

Chapter 4:

Communicating with the Juvenile Client



Communicating effectively with the client is essential to representation in juvenile delinquency proceedings. The National Juvenile Defender Center (NJDC) has prepared an excellent treatment of attorney-client communications, which is reprinted with permission in Appendix 4-1 of this chapter. The reprinted material is part of the NJDC’s Juvenile Defender Delinquency Notebook (2d ed. Spring 2006), which is available free of charge on the NJDC website at www.njdc.info/delinquency_notebook/interface.swf.

Appendix 4-1

Initiating the Attorney-Client Relationship

Your relationship with your client is central to effective representation. Make every effort, from your first meeting on, to ensure that it is strong. Do not expect your client to trust you immediately; it is more likely that rapport will build over time as you demonstrate commitment to her case and respect her wishes. The recommendations in this chapter are meant to help you think about building a relationship with your client as you collect vital information during your early meetings with her. Take into account your personality and interpersonal style as you develop a method of getting to know your clients.

What to consider before your first case

-  *Your client's neighborhood, environment, and background.* Each client will be unique, but there will most likely be commonalities among youth who end up in court in your jurisdiction. Think about how your client's upbringing— such as the sort of neighborhood she grew up in and the school she attends— affects how she thinks, speaks, and acts as well as how she relates to you.
-  *How to communicate with your client.* Educate yourself about child and adolescent development. Books like the *Handbook on Questioning Children* and continuing legal education programs, such as the MacArthur Foundation's *Understanding Adolescents: A Juvenile Court Training Curriculum* (available at <http://www.njdc.info/macarthur.php>), are great places to start.²⁵

[I]t is the obligation of juvenile defense counsel to maximize each client's participation in his or her own case in order to ensure that the client understands the court process and to facilitate the most informed decision making by the client.

—ACCD-NJDC *Ten Core Principles for Providing Quality Delinquency Representation Through Indigent Defense Delivery Systems*,
Preamble

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I. ETHICAL CONSIDERATIONS

A. Legal advocacy vs. “best interests”

The rehabilitative focus of juvenile court can create confusion about the role of defense counsel. Defenders will find themselves tempted to focus on the perceived “best interest” of the child rather than on legal advocacy. You are obligated to keep in mind, though, that it is through counsel that the child exercises the most fundamental due process guarantee: the opportunity to be heard. In delinquency cases, all other perspectives are accounted for: community safety is represented by the prosecution, the parent’s interests by him or his counsel, and the view of “best interests” by probation and child care agencies. Defense counsel’s function is to articulate and advocate as zealously as possible for the expressed legal position and desires of the child, your *client*. The best decisions are made when all positions are fully articulated and tested via the adversarial court process.

The *Institute of Judicial Administration-American Bar Association Juvenile Justice Standards* state that the defense counsel’s principal duty is to advocate, within the bounds of law, for the best outcome available under the circumstances, *according to the client’s view of the matter*.²⁶ Similarly, the *ABA Model Rules of Professional Conduct* provide that so long as your client is not so incompetent as to be unable to adequately act in her own interest, your client must be accorded the prerogative of making decisions concerning the objectives of representation.²⁷ In that the *Model Rules* contemplate application to children as young as ages five or six,²⁸ delinquency clientele are conclusively within these critical decision-making guidelines.

In practice, advocating for your client’s expressed interests, as opposed to your view of her best interests, means that you must allow her to make decisions. Although, you have the

expertise required to navigate the court process, predict possible outcomes of choices your client must make, give advice based on your evaluation of your client's situation, and speak for your client, she has fundamental control of her defense. At each and every stage of the case, you will use your knowledge to help her make informed decisions, but you must confer with her and abide by her decisions concerning the objective of representation.²⁹ In this regard, representing a child client is just like representing an adult. For example, sometimes a client will feel a strong desire to testify so she has had a chance to explain herself to the judge. Even if you think she will hurt rather than help her case, you must put her on the stand. Your role is to provide counsel and ensure that she understands the possible legal consequences of testifying in a particular case. Once she has decided to testify, regardless of how you feel about the decision, your role shifts and you must assist her in presenting herself well on the stand.

Juvenile Justice Standards

The IJA/ABA Juvenile Justice Standards and rules of professional conduct provide guidelines for control and direction of the case.

As long as she is competent, the client has control over key decisions relating to the goals of the representation. The lawyer is responsible for determining and pursuing the legal strategies to achieve these goals.

