



Washington State
Office of Public Defense

Winning the Case out of Court through Negotiations

Juvenile Defense Training Academy
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Nicole McGrath,

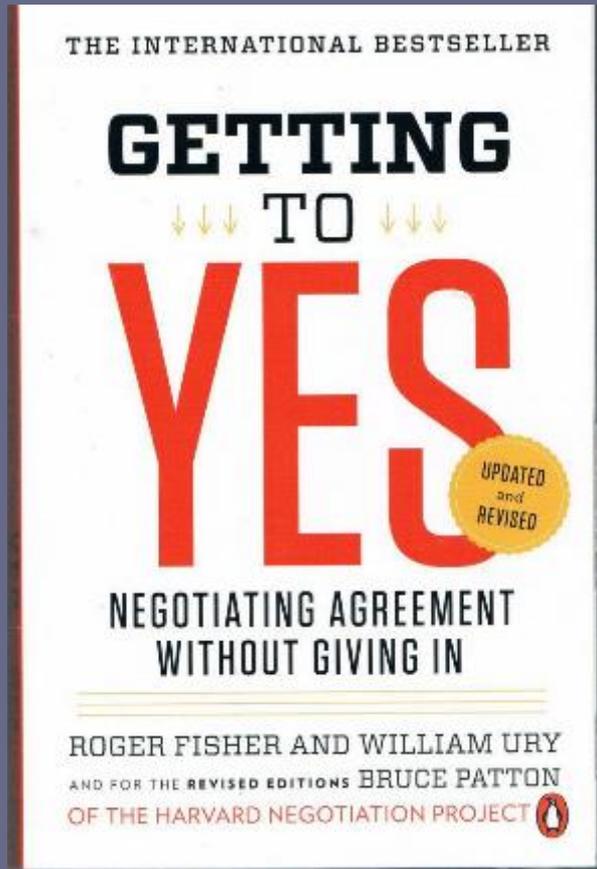
Law offices of Nicole McGrath, PLLC

George Yeannakis,

Washington State Office of Public Defense

Negotiation: a Basic Means of Getting What You Want From People

- Prosecutors
 - Probation Officers
 - Judges
 - Guardians/Parents
 - Client
 - School Officials
 - Others
- All stages of a proceeding
 - Initial Charging Decision
 - Detention
 - Plea bargaining prior to adjudication
 - Disposition
 - Motion to Revoke
 - Response to a probation violation
 - Reentry



Approaching and Preparing for Negotiation

Roger Fisher & William L. Ury,
“Getting to Yes: Negotiating
Agreement Without Giving in”
(Bruce Patton ed., 3d ed. 2011)

Positional Bargaining



Principled Negotiation



Fundamental Principles

1. Separate the people from the problem
2. Focus on interests not positions
3. Invent options for mutual gain
4. Insist on objective criteria
5. Know what your alternatives are

1. Separate the People from the Problem

- Separate relationship issues from substantive issues
- Your personal relationship should not affect how you approach the solution
- Focus on communication with the other party
- Listen attentively to the other party

2. Focus on Interests and Not Positions

- Interest: What people *really* want
- Position: What people *say* they want and need
- Focusing on interests takes the focus off one side winning or losing

3. Invent Options for Mutual Gain

- Be Creative
- Look for new solutions to problems they may not have thought of before
- Victim offender mediation



4. Insist on Objective Criteria

- If available, some outside objective criteria for fairness can simplify the negotiation process
- Cases with similar fact patterns
- Possible dispositions
- Gives the negotiation legitimacy

5. Know What your Alternatives Are

If you do not know what the viable alternatives are within a given case, you may agree to something that is not in your client's best interest.



Determining Client's Interests

FACT PATTERN: Client is 15 year old Ronald Gibson, who has been charged with one count of Theft 2 for stealing more than \$3,000 from a safe in the attic of his mother's home.

Determining Client's Interests

- 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?

