Possessing Evidence of a Client’s Crime
What Should a Lawyer Do?

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Criminal defense lawyers help clients and safeguard their secrets. They also must follow the law. These obligations collide when a lawyer acquires tangible evidence of a client’s crime, leaving counsel to walk a fine line between protecting a client and avoiding wrongdoing. Potential risks a lawyer faces include state bar proceedings, sanctions, ineffective assistance, malpractice and spoliation claims, and even criminal charges.

What should counsel do? The first step is to locate state rules of professional conduct. The second step is to evaluate the type of evidence and how it was acquired because this usually dictates the statutes, rules, and case law that could apply. Simply possessing certain types of evidence is a crime, and an array of federal and state criminal statutes punish obstruction of justice, evidence tampering, and related offenses. Discovery rules and court orders in pending proceedings also may apply, and various laws impose civil and evidentiary sanctions for concealing or destroying evidence. The third step is to follow the ethical and lawful course that best protects the client. At every step, counsel should document efforts to responsibly resolve the problem.

Step 1: Which Rules of Professional Conduct?

A lawyer’s ethical obligations are defined by state codes of professional responsibility, statutes and case law. The relevant state’s code of responsibility must be consulted because ethics rules vary nationwide. Most states have adopted some version of the ABA Model Rules of Professional Conduct (Model Rules), which contain several provisions implicated by possessing evidence of a client’s crime.

Model Rule 8.4 (Maintaining the Integrity of the Profession, Misconduct) provides that it is “professional misconduct” to “(b) commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects; (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation; [or] (d) engage in conduct that is prejudicial to the administration of justice. …”

Under Model Rule 3.4 (Advocate - Fairness to Opposing Party and Counsel), a lawyer may not “unlawfully obstruct another party’s access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value,” nor “counsel or assist another person to do any such act.” The rule’s Comment illustrates the overlap of professional and legal obligations:

Applicable law in many jurisdictions makes it an offense to destroy material for purpose of impairing its availability in a pending proceeding or one whose commencement can be foreseen. Falsifying evidence is also generally a criminal offense. … Applicable law may permit a lawyer to take tempo-
rary possession of physical evidence of client crimes for the purpose of conducting a limited examination that will not alter or destroy material characteristics of the evidence. In such a case, applicable law may require the lawyer to turn the evidence over to the police or other prosecuting authority, depending on the circumstances.

A lawyer’s duty of confidentiality is set forth in Model Rule 1.6 (Client-Lawyer Relationship, Confidentiality of Information). It provides that absent client consent, a lawyer shall not reveal information relating to the representation of a client unless the disclosure is permitted by the client or comes within limited exceptions. These include, among others, counsel’s discretionary ability to reveal confidences where the lawyer “reasonably believes” disclosure is necessary to “prevent reasonably certain death or substantial bodily harm,” or to prevent or rectify “substantial injury to the financial interests or property of another” with respect to which the client used, or is using, the lawyer’s services.

These rules may come into play when a lawyer acquires evidence of a client’s crime. However, these rules do not provide specific guidance concerning how to handle the situation.

**Step 2: What Type of Evidence and How Did Counsel Get It?**

The type of evidence that a lawyer possesses is often critical. Most tangible evidence of a client’s crime will fall into two broad categories: (1) contraband, instrumentalities or fruits of a crime; or (2) ordinary items that were not directly involved in the perpetration of a crime — defies a categorical rule.

**Contraband, Fruits and Instrumentalities of a Crime**

It is a crime for anyone to knowingly possess or transfer contraband, which includes, for example, illegal narcotics, unregistered firearms, unlawful explosives, and child pornography. kilometers Long, possessing the fruits of a crime, such as stolen money or merchandise, counterfeit goods or phony identification cards, also may violate various laws.

Instrumentalities are any type of item designed or intended to be used in committing a crime, or actually used to commit a crime. They range from sophisticated software to a burglar’s tools. Knowingly possessing instrumentalities can be a crime, depending on the type of item, possessor’s intent, and relationship between the evidence and a potential or actual crime. Many statutes criminalize possession only when accompanied by an intent to use the instrumentality. But, laws widely differ.

