

NO COUNTRY FOR ETHICAL DEFENSE LAWYERS

A PRESENTATION BY ERIC ECKES

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*“BUT, I DON'T WANT TO PUSH MY CHIPS FORWARD
AND GO OUT AND MEET SOMETHING I DON'T
UNDERSTAND. A MAN WOULD HAVE TO PUT HIS
SOUL AT HAZARD. HE'D HAVE TO SAY, "O.K., I'LL BE
PART OF THIS WORLD.”*





BIG PICTURE ETHICAL DILEMMA FOR US SO-CALLED TRUE BELIEVERS

- Being part of this world requires you to do the bidding of government on occasion
- The zealous advocacy for your individual client can lead you to some pretty difficult ethical quandaries
- I am not talking about “how do you represent those people?”
- I am talking about “helping” the government in their drug war, helping secure convictions based on unreliable snitch testimony, and the overall attitude we develop when we are forced to become “well-adjusted to injustice.”

THE CLIENT'S CAUSE BE SNITCHIN'

Use a certain rule to offload a difficult moral decision onto the rulebook

We can always just say we must zealously represent our specific client, and chips will fall where they may. Not just snitchin', friends, but snitchin' with zeal

ABA rule: A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required **to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf.**

Is that a little too close to: I was just doing my job?

Any other way stories we can tell ourselves to get around this?

Alcohol?

- [Llewelyn Moss](#): I know what beer leads to.
- Woman: Beer leads to more beer.



NAGELHELP?

“If...there is no reason to believe that anything matters, then that does not matter either, and we can approach our absurd lives with irony instead of heroism or despair.”

COMMON ETHICAL STUFF

#1 – TO BOX IT UP OR NOT

- [Anton Chigurh](#): What's the most you ever lost on a coin toss?
- [Gas Station Proprietor](#): Sir?



The client who does not want to go to trial.

... and does not want to take their plea.

There is no door number #3.

(Unless you are Carla Jean, and she dies so...)

CLIENT'S DECISIONS

PLEAD OR NOT TO PLEAD

JURY OR BENCH TRIAL

TESTIFY OR NOT TESTIFY

APPEAL OR NOT APPEAL

PROCEED PRO SE OR BY COUNSEL

ACTUAL INNOCENCE DEFENSE

CARLA JEAN MOSS: AND WHAT ARE YOU
GOING TO DO?

LLEWELYN MOSS: I'M FIXIN' TO DO
SOMETHING DUMBER THAN HELL, BUT
I'M GOING ANYWAYS.



#2 - *FRIVOLOUS ARGUMENTS*

- Client: [Chuckles] Alright. Let me ask you something. If the rule you followed brought you to this, of what use was the rule?
- You: Do you have any idea how crazy you are?
- Client: You mean the nature of this conversation?
- You: I mean the nature of you.
- Client: So are you filing my sovereign citizens motion or not?



#3- *NEED TO KNOW BASIS*

[Carla Jean Moss](#): Where'd you get the pistol?

[Llewelyn Moss](#): At the gettin' place.

[Carla Jean Moss](#): Did you buy that gun?

[Llewelyn Moss](#): No. I found it.

[Carla Jean Moss](#): Llewelyn!

[Llewelyn Moss](#): What? Quit hollerin'.

[Carla Jean Moss](#): What'd you give for that thing?

[Llewelyn Moss](#): You don't need to know everything, Carla Jean.

[Carla Jean Moss](#): I need to know that.

*“Men's memories are uncertain
and the past that was differs little
from the past that was not.”*



#4 - *LIARS*

- *"A man's at odds to know his mind cause his mind is aught he has to know it with. He can know his heart, but he don't want to. Rightly so. Best not to look in there."*



#5 - *CLIENT'S VERSION OF EVENTS*

CARLA JEAN MOSS: SHERIFF, WAS THAT A
TRUE STORY ABOUT CHARLIE WALSER?

ED TOM BELL: WHO'S CHARLIE WALSER?
OH! WELL... UH... A TRUE STORY? I
COULDN'T SWEAR TO EVERY DETAIL BUT
IT'S CERTAINLY TRUE THAT IT IS A STORY.



#6 *CONFIDENTIALITY*

[Anton Chigurh](#): I'm looking for Llewelyn Moss.

[Desert Aire Manager](#): Did you go up to his trailer?

[Anton Chigurh](#): Yes, I did.

[Desert Aire Manager](#): Well, I'd say he's at work. Do you want to leave a message?

[Anton Chigurh](#): Where does he work?

