

## Case 10: Client Confidentiality

Does the vow of client confidentiality extend past the client's death? The issue came up dramatically when North Carolina attorney Staples Hughes testified at a hearing for a man who may have been wrongly convicted of murder.

Hughes represented Jerry Cashwell, who pled guilty to the 1984 murders of Roland and Lisa Matthews. A second man, Lee Wayne Hunt, was thought to be an accomplice. Hunt was convicted and received a life sentence. Cashwell never publicly commented on Hunt's involvement, but soon after Hunt's conviction, Cashwell told his lawyer in confidence that he had acted alone.<sup>1</sup>

Hughes kept his client's secret for 22 years, until Cashwell's death. Then Hughes began seeking ways to help free the man whom he believed to be innocent. In 2007, Hughes testified at Hunt's hearing for a new trial. The judge knew that Hughes planned to reveal Cashwell's secret. The judge cautioned him not to, saying that he would be compelled to report Hughes testimony as an ethics violation. Hughes testified anyway, sharing Cashwell's admission that he had acted alone in the killings and that Hunt was not involved. The judge reported Hughes to the state bar for violating client confidentiality and refused to consider Hughes' testimony in reviewing Cashwell's case.<sup>2</sup>

The U.S. Supreme Court has held that attorneys have a responsibility to keep confidentiality even after a client has died. The Model Rules of Professional Conduct, the rules promulgated by the American Bar Association to guide lawyers' behavior, also strongly urge against disclosing information unless certain criteria are met.<sup>3</sup> Some legal experts believe that it is sometimes justifiable to violate confidentiality, even when the client is alive, but only to prevent an innocent person from being executed. In some other cases where a suspect or convicted killer had information regarding unsolved crimes, lay people have argued that attorneys should not keep clients' secrets at the expense of those hoping to find out the fate of missing loved ones.<sup>4</sup>

Eventually, Hughes was cleared of wrongdoing by the state bar and continues to practice law. Despite Hughes' testimony and questions regarding possible faulty analysis of evidence in the case, as of June, 2008, Hunt remains in prison.

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<sup>1</sup> McManus, Kathy, "Freeing An Innocent Man?," *The Responsibility Project*, May 27, 2008.

<http://www.responsibilityproject.com/blog/post/freeing-an-innocent-man/>.

<sup>2</sup> Liptak, Adam, "When Law Prevents Righting a Wrong," *New York Times*, May 4, 2008. Sec. The Nation.

<http://www.nytimes.com/2008/05/04/weekinreview/04liptak.html>.

<sup>3</sup> American Bar Association Model R. Prof. Conduct 1.6: Confidentiality of Information (2007).

<sup>4</sup> Barksdale, Titan, "Confidentiality and the Dead Client," *Legal Ethics Forum*, Nov. 27, 2007.

<http://legaethicsforum.typepad.com/blog/2007/11/confidentiality.html>.