Statutes differ regarding knowledge and intent, but if a lawyer’s possession of any kind of evidence of a crime helps a client conceal evidence from law enforcement, impedes law enforcement’s access to it, or alters the quality of the evidence, offenses including obstruction of justice, evidence tampering, aiding and abetting, misprision and conspiracy could be implicated. Also, if a client intends to use counsel’s offices to hide incriminating evidence, related communications may not be privileged.

From a practical perspective, possessing evidence of a crime increases the chances of a law office search. A lawyer who acquires contraband, fruits or instrumentalities often will run afoul of one or more statutes. Under such circumstances, counsel must turn over the evidence to law enforcement at some point, even if doing so could implicate a client in wrongdoing. One court described the obligation of an attorney who receives such evidence as follows:

The attorney should not be a depository for criminal evidence (such as a knife, other weapons, stolen property, etc.), which in itself has little, if any, material value for the purposes of aiding counsel in the preparation of the defense of his client’s case. Such evidence given the attorney during legal consultation for information purposes and used by the attorney in preparing the defense of his client’s case, whether or not the case ever goes to trial, could clearly be withheld for a reasonable period of time. It follows that the attorney, after a reasonable period, should, as an officer of the court, on his own motion turn the same over to the prosecution.

Should a lawyer give the evidence back to the client or whoever provided it? While this would achieve the goal of disposition, it could aggravate counsel’s exposure because knowingly transferring certain evidence (particularly contraband) is a worse transgression than possession. It also should not be done if the client or third party might destroy it.

If a lawyer can return noncontraband evidence to its source without risking its destruction, impairing it or hindering law enforcement’s efforts to investigate and prosecute, counsel may do so after a “reasonable time for inspection.” Caution should be exercised, however. If the evidence degraded while in counsel’s possession or is destroyed after being returned to its source, counsel’s judgment call may be criticized.

What are the possible ramifications of destroying the evidence? Destroying evidence is a poor choice. Knowingly destroying any evidence of a crime may constitute obstruction of justice, evidence tampering, aiding and abetting, or conspiracy, depending on counsel’s or a client’s intent, and the potential or actual existence of an investigation or a proceeding. The lawyer for a Connecticut church learned this the hard way when he was indicted for destroying a laptop that he knew contained child pornography. Church officials delivered the laptop to the lawyer after they received it from a church employee. The church employee discovered the images after borrowing the laptop from its owner, the church organizer.
Is it a good idea to suggest that a client destroy the evidence? This choice is even worse. Encouraging another to break the law is a crime and could garner an enhanced penalty because of a lawyer’s position of trust. Encouraging a client to destroy evidence also would violate Model Rule 1.2(d), which precludes a lawyer from “counsel[ing] a client to engage … in conduct the lawyer knows is criminal,” and Model Rule 3.4(a), which states that a “lawyer shall not counsel or assist another person” to obstruct another party’s evidence or unlawfully destroy or conceal evidence. Advising a client to destroy evidence could fall within the crime-fraud exception to the attorney-client privilege or otherwise fall outside the scope of protected communications.15

Also, a dispute about counsel’s advice could turn counsel into a witness, create a conflict of interest with a client, and lead to disqualification.

Destroying evidence also can lead to serious consequences in criminal and civil proceedings. These include disqualification, sanctions, the admission of secondary evidence of the destroyed material, an order prohibiting the offending party from introducing certain evidence, and a jury instruction that an adverse inference may be drawn from a party’s destruction of evidence. A client who otherwise might testify at trial could be dissuaded by the potential for cross-examination on the defense’s destruction of evidence.

