

# **Criminal Defense Investigation and Discovery - Fall 2010**

**Friday 9:00 AM, Room 105**

## **Week 1 - 8/27          Brainstorming the Theory of Defense**

*Actual Innocence*, Preface and Chapters 1, 2.

*Themes and Theories Outline*

*Brainstorming: Developing the Facts to Build a Theory of Defense*, by  
Ira Mickenberg.

*If you Build It, They Will Come*, by Stephen P. Lindsay

NCDC Theory of the Case Worksheet

Prepare to brainstorm and develop a Theory of Defense for the *Lewis* and *Sage* cases.

## **Week 2 - 9/3          Initial Client Interview**

*Actual Innocence*, Chapter 3, 4.

*Client in Crisis Initial Interview with the Detained Client*, by Andrea Lyon.

*Improve Your Client Interview*, Denise De LaRue

Using hypos from week 1, plan your interview of the client in each. What is your goal(s)? What type of approach would you take? What problems can you anticipate may present themselves? Resolution?

**Week 3 - 9/10**

**Reality Checking Your Facts: Controlling the Evidence**

*Kyles v. Whitley*, 514 U.S. 419, 115 S.Ct. 1555 (1995).

*Holmes v. South Carolina*, 547 U.S. 319, 126 S.Ct. 1727 (2006).

**Week 4 - 9/17**

**The Right to Counsel and Zealous Advocacy**

*Actual Innocence*, Chap. 5.

*Gideon v. Wainwright*, 372 U.S. 335 (1963).

*RFK Statement*

*Avoid Balancing Rights*

*Criminal Defense Attorney Duty*

Prepare Ethics Hypos on TWEN

Recommend you **skim** the following articles, but not required:

*Professional Responsibility of the Criminal Defense Lawyer: The Three Hardest Questions*, 64 Mich. L. Rev. 1469 (1966).

*The Criminal Lawyer's "Different Mission": Reflections on the Right to Present A False Case*, 1 Geo. J. Legal Ethics 125, 136 (1987).

**Week 5 - 9/24**

**Right to Counsel and Zealous Advocacy, continued.**

*Actual Innocence*, Chap. 6

*Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984).

*In re Jones*, 132 Ohio App.3d 173, 724 N.E.2d 839 (1998).

*In re Sherlock*, 37 Ohio App.3d 204, 525 N.E.2d 512 (1987).

*In re Burns*, 42 Ohio Misc.2d 12, 536 N.E.2d 1206 (1988).

In *Strickland*, what was the basis of the claim of “ineffective assistance” of trial counsel? What is required of trial counsel in order to be constitutionally “effective”? Is this the minimum or maximum level of effectiveness you should aspire to achieve, or would you want an attorney representing you to perform at a higher level? Review Week One Hypos in light of last week’s discussion. Be prepared to discuss the rights of each defendant with respect to your representation.

## **Week 6 - 10/1            Discovery**

*Actual Innocence*, Chap. 7.

Discovery Documents - TWEN

*Brady v. Maryland*, 373 U.S. 83 (1963).

Ohio Crim. R. 16.

Prepare Discovery problems for class.

## **Week 7 - 10/8            Discovery, continued.**

*Actual Innocence*, Chap. 8.

Finish Discovery questions from last week. Review *Brady* and *Kyles*.

## **Week 8 - 10/22      Investigating the Case**

*Actual Innocence*, Chap. 9.

Investigative Documents - TWEN

Witness Statement of John Smith - TWEN

O.R.C. §149.43 et seq.

Ohio R. Evid. 607, 608.

Ohio Crim. R. 17.

*State ex rel. Steckman v. Jackson*, 70 Ohio St.3d 420, 639 N.E.2d 83 (1995).

*State ex rel. Rasul-Bey v. Onunwor*, 94 Ohio St.3d 119 (2002).

## **Week 9 -10/29      Investigation - cont'd**

*Actual Innocence*, Chap. 10.

*Davis v. Alaska*, 415 U.S. 308 (1974).

*Story Telling, Why We Do It.* - Lindsay

*Some Thoughts on Opening Statements and Closing Arguments* -  
Glass

## **Week 10 - 11/5      Investigating for Cross in the Digital Age**

*Actual Innocence*, Chap. 11.

Pa. Ethics Opinion

## **Week 11 - 11/12      Cross Examination**

*Actual Innocence*, Chap. 12.

*Selected Portions of Pozner and Dodd*

*Look Good Cross Examination* - McCarthy

*Why Johnny Can't Lead* - Dantzler

## **Week 12 - 11/19      Impeachment**

*Actual Innocence*, Chap. 13, review App. 1 & 2.

Impeachment Chart and related evidence rules.

*Paper Training Puppies* - Dantzler

*Using the Rules* - Charlie Daniels

Prepare the impeachment exercises on TWEN

## **Week 13 - 12/3      Pretrial Motions & Last Class**

*Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868 (1968).

*Neil v. Biggers*, 409 U.S. 188, 93 S.Ct. 2243 (1972).

*Manson v. Braithwaite*, 432 U.S. 98, 97 S.Ct. 2243 (1977).

*United States v. Wade*, 388 U.S. 218, 87 S.Ct. 1926 (1967). Please note the dissent/concurrence.

Review, answer any questions, and hand out problem for Final Exam project.