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THE ROLE OF ATTORNEY ETHICS AND WITNESS MISIDENTIFICATION IN THE 26 YEAR INCARCERATION OF AN INNOCENT MAN

by SUSAN POLL-KLAESSY

For over a quarter of a century, an innocent man was trapped in prison, serving a life sentence for a crime he did not commit. This tragedy first began in 1982 when Alton Logan was convicted of murdering a security guard at a Chicago McDonald's restaurant.¹ While Logan and three others testified he was at home asleep at the time, three eyewitnesses nonetheless identified him in a police lineup, and he was charged with murder.² Attorneys Jamie Kunz and Dale Coventry knew that Logan was innocent.³ Their client, An-

drew Wilson, had told his lawyers that he, not Logan, was responsible for the murder.⁴ Bound by the duty of attorney-client confidentiality, Kunz and Coventry could not reveal Wilson's confession.

The Illinois Rules of Professional Conduct state that a lawyer is barred from revealing a client's confidence, either during or after termination of the professional relationship with the client, unless the client gives consent.⁵ However, a lawyer must reveal client information to the extent necessary "to prevent the client from committing an act that would result in death or serious bodily harm."⁶ Furthermore, a lawyer may reveal client confidences to prevent a client from committing a future crime.⁷ A lawyer may also reveal client confidences as necessary to collect the lawyer's fee or to defend the lawyer against accusation of wrongdoing.⁸

The duty of client confidentiality generally continues even after the client's death. Kunz and Coventry, however, convinced Wilson to allow them to reveal his confession after his death.⁹ Because of their skillful execution of this remarkable idea, they were free to come forward when Wilson finally died on November 19, 2007.¹⁰ However, this alone was not enough to make Logan a free man.

Assistant public defenders Erica Reddick and Harold Winston represented Logan in his post-conviction legal battle.¹¹ Because of the additional discovery, admissibility and procedural issues associated with this new evidence, Reddick and Winston labored well into the following year on Logan's case.¹² Their efforts eventually succeeded on September 4, 2008.¹³ Logan was cleared of all charges as presiding Judge Schreier noted that Logan had "endured a season in purgatory" but that now the "long nightmare is over."¹⁴



Alton Logan (center) with his attorneys Erica Reddick (left) and Harold Winston (right)

THE LAWYERS' DILEMMA

At trial, Logan's life was spared in a 10-2 vote in favor of the death penalty.¹⁵ Had he been sentenced to death, Coventry asserts he and Kunz would have gone to the governor in an effort to prevent Logan's death.¹⁶ Coventry says they could not have remained silent while an innocent man was put to death. Although even if they had broken the ethical rules to save Logan from the death penalty, it likely would have resulted in their own client's death.¹⁷ Wilson was already serving time for another murder. A second murder conviction may have meant the death penalty for Wilson.¹⁸

Since it was Wilson who committed the murder, what's wrong with revealing information that could send him to his death? Reddick explained the dilemma, "it's so easy to say . . . they should have come forward . . . However, it's really difficult to know what you will do in those actual circumstances. . . ." Reddick added, "I feel a strong loyalty to each of my clients, and knowing that what I said would certainly have a role in the death of someone else would stop me in my tracks."¹⁹

WHAT'S WRONG WITH OUR ETHICS CODE?

Perhaps the rules governing attorney ethics in Illinois need to be changed to prevent such an injustice in the future. Surprisingly, Logan disagrees, insisting that "Andrew Wilson's attorneys did nothing wrong. They did their job."²⁰ Reddick, however, believes that generally, even one day of wrongful imprisonment should be enough to trigger the exception for serious bodily harm.²¹ Winston says Illinois should eliminate the guesswork by adopting a provision similar to a Massachusetts law that allows disclosure for wrongful imprisonment, but he would add a corollary law that such information cannot be used directly against the client of the lawyer disclosing it.²² This would allow prosecutors to reopen the investigation without destroying the client confidentiality that is so crucial to our legal system.²³ Coventry believes the law should include an exception in the case of a client's death.²⁴

PREVENTING FUTURE WRONGFUL CONVICTIONS

Sadly, Alton Logan is not alone in his legal battle against wrongful conviction. Winston believes there are two things that can be done to help prevent future wrongful convictions.²⁵ First, police and prosecutors must keep an open mind if new evidence surfaces.²⁶ Winston explains, "There's so much pressure, because of publicity, to resolve a case quickly. I think it's adverse to the system of justice."²⁷ Secondly, Winston believes improvements are needed in eyewitness identification procedures.²⁸

