Not Death by PowerPoint Them

UJI-CRIMINAL  
UJI 14-2206

Supreme Court Approved  
November 1, 2020

1 **14-2206. Aggravated assault on a peace officer; attempted battery or threat or menacing**  
2 **conduct with intent to commit a felony; essential elements.<sup>1</sup>**

3 For you to find the defendant guilty of aggravated assault on a peace officer with intent to  
4 commit \_\_\_\_\_<sup>2</sup> [as charged in Count \_\_\_\_\_]<sup>3</sup>, the state must prove to your  
5 satisfaction beyond a reasonable doubt each of the following elements of the crime:

6 1. The defendant intended to commit the crime of battery against \_\_\_\_\_  
7 (*name of peace officer*) by \_\_\_\_\_<sup>4</sup>;

8 A battery consists of intentionally touching or applying force in a rude, insolent, or angry  
9 manner.<sup>5</sup>

10 2. The defendant began to do an act which constituted a substantial part of the battery  
11 but failed to commit the battery;

12 OR

13 1. The defendant \_\_\_\_\_ (*describe unlawful act, threat or menacing*  
14 *conduct*);

15 2. The defendant's conduct caused \_\_\_\_\_ (*name of peace officer*) to  
16 believe the defendant was about to intrude on \_\_\_\_\_'s (*name of peace officer*)  
17 bodily integrity or personal safety by touching or applying force to \_\_\_\_\_ (*name*

## Intent

## Angry manner

## Began to do an act...

# VS



TACTICAL  
ATTORNEY

# Do Not Death by PowerPoint Them

## Man Indicted On First Degree Murder

By Wheeler Cowperthwaite SUN Staff Writer Feb 1, 2018 Updated Feb 8, 2018 1



Gabriel Sanchez walks into court, Dec. 22, for a pre-trial detention hearing in Santa Fe. A Rio Arriba grand jury indicted him, Jan. 24, on charges of first-degree murder, aggravated burglary and tampering with evidence.

(SUNfoto by Wheeler Cowperthwaite)