The following guidelines are from the IJA/ABA Juvenile Justice Standards:

The client, after full consultation with counsel, is ordinarily responsible for determining:

- *the plea to be entered at adjudication;*
- *whether to cooperate in consent judgment or early disposition plans;*
- *whether to be tried as a juvenile or an adult, where the client has that choice;*
- *whether to waive jury trial; and*
- *whether to testify on his [or her] own behalf.*

Decisions within the exclusive province of the lawyer, after full consultation with the client, include:

- *what witnesses to call,*
- *whether and how to conduct cross-examination,*
- *what jurors to accept and strike,*
- *what trial motions should be made, and*
- *any other strategic and tactical decisions not inconsistent with determinations ultimately the responsibility of and made by the client.³⁰*

B. Conflicts of interest

Zealous advocacy includes giving each client your undivided loyalty. It is a violation of ethical rules to represent a client if you have a conflict of interest in her case. The ABA *Model Rules of Professional Conduct* state: "A lawyer shall not represent a client if ... the representation would be directly adverse to another client or there is a significant risk that the representation of a client would be materially limited by the lawyer's responsibilities to another client, a former client, or a third person, or by a personal interest of the lawyer."³¹ As you are considering taking on a new case, ask yourself if you have learned anything from any previous or current client that could be useful in preparing the defense of this new client. If the answer is yes, then you have a conflict of interest and you should decline the new case. Common examples of conflicts of interest include: representing more than one person charged in relation to the same events, or representing a respondent in one case and her complaining witness or other witness in a different case. Even if you think that a conflict is more apparent than real, the mere appearance of a conflict is problematic because adolescents are quick to notice and react to perceived unfairness. For this reason, you should also consider whether you have a personal or professional relationship with someone that will compromise your zealousness on behalf of your client or inhibit your client's trust in you. Discuss concerns with your client openly and directly so that she can decide whether she still wants you to represent her.

If you perceive a conflict of interest between two potential clients, do not discuss the facts of the case with either client until you have tried to eliminate the conflict. Immediately seek the judge's permission to withdraw from the conflicting case. If there are few lawyers available, you may be pressured to represent co-respondents in the same proceeding. This is extremely problematic because one client's best defense may lie in suggesting that the other client committed the alleged offense. All jurisdictions have ethical rules addressing conflicts of interest. Cite these rules in arguing to the judge that another attorney should be appointed to represent the co-respondent. Remind the judge that a conflict of interest could be a reason for the case to be overturned on appeal. Research the procedures in your jurisdiction for appointing counsel so that you can help secure another attorney for the child. If the judge grants your request to withdraw, your ethical obligations include turning over any case files and information promptly to the child's new attorney.

Even if the judge declines your request to withdraw, you can proceed with representation *only* if you reasonably believe that you can provide competent counsel to each of your clients and if both clients give their informed, written consent to the shared representation.³² If you proceed without informed consent, you risk disciplinary action for violation of ethical rules. Explain the nature of the conflict to each child in an individual conversation. Allow

each child to ask questions of you confidentially. If both clients grant their informed consent and you proceed with representation, make sure that the conflict and its resolution are reflected in the case record.

II. TIPS FOR QUESTIONING CHILDREN

Before you focus on the content of your early conversations with your client, think about how you will approach your meetings with her. Take her age, background, and abilities or disabilities into account when you speak to her and ask her questions. Adolescents process and use language differently than adults. Adolescents, especially if they are under-educated or have mental disabilities, are prone to becoming confused by linguistic ambiguities or lengthy questions, have an immature understanding of time, and may have difficulty constructing narratives. They may also interpret language literally and be unable to handle abstractions well. Whenever you speak with children and adolescents, phrase your questions with care in order to elicit accurate information. Specific suggestions adapted from Anne Graffam Walker's *Handbook on Questioning Children* follow.³³

Suggestions for questioning children

General precepts:

- *Aim for simplicity and clarity in your questions.* If the child uses simple words and short sentences, so should you.
- *Be alert for possible miscommunication.* If a child's answer seems inconsistent with prior answers or doesn't make sense to you, investigate the possibility that there is some problem 1) with the way the question was phrased or ordered, 2) with a literal interpretation on the part of the child, or 3) with assumptions the question makes about the child's linguistic/cognitive development or knowledge of the adult world.
- *Make sure you understand the child.* You cannot be embarrassed to ask your client to define slang terms. Very few adults are fully fluent in street slang, and it is important to know what the terms a child is using mean. Do not guess.

Some specifics:

- Break long sentences/questions into shorter ones that have one main idea each.
- Choose easy words over hard ones: use simple expressions like “show,” “tell me about,” or “said” instead of more formal words like “depict,” “describe,” or “indicated.”
- Avoid legal jargon like “What if anything” or “Did there come a time.”
- It is important that you and the children use words to mean the same thing, so run a check now and then on what a word means to each child. Although children generally are not good at definitions, you can still ask something like, “Tell me what you think a ___ is,” or “What do you do with a ___?” or “What does a ___ do?” Do not expect an adult-like answer, however, even if the word is well known. The inability to define, for example, “wind” does not mean that the person does not know what wind is. Definitions require a linguistic skill.
- Avoid asking children directly about abstract concepts like what constitutes truth or what the difference is between the truth and a lie. In seeking to judge a young (under nine or ten) child’s knowledge of truth and lies, ask simple, concrete questions that make use of a child’s experience. E.g., “I forgot: how old are you?” (Pause.) “So if someone said you are ___, is that the truth, or a lie?” Young children equate truth with fact, lies with non-fact.
- Avoid the question of belief entirely (“Do you believe that to be true?”).
- Avoid using the word “story.” (“Tell me your story in your own words.”) “Story” means both “narrative account of a happening” and “fiction.” Adults listening to adults take both meanings into consideration. Children listening to adults, however, might well hear “story” as only the latter. “Story” is not only an ambiguous concept, it can be prejudicial.
- With children, redundancy in questions is a useful thing. Repeat names and places often instead of using strings of (often ambiguous) pronouns. Avoid unanchored “that’s” and “there’s.” Give verbs all of their appropriate nouns (subjects and objects), as in “I want you to promise me that you will tell me the truth,” instead of “Promise me to tell the truth.”
- Watch your pronouns carefully (including “that”). Be sure they refer either to something you can physically point at or to something in the very immediate (spoken) past, such as in the same sentence, or in the last few seconds.

