

# Where Stated Interests Meets Best Interests: Avoiding Ethical Disasters in Delinquency Proceedings

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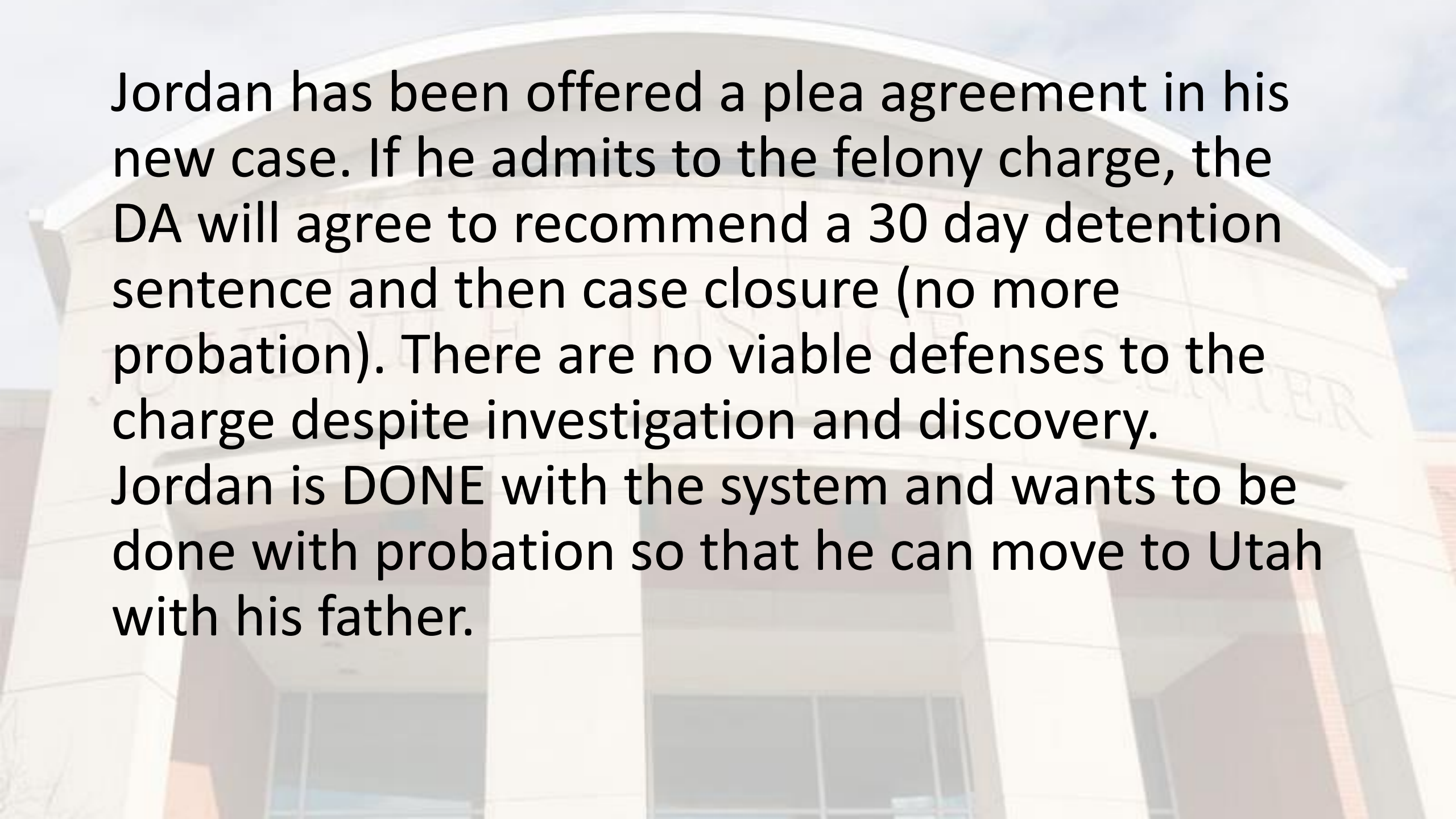
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# Presentation Goals

