

# JOHN MARSHALL LAW SCHOOL

## Syllabus – Spring 2015

Professor: Rich
Course Title: Client Counseling
Semester: Spring 2015
<b>Required Books</b>
<b>Title: A Practical Approach to Client Interviewing, Counseling, and Decision Making: For Clinical Programs and Practical Skills Courses</b> <b>Author: G. Nicholas Herman and Jean M. Cary</b>  <b>Publisher: Lexis Nexis</b>  <b>Edition: ISBN:9781422422939</b>
<b>Title: The Lincoln Lawyer</b>  <b>Author: Michael Connelly (2005)</b>  <b>Publisher: Little Brown &amp; Company</b>  <b>Edition: ISBN: 0-316-73493-4</b>
<b>Required Cases to Read</b> <b>(be prepared to act as attorney for each party as your client)</b>
Jones/Linkous/Mimms v. State, 276 Ga. 171 (2003)
Fogarty v. State (Court of Appeals and Supreme Court decisions)(1997)(1999)
CAMP, et al. v. PEETLUK, et al. 262 Ga. App. 345; 585 S.E.2d 704; 2003

### Cases Recommended to Read (lawyer conduct)

Mullaney v. Aude, 126 A2d 639 (Md 1999)

In re Eisenberf, 144 NW2d 867 (Wis 1988)

Thomas v. Tenneco Packaging, 293 F.3d 1306 (2002)

In re First City Banc of Texas, 282 F.3d 864 (5th Cir. 2002)

In re Cordova-Gonzalez, 996 F2d 1334 (1st Cir. 1993)

Lee v. American Eagle, 93 F.Supp. 2d 1322 (SD Fla 2000)

US. v. Kouri-Perez, 8 F.Supp.2d 133 (DPR 1998)

In re: Finklestein, 901 F.2d 1560

Weeks One and Two: Read Chapter 1 and 2 from **Both** Books

For first few minutes of Class #1, be prepared to discuss background before law school, current/past employment, and what type of cases you expect to handle after graduation.

Discussion topics from Textbook:

How important are People Skills in client interactions?  
Is same course of action appropriate in every case for every client?  
What are differences in lawyer centered model and client centered model?  
Which is better model?  
What is collaborative model?  
Is it better?  
How important is money in client representation and counseling?  
Should you accept client who is not dependable?  
How important is a lawyer in the legal system?  
Can client represent themselves in most cases?  
Discuss roles of Guide, Guardian, and Governor as it relates to attorney role.  
How important is it that client understand legal process?  
Discuss following attributes of lawyers: caring, patience, empathy.

Discussion from Lincoln Lawyer:

Chapter 1:

Preface: Discuss “No Client as scary as an innocent man” J. Haller (1962)  
What is “franchise” player?  
Is it ethical to get referrals from bondsman?  
Discuss ethics of “Christmas List” gift box  
What does judge not running for re-election mean to lawyers?  
Should lawyer promise to be at next case by 11:00 when not certain he could make it?  
What does list of charges say about case? How much to charge?  
Is it ethical to set fees on booked charges when possible charges may be reduced?  
What did CC Dobbs’s name mean to Haller? What about his address?  
Why did Haller ask bondsman “Why me?”  
Why is Haller worried Dobbs may turn him into state bar? Or a bondsman sting operation?  
Why is it likely Dobbs would have his own man for criminal referrals?  
Why is Haller so careful in his answer “don’t worry, you are on Christmas list”  
Is it okay to go into employee entrance at courthouse?

## Chapter 2:

Discuss Haller knowing court was about to start when he saw bailiff sitting in court

Discuss Haller getting bailiff's name wrong

Why was it necessary to advise client to cut hair and shave? What about tattoos? Pony tails?

Discuss facts of Casey case

Is it proper for Haller to give client hope he may win case?

Why did Haller not waive right to speedy trial? Is this a good tactic?

Why is airspace important to facts in Casey case?

Is it proper to tell client he needs money for expert?

Discuss client's statement "I checked around, judge won't let you quit"

Discuss Haller's statement "I gave Judge the wink"

Why is a trial the last thing a judge would want to hear?