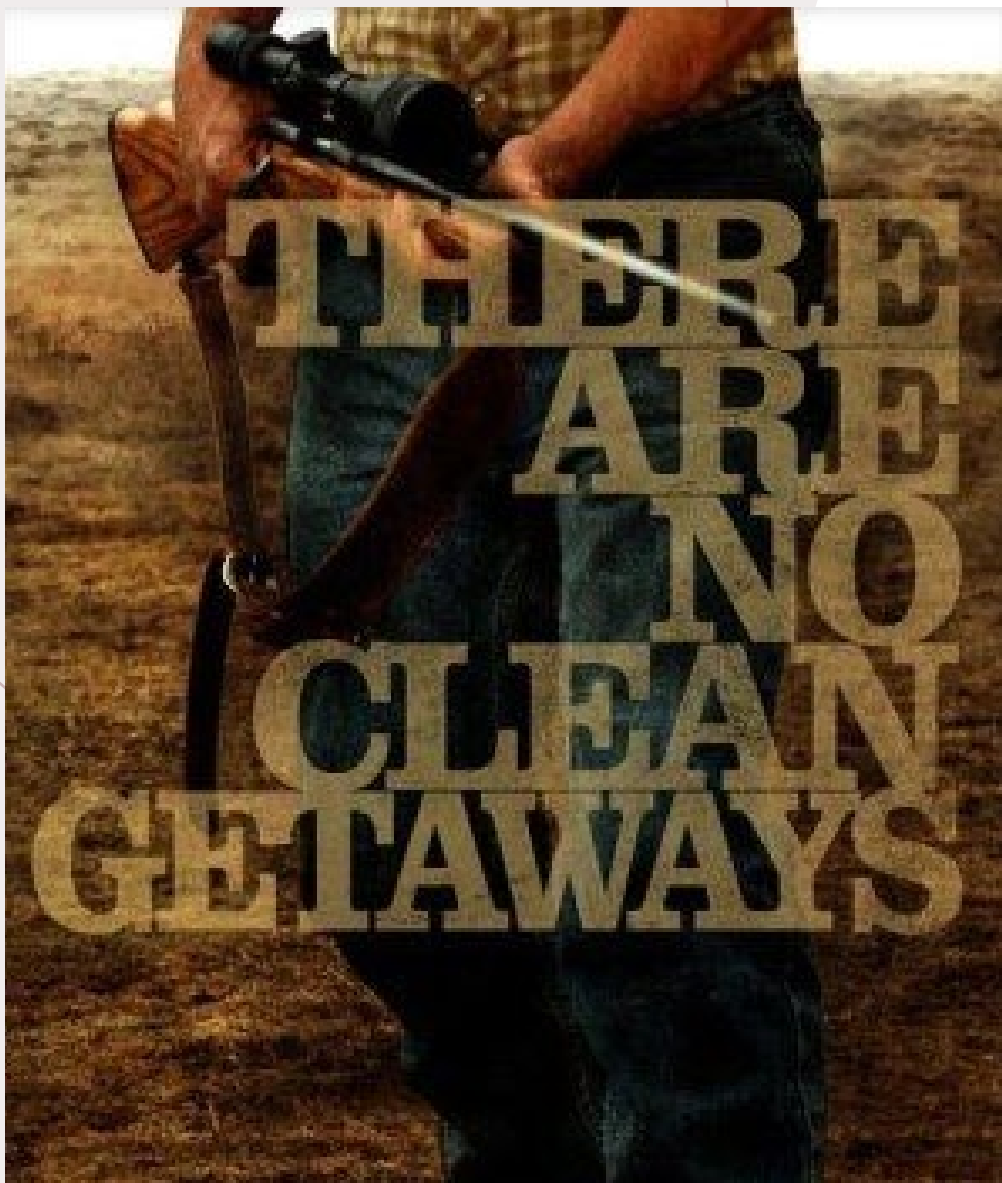
[Desert Aire Manager](#): I can't say.

[Anton Chigurh](#): Where does he work?

[Desert Aire Manager](#): Sir, I ain't at liberty to give out no information about our residents.

[Anton Chigurh](#): Where does he work?

[Desert Aire Manager](#): Did you not hear me? We can't give out no information.

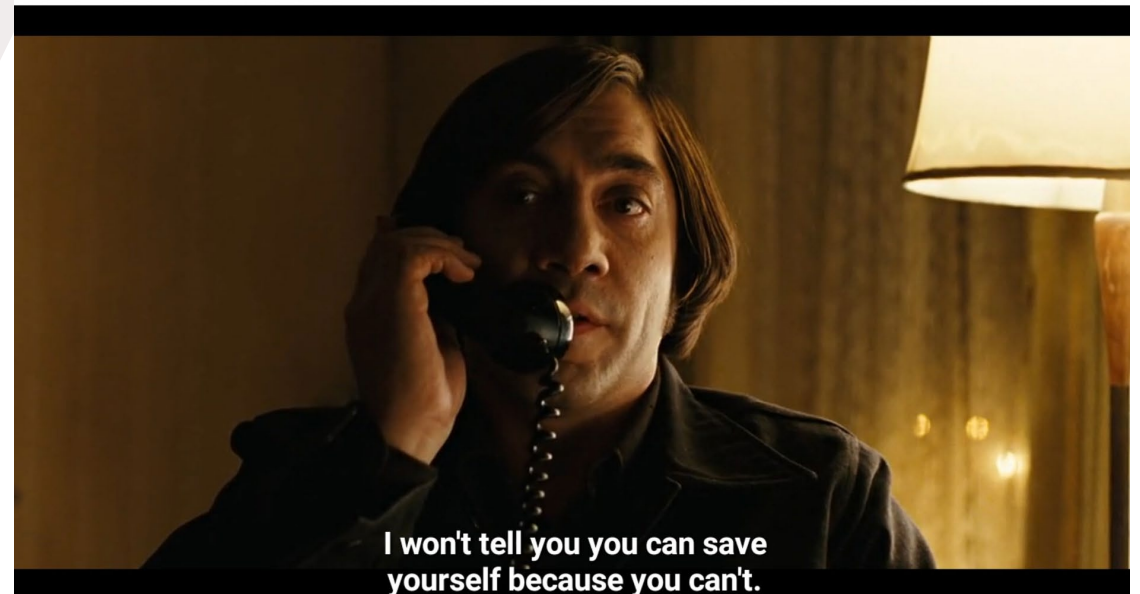
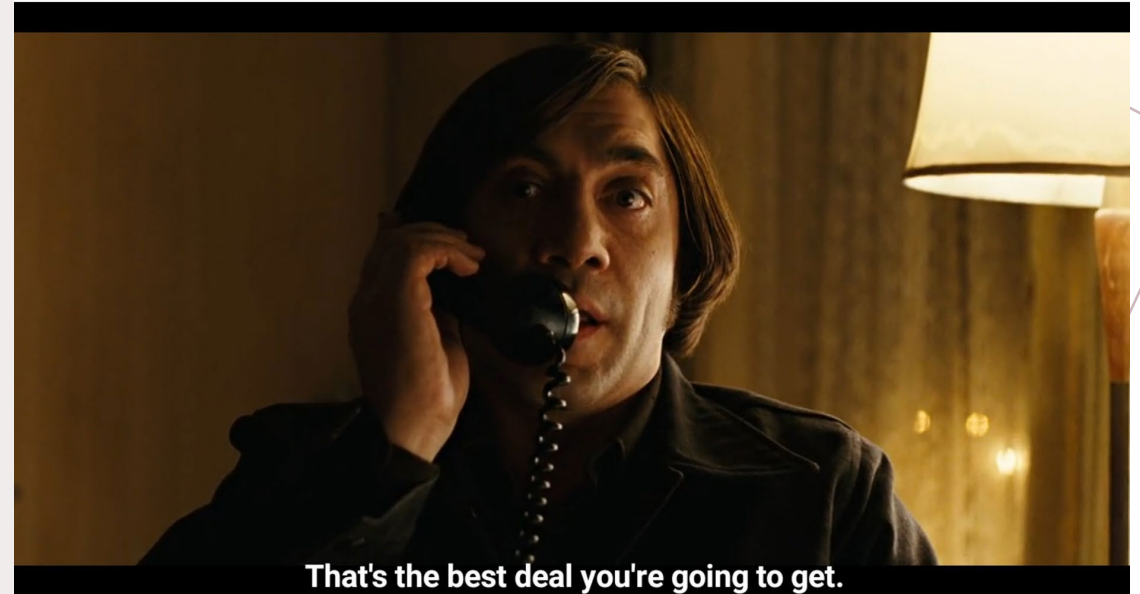


