

IV. Forensic Exercise: Negotiation 101

The following exercise is based on the presumption that the defender has already conducted a thorough investigation, assessed the strengths and weaknesses of the case and has from there determined that some alternative to formal court processing, a diversion program, is a promising avenue to pursue.

PART 1: IDENTIFYING AND UNDERSTANDING THE CLIENT'S POSITION

Your client, Ronald Gibson, has been charged with one count of Felony Theft for stealing more than \$3,000 from a safe in the attic of his mother's home. Ronald is a 15-year-old student in the ninth grade at East High School. He is a special education student and has experimented with drugs in the past. He is uncertain about whether he is gay. Ronald is a black male with permed hair and dresses very effeminately. Because of his poor performance in school and his habit of staying out late at night, Ronald's relationship with his single mother, who works long hours, has been rapidly deteriorating.

Ronald has no previous contact with the juvenile court, and you have learned from his special education teacher that Ronald talks about his mother a lot and clearly loves her, but believes that she does not understand him. He tells you that he cuts school because the work is hard for him and he is embarrassed. Ronald has positive social factors, including his frequent attendance at a local LGBTQ-friendly church and recreation center and his involvement with modeling, fashion and design.

Ronald has stayed with various other relatives (aunts, a grandmother, a family friend) in the past, but none of these placements has lasted beyond two months. Ronald's father has never been a stable influence in his life.

During your conversations, Ronald has expressed differing attitudes about his mom and the theft. He is generally remorseful about taking the money; at

one point he even broke down and cried. At another point, he became angry with his mother, telling you that he thinks she is exaggerating the amount missing so she can get money from someone else. In all discussions, he just cannot believe that he spent \$3000 and thinks a more likely figure is \$300. He said that he found the money one day when his mother told him to go to the attic to get a box. Ever since then, he has taken a few dollars here and there. He spent the money on clothes, a flattening iron and gifts for his friends.

Ronald loves his mother and does not want to be excluded from the family or go to detention. After extended conversations, he acknowledges that he has been disrespectful and disobedient a lot lately, and he knows that his mother is fed up and probably "needs a break" from him. He also knows that he has to turn his behavior around to "win his mother back." He initially tells you that he just wants to stay home and turn things around himself. He does not want tutoring, family or individual counseling, and he does not want to leave his mother's home – not even to create a short respite for his mother.

You have already spoken briefly to Ronald's mother (before the substantive negotiations), and she is livid about the amount of money taken. She thinks that putting him in the system will straighten him out, and she is tired of dealing with him. In addition, you have spoken to the prosecutor, and she has made it clear that if

Ronald's mother thinks Ronald should be in detention, then as prosecutor she will advocate for it zealously.

Ronald has given you permission to talk to his mother and the State about resolving the case informally. You are scheduled to meet with his mother. Before you do, answer the following questions:

- A. What is Ronald's position?
- B. What are Ronald's likely real and immediate interests?
- C. What do you think may be driving Ronald's position right now?
- D. How can Ronald help you figure out what his mother might want?
- E. What information, insight and advice do you want to offer Ronald as you undertake the negotiation process?

mother and the State about resolving the case informally. You are scheduled to meet with his mother. Before you do, answer the following questions:

- F. What is Ronald's position?
- G. What are Ronald's likely real and immediate interests?
- H. What do you think may be driving Ronald's position right now?
- I. How can Ronald help you figure out what his mother might want?
- J. What information, insight and advice do you want to offer Ronald as you undertake the negotiation process?



PART 2: MEET THE PARENTS

The defenders in this exercise should assume that they have all of the information contained in **PART 1** of this exercise. The participants playing the role of the mother should assume that she does not know any of the confidential information the attorney obtained during his or her communications with Ronald.

CONFIDENTIAL INSTRUCTIONS/INFORMATION FOR DEFENDERS

You have been assigned to play the role of defender. Please read these facts and be ready to negotiate with the mother. Those participants playing the role of mother should not read this fact pattern.

You are meeting with Ronald's mother to try to resolve the case informally. You and Ronald agree that they might need a break from each other and that Ronald's interests would be better served through a diversion program and support from his family and teachers, rather than entering delinquency proceedings and being labeled as an offender. Ronald has given you permission to tell his mother how bad he feels about all of the trouble he has caused her. He is willing to pay her back the money he took, but still believes that she is really exaggerating the amount; he does not think he should or could be in a position to pay the full amount back.

As you prepare to speak with Ronald's mother, think about the following questions. You will be asked to revisit them after your meeting with her.

A. How do you explain what Ronald ultimately wants?

- B. What is mom's position on how this matter should be handled?
- C. What are the mom's likely real and immediate interests?
- D. Can you think of any creative options for resolving the conflict between Ronald and his mother? What are some alternatives that would get Ronald out of the juvenile justice system (either now or before trial)?
- E. What barriers are likely to get in the way of an agreement between mom and Ronald?

(e.g., How does mom feel right now? What is she upset about right now?)

- F. What can be done to get around these barriers?
- G. As the juvenile defender, how would you attempt to reach a consensus between mom and Ronald?
- H. What compelling arguments can you make to get Ronald's mother to go along with your recommended course of action?

CONFIDENTIAL INSTRUCTIONS/INFORMATION FOR MOTHER

You have been assigned to play the role of mother. Please read these facts and be ready to negotiate with the juvenile defender. Please base your negotiation with the defender only on the information provided below. Those playing the role of defender should not read this fact pattern.

