

Criminal Defense Investigation and Discovery - Spring 2008

Friday 9:00 AM, Room 302

Week 1 - 1/18 Brainstorming the Theory of Defense: Where it all Begins, and Must Continue.

Actual Innocence, Preface and Chapters 1, 2.

Trial By Design, by Cathy R. Kelly, *Champion*, November 2002.
Theories and Themes article.

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 2
hypos in light of the reading assignment.

Week 2 - 1/25 Initial Client Interview

Actual Innocence, Chapter 3, 4.

Article: Initial Interview with the Indigent Client, by Andrea Lyon.

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 - 2/1

The Right to Counsel and Zealous Advocacy

Prepare to discuss Ethics Hypos.

Actual Innocence, Chap. 5.

Read the opinion of Justice White in his partial dissent and concurrence in *United States v. Wade*, 388 U.S. 218, 256-257, 87 S.Ct. 1926, 1947-1948 (1967).

Powell v. Alabama, 287 U.S. 45 (1932).

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

Skim the following articles:

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 4 - 2/8

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).

State v. Gasen, 48 Ohio App.2d 191, 356 N.E.2d 505 (1976).

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

In re Original Grand Jury Subpoena, 89 Ohio St.3d 544, 733 N.E.2d 1135 (2000).

Franklin v. Anderson, 2006 U.S. App. Lexis 444, read sections I, III, and IV of the decision.

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 5 - 2/15 Discovery

Actual Innocence, Chap. 7.

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

Kyles v. Whitley, 514 U.S. 419 (1995).

State v. Kalejs, 150 Ohio App.3d 465, 782 N.E.2d 112, 2002 Ohio 6657.

Rule 16, Ohio Rules of Criminal Procedure.

Be prepared to complete remaining Ethics Hypos from last week. Read and prepare Discovery Hypos/problems to discuss in class.

Week 6 - 2/22 Discovery, continued.

Actual Innocence, Chap. 8.

Arizona v. Youngblood, 488 U.S. 51, 109 S.Ct. 333 (1988).

State v. Benson, 152 Ohio App.3d 495, 788 N.E.2d 693 (2003).
Finish Discovery questions from last week. Review Brady and Kyles.

**Week 7 - 2/29 Investigating the Case: Non-traditional
Discovery**

Actual Innocence, Chap. 9.

O.R.C. §149.43 et seq.

Ohio R. Evid. 607, 608.

Rule 17, Ohio R. Crim. Proc.

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).

State ex rel. Beacon Journal Publishing Co., v. Maurer, 91 Ohio St.3d
54 (2001).

Olden v. Kentucky, 488 U.S. 227 (1988).

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

Week 8 - 3/7 Investigation Process

Actual Innocence, Chap. 10.

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

Finish non-traditional discovery.

Begin Investigation Hypo handed out in class.

General Lecture on investigations: Crime Scene & Witness interviews.

For next week prepare Discovery Demand and Memo. outlining investigation goals/task.

Week 9 - 3/14 Cross Examination

Actual Innocence, Chap. 11.

Impeachment Chart and related evidence rules.

My Cousin Vinny excerpts.

Week 10 - 3/21 Cross Examination conclusion.

Actual Innocence, Chap. 12.

Brief review on conducting witness interviews and scene visit.

Lecture on fundamentals of Impeachment.

My Cousin Vinny and A Time to Kill

For week 11 do witness interviews and scene visit.

Week 11 - 4/4 Impeachment Exercises

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

In class do impeachment exercises.

Week 12 - 4/11 Impeachment

Material to be distributed.

Week 13 - 4/18 Pretrial Motions

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.

Week 14 - 4/25 Last Class

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

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