

## Too Much Confidentiality?

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For some time, I've been meaning to do a post about attorney-client confidentiality in extreme circumstances. For example, in [this Chicago case](#), defendant X, who was charged with one murder, admitted to his lawyers that he had also committed another murder, one with which defendant Y had been charged. There was other evidence in the second case that lined up with the confession, so the lawyers representing defendant X were certain that defendant Y was completely innocent. But they watched as defendant Y was tried capitally, convicted, sentenced to life in prison, and served 26 years. Meanwhile, defendant X was convicted of the first murder and also sentenced to life in prison. Only after defendant X died did his lawyers come forward with the information that defendant Y was innocent and that defendant X was responsible for the murder. Defendant Y has since been formally exonerated, as described [here](#).

The lawyers who represented defendant X said they consulted with "legal scholars, ethics commissions, [and] the bar association" and were consistently told that the ethics rules prohibited them from disclosing what their client had said. And, of course, Rule 1.6 does provide that "[a] lawyer shall not reveal information acquired during the professional relationship with a client" unless the client consents or one of the Rule's exceptions apply. The only exception that could have any application here is set forth in Rule 1.6(b)(3), "to prevent reasonably certain death or bodily harm."

Some of you may recall that a [similar situation](#) arose in North Carolina several years ago, when a North Carolina lawyer disclosed a client's confidence after the client's death in an effort to exonerate the client's co-defendant. The lawyer's theory, apparently, was that when an innocent man is convicted of a crime, his incarceration amounts to "bodily harm" within the meaning of Rule 1.6(b)(3). Although at least one legal scholar [criticized that reasoning](#), the State Bar reportedly dismissed a complaint against the lawyer, suggesting that the Bar viewed the lawyer's actions as reasonable.

According to [this New York Times story](#), the Virginia State Bar likewise declined to sanction a lawyer involved in a similar case. And apparently at least one state – Massachusetts – expressly provides for a confidentiality exception when necessary "to prevent the wrongful execution or incarceration of another."

The dilemma is pretty poignantly summed up by these opposing quotes from the Chicago case:

- From the innocent defendant: "Is (a) job more important than an individual's life?"
- From one of the guilty defendant's lawyers: "Should I do the right thing by Alton Logan and put my client's neck in the noose or not? It's clear where my responsibility lies and my responsibility lies with my client."

I don't know the right answer, but I'm interested in trying to harness the wisdom of crowds, so I'm going to try to put up a poll immediately below. I've never done a poll before, so bear with me if there are any technical difficulties.

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