Discuss bailiff letting lawyer back to talk after court, as a courtesy (i.e. why would Haller be given such a courtesy?)

## Week Two: No additional reading from Text; Chapters 3 and 4 Lincoln Lawyer

### Chapter 3

Is it ethical for Haller to hire former client as driver and keep 1/2 hourly wage?

Discuss Haller keeping tapes/notepad/low volume while in car for \$50 p/h

Discuss Gwinnett county wiretap case to be assigned

Is it ethical to have yellow page/bus bench ads go to Lorna Taylor as call screener

Is it ethical to accept Visa/MC for fees? What about getting pre-approval on cards before accept case?

Discuss Gloria Dayton as client

Is it ok to take her repeated cases pro bono?

Is it ethical to "tip Sticks" to the Roulet pre-lim?

Is it ethical to take case knowing case is assigned to ex-wife?

Is it ethical to tell Vogel that Kodak expert will need 1<sup>st</sup> class airfare/hotel when not hired yet?

Discuss slogan: "Reasonable Doubt for Reasonable Fee"

Why did Haller write 10K receipt to Casey not Vogel?

Is it true that most lawyers get disbarred for fee issues?

Why did Haller put funds in client fee account?

What can we surmise about Haller's thoughts about the criminal justice system after being a lawyer for 15 years?

Discuss Haller's characterizations of his various roles in system: mechanic/demon/finder of mistakes made by workers/greasy angel

#### Chapter 4

Discuss Haller's thoughts that client looked like prey instead of predator

Why was Haller insistent that client not discuss case?

Discuss why Haller asks about age/marital status/community/charities/income

Why does Haller not take interest in other defendant in holding cell?

Is it proper to tell him to talk to Public Defender?

Why does Haller tell client not to speak to Judge unless he checks with Haller first?

Is \$2,500 reasonable fee for preliminary hearing?

Discuss Haller's hope that leather binder impressed client

Discuss Haller asking client why he picked Haller vs. another lawyer from Dobbs

Is it ethical for supervising DA to place no bail on file assigned to other Asst DA?

Is it ethical for Haller to tell client he asked Judge for favor to take case first?

Is it ethical for judge to take media cases before all other cases?

Discuss Haller's advice: use me as a shield for camera

Is it ethical for judge to hear case when he went to Haller's wedding?

Is it ethical to use Dobbs as witness when his only role was to make campaign contributions to judge?

Is it reasonable for judge to set bond at \$1 million? Ethical?

Why does Haller check to look at Dobbs before he accepts judge's ruling?

Why is bondsman happy when the bond was so high?

#### Weeks Three and Four: Read Chapter Five and Six Lincoln Lawyer

#### Chapter 5:

Why do lawyers have multiple rates? "A" rate vs. Everybody else

Does Haller have a conflict in advising on property bond vs. using his friend as bondsman?

How persuasive / real are Haller's reasons? Danger and Snitch

What about his language? "Can I make a suggestion...?"

Why does Haller ask Dobbs "Do I have the case?" Why not ask client?

What are your thoughts on Haller's response to Dobbs: "Can you get prosecutor removed?"

What is the propriety of talking fee schedule with Dobbs and not client?

What are your thoughts on the fee arrangements proposed by Haller?

Hourly? \$2,500 today/\$300 ph prepare/\$500 ph trial

Flat fee: \$60K prelim+\$12K plea+\$60K prepare for trial+\$25K for trial+\$25K per week+appeal fee

Why does Haller look at Dobbs for reaction?

\$30K+\$10K investigator today

What are your thoughts on one card with cell number and one card with office number?

What is the propriety of tipping cameraman to hearing? To offering to buy the tape? To billing client? To splitting fees with cameraman?

## Chapter 6:

Why did Haller want Levin at the first meeting with client when he had not yet been paid?

Why did Haller think Lorna's question: "Did he do it?" was irrelevant?

What is the propriety of Maggie whispering that "Minton is a cheater" to Haller?

How can a prosecutor get such a reputation? Is it fair to share your reputation with other lawyers?