Why can’t the lawyer put the evidence in the client’s file and wait for law enforcement to request it? This may not solve the problem. If an item is contraband, or an instrumentality or fruit of a crime, the obligation to turn it over to law enforcement is self-executing, and no prosecution motion or court order is required.16 Knowingly possessing contraband is a crime, and knowingly possessing contraband, fruits or instrumentality, argues, hinders law enforcement’s access to the evidence, thereby exposing counsel to allegations of obstruction of justice or aiding and abetting a client’s efforts to conceal the evidence. Moreover, if the evidence is evanescent (blood, fingerprints, saliva, DNA), prolonged possession might alter it, thereby exposing counsel to allegations of tampering.

Ordinary Materials With Evidentiary Significance

It is not unusual for a client or third party to provide counsel with ordinary items that potentially incriminate a client, such as correspondence, emails or bank and phone records. What is a lawyer’s duty in this situation? Reviewing such evidence may be essential to prepare a case, and effective representation may be impossible without at least possessing duplicates.

Unlike contraband and fruits, mere possession of ordinary evidence is not a crime requiring counsel to stop possessing the evidence. Unlike an instrumentality, ordinary evidence usually was not directly involved in the perpetration of a crime. In most situations, counsel is not obligated to provide law enforcement with ordinary evidence unless a subpoena, court order, discovery obligation, cooperation agreement, or the like mandates disclosure. This is consistent with our adversary system in which the prosecution bears the burden of proof, and an accused has no generalized obligation to help prosecutors build their case. It also is consistent with an individual client’s Fifth Amendment right not to disclose evidence where the act of production could be incriminating.17 However, if a lawyer or someone acting at the lawyer’s direction took the evidence from its original location, thereby depriving law enforcement of an opportunity to find it, counsel may be obligated to turn it over to law enforcement.18

Even if counsel has no generalized duty to turn over ordinary evidence that could implicate a client, there are risks to possessing any evidence of a crime. If the evidence is unavailable elsewhere, counsel’s possession of it may impede law enforcement’s access to it, and prosecutors could contend that counsel knowingly hid the evidence from law enforcement with intent to avoid its use in legal proceedings. Furthermore, possessing evidence of a crime can increase the chances of a law office search. Because of these potential issues, it may make sense for counsel to keep copies of sensitive ordinary evidence, and return the originals to their source. Getting information contained in the materials may be essential to effectively advise a client and prepare a case, but possessing duplicates might avoid issues implicated by counsel being the sole repository of the evidence.

Not Entirely Ordinary Items With Evidentiary Significance

What is an attorney’s duty when an item is not contraband, a fruit or an instrumentality, but directly implicates a client and is closely connected to a crime? A client’s bloody glove and Nixon’s Watergate tapes are examples.

In two cases considering evidence that defied clear categorization, the courts ruled that counsel’s obligations do not turn on the type of evidence at hand.19 However, the evidence in both cases might be classified as an instrumentality. Also, both cases involved evidence received from a third party, not the client, so applying the Fifth Amendment to the act of production, and the attorney-client privilege, were not implicated.20

Where a client gives counsel evidence directly implicating the client, the Fifth Amendment supports counsel’s nondisclosure because the mere act of producing the evidence may furnish a link in the chain of evidence used to convict the client.21 However, the evidence itself is not privileged from disclosure by the attorney-client privilege or duty of confidentiality, and counsel’s possession of the evidence arguably hinders law enforcement’s access to it. Moreover, preparing a client’s defense probably does not require counsel to possess the items, and any evanescent evidence could degrade while in counsel’s possession.

Case law considering evidence closely connected to a crime treats it much the same as contraband, fruits and instrumentality. Courts split the baby by requiring lawyers to surrender the evidence, but precluding prosecutors from offering evidence that the defense was the source — at least where the defense is willing to stipulate to authenticity.22 As noted by leading criminal defense ethics authority John Wesley Hall Jr., “This is a trade-off with a weighty policy interest. The criminal justice system needs the evidence, but the defendant cannot be penalized for producing it.”23