Ethical Considerations of Working with Other Stakeholders



Make it clear to client that you are still pursuing their expressed interest when dealing with others

Know Your Ethical Obligations

*Remain Client Focused and
Keep Client Interests in Mind*

- Rule 1.2 - [Scope of Representation](#)
- Rule 1.3 [Diligence](#)
- Rule 1.4 - [Communication](#)
- Rule 1.6 - [Confidentiality](#)

Know Your Ethical Obligations

*Remain Client Focused and
Keep Client Interests in Mind*

- Rule 1.7 - [Conflict of Interest](#)
- Rule 2.1 - [Advisor](#)
- Rule 4.1 - [Truthfulness in Statements to Others](#)
- Rule 4.3 - Dealing with Unrepresented Person

What does client want?

What does the other side want?

What is the other side really interested in?

What Can You Disclose?



- What is the extent of your authority granted by your client?
- How can the other side's interests be addressed?
- How do we make a compelling presentation of client's interests and justifications?

Dealing with Prosecutors



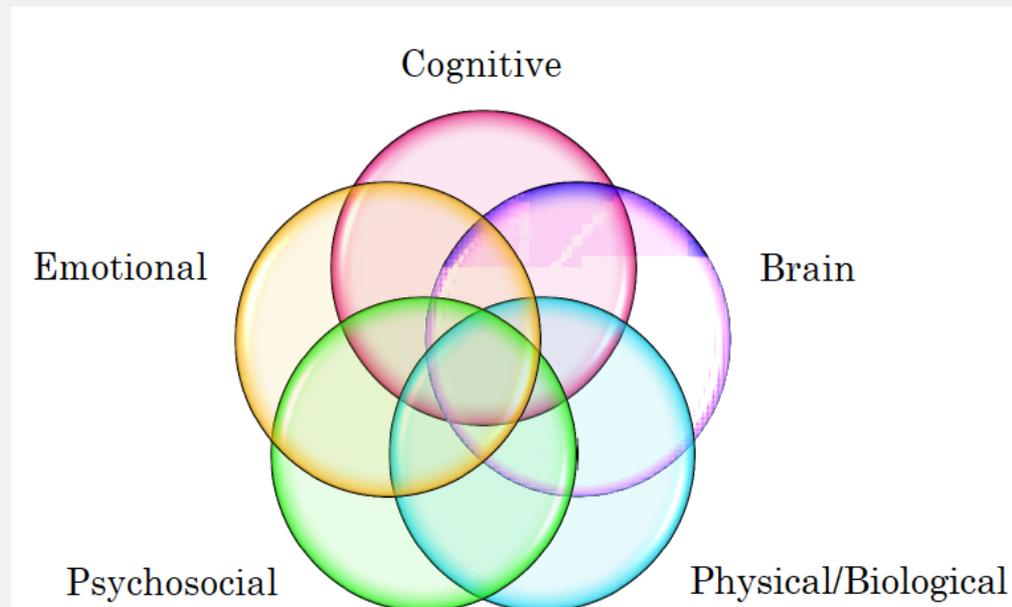
Emphasize Client's Strongest Points

- School strengths
- Athletic accomplishments
- Church or community involvement
- Discipline administered by parents/guardians



Tether Your Presentation To:

- Rehabilitative nature of proposed solution
- Adolescent development



Tether Your Presentation To:

- Be creative



- Talk to the victim if appropriate, to get their perspective

Be prepared. Have a full command of the:

Law

Case law

Facts of the case

Demonstrate a commitment
to each client

Think like the Prosecutor and create a plan

Negotiating with Prosecutors

- Learn the office politics and policies
- Be familiar with the prosecutor's office chain of command and levels of decision making power
- Know the prosecutor's interests, positions and goals



Plea Bargaining

- Objective: Figure out what the prosecutor really wants and how to give it to him/her without sacrificing what client wants
- Ask what the prosecutor views as a satisfactory disposition of the case
- Put yourself in the shoes of the prosecutor in considering your what their interests are

Plea Bargaining

- Talk about the range of options early on with your client so you are prepared to advocate for the best deal consistent with the youth's goals and the authority they have given you
- Be careful to not give away too much of your defense theory, before a deal is reached, defenders should make no commitments or indicate the client wants to admit

Where else can negotiation skills be helpful?

