

GARDEN STATE CLE LESSON PLAN

A 1.0 credit course

**FREE DOWNLOAD
LESSON PLAN AND EVALUATION**

THE JACKET: THE TRIALS OF A NJ CRIMINAL DEFENSE ATTORNEY

With

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And featuring

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Program description

Attorney John Hartmann's book explores a judicial nightmare that can happen to anyone in New Jersey, a criminal conviction based upon mistaken eye-witness identification. In this one-credit CLE, the author explores this problem and how NJ law addresses it.

I. Introduction

- **John Hartmann, Esq., author**
- **Had a client whose conviction was overturned on appeal and during re-trial was found not guilty – impressed by client as a person**
- **Three recent cases have developed since the re-trial on the exact issue that was addressed in that case:**
 - **State v. Henderson, 208 NJ 208 (2011)**
 - **State v. Chen, 208 NJ 307 (2011)**
 - **State v. Lazo, 209 NJ 9 (2012)**
- **Book has tidbits of information about how to get stuff done in the court system – intended audience is for young attorneys as well as general public**
- **Introduction into how to go into the law in this area – highly populated area; crime**
- **Prior interest in politics but no longer**
- **Public defender's office – Middlesex County per diem**
- **Criminal practice – theory v. practice**
 - **Great way to get into the court room**
 - **Get to help people**

II. Points in the book for new attorneys starting in criminal work

- **Get in at ground level – clerk for a judge**
 - **Get to know people – networking**
- **Go to prosecutor's office or public defender's office**
 - **PD's office is better because you have a “real” client – good practice to do criminal defense work on your own or for a firm later**
 - **Always ask client “what is your jacket like” – want to know what his criminal history is and will establish for the client that you know what you are doing**
 - **Cannot promise to do anything except for you to do a good job**
 - **Never talk about a plea the first meeting because clients tend to think you want to sell them out**
 - **Clients want you to fight the case**
 - **Gain trust and confidence of your client**
 - **Shouldn't matter whether someone is guilty or not – be careful ethically – Nix v. Whiteside, 475 US 157**

(1986) – cannot put your client on the stand if he is going to perjure himself

- **Need to assess what result in the case will satisfy client's needs (plea, immigration issues, etc)**
 - **Almost no leverage in criminal matters – state has investigators and resources – need to punch holes in state's case**
 - **File motions – most work is done before the trial in motion practice**
 - **Having a good investigator will help to make a case for the defense – can dig things up – especially in inner cities the police work is shoddy because of lack of resources – not always thorough investigations**
 - **Value to being nice to people – everyone in the system – you never know who you will come across**
 - **Reputations stick with you – so be nice**
- III. Just starting out on your own as a defense attorney**
- **Go to public defender's office – do pool work and work hard**
 - **When you meet a defendant you have to realize that the person is a source of future clients**
 - **Cover for other attorneys – make contacts – hustle**
 - **Be willing to do other things in order to get out there and make money**
 - **3-4 years to build up a practice**
 - **Not high overhead expenses for criminal work**
 - **If you mess up, you don't have to worry so much about malpractice because post conviction relief**
 - **Whatever you make, add \$50K because being your own boss provides benefits of making your own schedule**
- IV. Advice for handling yourself in a courtroom**
- **Have to have at least 5 trials**
 - **Go to public defender to get cases that are trial cases – get cases that are less serious – don't take homicide trials**
 - **You have to get in there and doing the trial work**
 - **Important to talk to people and observe – find people you can ask questions**
 - **In chambers:**
 - **Be extremely respectful**
 - **Don't volunteer too much information**
 - **Don't say anything until you are asked**

- **On the record:**
 - **Build the record**
 - **Be extremely respectful**
 - **Don't volunteer too much information**
 - **Don't say anything until you are asked**
 - **Represent your client**
- **Dealing with prosecutors:**
 - **Realize you are going to be working with these people for a long time**
 - **They should know you are going to work hard on your case**
 - **They have to realize that you are willing to try a case**
 - **Be pleasant, be professional**
 - **To get a plea offer to improve you have to be able to point out the weaknesses in the case without insulting the prosecutor**
 - **Need a good investigator to get the information to find weaknesses**
 - **File motions that are strong motions**
 - **If you have a strong suppression issue, then defense can volunteer to write the first brief – may result in a lower plea**
- **Getting client out of jail pre-conviction**
 - **No necessity if likelihood of jail or prison term – jail credits are beneficial**
 - **Every once in a while there is someone who is factually innocent but is in jail – now what?**
 - **Rare situation because if this were the rule and not the exception, then question the functioning of the criminal justice system!**
 - **Must do everything you can do get the guy out of jail**
 - **Nathaniel Smith (in book) – a great deal of pressure to get him out**