- In a related caution, be very careful about words whose meanings depend on their relation to the speaker and the immediate situation, such as personal pronouns (I, you, we), locatives (here, there), objects (this, that), and verbs of motion (come/ go; bring/ take).
- Avoid tag questions (e.g., “You did it, didn’t you?”). They are confusing to children because a youth may lose track of what the subject is. Avoid also Yes/No questions that are packed with lots of propositions. (Example of a bad simple-sounding question, with propositions numbered: “[1] Do you remember [2] when Mary asked you [3] if you knew [4] what color Mark’s shirt was, and [5] you said, [6] ‘Blue?’” What would a “Yes” or “No” answer tell you here?) It does not help the fact-finder to rely on an answer if it’s not clear what the question was.
- See that the child stays firmly grounded in the appropriate questioning time frame and situation. If you are asking about the past, be sure the child understands that. If you shift to the present, make that clear too. If it is necessary to have the child recall a specific time/date/place in which an event occurred, remind the child of the context of the questions. Do not use phrases like, “Let me direct your attention to.” Try instead, “I want you to think back to...,” or “Make a picture in your mind of when...,” or “I’m going to ask you some questions about...”
- Explain to children why they are being asked the same questions more than once by more than one person. Repeated questioning is often interpreted to mean that the first answer was regarded as a lie or was not the answer that was desired.
- Be alert to the tendency of young children to be very literal and concrete in their language. “Did you have your clothes on?” might get a “No” answer; “Did you have your p.j.’s on?” might get a “Yes.”
- Do not expect children under about age 9 or 10 to give “reliable” estimates of time, speed, distance, size, height, weight, color, or to have mastered any relational concept, including kinship. (Adults’ ability to give many of these estimates is also commonly overrated.)
- Do not tell a child, “Just answer my question(s) yes or no.” With their literal view of language, children can interpret this to mean that only a Yes or a No answer (or even “Yes or No”!) is permitted – period, whether or not such answers are appropriate. Under such an interpretation, children might think that answers like “I do not know/remember” and detailed explanations would be forbidden.

Sentence-building principles for talking to children

Vocabulary:

- Use words that are short (1-2 syllables) and common. For example, call it a “house” instead of “residence.”
- Translate difficult words into easy phrases. Use “what happened to you” instead of “what you experienced.”
- Use proper names and places instead of pronouns, e.g., “what did Marcy do?” instead of “what did she do?”; “in the house” instead of “in there.”
- Use concrete nouns that can be visualized (“backyard”) instead of abstract ones (“area”).
- Use verbs that are action-oriented, such as “point to,” “tell me about,” instead of “describe.”
- Substitute simple, short verb forms for multi-word phrases when possible. Try, for example, “if you went” instead of “if you were to have gone.”
- Use active voice for verbs instead¹⁸ of the passive. For example, ask “Did you see a doctor?” instead of “Were you seen by a doctor?”
Note: One exception is the use of the passive “get” (“Did you get hurt?”), which children acquire very early and is easier to process than “Were you hurt?”

Putting the words together:

- Aim for one main idea per question/sentence.
- When combining ideas, introduce no more than one new idea at a time.
- Avoid interrupting an idea with a descriptive phrase. Put the phrase (known as a relative clause) at the end of the idea instead. For example, “Please tell me about the man who had the red hat on” instead of “The man who had the red hat on is the one I’d like you to tell me about.”
- Avoid difficult-to-process connectives like “while” and “during.”
- Avoid negatives whenever possible.
- Avoid questions that give a child only two choices. Add an open-end choice at the end. “Was the hat red, or blue, or some other color?”

The bottom line: Keep it short and simple.

III. INTERACTIONS WITH YOUR CLIENT

A. Initial meeting and interview

Ideally, your initial meeting with your client (and possibly her parent) will take place in your office with ample time to get to know each other. In reality, you are more likely to meet your client just before a court appearance, with little time or privacy in which to hold a productive conversation—for your purposes or hers. You must be prepared to conduct a quick yet efficient initial interview with your client, remembering that establishing a good relationship with her is as important as collecting vital information about the case. Document A1 in Appendix A is a sample form that can help you collect the critical information you will need prior to a detention hearing. Please feel free to adapt this form for your own use. As you interview her, maintain a calm, even tone so as not to make your client feel anxious or rushed. You will conduct a more extensive interview later, during which you will have more time to gather additional information.