- Negotiating stipulations
- Seeking alternatives in a disposition plan
- Diversion
- Advocating against a transfer to adult court
- Dealing with Probation

Negotiation Exercise

State v. Ronald Gibson

Theft 2, for stealing more than \$3,000 from a safe in the attic of his mother's home.



<http://njdc.info/our-work/listservs/>
<https://gaultat50.org/get-involved/sign-on-statement-of-principle/>

Interacting with Parents/Guardians



"He's talking now, but only through his attorney."

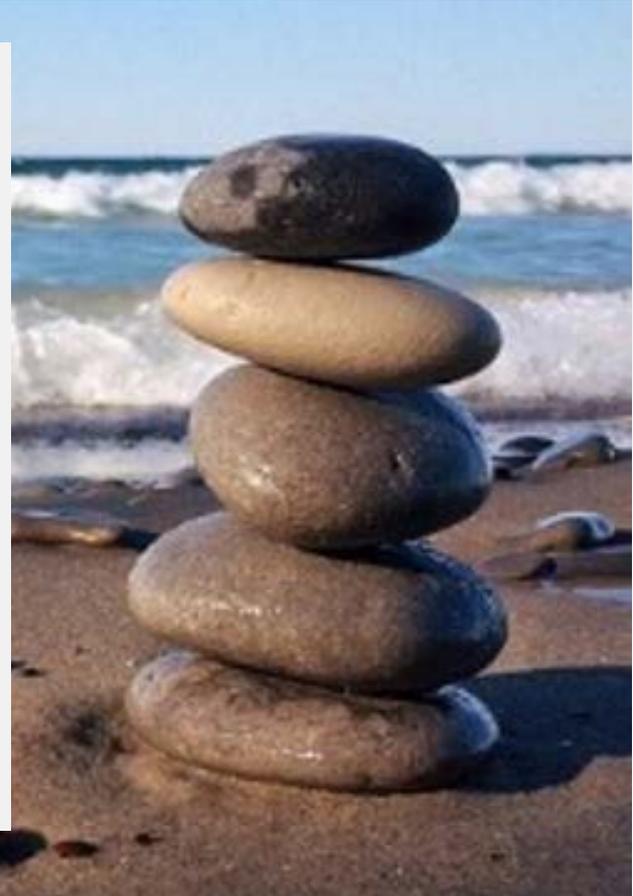
Interacting with Parents/Guardians

- Parents/guardians who feel engaged in the process will more likely be supportive and helpful
- Parents/guardians excluded from the court process may be unwilling to help or support the process

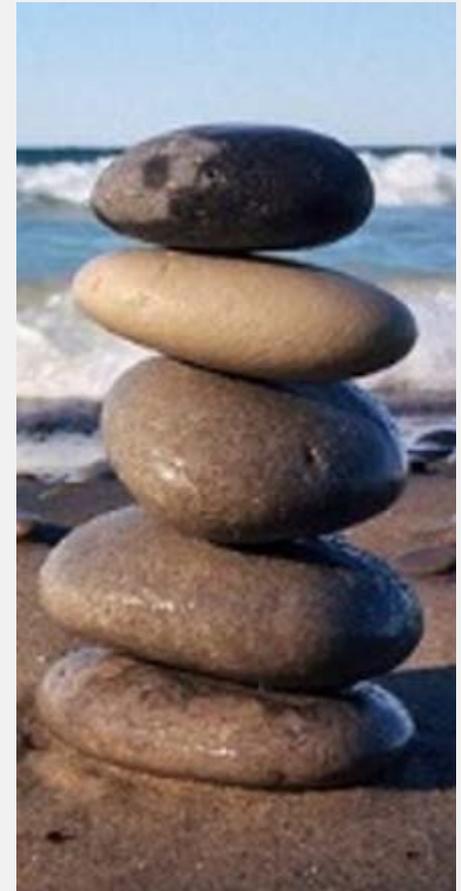
Balancing Test: Client's Autonomy v. Adult Support

Helpful hints:

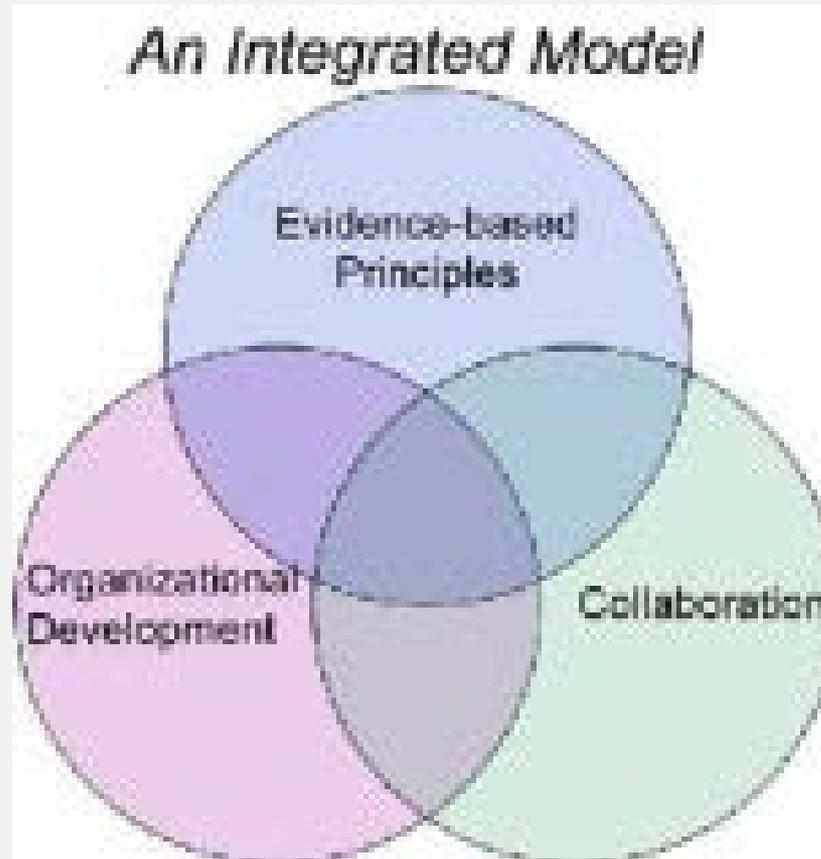
- Clearly identify youth as the client
- Clearly advise parents that the youth is the final decision maker of all key decisions



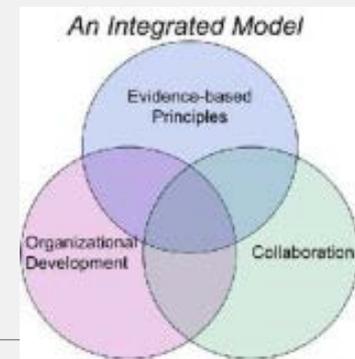
- Ensure adults understand that the attorney is an expressed interest role
- Ensure parents understand the confidentiality component
- Explain purpose of a hearing, time lines and possible outcomes
- Explain to the adults their role in the process



Negotiating with Probation Officers



Negotiating with Probation Officers



- Become familiar with your probation officer
- Understand the probation chain of command
- Become familiar with probation subject matter
- Regular communication with probation officer is essential
- Sometimes useful to think of yourself as a mediator between the youth and probation

Probation

- Establish a rapport and good working relationship with probation
- Have a plan with your client's expressed interests in mind
- Act as a mediator between client and probation if possible
- Regular communication with the probation officer

Interacting with Judges

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"Bad news, we drew Judge Rover."

Interacting with Judges

- What are some advantages of becoming familiar with a judge's particular pre-dispositions and attitudes?
- What are the disadvantages?
- Key: use your knowledge of the judge to in a way that allows you to advocate for your client without alienating the judge

Be prepared. Have a full command of the:

Law

Case law

Facts of the case

Demonstrate a commitment
to each client

Think like the **Judge** and create a plan

Remember the Role Public Safety Plays in the Judge's Mind

- Don't be afraid to lose forward
- Don't be afraid to appeal the judge