What should a lawyer do with items that were not closely connected to a crime, but nonetheless directly implicate a client? For example, an attorney might be in possession of a photo of a client wearing stolen jewels, or a letter to counsel from a fugitive blaming a client for the charged conduct. No case law or ethics rules provide clear guidance for counsel in possession of this type of secondary evidence. Counsel’s possession of the items comes within the duty of confidentiality, even if no privileged communications were involved. The items are analytically distinct from physical evidence of a crime such as knives, guns, bloody garments or a victim’s property, or items directly involved in the perpetration of a crime such as book-making receipts or falsified records. However, preparing a client’s defense probably does not require counsel to possess the originals, and possessing unique evidence arguably hinders
law enforcement’s access to it and might increase the chances of a law office search. Therefore, where possible, the most reasonable course may be to return the items to whoever provided them, at least when counsel is not on notice that returning them is likely to result in their destruction. When feasible, it may be prudent to advise the source that it is a violation of the law to destroy evidence of a crime. The unique facts at hand, of course, will have to be evaluated to chart an ethical and lawful course that is practicable under the circumstances.

Look, but Don’t Touch

Whatever the type of incriminating evidence, there is a big difference between a lawyer having custody and simply knowing about it. Once a lawyer takes possession of, moves from the original locale, tests or otherwise meddles with evidence of a crime, information about its original location and condition loses any confidentiality protections. Counsel may be compelled to disclose the original situs and condition of the evidence, even if the information came from confidential client communications. The lawyer also could be forced to testify about the chain of custody of the evidence, and risks disqualification.

A lawyer who alters a crime scene or secretes evidence of a crime also could face charges of obstruction of justice or even charges of accessory-after-the-fact regarding the principal crime. Such conduct may create a conflict of interest that renders counsel ineffective. Counsel also risks sanctions for secreting evidence.

Two leading cases illustrate the critical difference between looking and touching when it comes to evidence of a crime. In People v. Meredith, a lawyer’s investigator retrieved a murder victim’s labs and gave to counsel probably would not, counsel may be justified in withholding information about the source of the evidence. Anonymously delivering a toxicology report that a client stole from the crime lab and gave to counsel probably would not impair a prosecutor’s ability to introduce it into evidence in the client’s DUI trial. It also would achieve counsel’s goal of dispossession regarding the principal crime. Another key issue is whether anonymous delivery would deprive the prosecutor of any evidence the defense is obligated to produce. If not, counsel may be justified in withholding information about the source of the evidence.

What should counsel do if there is a subpoena or court order directing the disclosure of incriminating evidence that counsel has no ethical or legal obligation to disclose? Consider moving to quash the subpoena or appealing a flawed order. Similarly, if incriminating materials appear to come within the scope of discovery obligations, consider submitting specific objections or obtaining a protective order. Prepare a privilege log to document the grounds on which the evidence is being withheld. Of course, attorneys face a range of hazards if they fail to resist disclosure in an appropriate manner.

At Every Step: Protect Your Clients and Yourself!

No single rule applies to all situations, but the following may be useful guideposts:

1. Do not take possession of potential contraband, instrumentalities or fruits of a crime, or move or otherwise meddle with evidence involved in the perpetration of a crime, and train your subordinates and other agents accordingly;

2. Do not destroy or conceal, or advise a client to destroy or conceal, any potential evidence, and train your subordinates and agents accordingly;

3. Warn clients or third parties seeking to give evidence to you that if it is unethical or illegal for you to possess it, you may be required to turn it over to law enforcement and it could be admitted into evidence against your client;

4. Before taking action, research applicable ethics rules and laws and other authorities. When the results of research are inconclusive, consult colleagues or outside counsel;

5. If you possess contraband, instrumentalities or fruits, turn them over to law enforcement pursuant to a strategy that minimizes the revelation of client confidences and the adverse impact on a client;

6. If a client provides ordinary materials (i.e., items that are not contraband, instrumentalities or fruits, and were not directly involved in the perpetration of a crime) that evidence the client’s wrongdoing, ordinarily you need not disclose them to law enforcement unless required to do so by a subpoena, court order, discovery obligation or the like;