- Get you moving!
- Get you thinking!
- Get you talking!
- Develop frameworks for analyzing common ethical scenarios applicable to:
  - GAL role
  - Defense counsel role

# Jordan's situation

- 14 year-old
- “Crossover” youth: JD & D&N proceedings
  - Public Defender and GAL
- New charge + revocation proceeding
- Parents
  - Mom is not a placement option
  - Dad is out of state and has made no progress on D&N treatment plan
- GAL knows:
  - Dad faces three misdemeanor charges in Utah
  - Dad's live in girlfriend has plead guilty to possession of marijuana



Jordan has been offered a plea agreement in his new case. If he admits to the felony charge, the DA will agree to recommend a 30 day detention sentence and then case closure (no more probation). There are no viable defenses to the charge despite investigation and discovery. Jordan is DONE with the system and wants to be done with probation so that he can move to Utah with his father.

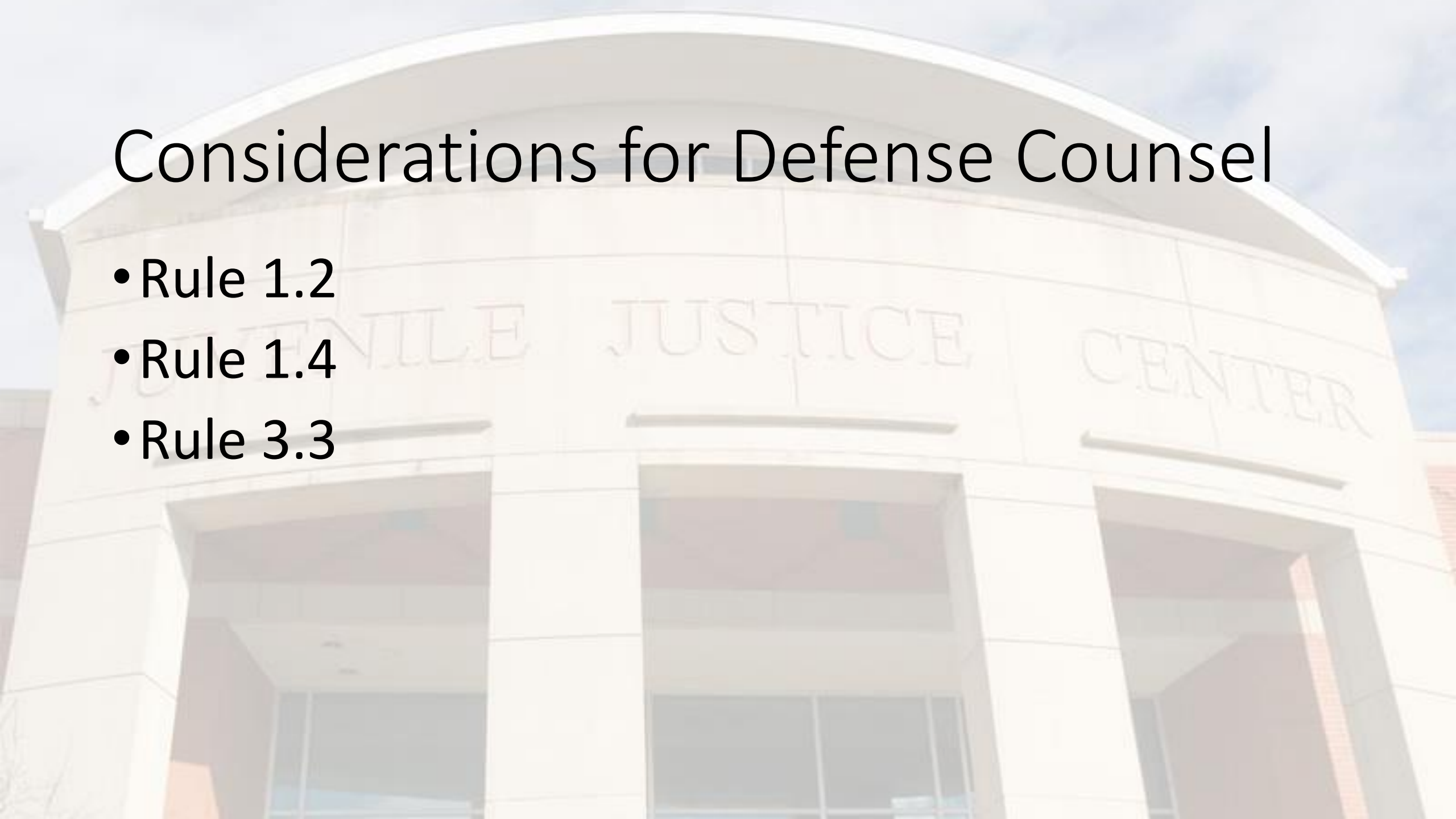
A photograph of a large, modern building with a curved facade and a prominent archway. The words "JUVENILE JUSTICE CENTER" are carved into the stone above the entrance. The building is light-colored with large windows and columns. The sky is blue with some clouds.