#7 *PROFFERS*

SHERIFF BELL'S SECRETARY: THAT DEA AGENT CALLED AGAIN. YOU GONNA WANNA TALK TO HIM?

ED TOM BELL: GONNA TRY TO KEEP FROM HIM AS MUCH AS I CAN.

8 COOPERATION



#9 CANDOR TO THE COURT

BEFORE THE BOARD OF PROFESSIONAL CONDUCT OF THE SUPREME COURT OF OHIO

Disciplinary Counsel
65 East State Street, Suite 1510
Columbus, Ohio 43215-4215

Relator,

v.

Case No. 2024-031

Clyde Bennett II, Esq.
Attorney Registration No. 0059910
119 East Court Street
Cincinnati, Ohio 45202

Respondent.

FILED

OCT 30 2024

BOARD OF PROFESSIONAL CONDUCT

Complaint and Certificate

Relator, Disciplinary Counsel, alleges that respondent, Clyde Bennett II, an attorney admitted to the practice of law in the state of Ohio, has committed the following misconduct:

- [Ed Tom Bell](#): Uh-huh. Don't wanna lie without what it's absolutely necessary. What is it Torbert says about truth and justice?
- [Sheriff Bell's Secretary](#): Oh... we dedicate ourselves daily anew. Somethin' like that.
- [Ed Tom Bell](#): I'm gonna commence dedicatin' myself twice daily. Might come to three times before it's over with.

#10 KEEPS ON COMMITTING CRIMES



- You: And you know what's going to happen now. You should admit your situation. There would be more dignity in it.
 - Client: You go to hell.

11 CONFLICTS

- Conflict occurs when attorney has *competing or incongruent loyalties*
- A need to satisfy multiple roles, duties, or obligations.
- Attorney has important knowledge about facts and evidence underlying the charges (potential witness)
- Representing codefendants against interest of one another



“HYPOTHETICALLY...”

1. A disbarred lawyer with a dumbass moniker like, let's just say, “The Bulldog,” advises your client to go *pro se*, file a motion for a bench trial, meet with the prosecutors to tell them everything about the case along with all possible defense witnesses (before client has ever spoken with said witnesses).
2. This Bulldog lawyer is also suing (he does not really care much about that whole disbarment thing) your client's codefendant.
3. The Bulldog also forces your client to sign an affidavit admitting to things against his interests so that the Bulldog can use that affidavit in the lawsuit against the co-defendant.
4. The codefendant and client are charged in the same fucking conspiracy so, in the interest of supporting the plaintiffs in the civil suit, the Bulldog has client make statements that are harmful to his case but helpful to the plaintiffs.
5. And to get this affidavit, the Bulldog promises to provide a free lawyer, one he calls the “Big Dog.” And the Big Dog then defends vigorously the case for entirety of about a week before running with his tail between his legs, leaving your client to proceed *pro se* at trial. Client loses the bench trial. The codefendant has a lawyer, does a jury trial, and is acquitted of all charges.

The Supreme Court has held that courts must presume prejudice when a defendant's counsel is burdened by a conflict of interest, as “unconstitutional multiple representation is never harmless error.” *Cuyler v. Sullivan*, 446 U.S. 335, 349 (1980). If defendant's counsel (1) actively represents conflicting interests among different clients, and (2) that conflict has some adverse effect on the lawyer's performance, then courts may not “indulge in nice calculations as to the amount of prejudice” attributable to the conflict. *Id.* (quoting *Glasser v. United States*, 315 U.S. 60, 76 (1942)).



Angie Elleman

My coworkers left this photo on my office door in honor of my 40th. In POSTER size. I was collecting evidence in a case.

4y Like



Gus Ravenwheel

Did you get angry? I bet your BARK is worse than your bite...

4y Like



Angie Elleman

Not angry. It's funny.