7. Consider filing a motion to quash, seeking a protective order, and appealing any court order requiring the disclosure of evidence implicating a client where there is a legal basis for doing so;
8. Where the mere act of producing nonprivileged materials on behalf of an individual client may incriminate the client, or provide a link in a chain of evidence implicating a client, challenge disclosure of the evidence on Fifth Amendment grounds and/or seek act of production immunity for the client;

9. Avoid accusations that your offices were used as a repository for unique incriminating evidence by duplicating and returning to the provider materials other than contraband, instrumentalties or fruits of a crime, unless doing so would lead to destruction of the evidence; and

10. Document your efforts to legally and ethically resolve problematic situations in order to shield yourself and your client from any claims of inappropriate conduct.

Conclusion

A lawyer possessing evidence of a client’s crime is in the perplexing situation of needing to comply with many laws and rules that were adopted without regard to criminal defense lawyers’ special duties to their clients and unique role in our criminal justice system. However, the challenges can be met with a familiar approach — investigation, analysis, and thoughtful application of available authority to the specific facts at hand.

Notes


3. Counsel’s ethical duty to protect client confidences is broader than the attorney-client privilege or work product doctrine. The former protects all information relating to representation of a client, whether or not it came from a client or was imparted in confidence. The latter are evidentiary rules invoked when the disclosure of evidence is sought in legal proceedings.

4. Model Rules of Prof’l Conduct R. 1.6(b)(1)-(3). Some states diverge from Model Rule 1.6’s discretionary disclosure and mandate attorney disclosures where necessary to prevent a crime or substantial bodily harm or death (see, e.g., Florida Rules of Prof’l Conduct R. 4-1.6(b); Washington Rules of Prof’l Conduct R. 1.6(b)(1)), or even where necessary to prevent a client’s crime or fraud that is likely to result in substantial financial injury to another (see, e.g., Wisconsin Rules of Prof’l Conduct R. 20:1.6(b)).


7. See, e.g., 18 U.S.C. § 1029(a)(9) (offense to knowingly possesses “phishing” hardware or software); cf. Va. Code § 18.2-94 (possessing burglary tools by person other than licensed dealer is prima facie evidence of intent to commit offense).

8. See, e.g., 18 U.S.C. § 1503(a) (crime to corruptly obstruct due administration of justice), 18 U.S.C. § 1512(c) (corruptly altering or concealing item with intent to impair its integrity or availability for use in official proceeding), 18 U.S.C. § 1519 (altering or concealing item with intent to impede investigation); Cal. Penal Code § 135 (willfully destroying or concealing item knowing it is about to be produced into evidence in any trial or investigation); Fla. Stat. § 918.13(1)(a) (destroying or concealing item with purpose of impairing its availability in criminal proceeding or investigation); N.Y. Penal Law § 215.40(2) (concealing or destroying evidence while believing it is about to be produced or used in official or prospective proceeding).

9. See, e.g., Cal. Evid. Code § 956 (“there is no privilege under this article if the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit a crime”).

10. See Rubin v. State, 325 Md. 552, 602 A.2d 677 (1992) (defense lawyer’s office searched for bullets investigator took from client’s purse and provided to counsel; defendant had no reasonable expectation of privacy in items seized because of lawyer’s ethical duty to deliver the evidence to police).

11. State ex rel. Sowers v. Olwell, 64 Wash. 2d 828, 394 P.2d 681, 684-85 (1964) (attorney must deliver to law enforcement knife received from client although client’s act of providing knife to lawyer is privileged communication); see also State v. Green, 493 So. 2d 1178, 1182 (La. 1986) (no violation of privilege for counsel to deliver to law enforcement gun client used in crime and gave to lawyer).

12. See Hitch v. Pima County Superior Court, 146 Ariz. 588, 708 P.2d 72, 78 (1985) (proper for lawyer to give prosecutor victim’s watch provided by third party if lawyer reasonably believes evidence would be destroyed if returned to third party).

