

CRIMINAL DEFENSE LITIGATION HYPOTHETICALS

by

LABE M. RICHMAN, ESQ.

Attorney at Law
New York City

HYPOTHETICALS

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Attorneys Manny Vargas, Kerry Bretz, Labe Richman

Written by Labe Richman

HYPOTHETICAL ONE

Client is charged with a boiler-room operation selling fraudulently over-valued coins with a demonstrated loss to the victims of 300,000 dollars. A few of the workers (not your client) were also involved in a cocaine delivery operation from the same location. The place is raided and the police find evidence of the fraud and also find one-half ounce of cocaine. All four defendants are charged with numerous larceny, fraud and cocaine charges. The cocaine charges involve weight offenses and offenses of sale and possession with intent to sell.

You have been given the information from the prosecutor that they want to work something out and that you could plead to a felony drug crime or a felony fraud crime – the details to be worked out.

1. Your client has been in the United States for 7.5 years and entered the United States with a green card. Should you seek a drug plea or a fraud plea in this case?
2. Your client has been in the United States for 7.5 years but never got a green card. He could apply for a green card now because he entered with a tourist visa, overstayed, and he just got married to a United States citizen. Should you seek a drug plea or a fraud plea?

3. Same scenario as Example 2, but the People appear to have a problem with the case and offer attempted possession of a crack pipe with residue found in a drawer, PL § 110/220.03 and a one hundred dollar fine to drop whole case. Do you take it?

4. Your client entered 10 years ago by sneaking across the border undetected, and married a U.S. citizen last year. What disposition can he take?

HYPOTHETICAL TWO: THE WARRANT CASE

Police execute a warrant in the client's apartment where others are living in 1988 and find drugs, a loaded gun, and a stolen stereo. It appears client was not indicted for bail jumping. He gets picked up on the warrant now. Client is offered either an A misdemeanor gun case, an A misdemeanor drug case, or an A misdemeanor possession of stolen property case and three years probation. Bail jumping prosecution is threatened if he does not take the plea.

1. Defendant is a green card holder for decades, having come to the U.S. with his green card in 1984. Does it matter which plea he takes? If so, which should he take?

2. Same scenario but defendant came to the US in 1982? Which plea should he take?

3. Same scenario but defendant has a possession of cocaine case from another state from 2001. What should he do?

4. Defendant arrived on a visitors visa in 1982, never got a green card, but is eligible to get one now because his children need him and they are over 21 years

old. What is a good disposition for this person?

5. If the offered convictions were for a felony, would this change the analysis under Number 4 of this Hypo?

6. What is the legal advice one should consider giving if the defendant wants to adjust his status through a new U.S. citizen wife, but entered illegally by sneaking across the border under Number 4?

HYPOTHETICAL THREE

Russian client is a secretary in a doctor's office. She is charged in a Medicaid and insurance fraud scheme with very large loss amounts and a gun charge for a pistol found in a drawer. She is a minor player and could try the case on the grounds that she did not know what the office was doing criminally and was unaware of the weapon. She is very scared of trial. The offer is grand larceny, probation and restitution of 500K which they will allow her to satisfy with a confession of judgment. They know she can't pay it.

1. Client came to the United States three years ago on a tourist visa and applied for asylum which she won. Two years later she gets her green card. She marries a United States citizen after getting her green card. If she takes the plea, what are her immigration consequences? Does she have to try this case and win to avoid deportation?

2. Same as above but client is offered a gun charge with a one-year sentence. This would be a deportable offense and defendant would not be able to get cancellation of removal because she would be put in proceedings before the 7 year residency is up and before she has her green card for five years. Is there an

immigration option for her if she takes this plea offer?

3. Same as Number 1, but the crime occurred six years after her entry into the United States. What disposition should she seek?

4. Prosecutor believes that cocaine addiction fueled the criminal conduct here. She offers a drug diversion program. Client will plead to a fraud offense with stipulation of \$100,000 loss amount and a count of disorderly conduct. After completion of the program, the felony conviction and restitution agreement will be annulled and she will be sentenced to time served on the disorderly conduct conviction. What are the immigration consequences of this conviction if she completes the program and gets the benefit of this deal?