4y Like

**“HYPOTHETICALLY,” LET’S SAY YOUR CLIENT
TELLS YOU WHERE THE SHELL
CASINGS ARE BURIED**

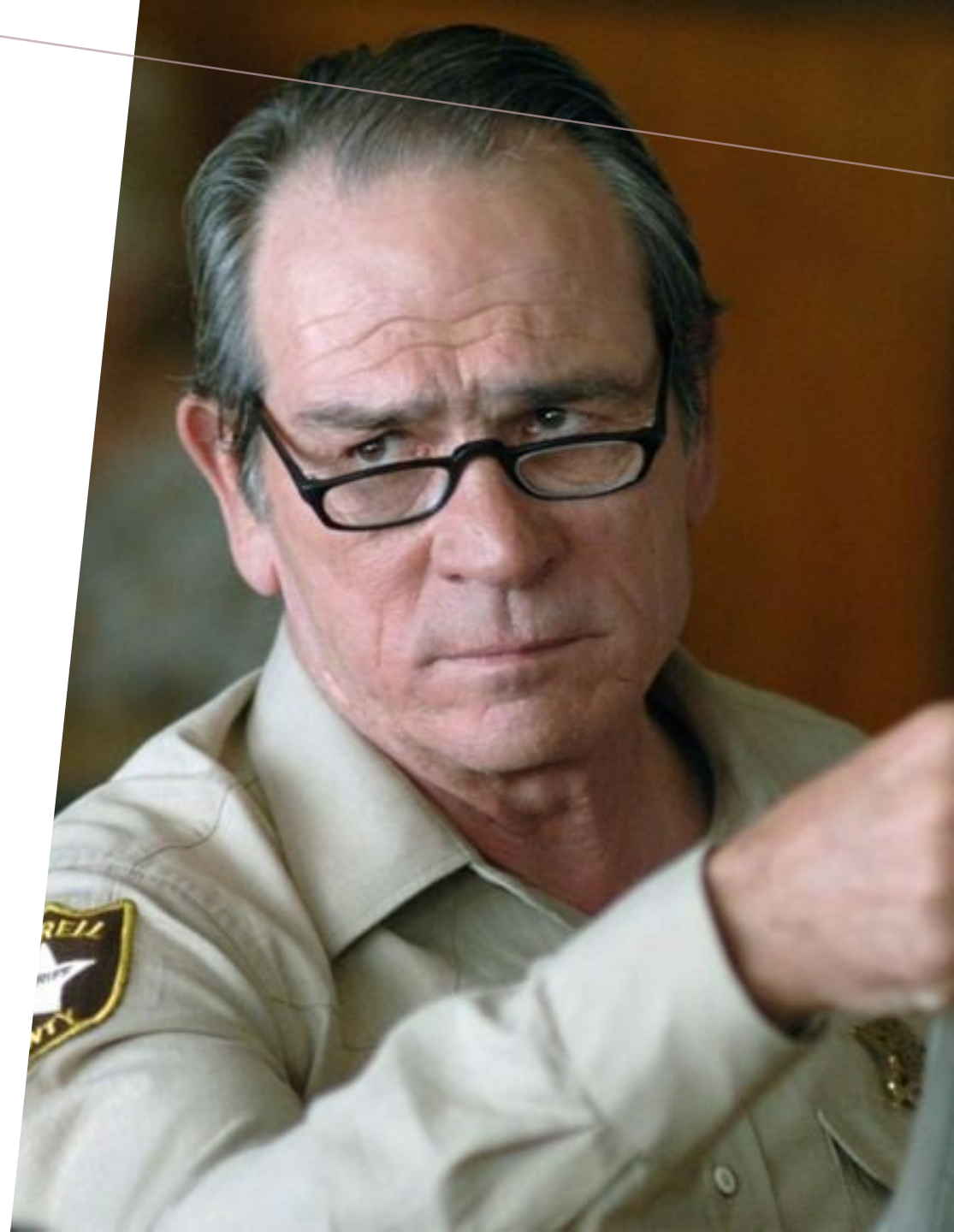
(SHELL CASINGS THAT WERE REMOVED FROM A MURDER SCENE)

COLLECTING EVIDENCE

“Instrumentality” = was used or was intended to be used in the crime – e.g., gun, computer software, or burglar’s tools.

“Contraband” = illegal in itself to possess – e.g., drugs, child pornography, or counterfeit money.

“Fruit” = was obtained as a result of the crime – e.g., the million dollars stolen from Grandma’s safe



“HYPOTHETICALLY...”

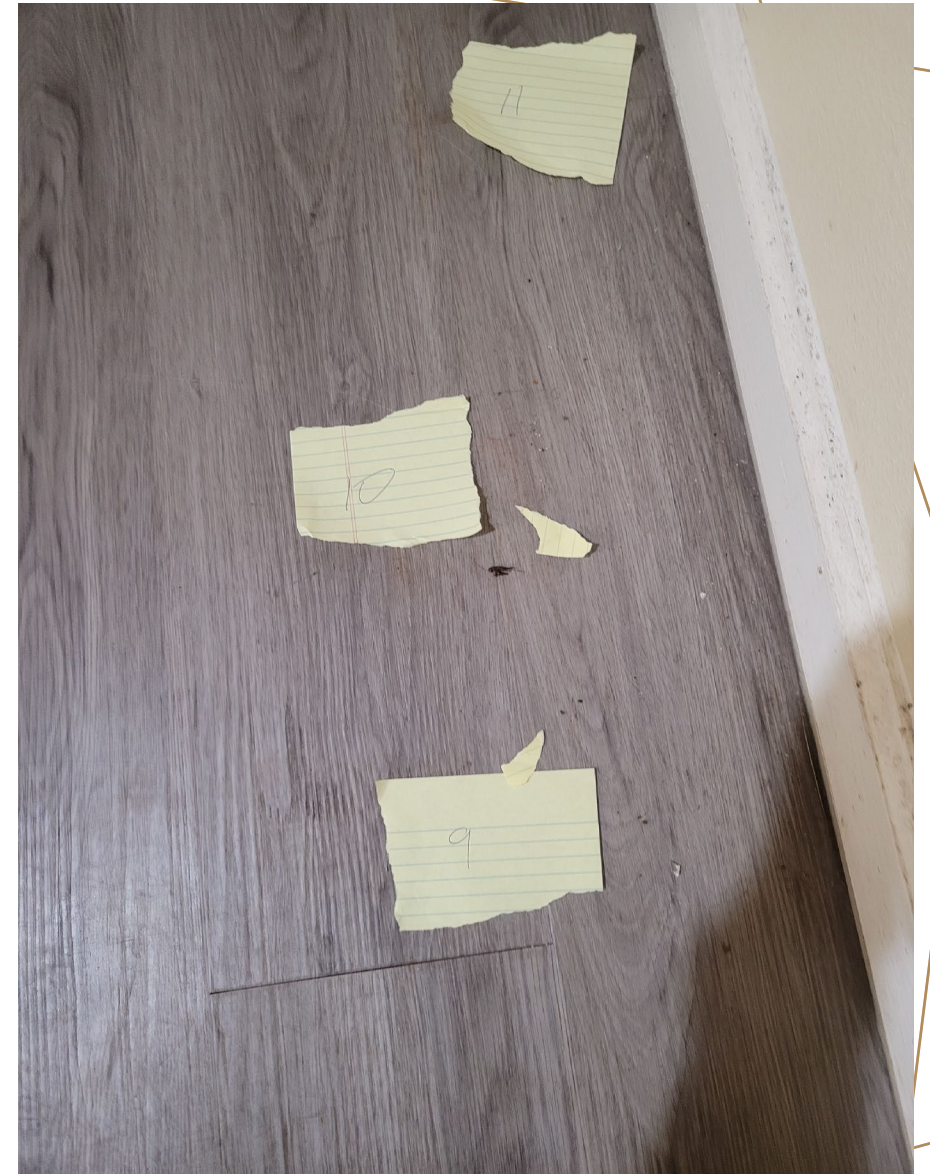
You are aware of where the shooting took place

