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Writing Sample

Legal Ethical Issues of Perjuring Clients

Lawyers face many ethical dilemmas while practicing law. Fortunately, most ethical issues can be resolved by consulting the guidelines that the American Bar Association (ABA) has put in place for the lawyers practicing in the U.S. However, an issue that lawyers may have to encounter comes when they suspect that their client is being dishonest. In the film, *The Lincoln Lawyer*, this issue is cleverly represented, along with a possible solution to the problem. Attorney-client privilege can come in the way of choosing to turn in the newfound guilty client. Even though the ABA protects lawyers from representing guilty clients, it does not explicitly protect lawyers from clients who falsely claim to be innocent. *The Lincoln Lawyer* crafts a unique plotline that represents this ethical issue in a different light. Even though the protagonist of the film was forced to uphold attorney-client privilege, he was able to get the guilty client arrested for a different charge. This movie helps spark inspiration for thinking creatively in order to solve the problem of a client possibly lying about the case.

This problem of clients committing perjury has existed for many years. Historically, this problem has been around ever since the attorney-client privilege was put into strict enforcement (Sanders, Pelton, and Taylor). In a Time Magazine article from 1986, an almost identical issue took place. A lawyer named Rubin was very confused about where he could stand on the line between ethics and client confidentiality. "Rubin's dilemma has dogged lawyers and courts since the beginnings of the legal profession. 'It is an unchallenged rule of professional ethics that a lawyer may not put on a witness who he knows is going to lie,'...When the lying witness is the attorney's own client, however, the rule runs smack into another fundamental ethical rule -- a lawyer's obligation to protect the confidentiality of his client's conversations" (Sanders, Pelton, and Taylor). This quote from the article perfectly displays the two major issues that come up when dealing with these kinds of situations.

Rubin had the option to drop the client, warn the judge about perjury without breaking confidentiality, or stay silent during the client's testimony. Rubin was not allowed to leave the case due to the judge's orders, so he decided to resist defending the client. This caused Rubin to be sentenced 30 days in prison for criminal contempt (Sanders, Pelton, and Taylor). It is interesting to note that not much has changed since this case in terms of the code of ethics. Still today, this is a murky area to step foot in, and much of the time, attorneys can get their licenses revoked or be sent to jail if they seek to do the "right" thing.

The Lincoln Lawyer is a legal thriller fictional film, with the plot progressing chronologically through the events involving the court case (Furman). In *The Lincoln Lawyer*, the protagonist, Mickey Haller, first believes that his client, Louis Roulet is innocent. However, as more evidence comes to surface, Haller starts to believe that Roulet is guilty. The dynamics in the film are a lot different from reality, but the situation does not allow Haller to drop the case. Roulet blackmails Haller with a weapon that would implicate Haller for murder of his friend, and Roulet threatens the safety of his family. So, Haller is left with no option, he decides to pursue the case, keeping in mind that he has to comply with client confidentially. Haller wants to set up a plan so his client will be proven to have committed a past murder from a different case, while proving him innocent in the current case. To understand the fundamental problem involving client perjury, first it is important to understand what responsibilities lawyers, like Haller, have to uphold.

According to the Minnesota Rules of Professional Conduct, “a lawyer is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice” (Klausing). However, it is not always simple keeping those responsibilities from conflicting with each other. There are three sides to practicing law that must be taken into consideration: client confidentiality, upholding the legal system, and personal integrity (Klausing). As *The Lincoln Lawyer* suggests, balancing these three aspects can become very difficult. It is vital to examine the true relationship that a client and lawyer hold.

