
*ETHICAL ISSUES ARISING IN FEDERAL
CRIMINAL PRACTICE:
A Discussion of Difficult Dilemmas*

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*Presentation Materials taken from :

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Dilemma 1

- Your client, Cynthia, is charged with conspiracy to commit bank fraud along with 3 other codefendants. Cynthia is free on bond and insists on going to trial.
- On the Internet, you go to Cynthia's Facebook page and discover that it has a picture of the bank allegedly defrauded and the following caption under it: "Cash money the easy way – Cha-ching!"
- Do you ask Cynthia to remove the picture and caption?

Dilemma 1 – More Facts

- When you receive the list of potential jurors, you:
- (1) go on the Internet and look at each potential juror's Facebook page to learn about their personal lives and any prejudices that they might have.
- (2) look at each potential juror's LinkedIn profile, which somehow alerts each potential juror that you were viewing or attempting to view the profile.
- Have you violated the rules of professional ethics by taking the actions (1) or in (2)?

Dilemma 1 – More Facts

- Prior to trial, you ask your investigator to look into Juanita Gutierrez, who is the bank teller who identified your client as the person who opened bank accounts in fictitious names.
- Your investigator poses as 20-year-old female named Miley Cyprus and gets Juanita to accept her as her friend on Facebook. Your investigator then gathers impeaching information from Juanita's restricted Facebook page.
- Have you or your investigator violated the rules of professional ethics?

Dilemma 1 – More Facts

- Mary-Lo Tech is appointed to represent Cynthia and knows nothing about Facebook, Twitter, LinkedIn, or any other social media.
- Mary has an upcoming bank robbery trial and does not attempt to look at the Facebook pages or other social media sites of any potential jurors or witnesses who will be involved in the trial.
- Has Mary violated any rules of professional ethics?

Dilemma 2

- You have been appointed to represent Rufus, who is charged with tax evasion because, for years, he has filed tax returns understating his income by \$100,000 or more.
- During your first interview with Rufus, he states the following:
- “I am a sovereign citizen. The United States has no authority over a sovereign citizen, and the court thus has no jurisdiction in my case. You are not a real lawyer, but are merely a pawn of the illegitimate entity called the United States. I, therefore, hereby declare under U.C.C. 2-301 that I want to represent myself in this case.”
- What do you do in light of the statements made by Rufus?

Dilemma 2 – More Facts

- During your first court appearance, Rufus states that he wants to represent himself. The court allows Rufus to represent himself but appoints you as standby counsel.

- A week later, Rufus asks you to do the following:
 - (1) Draft a motion arguing that the income tax is unconstitutional.
 - (2) Interview the 8 IRS agents who will testify for the government and investigate their backgrounds.
 - (3) Research the number of criminal tax prosecutions last year and the number of defendants who were sovereign citizens.
 - (4) Organize all of his files and materials on the illegitimacy of the United States government.
- Which of these, if any, do you do, and why?

Dilemma 2 – More Facts

- Because Rufus is representing himself and you are merely standby counsel, you have not prepared for trial in Rufus's case.
- During trial, Rufus becomes belligerent while cross-examining IRS Agent Higgins. The court tells you to take over the cross-examination of Agent Higgins even though you are not prepared to do so. What do you do?
- At the end of trial, Rufus asks you to present closing argument. Again, you are not prepared to present closing argument. What should you do?

Dilemma 3

- You have been appointed to represent Ronald, who has been charged with being a felon in possession of a firearm and who had been detained. Ronald has a history of mental illness.
- Ronald was arrested while placing the firearm into the trunk of his automobile. If Ronald enters a plea of guilty, his Sentencing Guideline range will be 24 to 30 months.
- When you visit Ronald, he begins smearing his feces on the wall of the visitors' booth and screams about your work as an FBI agent and your surveillance of him for the past 2 years.

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- You file a motion to have Ronald examined for a determination of mental competency, and the Court orders that Ronald be sent to Butner Medical Center.

 - A staff psychologist at Butner contacts you and asks you for all psychiatric and psychological reports that you have in your file on Ronald.

 - 1. Can you send the reports in your file to the psychologist at Butner?

 - 2. Should you send the reports in your file to the psychologist at Butner?
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Dilemma 3 – More Facts

- Ronald returns from Butner. At the end of a hearing, the district court finds Ronald to be mentally incompetent and orders that he be returned to Butner so that his competency can be restored.
 - Ronald has been in custody for 16 months, which is only 8 months short of the Sentencing Guidelines minimum. You believe that, if Ronald is returned to Butner, it will take much longer than 8 months to resolve this case.
 - Ronald tells you he wants to plead guilty.
 - What should you do?
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Dilemma 3 – More Facts

- Following a hearing, the court orders that Ronald be forcibly medicated to restore his competency, and Ronald appeals.
- After you file an appellate brief, Ronald, who is still incompetent, sends you a letter stating he wants to withdraw the appeal because his case is taking too long and he just wants to plead guilty.
- Ronald has been in custody for 24 months.
- Should you follow Ronald's instructions and withdraw the appeal?

Dilemma 3 – More Facts

- Ronald returns from Butner with his competency restored and is on medication.
- Prosecutor offers a plea bargain of time served (which now is 27 months) and 3 years of supervised release.
- You know Ronald will go off of his medication when he is released and probably will threaten someone.
- What should or can you do, if anything?

Dilemma 3 – A Variation

- Roberto, a citizen of Mexico, reentered the United States. Roberto has been charged with illegal reentry after deportation and faces a Guideline range of 6 to 12 months.
- Roberto has trouble understanding what you are saying, says odd irrelevant things, and appears to be incompetent.
- AUSA offers you a plea agreement of time served, which the court almost assuredly will follow.
- What should you do?

Dilemma 4

- Your client, Maximus Paine, is charged with possession with intent to distribute methamphetamine.
- After you meet with Max a few times, you advise him about the agreement the government is offering if he pleads guilty.
- Mr. Paine screams at you that you are a no-good piece of crap, that he will break your arms, that he will find your house and burn it down, and that he will kill your freakin' children. Max then refuses to speak with you.
- What ethical concerns, if any, do you have, and what do you do?