If you are truly rushed or there are complex issues you need time to address before you can adequately represent your client, *you should request a delay from the court*. If the judge will not grant a later call or continuance, state repeatedly for the record that you are not prepared and cannot effectively represent your client. See Chapter 7, page 133, for more detail. Of course, when considering whether to request a delay, always take into account the need to prevent your client from being detained any longer than is absolutely necessary.

If you get cases in advance of court proceedings, your first conversation should cover the same crucial areas as if you were rushed, but you will have time to address each issue thoroughly and ask more questions on additional topics. It is also a good practice to send a letter to each client when you are assigned to her case. Many attorneys use a form or standard letter to introduce themselves and their job, as well as to request that the client call to schedule a first meeting. Document A2 in Appendix A is a sample introductory letter you can use as a starting point.

Your first in-person conversation with your client is significant to the entire case. It will lay the foundation for a strong attorney-client relationship and, therefore, effective representation. Be sure to include these crucial steps:

i. Introduce yourself and your role to your client

Tell your client who you are and what your job is, emphasizing that you work for her (and not her parent or the judge), are on her side, and will keep your conversations between just the two of you. Explain the attorney-client

privilege and emphasize how serious it is in the law and to you. Give her your card and tell her she can call you anytime. The encounter might open along these lines:

*Hi, my name is _____. I'm your attorney. How are you doing? [Pause, listen.] Have you ever had an attorney before? No? Let me tell you a couple of things about having an attorney. First, our relationship will be different than any other you've had with an adult. I work for you, not your mom, not your dad, not the court – nobody but you. My job is to help you understand what's going on in court and help you decide what you want to do on this case. Then, I'll work in court and outside of court to help take care of this case. I don't tell you what to do, and I will only do what you want me to do. Do you have any questions about that? [Pause, listen.] The second thing I want to let you know is that everything you tell me is confidential, it's secret. Do you know what I mean by that? Would you tell me what you think it means in your own words? [Pause, listen.] Yeah, that's right. And there is a law that says no one can make me tell what you've said to me. That makes it so you and I can talk about anything, and you don't have to worry, it is just between us. I will not repeat it to anyone without your permission. Does this make sense? [Pause, listen.] Do you have any questions about what I just said? [Pause, listen.] [At this point, hand your business card to your client. Document A12 in Appendix A is a camera-ready sample of an assertion of *Miranda* rights you can have printed on the back of your cards; if you choose to do so, you will want to explain its purpose.]*

Your individual style will dictate the exact language you use, but the point is to convey absolute loyalty to your client. Your clients will often have poor self-esteem and come from low-income families. They may also be untrusting of adults as a result of many unfortunate experiences. The extra effort to build rapport will pay off in innumerable ways, not the least of which is avoiding eliciting mistruths or half truths which can waste time and lead into unproductive defense theories. Furthermore, the benefits of a demoralized child experiencing camaraderie and trust with a non-threatening adult may be enormous.

2. Ask about your client

Asking about your client's grade in school, likes and dislikes, favorite activities, and home situation gives her a chance to get comfortable talking to you. It also provides you with a chance to collect valuable information and to assess her cognitive level. (For example, she might mention a teacher she likes who will

be a useful ally later.) Use her answers to tailor your language, explanations, and questions to her capabilities. (For example, high school students who have studied government should know that the Constitution provides rights, which can help introduce your explanation of the right to counsel.) If you are pressed for time in your initial meeting, you may have no choice but to skip this step, but be sure to remember it when you next have a conversation with your client.

3. Explain what is going on

Your client probably understands little about the court process—even if she has been through it before. Part of gaining her trust is showing her that you care about her questions and concerns. Before you begin asking case-related questions of her, take a minute or two to briefly explain her situation and what you need to accomplish in this quick meeting. You may say something like:

We are about to go into court so the judge can decide whether you can stay at home between now and when he listens to longer arguments about your case. We will have more time later to talk about everything that happened to you and for me to answer all of your questions, but right now I have to get some information from you pretty quickly so I can explain things to the judge at this first hearing.

4. Ask for written permission for access to confidential information

A central goal of your first meeting is to get written consent for the release of confidential information to you. The release is crucial to your investigation. School files, medical records, mental health evaluations, and other documents will help you not only in defending against the charges, but also in creating a disposition plan (see Chapter 11). It is important to send for these records as soon as possible because it can take time for other agencies to send the documents to you. For the information to be useful, you will need it as soon as possible. Because these documents contain confidential information, in most cases you will need written consent for the information to be released to you.