V. Nathaniel Smith case

- **Robbery – tall man put a knife to the tellers – demanding money at a convenience store – got maybe \$100**
- **2 witnesses – both saw – 1 of them was able to identify**
- **No cross racial ID issue**
- **Neighborhood: row houses, stores, dive strip club, mixed neighborhood, on major route – well traveled**

- **Everyone agreed that perpetrator was black**
- **Police show up and interviews victims and police go out in the area and see Nathaniel Smith (client)**
- **Smith was on his way to his second job as a telemarketer – taking a bus and eating a sandwich and is called over by the police**
- **Smith became argumentative with police and is very tall and thin**
- **Client found a couple of blocks from the crime scene – waiting for the bus**
- **Police detain client and does a show up from the back seat of police car – and victim identifies but does not get out and stand up**
- **Second person in store was only able to identify by height not by face – actual robbery victim identified defendant in back seat of police vehicle**
- **Police brought victim to police department and showed her photo lineup with defendant's picture and she identified him again – although only through seeing him at the show up – no mention of the height**
- **Smith in 40s with no criminal record**
- **Photo array – time consuming process to find other photos of people the same age as Smith – old form of photo array with actual photographs**
- **Suggestiveness of police procedure/identification**
 - **Wade hearing was conducted and better offer was made but client declined – maintaining his innocence**
 - **US v. Wade, 388 US 218 (1967)**
- **Plea offer was time served for theft – in jail for the whole time with \$100K bail (family could not afford) – client rejected offer**
- **First trial:**
 - **Client did not testify at first trial – trial strategy with first attorney**
 - **Jury did not deliberate long – just found guilty**
 - **Sentenced to 7 years (convicted as 1st and sentenced as a 2nd degree) – plus NERA (85%)**
 - **State prison**
 - **Appeals through PD's office**
 - **Gets a reversal on appeal – very rare! – but this is the way it should be!**
 - **Reversal was based on failure of trial court to give a charge on identification**
- **New trial:**

- **Appointed to represent Smith**
- **Go to meet him at correctional center – told client that if he pleads guilty to the DP offer then he could be released that week – client refused!**
- **For the police this was just closing another case – not looking to further investigate the case after the suggestive ID**
- **Police did not have any forensic evidence to present at trial and suggestive ID**
- **Some clients you have to put seed in their head that they should take the plea but this client was not willing to take even a minor plea – clients need to come to their own conclusions and decision on plea offers**
- **Have to tell client that they are turning down offer – not in a letter – need to speak with client directly so that client has faith in you and your judgment**
- **Sometimes conference with the judge to have judge place on the record the plea offer and risks of not taking offer – not in this case because client was adamant and was well informed of the consequences of not taking the plea**
- **Not a difficult trial – prepped client 3-4 times – well prepared for trial and did well testifying**
- **Cross examination of victim – going over the height, victim did not make sense (said actor was 7 feet tall), can't beat up on 20 year old girl, quite obvious that victim did not know what was going on, asked how tall attorney was and victim stated 6'2" (wrong answer), and then client stood up and towered over attorney – establishing that victim could not make a height determination/identification**
- **Police officers – not impressed with police officers, seemed that they took the path of least resistance after Smith was identified by the victim, inconvenience for officer to testify again, not a high profile case so was not important to officer**
- **Focused on the facts and reasonable doubt**
- **Jury out for short period of time – not guilty – client discharged**
- **Still in touch with client**
- **The rarest of all defendants – he was factually innocent – he did not do anything**

VI. Recent NJ caselaw about identifications – published just before book was published

- **State v. Henderson, 208 NJ 208 (2011) and State v. Chen, 208 NJ 307 (2011) – companion cases**
 - **Written by Chief Justice**
 - **Statistics in cases – recognition of difficulties and unreliability of witness ID cases**
 - **75% of convictions resulted from faulty eyewitness identification – before DNA**
 - **State v. Delgado – the greatest cause of wrongful convictions in NJ is incorrect eyewitness identification**
- **Outside of DNA, eyewitness testimony is most compelling**
- **NJ Supreme Court tried to prevent the Smith-type cases in the future**
- **Each county is different about Wade hearings – some counties are just adverse to granting Wade hearings**

VII. Advice to young attorneys

- **You have to take each case as it is**
- **If you start harping on pleading guilty, then your client will lose confidence in you – don't get angry with client**
- **It is not your case as the attorney – it is your client's case and their future**
- **Must make client fully aware of what he/she is risking and that is how it is going to be**
- **When talking to a client and you think they have a weak case, if you explain to them that client's fate is in the hands of other people (jury) – big risk, client is losing control and with a plea you are going to be in control – but never know about what a jury is going to do**
- **You have to enjoy your work and like people**
- **Clients come from different walks of life**
- **Build a practice and get respect – rewarding**
- **Like any other job, it has its stresses**
- **Clients calling, families calling – can be stressful**