Would you support this plea  
agreement?



# Considerations for Defense Counsel

- Rule 1.2
- Rule 1.4
- Rule 3.3



# Considerations for GAL

- Rule 1.2
- CJD 04-06(V)(B)
  - GAL is bound by all rules and standards of legal profession
  - GAL's client is best interests of the juvenile
  - Determination of best interests must include consideration of juvenile's wishes

# Considerations for GAL

- Rule 3.4(c)
- CJD 04-06
  - GAL shall represent best interests in a manner that promotes and protects juvenile's rights §(V)(E).
  - GAL must investigate:
    - Juvenile's understanding of proceeding and consequences of decisions, including pleas §(V)(E)(3)(f)
    - Whether immediate and long-term consequences consistent with best interests. §(V)(E)(3)(g)
  - Best interests must include consideration of juvenile's wishes. §(V)(B)
  - GAL must attend all court hearings and advocate for juvenile's best interests consistent with due process and statutory rights. §(V)(E)(2)





# Should the GAL be involved in plea discussions between the defender and the client?

## Considerations:

- Rule 1.6—Confidentiality
- Privilege—13-90-107
- Relationship with Client/Trust
- Rule 2.1—Counseling & Advice

Due to the GAL's advocacy, the plea agreement has fallen through. Jordan adamantly denies the charges and wants to take the case to trial. The case continues to be set for trial. At each pretrial conference, a different defense attorney appears and the deadline for motions has come and gone without the filing of any suppression motions. Jordan reports to the GAL that he has been unable to reach defense counsel.

# Considerations for GAL

- Rule 8.3
- CJD 04-06§(V)(E)(3)(b): GAL must investigate appointment and availability of defense counsel consistent with juvenile's constitutional and statutory rights

Jordan is in pretrial detention. He reports to defense counsel that his GAL has not visited him.