Your client is facing death penalty in Kentucky due to specific aggravating factor (active protection order)

The state where the shooting actually took place is South Carolina

There are no realistic aggravators in South Carolina such that if your client was charged there, he would not be facing the death penalty

Can you go to the scene of the shooting and swipe the deceased's blood off the floor?



ETHICS COUNSEL

1. Do not go doing crazy shit without having run it by ethics counsel
2. You are in much better shape if you act in accordance with the advice of ethics counsel



A person wearing a blue t-shirt is holding a plaid hat that is on fire. The fire is bright orange and yellow, with flames rising from the top of the hat. The background is dark and out of focus.

“DESTROY THE SIM”

(NOT HYPOTHETICAL)

CHILD PORNO

"He is small, unclean, unshaven. He moves in the dry chaff among the dust and slats of sunlight with a constrained truculence. Saxon and Celtic blood. A child of God much like yourself perhaps."

— Cormac McCarthy

[Child of God](#)



WHEN CLIENT GIVES YOU CP...

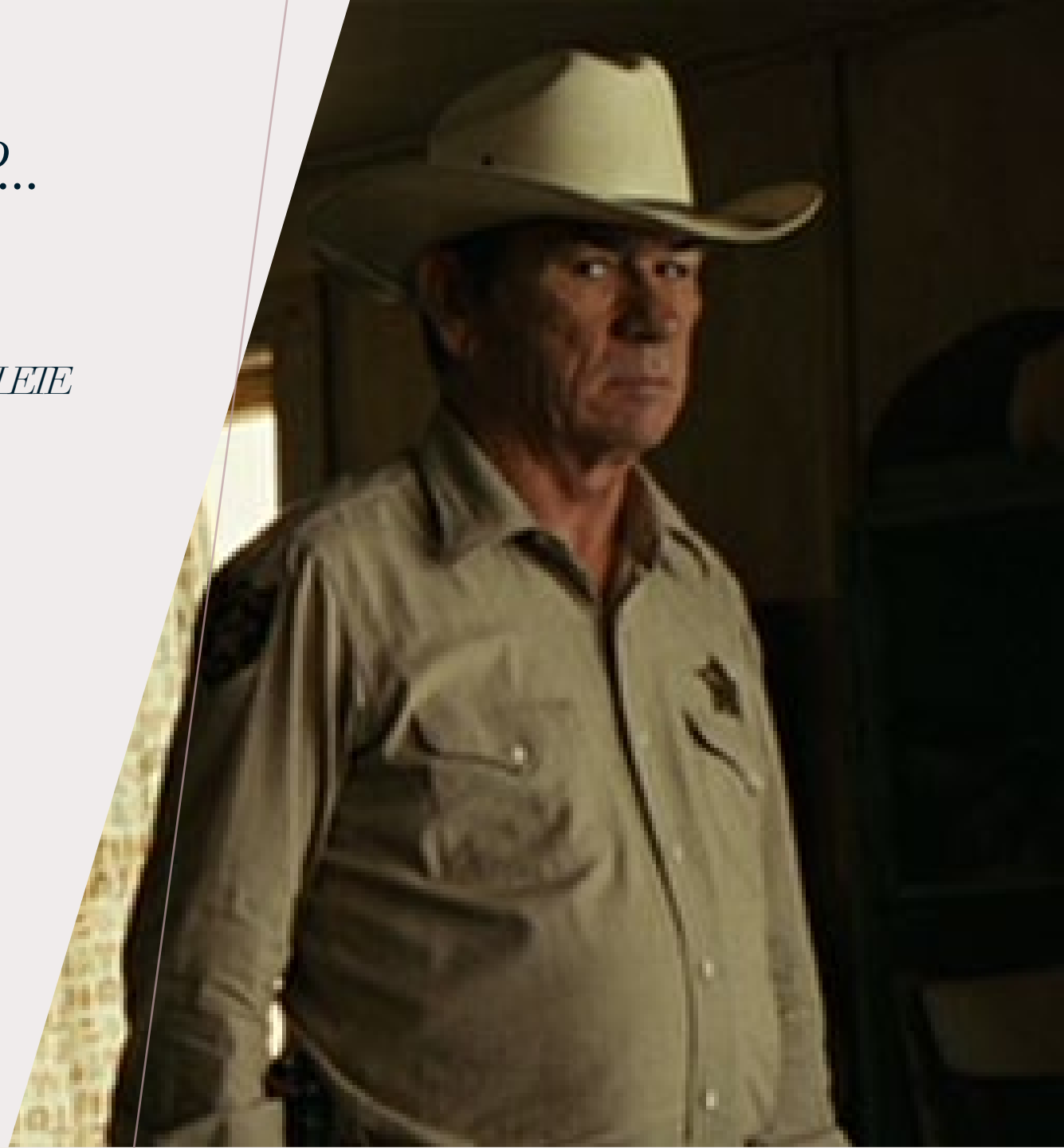
*WHAT IF YOU KNOW YOUR CLIENT HAS
CP ON A CERTAIN DEVICE?*

*WHAT IF THEY ASK IF THEY CAN DELETE
IT?*

*WHEN GOVERNMENT GIVES
YOU CP...*

YOU HAVE 3 DAYS TO CALL THE FBI.