The rules vary as to whether it is the parent, the child, or both who have to sign a release of information, so you need to know the laws in your jurisdiction. Find out when it is necessary to have a parent's signature and when it is not, so you will be prepared if your client's parent is uncooperative or absent. Determine if your state takes into consideration the age of a child and the subject matter of the records. For example, a state may give a 16-year-old the authority to release school records or a 13-year-old the ability to consent to release of mental health information but require a parent's consent for collecting other documents.

A sample release of information form is included as Document A3 in Appendix A. Adapt that form to your state's laws and explain to the child and parent at your first meeting why it is important for you to get these records. You can reiterate the strength of the attorney-client privilege if they express concerns about how the information will be used. Give your client a copy of the release she has signed. (Note that the release of information form gives you permission to collect records but not necessarily to share them with others; see page 231 in Chapter 11 for information about laws governing sharing educational and medical records.)

5. Conduct an interview about the case, in as much detail as you have time for

If the parent has been present up to now, this is the time to ask him to give you and your client privacy. Explain that attorney-client confidentiality extends only to you and your client. Describe the risk of the parent being called to testify about this conversation. Tell him it is better for everyone if you talk to your client alone for a few minutes.

Begin this part of the conversation by asking your client's permission to take notes, explaining that you want to write things down to help you remember all the important information she tells you. Tell her specifically that you will not share your notes with anyone. As you listen, pay close attention to your client's personality, intelligence, and communication ability, as well as the facts she provides. These observations will help you recognize possible educational disabilities, mental health problems, and/or other issues addressed in later chapters of this guide.

If you have time, try letting your client tell her whole story first, without interruption, and then start over by asking questions about each part of her explanation. Ask questions while keeping in mind your time constraints, immediate concerns, and the tips for framing questions from earlier in this chapter. Begin with the crucial issues, such as:

- *What happened in this case?* Where did the incident take place, when did it happen, who was there, why was she arrested? If the client claims she was not present for the alleged incident, where was she, and how can she prove it? Reading through the police report with your client may help her articulate her version of the events.
- *Does your client have a prior record or any pending cases?* If so, what can she tell you about them? What were the offenses? What was the disposition? Is your client now on probation or parole? What are the conditions of probation or parole? Who is her probation/parole

officer? Does the probation/parole officer know about the current charge yet? How does your client think the probation/parole officer will react to the most recent charge?

- *Where is your client staying right now, and is the situation there okay? Is there assaultive behavior at home, a current family crisis, lack of supervision, narcotics dealing by family members, etc.? Did the offense occur at home or while your client was on the run from home? If she does not want to stay where she is, does she have another place to stay? What about other family members or friends? Are there adults who could help supervise her, such as someone whose house she could go to after school? Can that person come to court to say he will take your client in, and will your client's parent agree to that arrangement?*
- *Who does your client think will testify against and for her? Make suggestions to help her think of possibilities and keep track of her answers in a witness chart, where you can keep—and readily relocate—contact and other information about each person as you collect it.*

There are, of course, many more questions you will want to ask, some depending on the nature of the case and others as a result of your client's answers to these questions. Again, use your time wisely, reminding yourself and your client that you will have more time later. If you have time, ask:

- *Is the police report right about what happened? Is anything missing? Is there other information that explains why the incident happened?*
- *Will your client's parent come to this hearing? If not, why? How can you contact the parent? Are there other relatives or adults who might be able to come if asked? Who are they, and how can they be reached?*
- *Where does your client go to school? Does she miss class? How often? Has she been in trouble at school? What are her grades? Is she receiving special education services? Does she participate in any extracurricular activities? Has she won any awards? Are there any teachers or administrators there who would say good things about her?*
- *Does your client have a job? Is it full-time or part-time? Has she ever worked before? When did she work? Are there any employers who can act as references?*
- *Is there any other social information that can be used to support pre-adjudication release? Does she participate in clubs, sports, or religious activities? How can she show that she is responsible (e.g., does she*

babysit for her siblings while her parent is at work)? Does she have any hobbies?

- *Does your client have any substance abuse or medical problems? Will a parent, probation officer, or detention center employee bring up these problems in court? Has your client ever been in treatment? Did she successfully complete treatment (even if now using drugs)? If treatment is incomplete, what supplemental services might be suggested?*
- *Has your client participated in any counseling programs? Is there a counselor who could serve as a reference?*
- *What are your client's dreams/hopes for herself? What does she want to do when she is an adult? Where does she see herself in five years? Ten? Twenty?*

More detailed questions regarding particular situations appear below.

6. Explain your client's proactive role during the case

Take a couple of minutes to convey to your client how her future conduct will affect the outcome of her case, for better or for much worse. Initially, you can get that message across with a simple, generic description focused on the most important areas: 1) avoiding any further trouble with the police, 2) going to school, and 3) behaving well at home. This part of the conversation may be more productive if you include the parent; you can quickly surmise whether bringing in a parent could reduce your client's trust in you at this point. (Note that you may also want to consider having a private conversation with the parent; see Section IV of this chapter.) Find out what you can about your client's home situation and social behavior, but most importantly, emphasize the implications of your client's actions outside the courtroom. Again, while expressing these ideas in your own style, you may say something like:

Let's talk a few minutes about what you can do to help your case. Do you have any ideas about that? What kind of things do you think you could be doing that could help things out at this point? What do you think the judge will be watching for now? [Pause, listen. Respond positively to her ideas. Build on and refer back to her ideas as you move forward.]