Professional opinion regarding client confidentiality “requires primary loyalty to the client whatever his need or situation” (Fried 1062). The ideal lawyer from a client’s perspective would be an individual who would be able to manage his client’s case by being perfectly honest to the client, and keeping the client’s secrets. Clients seek for their lawyers to be their “friends” as Fried points out in his article title, “The Lawyer as a Friend: The Moral Foundations of the Lawyer-Client Relation.” It is important for lawyers to make the distinction between being a good lawyer, and being a lawyer who is dictated by the client’s demands (Fried 1063). In *The Lincoln Lawyer*, this becomes the case, because Haller is being forced to continue the case due to Roulet’s blackmail. It is interesting to point out that most of the scenes where Roulet was blackmailing Haller the lighting was dark, which created a lot of suspense. This suspense led to a lot of tension buildup, which was then later released with Haller making a crude remark.

There are many existing code sections and model rules that help guide lawyers in making decisions that cooperate with the law and uphold the legal system. According to Model Rule 1.6, a lawyer cannot reveal information about the representation of a client, unless the lawyer believes that

the client will commit a future criminal act (Rambeau). One of the reasons Haller is unable to report Roulet, is because the criminal act Roulet committed was in the past. This aspect of the film made the most sense. The writers had understanding of these rules, and wrote the plot to incorporate them. This client confidentiality rule was repeated throughout the film to make it clear to the audience why Haller was in a problem. Model Rule 3.3 states that an attorney cannot make a false statement knowingly to a tribunal (Bolanos, 1). This rule creates the ethical dilemma when clients commit perjury. Haller realizes that he cannot reveal his client's secrets, so he takes a risk in knowingly misleading the jury. This aspect of the film was unethical, but that was the point they were trying to get across; ethics and rules in law can be contradicting.

Most lawyers will refuse to allow perjury to happen in court, and they attempt to take all steps to avoid it (Portman). Usually a lawyer is able to figure out if a client is lying by hearing their story over and over again. Lawyers listen in to try to find discrepancies with the client's story, in order to know whether or not they are lying (Weckel). If a lawyer is sure that their client is going to commit perjury, there are three approaches they can take to uphold ethical standards. The first step to take as an attorney, is to dissuade the client from perjuring, the second step is to drop the case (Freedman 1942). However, if these steps do not work, as they did not in *The Lincoln Lawyer*, there are three approaches to apply in court. The first approach is the Full Advocacy approach. This approach calls for the lawyer to protect the client even though they are lying (Boyd). This approach is all about confidentiality. And this is the very approach Haller took in the film. The film does successfully portray the court case by use of the camera movement, changing from the jury, to the lawyers, to the defendant. It was building up the thrill as the case went on. The second approach is the Narrative approach. This approach is controversial. The defense attorney does nothing in this approach, and just lets the perjuring client talk without questioning (Boyd). This gives a big hint to the court that the attorney thinks his client is lying. However, the best and recommended method is the Knowledge Based approach. According to Model Rule 3.3, the lawyer should reveal the perjury if the lawyer knows for a fact (not thought), that the information presented by the client is false (Boyd). This rule applies to all cases where the lawyer is certain that the client is going to lie. This would have been the perfect solution for Haller, except he was being threatened by Roulet. If Roulet was not blackmailing Haller, then Haller could have easily fixed this case by turning over the lies that Roulet was stating. Instead, Haller used the full advocacy approach. However, by questioning the witnesses, he was able to prove that Roulet was most likely guilty for previous murders of different cases. This allowed Haller to be personally satisfied; he was able to save

himself from the blackmail, uphold client confidentiality, and get Roulet arrested and punished for a different crime.

Client perjury is an issue that can be resolved after assessing the individual lawyer's situation. The Lincoln Lawyer is a successful film, however the plot is slightly unrealistic. If a lawyer was faced with that many problems in real life, he would probably go to the police, because the client was threatening him. But, in order to create a riveting film, the plot seems justified. The best option always will remain to convince the client not to perjure themselves, and instead offer them an alternative way of thinking. It is better to assure the clients that there is another way to come up with a defense strategy rather than to lie. However, if this method does not work, a lawyer always needs to remember model rule 3.3, because that will help justify their decision in turning in the perjuring client. As a lawyer, legal integrity should always be an important ground for making ethical decisions.

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