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FOLLOWING THE RULES OVER A CLIFF

Legal ethics aren't an end: they're a means

By Julius (Jay) Wachtel. Imagine that you're a defense attorney. What do you do if your client, who is facing murder charges, tells you that he did it and that his alleged accomplice, who has a different lawyer, wasn't involved?

"I never told nobody that I was an angel," says [Lee Hunt](#), who has insisted for twenty-two years that he is innocent. In 1986 Hunt and Jerry Cashwell were separately tried and convicted for the execution-style killings of a North Carolina man and his wife, supposedly over a drug deal gone sour. Evidence against Hunt consisted of testimony by two witnesses who got deals on unrelated cases and an FBI forensic scientist who matched the lead of bullets removed from the victims to an ammunition box tied to Cashwell.

Cashwell got the death penalty; Hunt, life in prison. What Hunt's jurors didn't know was that his alleged accomplice told his lawyer that he shot the victims during a quarrel that had nothing to do with drugs. Hunt, he insisted, wasn't involved -- he wasn't even there. But to protect Cashwell, his lawyer kept mum.

Think that's rare? In 1982 [Alton Logan](#) was convicted of killing a security guard at a Chicago-area MacDonald's. He was identified by three witnesses who picked him out of a photo lineup. There was no other evidence. Meanwhile, a man named Andrew Wilson who was awaiting trial for killing two police officers and had no connection to Logan told his lawyers that he was the one who murdered the guard. Deciding that they couldn't break Wilson's confidence, attorneys Dale Coventry and Jamie Kunz told no one. Luckily, Logan got life instead of the chair.

In 2003, seventeen years after Lee Hunt was unjustly locked up, Cashwell, the real double-murderer, told his attorney that "he felt bad about what happened to [Hunt]." Not long after he committed suicide in prison.

In 2007, twenty-six years after Alton Logan was unjustly locked up, Wilson, the security guard's real killer, died in prison from natural causes.

After Cashwell died his lawyer came forward. It did little good. Not only was Hunt's bid for freedom denied, but the judge referred the lawyer to the State bar for violating his dead client's confidence. (The complaint was recently dismissed.) Hunt's only remaining hope lies with the State Supreme Court.

Logan had better luck. Wilson's lawyers had their client sign a waiver allowing them to reveal his story when he died. Based on this and other factors a judge set aside Logan's conviction and released him on bail. Amazingly, Logan's [current lawyer](#) agrees that the cop-killer's attorneys were right to keep quiet. "I wish there had been a way this could have come out earlier," he said. "Under the...Illinois ethics code, I think the only way would have been if [the real killer] had released his lawyers earlier." Logan's new trial date hasn't been set.

Let's look at this "ethics code" that lawyers seem so keen to obey. Are its rules really that strict? Here's what the Illinois Supreme Court's Rules of Professional Conduct say about [confidentiality](#):

Rule 1.6. Confidentiality of Information

(a) Except when required under Rule 1.6(b) or permitted under Rule 1.6(c), a lawyer shall not, during or after termination of the professional relationship with the client, use or reveal a confidence or secret of the client known to the lawyer unless the client consents after disclosure.

(b) A lawyer shall reveal information about a client to the extent it appears necessary to prevent the client from committing an act that would result in death or serious bodily harm.

(c) A lawyer may use or reveal:

(1) confidences or secrets when permitted under these Rules or required by law or court order;

(2) the intention of a client to commit a crime in circumstances other than those enumerated in Rule 1.6(b); or

(3) confidences or secrets necessary to establish or collect the lawyer's fee or to defend the lawyer or the lawyer's employees or associates against an accusation of wrongful conduct....

Illinois' rules are commonplace. Lawyers may breach a confidence with their client's consent. Lacking that, they may only violate confidentiality to prevent a new crime from occurring (mandatory disclosure if death or serious bodily harm may result, optional otherwise), to help collect their fees, or to defend against a lawsuit.

On first blush it seems that the bad guys' lawyers were right to keep mum. Yet confidentiality doesn't trump everything. [Other rules](#) forbid attorneys from making "a

statement of material fact or law to a tribunal which the lawyer knows or reasonably should know is false.” Lawyers must also disclose to the court “a material fact known to the lawyer when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client.” Surely there’s some wiggle room in all this!

But let’s not quibble. If we must cross a double-yellow to avoid a horrible accident, we do it. If we must bend a rule to avoid consigning an innocent to decades of imprisonment, we do it. Ethical rules are supposed to further justice, not frustrate it. They’re *means*, not *ends*. There are plenty of talented lawyers who could put their heads together and craft solutions that would keep the legal system on an even keel while helping avoid the calamities that befell Lee Hunt and Alton Logan.

Wrongful convictions have shaken citizen confidence in the criminal justice system. And now we know that the problem is even worse than it appears, with the system enshrining behavior that inevitably leads to corrupt outcomes. How can we in good conscience ask judges and jurors to render decisions while hiding from them the fact that they might be dooming an innocent person?

When interviewed by “60 Minutes” one of the cop-killer’s lawyers said that “there may be other attorneys who have similar secrets that they’re keeping.” That’s a frightening thought. For humanity’s sake, would they please speak up?