You are a single mother with three teenage children; Ronald is the middle child. You have become increasingly frustrated with his behavior over the past several months: he stays out late, skips school, talks back to you and in general seems out of control. The theft from the box in the attic is the final straw. You cannot believe that he stole from you and find the amount especially appalling. You are sure it is Ronald because you normally lock the attic, and he is the only child you have sent up there in the last several months. In addition, he has been wearing new clothes lately and has no source of income.

You do not think Ronald has expressed any remorse, and you think he needs to be punished. The prosecutor has explained to you that Ronald can be taken out of your home and sent to a

facility where he will have to own up to what he did. The prosecutor also told you that this would be an opportunity for Ronald to get some counseling and other help. The prosecutor also mentioned that there might be a way to make Ronald pay the stolen money back. This sounds good to you, because you are at your wits' end.

Finally, you are confused by Ronald's recent appearance and behavior. He has been dressing and talking like a girl and has been going to some center that appears to encourage boys to be gay. Your friends have made side comments about Ronald. You are frankly baffled about his new activities at this new church/center (he stopped going to your church a while ago). This subject makes you uncomfortable, and so you will not raise it directly (or even at all if the conversation does not seem to facilitate it), but you will discuss the issue if the attorney brings it up.

Even though you are frustrated and think the prosecutor's approach makes the most sense, you are willing to hear the defense attorney out. You should ask questions that you think a parent in this situation would ask. You can make up facts that would be consistent with the fact pattern.

Often

child
need
themselves.



when parents prosecute, there may be something besides the alleged offense motivating them (*e.g.*, frustration over other behavior, conflict between the and a parent's boyfriend/girlfriend, other family dynamics, etc.). Defenders to be especially sensitive to this, because the parents may not be aware of it

Practice Tip

Identifying and addressing the underlying source of conflict is a path to both resolving the case and reducing the chance of future parent-initiated complaints.

PART 3: GETTING TO YES WITH THE PROSECUTOR

CONFIDENTIAL INSTRUCTIONS/INFORMATION FOR DEFENDERS

You have been assigned to play the role of defender. Please read these facts and be ready to negotiate with the prosecutor based on the information below, as well as the information from the previous exercises. Those playing the role of prosecutor should not read this fact pattern.

The prosecutor has given you the discovery in the case. Although you have not started formal plea negotiations with this prosecutor, at an earlier court date the prosecutor said, “You know, that theft case is really tragic. The mom is very upset. She had been saving that money for some surgery that she really needs. I also heard your client is out of control at home. I think I am going to file a motion to have him detained. I will send you a plea offer so we can get this case moving.”

You have conducted a full investigation into this case and think it boils down to the mom versus Ronald. Even though you do not think this is a slam-dunk for the State, your client would like to avoid a formal adjudication. You should factor

You know that this prosecutor cares a lot about victims and believes that young people should face the consequences of their behavior. In planning for your negotiations with the prosecutor, answer the following questions. You will be asked to revisit these after the negotiation.

- A. What is the government’s position right now with regard to detention and resolution of the case?
- B. What are the government’s likely real and immediate interests?
- C. What barriers are likely to get in the way of an agreement between you and the prosecutor regarding what you and your client want to happen?
- D. What can be done to get around these barriers? What compelling arguments can you make to get Ronald’s mother to go along with your recommended course of action?

what you learned in the previous exercises into this one.

**CONFIDENTIAL INSTRUCTIONS/INFORMATION
FOR PROSECUTORS**

You have been assigned to play the role of prosecutor. Please read these facts and be ready to negotiate with the juvenile defender based only on the information below. Those playing the role of defender should not read this fact pattern.

At an earlier court appearance, you said to the defender, “You know, that theft case is really tragic. The mom is very upset. She had been saving that money for some surgery that she really needs. I also heard your client is out of control at home. I think I am going to file a motion to have him detained. I will send you a plea offer so we can get this case moving.” The defender has asked to discuss plea options.

You care a lot about victims and believe that young people should face the consequences of their behavior. You have a heavy caseload and would like to settle this case; however, you (and your boss) need to feel that the youth is appropriately punished for his crime. He has really jeopardized his mother’s finances and his family’s stability. You have a strong ethos that “you should never bite the hand that feeds you.” That being said, if the juvenile defender convinces you that Ronald can truly be rehabilitated, you may be willing to give him a chance, especially since this is a nonviolent, intra-family matter. You do not want to take any drastic actions that will have long-term negative consequences on Ronald’s life.

You also realize that, despite your confidence, your case may not be that strong. It is based on purely circumstantial evidence. There are actually three teenagers and one adult child living in the house with Ronald’s mother. No one saw Ronald take the money. The case turns primarily on three things: (a) Ronald’s mother tells you that Ronald is the only person she has ever sent up to the attic to get anything (a box of old papers she needed to go through); (b) she always keeps the door to the attic locked, except that one day she sent Ronald up there; and (c) Ronald’s mother noticed Ronald buying a lot of new clothes. Notwithstanding these facts, the attic is completely accessible to everyone who lives in the house and probably to any guest who comes over, and you know one of the older children is a drug user. You are also concerned about the fact that there is no formal record or accounting of how much money was originally in the attic. The mom still has \$5000 left in the attic after she discovered the theft.

The usual plea bargain in this case is for the juvenile to plead guilty to one count of misdemeanor theft, if the mother is on board. The government will dismiss the felony; will agree not to seek detention pending disposition; will not oppose six months of probation if recommended by the probation officer; and will recommend around 50 hours of community service. You are prepared to offer this eventually, and you will insist upon restitution. You know that the juvenile defender probably wants diversion, but you are extremely reluctant to even think about that, because of the large sum of money involved and the financial impact the theft has had on the family. You will have to have a strong justification for agreeing to diversion.