I think there are three main things that the judge looks at. First is your record. I see you have XX charges. It's really important that you don't get in trouble while this case is going on. If you do, the judge will take that as a sign that you think court is just a big joke, nothing important. And this will tick off the judge in a big way and make him decide to lock you up in detention. Getting in

trouble right now, while this case is going on, is a much bigger deal than getting in trouble when you don't have a case going on – Tell me you'll be careful...[Pause, listen.] It's going to mean that you're going have to watch not only what you are doing, but be careful about who you are hanging out with. Can you be careful about what your friends are doing, too? [Pause, listen.] Like, if you are at the mall and a friend starts shoplifting, you need to just get out of there. Right away. If you're out with friends and someone pulls out a blunt, you gotta leave, immediately. Don't try to talk them out of it, don't bother explaining things, just leave. If the guys roll up in a car and you're not sure it's their car, say no thanks to a ride. You just can't risk being near people who are doing something wrong, even if you weren't doing anything wrong. I know that is unfair, but it's the situation you're in at this point. What do you think will be the hardest thing about this? [Pause, listen.]

Second, judges look at school. You can't be messing up in school. Prosecutors go out of their way to find out about school problems because they know if a judge hears about it he'll want to lock you up. So, be on time. Don't miss any classes. No fights, no talking back to teachers – just don't get into trouble at school. We're going to talk in a few minutes about how things are going in school, but the main thing now is remember that you need to keep school as your focus.

Third, judges watch what is happening at home. Basically, if you're not doing what your parent says, a judge thinks, "Well, okay, I guess if home isn't working out then detention is where you should be staying." Try to follow the rules at home, help around the house, get along with your brother and sister. Your parent loves you, but when the judge asks him how you are doing, he has to tell the truth. Make it easy on him so he can say you're doing well, and that since this case you've been really getting it together. When a judge hears that, he's likely to think, "Okay now, I guess we don't need to think about detention if things can turn around like this at home."

You should be listening for your client's good qualities, as well as red flags. Focus your client on her strengths and her positive potential, emphasizing how doing well in these three ways can make a huge impact on the outcome of the case. Discuss strategies for addressing any problems in these three areas and review the status of those remediation plans at each subsequent meeting with your client. She has to understand how important her behavior is while her case is in progress, and you should be prepared to work with her to find viable solutions as problems continue or arise. It may be easier to convince her of the significance of her role if you ask her to think about how her behavior must look to the judge. (Using this reasoning also helps make clear that what seems like

criticism does not come from you, but from concerns about the judge's perception.) Your assistance may include helping her obtain special education school services, family counseling, medical or social services, or other assistance. The many benefits of these strategies will become clear as the case progresses.

7. Listen to your client and find out what she wants

You must act on your client's expressed interests at every stage of the case. Before you enter the courtroom and speak on her behalf about anything, find out what her goals are for the hearing. Explain the possibilities for what you will say as well as how you will present the arguments and let her determine the best course of action.

B. Further conversations

As early as possible, you will want to gather as much information as you can from your client. Depending on what you know – from her, the police report, or other sources – about the circumstances of the offense and arrest, you will engage your client in different lines of questioning. Your goals in gathering this information are to begin to determine what legal defense is appropriate in the case, consider the potential for meritorious suppression and other pre-adjudication motions, and identify possible witnesses for the prosecution and defense. (An explanation of how to process and consolidate this information appears in Chapter 6.) Remember to take time to explain to your client why you are asking questions and how her answers may help her case. See Chapter 6 for an overview of possible grounds for suppression and suggested questions associated with each legal issue. In any situation, ask whether your client was ill or under the influence of medication, drugs, or alcohol; if she was, her decision-making capabilities may have been compromised. (In the event that illegal drugs or alcohol caused the impairment, weigh the benefits and risks of introducing that information in court.) Then, research applicable law to determine whether there are grounds to exclude harmful evidence from court.

C. Continued contact

It is very important that you maintain regular contact with your client. After your initial client interviews are complete, you should still meet with or talk to your client regularly, at least once every two weeks if the child is in the community and at least once every week if the child is detained. Regular contact with your client allows you to maintain your rapport and helps provide you and your client with deadlines for performing specific tasks. It also reminds your client of the pending case and her pre-adjudication obligations to the court.

It is a good policy to meet your client on her turf and preferably in her home, as long as you can meet in private when necessary. This strategy provides insight into your client's home situation and alleviates concerns about how or if she will come to meetings at your office. Be aware of any safety concerns related to traveling to an unfamiliar neighborhood and plan accordingly.