13. Commonwealth v. Stenhach, 365 Pa. Super. 5, 23-24, 514 A.2d 114, 123 (1986) (returning evidence permissible where it can be done “without hindering the apprehension, prosecution, conviction or punishment of another and without altering, destroying or concealing it or impairing its verity or availability in any pending or imminent investigation or proceeding”).

14. See United States v. Russell, 3:07-CR-31 (D. Conn.); see also United States v. Triumph Capital Group, Inc., 544 F.3d 149, 165-66 (2d Cir. 2008) (attorney convicted of obstruction for deleting from computer fraudulent consulting contracts he knew were likely to be sought by grand jury subpoena); United States v. Scruggs, 549 F.2d 1097, 1103-04 (6th Cir.) (attorneys convicted of obstruction of justice and possessing stolen funds after accepting stolen money as a fee, subsequently denying doing so and destroying the cash), cert. denied, 434 U.S. 824 (1977).

15. See Clark v. State, 159 Tex. Crim. 187, 261 S.W.2d 339, 347 (no privilege regarding attorney’s advice that client destroy murder weapon because such communications are not within “legitimate course of professional employment”), cert. denied, 346 U.S. 855 (1953).


18. See, e.g., Clutchette v. Rushen, 770 F.2d 1469, 1472 (9th Cir. 1985) (client told attorney location of incriminating receipts, which was privileged, but once attorney’s agent retrieved them, counsel was obligated to turn them over to law enforcement), cert. denied, 475 U.S. 1088 (1986).