*WHAT IF GOVERNMENT GIVES YOU CP
AND YOU DO NOT THINK THEY KNOW
ABOUT IT?*



ASYMMETRICAL WARFARE

- Prosecutor's being unethical
- Other defense attorneys being unethical
- The everybody is doing it defense
- Again, this is all hypothetically...
- Do we fight fire with fire?



Dayton man let out of prison after child rape conviction overturned



Montgomery County courts building

CURTISS CASE INVOLVED

Motion to Recuse Judge

Motion to Recuse Prosecutor

Writ to Supreme Court for Recusal

Motion to Dismiss for Judicial Misconduct

Motion to Dismiss for Prosecutorial Misconduct

Subpoena of the Judge to Hearing on Misconduct

Hamilton County prosecutors drop murder charge against man who spent 13 years in prison

Amber Hunt, Dan Horn and Kevin Grasha Cincinnati Enquirer

Published 1:42 p.m. ET May 22, 2024 | Updated 3:56 p.m. ET May 22, 2024



A judge dismissed murder charges Wednesday against a Cincinnati man who spent more than a decade in prison because of a conviction his attorneys say was based on lies by a police informant.

The judge's decision means Marcus Sapp, who was convicted of shooting to death Andrew Cunningham in Oakley in 2008, will remain free and will not face another

MOTION TO DISMISS

- Lawyers and judges must work from a foundation of information about past events collected by various parties. The system requires candor from all officers of the court for the results of our pursuits to amount to justice. Defense counsel and prosecutors argue about what justice means in certain circumstances, and there are disputes about the interpretations of facts or the credibility of witnesses. However, because the system breaks down at a fundamental level **when officers of the court are misleading (or have been misled into speaking untruths)**, it is rare to find circumstances where allegations of such conduct are made. While one hopes that the behavior exposed in this case is abnormal, there is now striking evidence suggesting otherwise.
- The foundation of information surrounding this case is irredeemably flawed. There is no present means to recreate a foundation that is not riddled with uncertainties. There is no remedy here. For its part, the state has continued to double-down, plowing forward despite the shaky foundation underneath this entire case. This unyielding posture has resulted in the state making recent statements to this Court that were blatantly untrue. The elephant in the courtroom for any continued proceedings: there is no present means to ascertain what *Brady* evidence has been—in the words of the state—purged. The state cannot be trusted on this front; they have repeatedly forfeited credibility. This lack of candor must be considered as the statement of facts is considered and the motion to dismiss is litigated.
- Of overarching relevance, the state cannot argue with a straight face that it has properly preserved evidence in this case or been straightforward with this Court about what does and does not currently exist, such that this Court can have any confidence that **all the *Brady* material** has been unearthed. Only through this lens of continued uncertainty about what was and continues to be hidden can the Court properly evaluate the state's attempts to insulate itself and its agents from consequences for their conduct.



JEFFERSON CIRCUIT COURT
DIVISION TWELVE (12)

COMMONWEALTH OF KENTUCKY, : Case No. 12cr1317
Plaintiff, _____: Judge Susan Schultz Gibson
v. :
JAMES MALLORY, _____:
Defendant. _____:

**MOTION FOR ADDITIONAL DNA TESTING, COLLECTION OF A DNA
SAMPLE FROM ANGELA ELLEMAN, AMY HANNAH, AND LESLIE MEURER**

As this Court is aware, this case involves co-defendant Anthony Hogan, who directed his lawyer, Angela Elleman, to retrieve seven spent shell casings from a tree stump located near a parking lot outside Cheers Pub in June 2012. Angela Elleman, along with Amy Hannah and their investigator, Leslie Meurer, went to the tree stump and removed the shell casings. (Exhibit A, Angela Elleman Tree Stump Photo). A photo of Angela Elleman was taken of her reaching down into the tree stump *without gloves*. Angela Elleman then posted this photo to her Facebook account and stated she was, “collecting evidence in a case.” (Exhibit B, Angela Elleman Tree Stump Photo Facebook Comments).

ABOUT THAT HYPO WITH THE BULLDOG...

I. INTRODUCTION

Defendant Michael Fletcher, M.D., hereby moves this Court for a new trial. Unbeknownst to this Court, Dr. Fletcher's trial was undermined by a clandestine scheme to manipulate him. The scheme—orchestrated by disbarred attorney Eric Deters—resulted in Dr. Fletcher proceeding *pro se*, which allowed Mr. Deters to control Dr. Fletcher's case in the shadows through the unauthorized practice of law. Upon information and belief, Mr. Deters has an interest in the group pursuing concurrent civil litigation against Dr. Kendall Hansen, who was Dr. Fletcher's co-defendant. In furtherance of that litigation, Mr. Deters portrayed himself as Dr. Fletcher's ally. Mr. Deters, however, was not motivated by a benevolent desire to help Dr. Fletcher; rather, Mr. Deters appears to have pursued his own personal gain by providing unlawful legal services in exchange for favorable (to Mr. Deters, not Dr. Fletcher) sworn statements from Dr. Fletcher. Mr. Deters—and apparently Alan Statman, an attorney who does not practice federal criminal defense with any regularity, if at all—intended to use the induced statements in the concurrent civil litigation against Dr. Hansen.

As shown below, Mr. Deters' unlawful and conflicted legal advice—which Dr. Fletcher earnestly but naively took to heart—was, in fact, objectively terrible advice. Indeed, the patent absurdity of Mr. Deters' "plan" is obvious to anyone with even the slightest experience in federal criminal law practice. Ultimately, Mr. Deters' maneuvering resulted in Dr. Fletcher proceeding *pro se* in a case that would strain even the most experienced trial attorneys.