Though the substance of each conversation will differ, the fundamentals remain the same. Always:

- Show your client that you care about what she thinks and what happens to her,
- Keep your client informed about developments in her case,
- Let your client know of work you are doing on her case,
- Answer your client's questions plainly and clearly,
- Be timely and responsive to all your client's inquiries, and
- Keep your promises.³⁴

I learn more from spending one hour in a child's home than by spending five hours taking a social history from the child.

—Juvenile defender

Be careful not to promise your client anything you are not absolutely sure you can deliver; you risk losing her trust if you fail her. In general, if you always keep in mind that you work for your client and act upon her expressed interests, these displays of respect and frequent consultations will become a natural part of the development of each case.

IV. YOUR CLIENT'S PARENT

Interacting with your client's parent is a complicated issue unique to juvenile court. You must be clear at all times that you work for the child, but at the same time, you need to cultivate the parent's cooperation. Do what you can to work with or around the parent.

Ideally, the parent wants to be an ally. In some cases, though, he will be the complainant, or you will discover troubling information about his relationship with his child. Regardless of his willingness to help your client's case, be clear about how he can be involved and how he cannot. You have to be able to talk to your client alone, so you can be sure she is not altering anything she tells you for the parent's benefit. Similarly, you should talk to the parent alone so you can collect information free from any distortions designed to influence the child. You can also use these individual interviews to frame things for the benefit of each party. (For example, you could explain to the parent that your client's behavior,

though unacceptable, is typical for adolescents or explain to the child that her parent's nagging is a sign of concern for her.)

It will often become apparent during these interviews that there is a significant parent-child conflict. It could be a typical disagreement over curfew, sibling rivalry or perceived

favoritism, or privacy boundaries and/or a more serious problem, such as neglect, abuse, or desire on the part of one or both parties to stop living together. Smoothing over relatively minor problems, on your own or with the help of a social worker, will benefit your client and her case. Encouraging a parent to enroll in counseling with her child or to enroll her child in desired counseling alone can also be helpful. If the parent was the complainant and counseling is successful, you may be able to bring a statement to the prosecutor that the parent no longer wants the case pursued, which could earn a dismissal or *nolle prosequi* (see Chapter 6, page 107). (Handling serious parent-child

One of the ways I let my clients know they are in charge is by asking them for permission before sharing information or case documents, like a police report, with their parents. Whatever the client says, the point is made.

—Juvenile defender

issues is more complicated and transferring a case to dependency court, for example, can be a significant step to a more appropriate resolution.)

Let the parent know what impact his statements to the court, probation officer, and others will have. A parent may try to get help for his child by relating to the judge the details of difficulties at home without realizing he is actually encouraging the judge to order detention. Understand that the parent may be justifiably frustrated and let him vent to you, but help him figure out how to convey what he means to others in a way that is less harmful to his child. Do not advise the parent to lie, of course, but assist with framing the complaint: "There are some curfew problems" sounds much better than "She stays out all night. I don't know where she goes, who she's with, or what she's doing."

Further thoughts about dealing with parents at various points in the case, including strategies for winning over an uncooperative parent, are provided in Chapter 7 on page 137, as well as in other sections in which they are relevant.

Remember that you must continuously assess the child's comprehension of what you say and her ability to articulate her thoughts to you. If you are having trouble communicating with a client, consider whether that difficulty is indicative of a mental health problem or disability and whether these issues could mean she is incompetent to face adjudication. Chapter 3 addresses these difficult and complex issues.



Endnotes

- 25 Anne Graffam Walker, *Handbook on Questioning Children: A Linguistic Perspective* (2d ed. 1999). *Understanding Adolescents: A Juvenile Court Training Curriculum* is a six-module training curriculum sponsored by the John D. and Catherine T. MacArthur Foundation and created by the ABA Juvenile Justice Center, Juvenile Law Center and the Youth Law Center.
- 26 IJA-ABA *Juvenile Justice Standards, Standards Relating to Counsel for Private Parties*, Standards 3.1(a), 9.3(a); see also Martin Guggenheim, *The Right To Be Represented But Not Heard: Reflections on Legal Representation for Children*, 59 N.Y.U. L. Rev. 76, 86-90 (1984).
- 27 *Model Rules of Prof'l Conduct* R. 1.2(a), 1.14(a) (2002).
- 28 *Model Rules of Prof'l Conduct* R. 1.14(a) cmt. 1; compare Guggenheim, *supra* note 26 (arguing that youth aged 7 and older should be permitted to direct delinquency counsel).
- 29 *Model Rules of Prof'l Conduct* R. 1.2(a) (2002).
- 30 IJA-ABA *Juvenile Justice Standards, Standards Relating to Counsel for Private Parties*, Standard 5.2.
- 31 *Model Rules of Prof'l Conduct* R. 1.7(a) (2002).
- 32 See *id.*
- 33 Walker, *supra* note 25. Adapted and used with permission.
- 34 See generally 1 Randy Hertz, Martin Guggenheim & Anthony Amsterdam, *Trial Manual For Defense Attorneys In Juvenile Court* 133-154 (1991) [hereinafter 1 Hertz]