JUVENILE JUSTICE CENTER

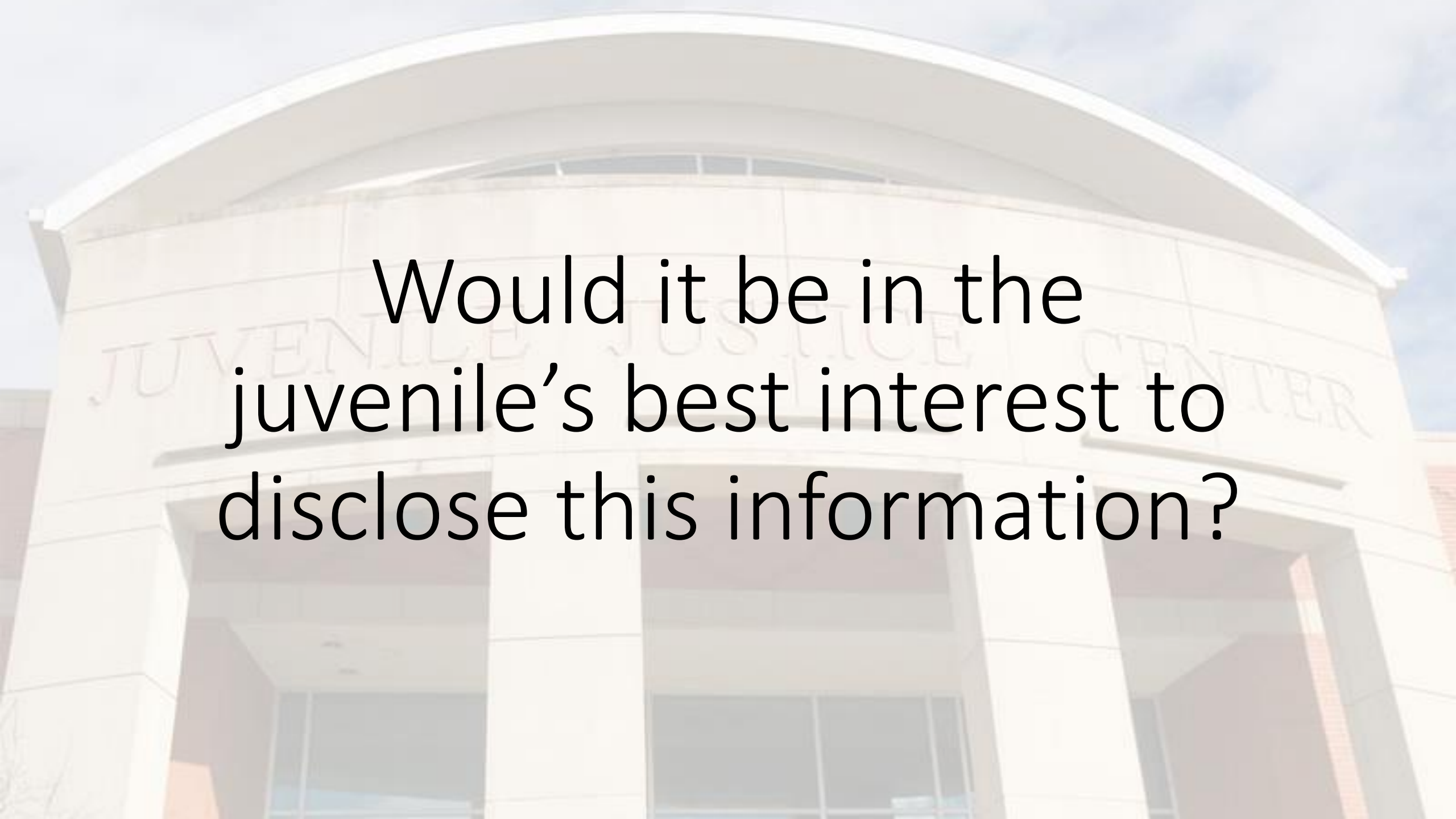
The image shows the exterior of a large, modern building with a curved facade. The words "JUVENILE JUSTICE CENTER" are carved into the light-colored stone or concrete above the entrance. The entrance features large glass windows and doors. The sky is visible in the background.

# Considerations for Defense Counsel

- Rule 8.3
- CJD 04-06 §(V)(E)(1): Timely in person meeting requirements:
  - Follow up to court contact is required
  - As soon as possible
  - If juvenile is in detention, diligent efforts to visit within 7 days
- CJD 04-06 §(V)(E)(4)(a): Maintaining contact requirements:
  - Contact with juvenile should not be limited to court appearances



Jordan also informs GAL (or) defense counsel that he is questioning his gender and he believes he is facing some bullying as a result of some of his behaviors. He does not want his parents to know about this, as he is afraid that they will disown him.