Mr. Deters' unauthorized practice of law completely contaminated Dr. Fletcher's trial, resulting in a judgment which, if allowed to stand, would deprive Dr. Fletcher of both his right to counsel and his due process rights. A new trial is the only remedy.

35. Respondent likewise falsely stated in the *Petition* that "Trial counsel for the Defendant advised the Defendant to take a plea to trafficking in heroin with the understanding that a plea to trafficking in heroin would not result in a predicate offense for a federal sentencing guideline 'Career Criminal' finding."

ANSWER: Respondent admits that paragraph 35 of Relator's Complaint accurately quotes the *Petition*. Respondent further admits that the quoted language of the *Petition* was based upon Mr. Campbell's Affidavit. With the benefit of the plea agreement and the transcript of the plea hearing, and an understanding of the timing of the federal indictment, Respondent admits that he believes that Mr. Campbell incorrectly testified in his affidavit that "My trial counsel advised me to take a plea to trafficking in heroin with the understanding that a plea to trafficking in heroin would not result in a predicate offense for a federal sentencing guideline 'Career Criminal' finding." At the time the affidavit was created, signed and filed with the court Mr. Bennett did not know for a fact that Mr. Campbell was incorrectly testifying in the affidavit. Further answering, Respondent states that Mr. Campbell's affidavit contains Mr. Campbell's recollection of events, not Respondent's recollection. Respondent denies each and every other allegation contained in paragraph 35 of Relator's Complaint.

IN SHORT, WE DO NOT CHEAT



- But we do fight back
- And we do it from the high ground

JAIL CALLS



Speaking of cheating...

WHO IS LISTENING?

NEWS

Prosecutors Eavesdropped on 120 Confidential Defense Calls in Kentucky Death-Penalty Case

[f](#) SHARE [t](#) TWEET [e](#) EMAIL

By Death Penalty Information Center

Posted on Jun 20, 2019 | Updated on Sep 25, 2024

KENTUCKY



A **Kentucky** capital defendant has moved to dismiss all charges against him or to bar the death penalty in his case as a result of evidence that prosecutors repeatedly eavesdropped on privileged attorney-client telephone calls over the span of a year. Lawyers for **James Mallory** (pictured) have filed a motion to dismiss the case for gross prosecutorial misconduct, alleging that prosecutors listened to recordings of 120 prison phone calls between Mallory and members of his legal team, totaling more than 24 hours of confidential conversations. "Given that it is clear from the calls that the conversations were privileged," defense attorneys Eric Eckes and Greg Coulson wrote, "it is difficult to fathom another purpose for the Prosecutor to continue to listen to the calls for any reason other than to gain confidential, privileged information."

The motion alleges that prosecutors committed "a serious and shocking violation of basic ethical standards" when they eavesdropped on conversations between the defense team and Mallory that were recorded by the **Louisville** Metro Corrections facility. The recorded phone conversations included privileged discussions of witnesses and defense strategy. Jefferson Commonwealth's Attorney Tom Wise said that prosecutors can listen to prisoner calls, but "have an ethical obligation to stop listening" when they realize that the prisoner is speaking with their attorney. However, Mallory's lawyers said "it defies logic to suggest the Prosecutor did not intentionally invade the attorney-client relationship based on the sheer volume of calls that were repeatedly listened to."



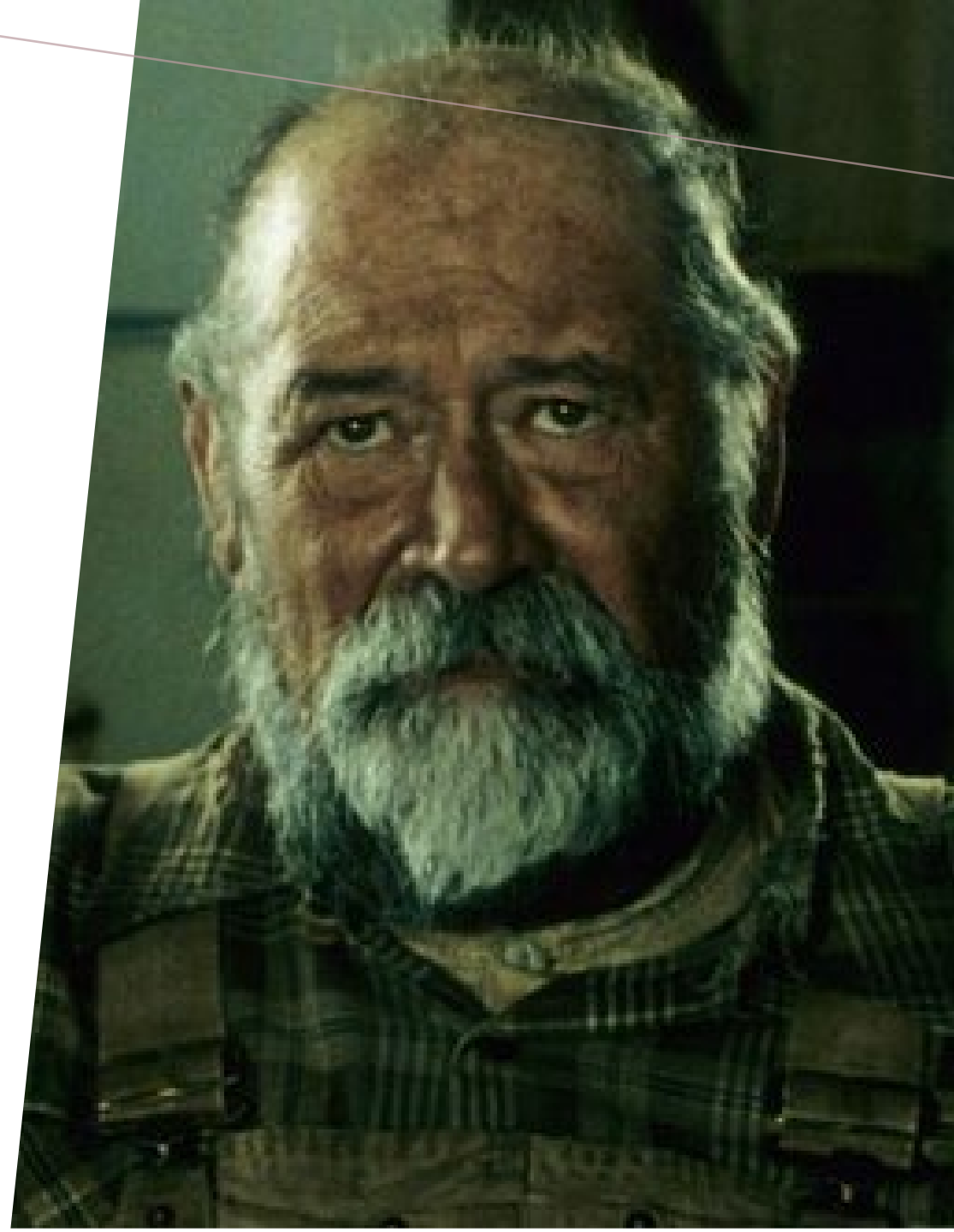
A man in a dark suit and glasses is laughing heartily, holding a small, light-colored dog. In the background, another man is smiling. The scene is dimly lit, with a warm, golden light source creating a soft glow.