19. See Morrell v. State, 575 P.2d 1200 (Alaska 1978) (not ineffective assistance where lawyer helped third party give police a kidnap plan prepared by client after lawyer returned it to third party who had given it to lawyer); State v. Carlile, 7 Kan. App. 2d 219, 640 P.2d 324 (1982) (no error to require defense counsel to give prosecutors
tape recordings of defendant’s threats that lawyer obtained from third party).
20. See also People v. Lee, 3 Cal. App. 3d 534, 83 Cal. Rptr. 715 (1970) (no violation of defendant’s rights where evidence included bloody shoes client’s wife gave to defense lawyer, who provided them to court); People v. Sanchez, 24 Cal. App. 4th, 30 Cal. Rptr. 2d 111, 119-20 (1994) (no error where trial court gave prosecutor defendant’s “misdemeanor checklist” that family gave defense counsel who delivered it to court in sealed envelope without explanation or notice to prosecutor, since defense counsel did no more than his “legal obligation”). 21. See note 17, supra.
22. See Commonwealth v. Ferri, 410 Pa. Super. 67, 599 A.2d 208 (1991) (privilege did not preclude attorneys’ testimony that defendant gave them clothing worn during homicide where testimony was required to establish chain of custody and defense declined to stipulate to authenticity).
25. See State v. Douglass, 20 W. Va. 770 (1982) (lawyer’s observations of location of client’s pistol are protected by attorney-client privilege, but firearm itself and fact it was found in attorney’s trunk are admissible).
27. Id.
28. See Oklahoma Bar Ass’n v. Harlton, 669 P.2d 774 (Okla. 1983) (lawyer suspended after federal conviction for being an accessory to concealing firearm in order to hinder prosecution); In re Ryder, 263 F. Supp. 360 (E.D. Va.) (lawyer disciplined for moving shotgun and stolen money from client’s safe deposit box to his own because “[i]t is an abuse of a lawyer’s professional responsibility knowingly to take possession of and secrete the fruits and instrumentalities of a crime.”), aff’d 381 F.2d 713 (4th Cir. 1967). Cf. Stenhach, 514 A.2d at 116-27 (vacating on statutory overbreadth grounds two public defenders’ convictions for hindering prosecution and evidence tampering by withholding rifle stock until ordered by court to provide it to prosecutor during prosecution’s case at trial); Wenmark v. State, 602 N.W.2d 810 (Iowa 1999) (ineffective assistance to advise client to tell law enforcement about location of weapon based on counsel’s mistaken belief that non-disclosure was obstruction of justice, but client not prejudiced because disclosure was not inconsistent with self-defense and provocation defenses).
30. See also Superior Court (Fairbank), 192 Cal. App. 3d 32 (lawyer obligated to inform court and prosecution about weapons used in charged offense that counsel retrieved from original locale); cf. Hitch, 708 P.2d 72 (lawyer required to give police watch provided to counsel by third party who found it in defendant’s jacket).
32. See Model Rules 1.1 (Competence), 1.6 (Confidentiality of Information), Fed. R. Evid. 501 (privileges determined by common law in criminal cases); available at http://www.abanet.org/cpr/mrpc/mrpc_toc.html. But c.f. Model Rule 1.6(b) (exceptions to duty of confidentiality).
33. See note 17, supra.
34. ABA Criminal Justice Standards: Prosecution Function (3d ed. 1993); available at http://www.abanet.org/cpr/mrpc/mrpc_toc.html. Although the ABA Criminal Justice Standards are aspirational, various laws require prosecutors to comply with additional protocols regarding evidence of a crime in a lawyer’s possession. See, e.g., 42 U.S.C. § 2000aa-11(a)(3) (recognizing “special concern for privacy interests in cases in which a search or seizure for such documents would intrude upon a known confidential relationship such as that which may exist between … lawyer and client”); 28 C.F.R. § 59.4(b) (heightened protocols regarding search warrants for materials held by lawyers).
35. See Superior Court (Fairbank), 192 Cal. App. 3d at 38-40 (chain of custody stipulation eliminates need for prosecution evidence about acquiring evidence from defense counsel, and court should “exercis[e] care to shield privileged communications and defense strategies from prosecution view” when giving prosecutors access to evidence); Olwell, 64 Wash. 2d at 834 (defense attorney required to produce client’s knife over objection, but prosecutors required to take “extreme precautions” to prevent jurors from learning lawyer provided knife); People v. Nash, 418 Mich. 196, 341 N.W.2d 439 (1983) (reversible error for prosecutor to tell jury that defense counsel was source of incriminating evidence); Anderson v. State, 297 So. 2d 871 (Fla. App. 1974) (where defendant gave stolen property to lawyer’s receptionist, prosecutor precluded from eliciting testimony that police received property from defense lawyer); United States v. Authement, 607 F.2d 1129, 1131-32 (5th Cir. 1979) (prosecutor could introduce brass knuckles defendant gave lawyer, but jury not told they were subpoenaed from counsel). Cf. People v. Sullivan, 271 Cal. App. 2d 531, 542 (where lawyer testified on direct that he obtained guns using claim check provided by a client, court properly sustained lawyer’s invocation of attorney-client privilege regarding client’s identity during cross-examination by defense), cert. denied, 396 U.S. 973 (1969); State v. Green, 493 So.2d at 1182 (harmless error for prosecution to elicit attorney’s testimony about client’s identity or circumstances surrounding counsel’s possession and delivery to law enforcement of gun client used to commit crime then provided to lawyer).
36. The District of Columbia Office of Bar Counsel may accept from lawyers, and turn over to appropriate authorities, tangible evidence implicating a client. See D.C. RULES OF PROF’L CONDUCT R. 3.4 CMT. [5].
37. See Hitch, 708 P.2d at 78-79 (rejecting D.C. procedure because “it is the fact that the watch was found in defendant’s jacket that makes the watch material evidence. By returning the watch anonymously to the police, this significance is lost.”).
38. See Dean v. Dean, 607 So. 2d 494 (Fla. Dist. Ct. App. 4th Dist. 1992) (denying order compelling lawyer to reveal who hired him solely to return a portion of property stolen from victim).
39. See, e.g., Briggs v. McWeeny, 796 A.2d 516 (Conn. 2002) (sanctioning counsel who attempted to suppress damaging engineering report by, inter alia, instructing non-client that communications were privileged and report was confidential).

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