***State v. Green***

**Confidential Information for the Assistant District Attorney**

You are an Assistant District Attorney (ADA) and have been assigned to handle a case against Matt Green, a former teacher and tennis coach at the local high school.

Mr. Green taught Spanish at the school for a few years, then quit to take a white-collar job at a local company. A tennis enthusiast, he continued to coach the high school’s tennis team. It became clear that a number of women on the team found him attractive and in several cases the feeling was mutual. Mr. Green knew that under state law teachers are not allowed to engage in sexual conduct with a student, whether or not that student is in one of their classes, and regardless of whether they have passed the legal age of consent, 16. He claims he did not know the law applies to persons who coach school teams whether or not they are teachers.

Mr. Green has said that while teaching at the school he had never pursued a relationship with a student. He did, however, begin a relationship with one of the tennis players a few years ago, but says he did not ask her out until the year after she graduated when they began a relationship that included sex. Mr. Green says he had broken up a few months before the incident that gives rise to this prosecution.

Police investigative reports provided the following information:

At the start of the current season Mr. Green told his players that it was okay to text him because he was no longer a teacher. He and a number of the female team members then began to flirt, through texts and at tennis practice. One girl on the team, Jane Fell, age 16, developed a strong crush on Mr. Green At some point Mr. Green told the team he was offering private lessons for players who wanted to improve their performance. Ms. Fell asked her parents if she could take lessons and they said they had no objection as long as the price was reasonable.

The first lesson was set for a Saturday morning. During the lesson Mr. Green touched her, rubbing the back of her neck, “correcting” her posture, and so on. After the lesson he offered to drive her home. When they arrived, she asked if he would like to have soda or a beer and to “hang out,” as her mother was working a Saturday shift and her dad was away. They stayed in the kitchen at first, but the conversation turned having sex and they went to her bedroom. Ms. Green turned on music and they began to kiss. Mr. Green took off his shirt and placed his hand on her thigh, but otherwise they remained clothed. At that point they heard the garage door open, because the mother had come home from work early. Mr. Green ran past Ms. Fell’s mother holding his shirt in his hand and drove away.

That evening Mr. Green and his parents came over to talk with the Fells. After some initial attempts at concocting a story, Mr. Green admitted to being in Jane’s bedroom, and said he was very sorry for this. Mr. Green’s mother asked the Fells, “What it would take for you to let this go?” The Fells believe this was an attempt to bribe them not to report what happened to the police.  In fact the parents contacted the police, who charged Mr. Green with one count of Attempted Sexual Battery (ASB). You also have the option to charge Mr. Green with greater or lesser offenses, with different penalties.

**Evidentiary/witness issues.** Jane Fell readily acknowledges that everything was entirely consensual. She says she would be willing to testify to what happened, but she cries whenever she talks about it and worries about the humiliation of describing what happened in a public courtroom. She appears to be acting under parental pressure and you are concerned that her willingness to testify will not hold up, especially if she realizes the effect of a conviction on Mr. Green.

Mr. Green appears to have “confessed” to the parents, but it is not clear that what he said is specific enough to support the charge of ASB, especially if jurors felt sympathetic toward him. Mr. Green doesn’t present like a sexual predator. He’s a handsome, likeable, young-looking 25-year-old with no criminal record. Ms. Fell also seems to be a normal teenager, unsophisticated, but clear that she had a crush on Mr. Green and was interested in a relationship.

**Interests/Concerns/Constituencies.** As an ADA, you have an obligation to the community, to crime victims, and to the law. You work frequently with the police and want them to know you are “on their side,” but you also suspect that the officers may feel some conflict over this case. At least one of the police officers has a son in his mid-twenties and pointed out that Ms. Fell was “of legal age.” He seemed to think it’s more about breaking a “school rule” rather than anything more serious; in fact, it’s the law, but he may have a point. Your boss, the District Attorney, holds an elected position but he would agree that ADAs have an obligation to treat all defendants, and all victims, fairly. You also know the defense attorney.

The case has garnered some local press attention, in part because it follows several other instances of teacher misconduct that have been publicized in the local media. On the other hand, you are concerned about Jane Fells. Ms. Fells seems to feel guilty and torn, but her parents seem bent on punishment for Mr. Green; while her parents might not see it, publicity about the case may be distressing to Ms. Fell.

**Statutory Constraints and Negotiating Flexibility**

Normally plea negotiations revolve around the crime(s) charged, the terms of the sentence, and the facts that will be stipulated.

*With respect to the charge(s):* There are several possible charges, including

* **Attempted Sexual Battery** (the current charge), which carries a penalty of 6 to 18 months in prison and up to a $5,000 fine; up to 5 years’ probation; and lifetime registration as a sex offender
* **Sexual Battery**, which carries 1 to 5 years in prison and up to $10,000 fine; up to 5 years’ probation; and lifetime registration as a sex offender.
* For these offenses, “battery” includes “any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person.”
* Conviction of Sexual Battery requires the defendant to register as a sex offender for life. Registration is a public record and must be renewed annually. People living within 1200 feet of the convicted offender are notified by mail of his presence in the neighborhood.
* Attempted Sexual Battery also requires lifetime public registration, but neighbors are not notified that an offender is living nearby.
* Penalties for either crime are increased if a person is below age16.

To avoid registering as a sex offender Mr. Green would have to plead to something that is not a sex offense. This would probably require agreeing to a description of the incident that omits some facts, which probably would not please the parents. Possibilities include:

* + **Battery:** A physical act that results in harmful or offensive contact with another person without that person's consent.
  + **Assault:** conduct which places another in reasonable apprehension of receiving a battery.
  + **Burglary:** Being in the house without permission from the parents, for the purpose of committing a criminal offense.
  + **Trespass:** Being in the house without permission from the parents.

*With respect to the terms of the sentence:* The parties can negotiate about the length of a sentence and probation time within any statutory minimum/maximum limits. More important than the length of a sentence is how much will be “served” in prison versus suspended or treated as “time served.” If a defendant is sentenced to longer probation, he has to report in and is exposed to being charged with a probation violation for a longer time period.

The judge is not obligated to accept your, or a joint prosecution/defense plea recommendation. While you believe you are well-respected in the court, the judge is elected and may care about public perception. He may also feel sympathetic either to Mr. Green or Ms. Fell, and may decide to impose a lighter or heavier sentence.

Mr. and Mrs. Fell want Mr. Green to be forced to register as a sex offender so he can never coach youth again. They are not as adamant about prison time, but they want more than five years of probation and for people to be warned about him for as long as possible. They would also like help paying for counseling for Jane.

Jane Fell feels guilty about what happened, confused, and sorry both for what has happened to Mr. Green and for the distress she has caused to her parents. Some members of the community and a local radio personality have pushed the idea that “predators like this should spend some time in a prison cell.”