How does it affect Haller that he is from a family of attorneys?

Why does Haller tell Dobbs that he will meet with client without his mother?

Why does Haller reject the idea of using Cecil's investigator? Why not use both?

Is it proper for Levin to acquire early copy of police report? For Haller to use it?

Week Five                      Read Chapter 7 and 8 Lincoln Lawyer

## Chapter 7:

Why does Haller not charge Gloria Dayton in her repeated cases for drug abuse?

Is it proper to create the "trade up" possibility when Dayton is clearly guilty?

Why is it not proper for Haller to post bond for client?

Why did Haller have to wait longer after was treated deputy rudely about the delay in seeing client?

Why is it significant that Levin finds a federal warrant for the person described by Dayton?

How does Haller handle the prosecutor's demand that his client testify if she is given a trade up?

Is it proper to use the Asst DA's interest in possible US Attny job as an incentive to trade up for Dayton?

Is it proper to use deadline with Asst DA or threaten to go directly to DEA directly?

Is it proper for Asst DA to threaten to "take it out on the client?"

## Chapter 8:

What image does conference room description portray of the type of firm that client uses?

What does Haller think about presence of mother in room?

Why does Haller refuse money from mother? Why did Haller change when he took fees from non-client earlier that a.m.?

What are terms of the fee contract?

Why is control important to Haller in this case?

How would you evaluate Haller's request for the client's mother to leave the room?

What are factors in decision on speedy trial demand or speedy trial waiver?

Is it appropriate to describe prelim as a rubber stamp? Is hearsay admissible in such hearings?

Why is Dobbs not correct in prelim as an opportunity to see the state's witnesses early?

Is it proper for DA to increase charges to get a better hand in negotiations? Is it proper for lawyer to say that is what is happening?

What is it about the way client demanded his innocence that convinced Haller that he may be telling the truth?

Is civil liability really a danger here from client's perspective? From criminal jury perspective? Civil jury?

Does one year at UCLA law school indicate anything to Haller in the way he may treat client?

Discuss topics of client interview:

where he lives/witnesses/employment/what he watched on dvd/golf/names of foursome/types of cars/drinks/where/bartenders/waitresses/tipper/location of note with address/time?/look at watch?/what he was drinking?/credit card receipt/(lawyer looking to Levin for questions)/see guy leave?/what was he driving?/stairs/elevator?/hit by something/woke up/bag on hand/left hand

Why is Haller afraid that he won't know what innocence looks like?

Why does Haller watch client as he reviews crime scene photos of victim?

## Week Six                      Read Chapters 9 and 10 Lincoln Lawyer

### Chapter 9

Why would Haller and Levin use good cop/bad cop technique?

Why was it meaningful that Defendant was acting angry?

Discuss "this is not my knife" statement

Why is rape kit important to the defense?

Why is Haller still putting on the show for client?

Discuss Haller's statement that he got prosecutor kicked off case, they got assigned a green prosecutor

Discuss Haller's obligation to advise client of plea

Discuss Haller's answer to "Can you win?" ("Yes, I am confident")

Discuss Dobb's statement that he can put political pressure on DA's office

Discuss Haller's anger that his fees will go down, and fees will be spent on investigator

Was it proper for Haller to advise Lorna to call Dobb's office pretending to be media?

What were terms of fee agreement? Was it in writing?

When Levin brings up Jesus Menendez, discuss how case seems to be bothering Haller

### Chapter 10

Discuss: "Any case. Anytime. Anywhere." Yellow pages add

Haller's analogy to hunting, and that he is a smart hunter

How does Haller relate his success in his work with Darius, the drug dealer

What are your thoughts on the courtroom exchange with Judge in the green robe?

What is an "annuity client"?

What are your thoughts on the way he remained in office ?

What role would the Robert Blake case have with Haller's cases?

Why did Haller miss court date the day before?

## Week 7      Read Chapters 11 and 12

### Chapter 11

Why did Haller have driver put on earphones?

How important in the lie about client attending UCLA?

Why does someone with a perfect memory make Haller nervous?

