***State v. Green***

**Confidential Information for Defense Attorney**

You are a criminal defense attorney. After graduating from the best law school in the state, you worked for three years in the Public Defender’s office and then joined a small law firm. You handle its criminal defense practice, though you also work in family and small business cases.

You were initially contacted by the frantic parents of Matt Green, a 25-year-old recently charged with Attempted Sexual Battery against 16-year-old Jane Fell. Matt and his parents came to see you and Matt formally retained you as counsel for the matter. Matt is a handsome, personable young man. Though an adult, he seemed unsophisticated, frightened, and somewhat immature. He was more comfortable having his parents make the initial contact and accompany him for your discussions with him.

Matt taught Spanish at the high 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 apparently mutual. Matt says he was aware 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 even if that student is past the legal age of consent of 16. He says he had no idea, however, that the law applies to persons who only coach school teams, as well as teachers.

Matt explained that, while teaching at the school he had never pursued a relationship with a student. He had been attracted to one of the tennis team players a few years before but did not ask her out until the year after she graduated. They did then begin a real relationship, including sex, but had broken up a few months before the incident with Jane Fell.

At the start of the season Matt told his players that it was okay to text him because he was no longer a teacher. He and some of the female team members began to flirt, through texts and at tennis practice. One girl, Jane Fell age 16, developed a strong crush on Matt. At some point Matt told the team he was offering private lessons for players who wanted to improve their performance. Jane 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 Matt 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”—her mother was working a Saturday shift and her dad was traveling. They stayed in the kitchen at first, but then the conversation turned to the idea of having sex. They went to her bedroom, she turned on music and they began to kiss. Matt 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—the mother had come home from work early. Matt ran past Jane’s mother holding his shirt in his hand and drove away.

That evening Matt and his parents came over to talk with the Fells. After some initial attempts at concocting a story, he admitted to being in Jane’s bedroom, and said he was very sorry for this. Matt’s mother asked the Fells, “What it would take for you to let this go?,” which the police are saying was an attempted bribe. In fact, the Greens just wanted to help the Fells get counseling. The charged Matt with one count of Attempted Sexual Battery (ASB), but the DA has the option to change the charges to greater or lesser offenses, with different penalties.

**Evidentiary/witness issues.** Jane Fell readily acknowledges that everything was entirely consensual and is clear she wanted a sexual relationship with Matt. She apparently is willing to testify, but Matt has heard she cries whenever she talks about it and has told friends she’s humiliated at the idea of publicly describing what happened. She appears to be acting under parental pressure to testify, and might change her mind if she realizes the effect of a conviction on Matt.

Matt’s statement to the parents isn’t helpful but is probably not specific enough to support the charge of ASB, especially if jurors feel sympathetic toward him. It helps that Matt doesn’t present like anyone’s idea of a sexual predator—he’s a likeable, young-looking 25-year-old with no criminal record. Jane Fell also seems to be a normal teenager and can be portrayed as an equal partner in what happened.

Matt has told you that he hadn’t necessarily planned to “go all the way” and wouldn't have done so unless he knew that Jane was on birth control. He had not brought a condom with him—further evidence of lack of intent or attempt to have “unlawful sexual conduct.” You do not believe the prosecutor has focused on this but am not sure Matt’s testimony on this issue would be entirely credible.

**Interests/Concerns/Constituencies.** Your only obligation is to your client (and the ethics of practice, of course). You have and will have other clients of course, so you’ll be interacting with this ADA or others in the DA’s office in other matters.

You hope that at least one of the police officers has a son in his mid-twenties. After all, at 16 Jane was (barely) of legal age to consent. This whole thing led to a criminal charge only because Matt happened to meet her through high school coaching. If he had coached somewhere else, for instance over the state line, and met Jane for private lessons there would be no crime at all.

Unfortunately, this case has garnered local press attention, in part because it follows other instances of teacher misconduct in the district. People in the district are concerned about teachers’ sexual misconduct with female students.

**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 registration as a sex offender
* Sexual Battery, a more serious offense which carries 1 to 5 years in prison and up to $10,000 fine; up to 5 years’ probation; and registration as a sex offender.
* For either of 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 either offense would require Matt to register as a “sexual offender.” Sexual Battery requires registration for life; it is a public record and the offender must renew his registration annually. People living within 1200 feet of the offender are notified by mail of his presence in the neighborhood.
* Attempted Sexual Battery also requires lifetime registration that is a public record, but neighbors are not given notice 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 sexual offense. This would probably require agreeing to a description of the incident that omits some facts. Possibilities include:
	+ Battery: A physical act that results in harmful or offensive contact with another person without that person's consent.
	+ Assault: conduct that puts another in reasonable apprehension of 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.

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

The judge is not obligated to accept a prosecutor’s or joint plea recommendation. While you believe you and the ADA are respected in the court, the judge is elected and may care about public perception. He may also feel sympathetic either to Jane or Matt and may decide to impose a heavier or lighter sentence as a result.

Mr. and Mrs. Fell want Matt to be forced to register as a sex offender so he can never coach youth again. They are apparently not as adamant about prison time, but they want a long period of probation and for people to be “warned” about him as long as possible. They might also like help paying for counseling for Jane. Jane, as noted, seems to feel guilty, confused, and sorry for everything that has happened. 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.”