ANTON CHIGURH IS THE GOVERNMENT

THIS GUY IS YOUR CLIENT
WITHOUT YOU

THE 2255 PROCESS

- **Ellis**: What you got ain't nothin' new. This country's hard on people. You can't stop what's coming. It ain't all waiting on you. That's vanity.





WENDELL: IT'S A MESS, AIN'T IT, SHERIFF?

ED TOM BELL: IF IT AIN'T, IT'LL DO TILL THE MESS GETS HERE.

IN THE FACE OF YOUR ETHICAL OBLIGATIONS...

And, un-hypothetically, against you,
you will meet:

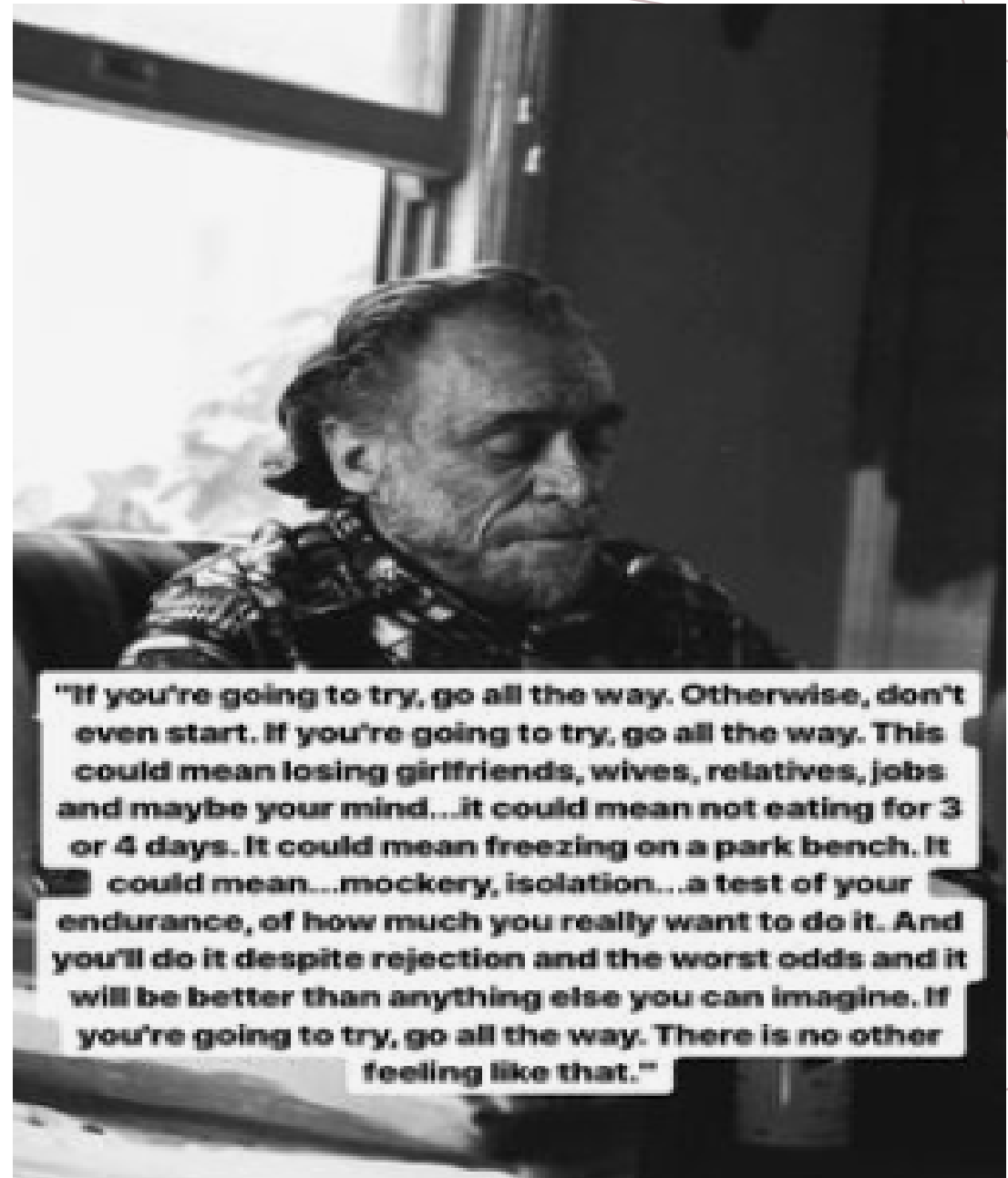
1. Government cheating
2. Other defense lawyers cheating
3. Judges cheating
4. Client doing the things some clients do
5. Your own personal moral compass

THIS NEVER HAPPENS



BUKOWSKI

“You begin saving the world by saving one man at a time; all else is grandiose romanticism or politics.”





DONE

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