

Committee Opinion  
August 21, 1987

LEGAL ETHICS OPINION 953

CRIMINAL LAW – FRUITS AND  
INSTRUMENTALITIES OF CRIME.

An attorney representing a client accused of committing a crime with a certain weapon was given the weapon by the client a year after the client was arrested for the crime. Although the police had made no effort to find the weapon prior to the time it was given the attorney, the commonwealth's attorney requested the attorney turn the weapon over to the commonwealth's attorney's office.

When a client delivers an instrument or weapon to his or her lawyer, the client may expect that the instrument or weapon comes within the purview of attorney/client privilege. Since the Commonwealth is aware that the attorney is in possession of the weapon, delivering the weapon to the commonwealth's attorney would not pierce the cloak of confidentiality which otherwise surrounds the attorney's possession of the weapon. The attorney has a duty to turn over the weapon, which is a fruit or instrumentality of the crime, to the commonwealth's attorney. Before doing so, the attorney has a duty to inform the client that he will do so. [ LE Op. 709 and LE Op. 551]

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