What are your thoughts on Levin paying \$1,000 for the DVD

Why did Haller miss court the day before?

What do you think about Haller advising Levin to keep the DVD to prevent its from disclosure to state?

Discuss Haller's statement that as a criminal defense attorney "I **live** in grey area"

Why is DVD so important in the defense of the case?

What do you think of the investigator following the victim? Taking down tag numbers? Times?

Why is it important that client wears a \$10k watch?

Why is client lying about prostitution important?

### Chapter 12

Did you think Haller succeeded in defense of Sam Scales case?

Why is it always client's choice for a trial and not lawyer's choice?

Why was it believed that Haller was a potential "no show again"? What is his reputation?

Why is Haller asking for more money?

How would you characterize the judge who brings her dog to work?

What is the reputation of Judge Flynn?

Why did Judge say "Strike that" when calling the Scales case?

Why did Haller not shake Scales' hand after case?

## Week 8      Read Chapters 13 and 14

### Chapter 13

What did Scales say that bothered Haller?

What do you think about Haller's comment "no real estate showings in prison"?

Why did Haller not like client to use his first name?

Why is Haller so angry?

What do you think of Haller's spinning plate analogy?

Why did Haller think franchise was "slipping away"?

Discuss client's statement that "I knew I found best lawyer when I found you."

Discuss Detective's mention of Jesus Menendez case and lawyer's interest in only money

Discuss Haller's defense of the criminal system, and detective's criticisms of defense lawyer

## Chapter 14

Why did Haller feel the prosecutor gave him no respect or deference?

Assess prosecutor's statement "here is discovery, I want to be cordial..." and

Haller's belief that most prosecutors withhold discovery

Why does Haller keep bringing up Blake case?

What does Prosecutor's law school mean to Haller?

What do you think of Levin's question, "Are there bonuses for everybody?"

What are Haller's feelings about franchise being back in play?

Was it the right thing for Haller to go to prosecutor even if it meant he might lose franchise fees?

## Week 9                      Read Chapters 15 and 16 Lincoln Lawyer

### Chapter 15

What does client's wealth mean to Haller?

Discuss conversation about client's lies and Haller's advice for client to take offer of 4 years

What new information does Haller think he can use in defense?

What does it mean to Haller that he knew he was going to trial

### Chapter 16

Was it proper for Haller to get kick back from cameraman?

What do you think of Haller drinking with DA's office?

Discuss statement "Did Minton sandbag you with that guy Corliss"?

What do you think of Haller's statement that good prosecutors are fair, all other are not

Can prosecutors and defense lawyers have personal relationships?

Did either party cross any ethical lines?

## Week 10                      Read Chapters 17, 18, and 19

### Chapter 17

Discuss other lawyers' joke that Haller married to create a conflict

Why would police have extra enjoyment booking Haller?

Is it ok for Haller to get free rent on the storage unit in exchange for attorney fees?

Is Haller a good lawyer? Would any lawyer have recognized the victim photo similarity?

Is it a coincidence that Haller was selected as the lawyer for both cases?

### Chapter 18

Why does Haller be sure to note that Menendez made police statement, "before I was the lawyer"?

What is "iceberg" evidence?

Is it ok for Haller to take on case as a loss leader, looking for media exposure

Why is language barrier important in the Menendez case?

What do you make of these facts? No lottery held on the date of murder/No \$ found in victim's home/no fingerprints found?/3 witnesses saw Menendez throw knife/lied to police to protect brother



Discuss Haller's reliance on his instincts /his comment that "my thoughts were whispers in the darkness inside"/his idea that the system was the knife

#### Chapter 19

What are your thoughts on the prison as described by Haller

Why are prison guards worried about lawyers bringing in contraband? Showing pictures to clients?

Why did Haller bring photo spread and not just single photo?

Why was guard irritated at Haller?

What did client assume when lawyer never asked if he was guilty?

What did Haller think when Menendez would not shake hands?

Would you feel the same way Haller felt on the train?

#### Week 11      Read Chapters 20, 21 and 22

#### Chapter 20

What is important about Corliss being given a deal?