DOCUMENT A1

Alternate Supervision:

Is there any one else client can stay with? YES NO NOT SURE

IF YES, what is this person's name: _____

Relationship to client: _____

Does client think this person can come to court today? YES NO NOT SURE

Does client know how to contact this person? YES NO

Home phone: _____ Cell phone: _____

Address: _____

Delinquency History (if there is no court file):

Has client ever been arrested before? YES NO NOT SURE

IF YES, about how many times has client been arrested? 1 2 3 4 5 or more

When? _____

Has client ever been to court before? YES NO NOT SURE

IF YES,

(1) When: _____ Why _____

What happened in that case?

(2) When: _____ Why _____

What happened in that case?

DOCUMENT A1

(3) When: _____ Why _____

What happened in that case?

Has client had a probation officer before? YES NO NOT SURE

IF YES, does client remember name of probation officer? _____

Does client remember what officer did:

- release conditions: _____
- health treatment: _____
- mental health treatment: _____
- education: _____
- supervision: _____
- OTHER: _____

Running Away:

About how long has client lived in this community: _____

Has client ever run away from home? YES NO

IF YES, client has run away about how many times: 1 2 3 4 5
or more

Last time client ran away: _____

About how long client stayed away from home: _____

Can client tell interviewer why s/he ran away?

DOCUMENT A1

Education and Truancy:

Is client in school now? YES NO

IF NOT IN SCHOOL, did s/he get GED or drop out? GED DROPPED OUT

Was client in regular classes or special classes? REGULAR SPECIAL

IF IN SCHOOL, is client in regular classes or special classes? REGULAR SPECIAL

IF IN SPECIAL CLASSES, what kind?

- for kids who have trouble learning (special education)
- for kids who have trouble paying attention (attention deficit/hyperactivity disorder)
- OTHER: _____

Does client go to school all the time? YES NO

How many days does client go to school per week? 1 2 3 4 5

Is there anything happening at school that makes client not want to go there?

YES NO

Can client tell interviewer about it? _____

Employment and Activities:

Does client have a job? YES NO

IF YES, what is the job? _____

Is there anything else that the client does every week that he/she enjoys?

- sports team
- religious group
- volunteering/public service
- extra class (art, music, etc.)
- OTHER: _____

DOCUMENT A2

June 20, 2005

Client Name
Street
City, ST 40569

Dear Ms. Name,

My name is Your Attorney. I am a lawyer, and I have been appointed by the Public Defender office in Our City to represent you in juvenile court. You are my client, which means that I work for you. You and your family do not have to pay me.

You are accused of petit larceny, which means taking someone else's property. Your next court date is May 3, 2005 at 10:30am in the City Juvenile Court.

It is important for us to meet as soon as possible so we can talk about your case and figure out how I can help you in court. Please bring with you the names, addresses, and telephone numbers of any witnesses (people who were at the scene of the crime) or other people who can provide information about your case.

Please call my secretary at (222) 333-4444, extension 55, so you can schedule a meeting with me. I am looking forward to meeting you.

Sincerely,

Your Attorney
Public Defender

DOCUMENT A3: AUTHORIZATION TO RELEASE INFORMATION

Authorization to Release Information

I hereby authorize [Your Name] of [Your Office], or any person or persons duly authorized by [him/her] to:

- Verify all financial information pertaining to me with employers, banks, credit unions, loan companies or any other source.
- Obtain all necessary medical information, evaluations, or memoranda from doctors, psychologists, social workers clinics and hospitals concerning my and my child's examinations, diagnoses, treatment or hospitalization. Obtain information from any school, counseling, labor department, welfare or other agency that has rendered its services to me or my child.

I hereby authorize all proper officials of all such organizations to forward to [Your Name], [his/her] employees, or any persons duly authorized by [him/her], such requested information for one year from this date for use in regard to legal proceedings.

I understand that the information disclosed may be from records whose confidentiality is protected by state and/or federal law and may contain information pertaining to psychiatric, HIV/AIDS, drug and/or alcohol diagnosis and treatment and that this authorization may be revoked by me at any time except to the extent that action has been taken in compliance with this request.

Client: _____

Parent: _____

Child/Witness Signature

Parent/Guardian Signature

Client's DOB:

Date:

DOCUMENT A12

Assertion of Miranda rights
(front of card or back of business card)



Notice to Police and Prosecutors

I will not waive my constitutional rights to remain silent and to have my attorney present.

I do not wish to answer any questions without speaking to my attorney first.

I will not consent to participate in any search until I have spoken to my attorney.

Signed: _____



Contact information
(back of card or unused)



My name: _____

My parent(s) name(s): _____

Their phone number(s): _____

My address: _____

My phone number: _____

My date of birth: _____

My attorney's name: _____

My attorney's phone number: _____

My attorney's registration number: _____