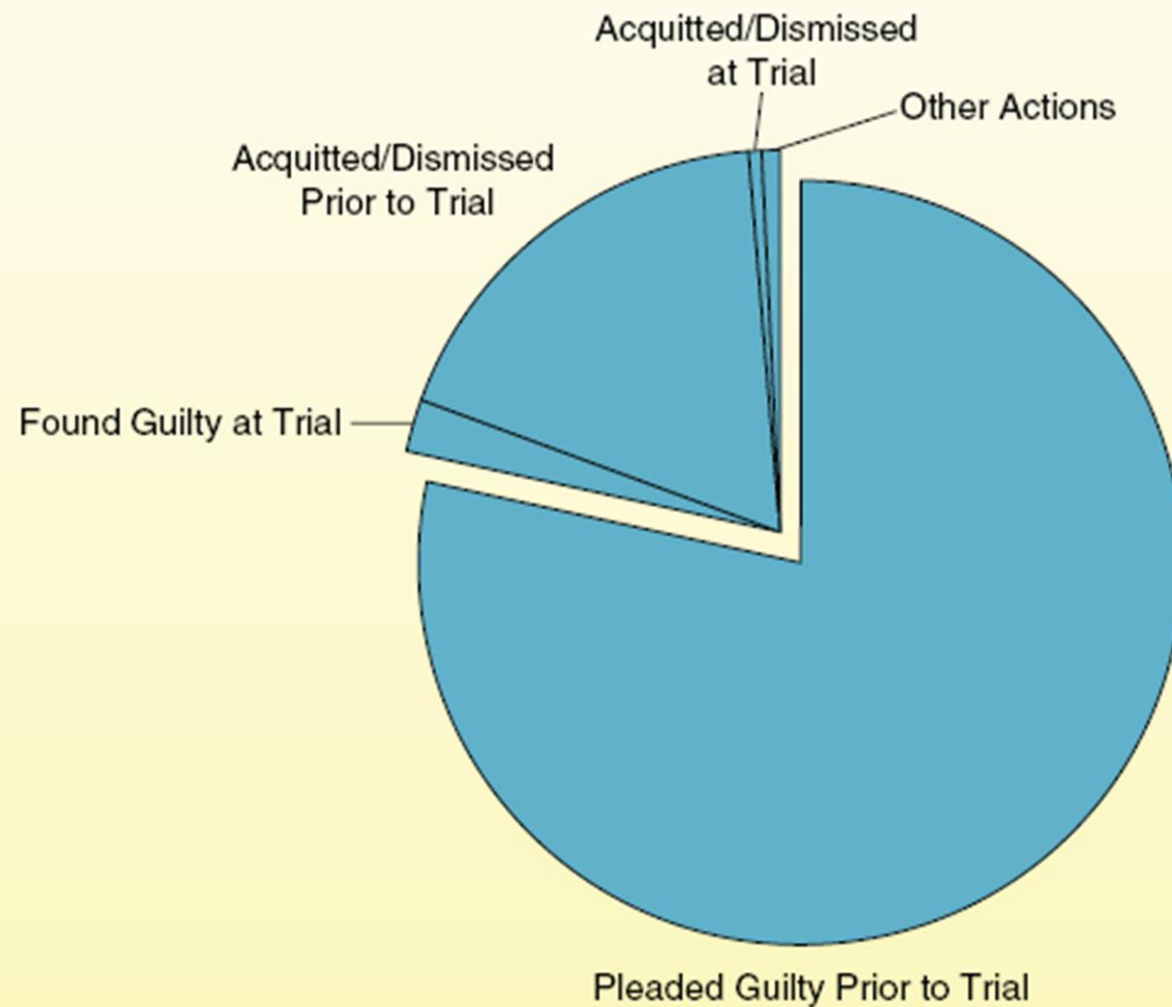


TACTICAL  
ATTORNEY



## Most Felony Cases Resolved By Pleading Guilty Prior to Trial

*Felony Dispositions, 2009-10*



# Explain the Consequences



# Time to Consider

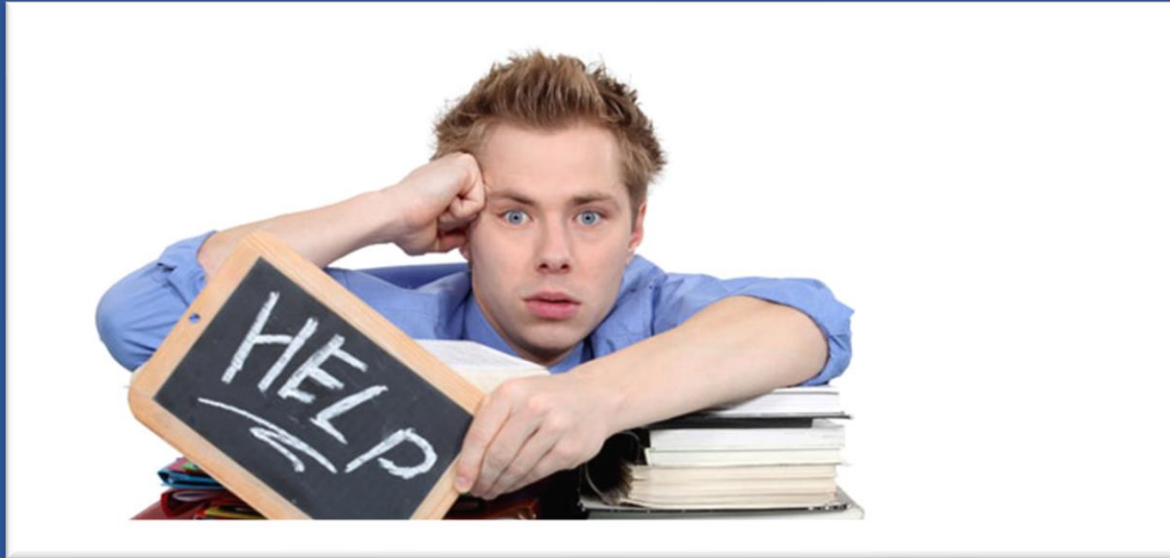
---



# Trial Prep



# Who is More Prepared?



**Met 15 minutes  
before trial**

**VS**



**Met weeks  
before trial**



“Every battle is won  
**BEFORE**  
it is fought.”

Sun Tzu



TACTICAL  
ATTORNEY

# Preparation vs. Coaching



VS



# Witness Prep

- **Explain the theme and theory**
- **Prepare witness for the “you met with the DA” question**
- **Advise on courtroom testimony skills**





# Credible Witness Characteristics?



# Tell the Truth



# **What Makes Testimony Convincing?**

- **Listen to the question**
- **Give audible responses**
- **Do not volunteer information**
- **Do not look to the prosecutor for assistance**

# Testimonial Skills

A photograph of a courtroom interior. The room features extensive wood paneling on the walls and a wooden bench for the judge. In the foreground, there are wooden chairs for the jury. An American flag is visible in the background. The text is overlaid on white boxes.

**Do not address  
questions or  
concerns to the  
judge**

**I don't remember vs.  
I don't recall**

**Handling objections  
and inadmissible  
evidence**

**Make eye contact  
with the jury**

# Cross Examination

- **“Wouldn’t you agree”**
- **Partially true questions**
- **Repetitive and compound questions**
- **Possibilities**



# Mock Trials

A conference room with a large wooden table, several chairs, water bottles, and a window with curtains. The room has light green walls and a patterned carpet. There are framed pictures on the wall and a window with sheer curtains and a striped curtain.

**Practice for the witness**

**Handling cross exam**

**Do we need to plea?**

# Working with Children



# Child Victims

- **Fine line between coaching and preparing for testimony**
- **Victim Advocates are a huge help here**
- **Frequent meetings**
- **Courtroom field trips**
- **No mock trials but mock testimony is ok**





# Preparing the Family for Trial

---



# Preparing for Trial

- **Disturbing images – how are we going to handle this?**
- **VAs and officers must help here**
- **Courtroom etiquette**



“Every battle is won  
**BEFORE**  
it is fought.”

Sun Tzu



TACTICAL  
ATTORNEY