What are assumptions Haller makes about Corliss? Prosecutor?

What do you think about Haller's heavy drinking that night after talking to Levin?

What do you think of Haller's explanation of his ethics to Levin?

#### Chapter 21

What do you think of Haller's descriptions of his house payments being dependent on his case load?

What do you think of Maggie's residence as a factor in her getting promoted?

How about her being passed over because she was too good/too fair/too honest?

Does that happen?

What are thoughts on client's offer to double fees after acquittal?

How does victim's safety affect attorney client privilege? What about client's statement that Haller has a beautiful daughter?

#### Chapter 22

Is it ok for Levin to give Dodger tickets to lawyers he works with?

Why would Haller stop taking new clients unless they are repeats/have money up front?

Is the key to trial preparation like Haller believes?

What do you think about sling shot analogy?

What facts is Haller working with to prepare for defense?

Why does Haller tell Lorna to mail 10 copies of appeal to Casey in jail?

Is it correct that Casey's parole still may be violated even though he won his appeal?

What might happen at a new trial? What about the state's right to appeal to higher appellate court?

Is it ok for Haller to tell Teddy Vogtle about appeal result before the client even knew?

What do you think about lawyer's joke that quick review in Casey case was because 3 of the judges were on Haller's Christmas list?

Week 12      Read Chapters 23, 24 and 25 Lincoln Lawyer

Chapter 23

Why didn't Haller tell police his suspicions about client?

Discuss conversations between police and Haller about the way the police and lawyers do their jobs

Chapter 24

What do you assume with the number of drinks that Haller consumes?

How do you think Haller is able to advise client not to talk to police when it may help police solve murder?

Chapter 25

Discuss guilty vs not guilty defendants and evil people as seen through Haller's viewpoint

Does the system deal well with either?

What do you think Haller was trying to say when he said "I can't do this anymore"

Read Fogarty v. State (2 decisions) and be familiar with attached list of facts for client interview

Read Chapters 3 and 4 Textbook

Discussion topics from reading material:

Explain Attorney-Client Privilege to client and discuss waiver issues

Explain Conflict of Interest to client and discuss waiver issues

Explain Retainer to client and discuss fee arrangement with client

Discuss office personnel role in taking initial phone call from client and what legal advice they can discuss;

Discuss Initial office visit with client;

Discuss choice of vocabulary you would use with client

Discuss how to explain your legal assessment of case with client

Discuss with client their objectives with regard to representation

Explain initial course of action to client and follow up meeting

What forms are necessary for client interview?

Week 13      Read Chapter 4 Textbook

Discussion topics from reading material:

Discuss how summary judgment, closing arguments, and settlement should be used by the attorney at the initiation of representation

What is active listening? Demonstrate

How can the first year of law school help attorney to communicate with client?

What phrases can be used to communicate effectively when discussing difficult subjects?

What are common barriers to communication? How can they be overcome?  
What is difference between open and leading questions? Why would each be used?  
What is Funnel Technique? Is it useful?  
How can attorney achieve client expectations during interview?  
Be prepared to demonstrate skills discussed in Chapter Four in class interviews.

Week 14: Read Chapters 5 and 6 Textbook

Discussion topics from reading material:

Discuss process of decision making on page 63  
What are non-legal factors? Are they important?  
How can attorney assign probabilities of outcomes?  
How can decision be implemented if client is unreasonable?  
How can attorney help in crisis decisions?  
Be prepared to counsel client through a decision

How important are lawyer ethics to decision making decisions for clients?  
Give examples from recommended cases and required cases where clients may have been harmed by lawyer conduct. Is lawyer harmed in other future cases?  
How important is written fee contract and scope of representation contract?  
Discuss Competence, Diligence and Communication roles of attorney.  
How much of attorney advice should be in writing? Why?  
How do you represent mentally disabled clients?  
How important is client confidentiality?  
How should representation be declined or terminated?  
How important are Conflicts of Interest?  
How is Attorney authority for settlement determined?  
Discuss Contingent fee arrangements.

Also, be prepared for final client interview to last 5-10 minutes (details of case to be provided by professor)