Negotiation

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Pre-Game

- Before you begin any negotiation these are things you must do to prepare.
- Know the Law and the cast of characters

The Cast of Characters
The Client
The ADA (How we see them)

The ADA (How they see themselves)

Know the Law

1) Is the citation correct or are there fatal errors? (charging issues)
2) Review the elements of the offense (proof issues)
3) Practice Note: NC Secretary of State website to verify ownership
Know your Client

1) Interview your client and get all relevant information about the charge.
2) Pay close attention to the relationship between your client and the witness/victim. Is this a relationship you can leverage in negotiation? Parent/child; romantic partners; friends. How heavily invested is the other party?
3) Review the client’s record. Do not rely on them for this information.

Know your Victim

► If you are trying to negotiate on your client’s behalf you have to acknowledge the victim.
► Who is the victim? Store – did they get the item back? Was it in usable condition? Negotiation: there was no actual harm
► Was the victim a family member or someone known to your client? If so, what is their position? Are they out for blood? Find out their position. Negotiation: witness doesn’t want to prosecute

Know your ADA

► What is their personality type?
  - Is this the dedicated DV prosecutor who hates every Defendant?
  - Is this Pollyanna who has never done anything wrong?
  - Is this your lazy ADA who never wants to try a case so they’ll make a deal?
► Negotiation is all about knowing your opponent.
► If it’s one of the bat-shit crazy unreasonable ADA’s you might want to continue the case in order to work with someone else.
► This is about strategy, who will give you what you want.
Know your Officer
**Working with your Client**

- Start the conversation with your client from a position of power, i.e., I have reviewed your case and because of this, this, and this, we should see if we can work out a plea to this.
  - If you start with what do you want to happen your client is going to come back with something unreasonable so limit the expectations from the beginning.
  - Get your client to commit to 2 options that way you have something to negotiate with rather than being a one-trick pony.

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**Client**

- Educate your client as to the most likely outcome in their case. Give the client a choice of two.
- Know your client’s bottom line. There is no need in negotiating something with the ADA & then having your client balk.
- Acknowledge your client’s limitations. Don’t hang them out to dry with terms they can’t meet.

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**Getting the Deal**
What Can I do to get you in this car today?

The 2 Minute Pitch

1) Prepare a pitch
   a) Here’s the crime
   b) Here’s what we can do to resolve this today. Present your reasonable offer
   c) Here’s why we should do this – skip trial, victim and defendant have reconciled, there was no actual harm, here’s all the great stuff my client is doing, etc.

ADA

2) Have all the questions the ADA will ask already answered.
   - I need to talk to the victim (I have and here’s their position)
   - I need to talk to my officer (done)
   - Ross got the dress back and it was undamaged

** Make it easy for the ADA to do what you want by doing the legwork
### Once the Deal is Done

a) Review it one final time with your client to make sure he/she understands it and is on board

b) Iron out the details – specify in the plea community service but instead of downtown which entails your client taking 2 buses it can be done at a church around the corner from their house

**make sure to memorialize all details on the shack or deferral agreement so there’s no issue when/if your client has to return for a compliance date**