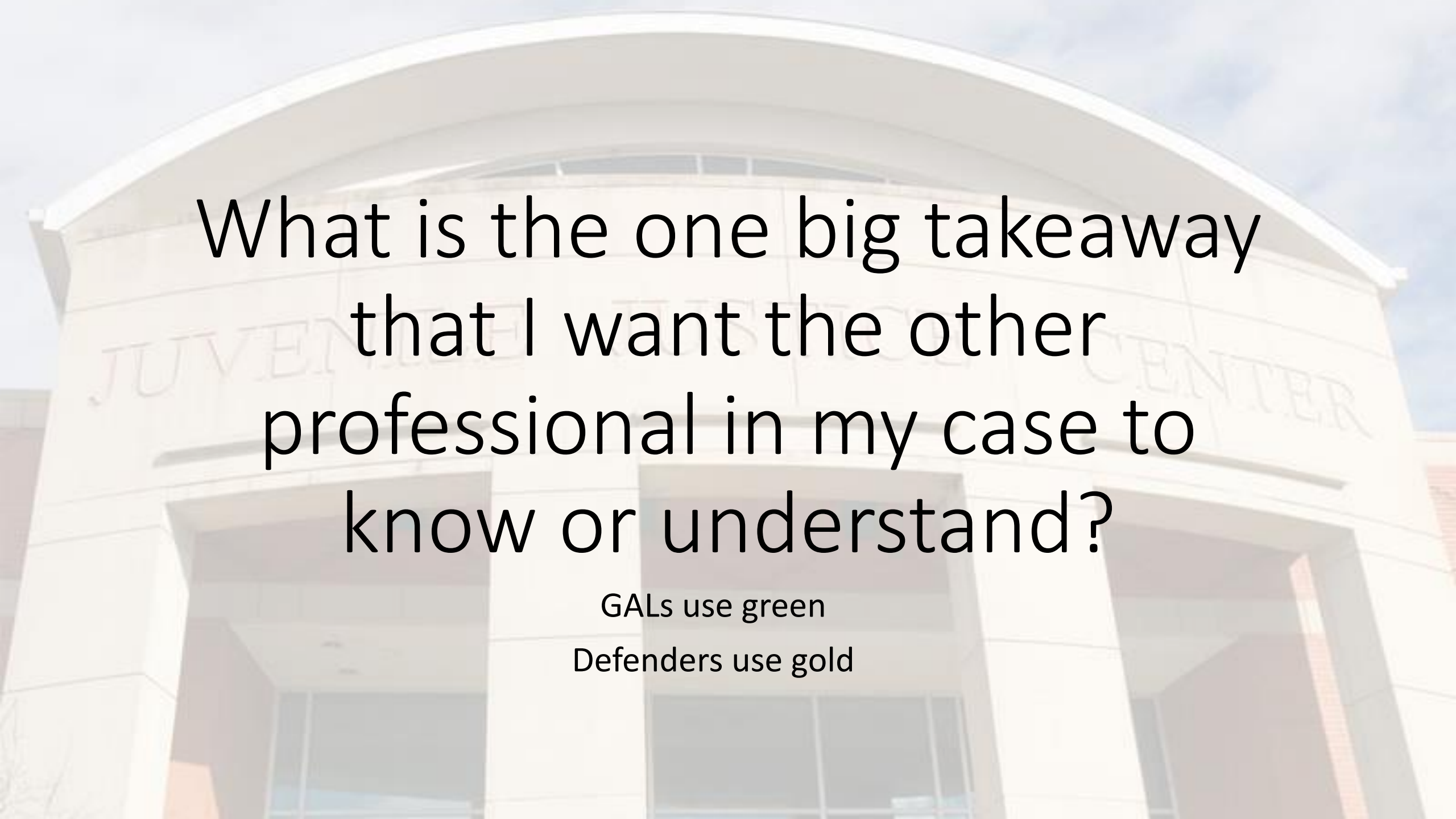
Would it be in the  
juvenile's best interest to  
disclose this information?

# Considerations for Defense Counsel

- Rule 1.6
- C.R.S. 13-90-107
- Client-centered Representation
- Stated or Expressed Interest

# Considerations for GAL

- Rule 1.6
- CJD 04-06§(V)(B):
  - due to unique definition of “client”, attorney obligation not to reveal confidential information does not apply if info necessary to advocate for BI of juvenile
  - GAL must explain limitations on confidentiality
  - GAL’s determination of best interests must include consideration of juvenile’s wishes



What is the one big takeaway  
that I want the other  
professional in my case to  
know or understand?

GALs use green

Defenders use gold