Three eyewitnesses misidentified Logan as the shooter at trial.²⁹ Two of the three witnesses testified they had never seen the shooter before the day of the crime, so Winston concludes it was easy for them to make a mistake.³⁰ Moreover, one witness was on the ground with a gun in his face at the only time when it was possible for him to see the shooter.³¹ The third eyewitness initially admitted she could not recognize the shooter, but later identified Logan after talking with the police.³² While there is no proof, Winston says it is possible the police may have directly or indirectly influenced the eyewitnesses.³³

Winston advocates "sequential line-ups" where witnesses see just one person at a time, because they are more reliable and less likely to have false positives.³⁴ Winston also advises using a "double-blind" system, in which the person conducting the procedure does not know who the suspect is.³⁵ This system would eliminate advertent and inadvertent hints from the police on who they suspect committed the crime.³⁶

According to the Innocence Project, an organization dedicated to exonerating wrongfully convicted people, eyewitness misidentification is the leading cause of wrongful convictions in the American justice system.³⁷ In addition to sequential line-ups and blind administration, the Innocence Project recommends four other safeguards against eyewitness misidentification.³⁸ First, "fillers," or non-suspects in a line-up should resemble the eyewitness description of the suspect.³⁹ Second, the eyewitness should be advised that the perpetrator may not be in the lineup, that the investigation will continue regardless of the lineup result, and that she should not look to the administrator for guidance.⁴⁰ Third, immediately following the lineup, an eyewitness should provide a statement articulating how confident she is in the identification.⁴¹ Fourth, identifi-

cation procedures should be videotaped whenever possible to avoid any misconduct and to help legitimize the procedure.⁴²

Amending the ethics laws and improving lineup procedures may save others from Logan's fate. But the lesson Logan learned from this 26 year nightmare was that "the criminal justice system in Illinois has to be rethought and reworked."⁴³ While noting that he sees change, he states there is "still a long way to go."⁴⁴

NOTES

1 Interview with Harold Winston, Assistant Public Defender, Office of the Cook County Public Defender, in Chicago, Ill. (Oct. 20, 2008).

2 *Id.*

3 *Id.*

4 *Id.*

5 ILL. RULES PROF'L CONDUCT R. 1.6 (a) (2008)

6 ILL. RULES PROF'L CONDUCT R. 1.6 (b) (2008)

7 ILL. RULES PROF'L CONDUCT R. 1.6 (c)(2) (2008)

8 ILL. RULES PROF'L CONDUCT R. 1.6 (c)(3) (2008)

9 Interview with Winston, *supra* note 1.

10 *Id.*

11 *Id.*

12 *Id.*

13 Interview with Winston, *supra* note 1.

14 Matthew Walberg, *South Side man finally free after 26 Years*, CHI. TRIB., Sept. 5, 2008 (available at <http://www.chicagotribune.com/news/local/chi-alton-logansep05,0,6873370.story>).

15 Interview with Winston, *supra* note 1.

16 Dale Coventry, Attorney, Panelist Remarks at Loyola University Chicago School of Law: 26 Years of Justice Denied: The Ethics of Attorney-Client Privilege in the Wrongful Conviction of Alton Logan (Nov. 3 2008).

17 Interview with Erica Reddick, Assistant Public Defender, Office of the Cook County Public Defender, in Chicago, Ill. (Oct. 20, 2008).

18 *Id.*

19 *Id.*

20 Interview with Alton Logan, in Chicago, Ill. (Oct. 20, 2008).

21 Interview with Reddick, *supra* note 17.

22 Interview with Winston, *supra* note 1.

23 *Id.*

24 Coventry, *supra* note 16.

25 Interview with Winston, *supra* note 1.

26 *Id.*

27 *Id.*

28 *Id.*

29 *Id.*

30 *Id.*

31 *Id.*

32 *Id.*

33 *Id.*

34 *Id.*

35 *Id.*

36 *Id.*

37 THE INNOCENCE PROJECT, EYEWITNESS MISIDENTIFICATION, <http://www.innocenceproject.org/understand/Eyewitness-Misidentification.php> (last visited Nov. 2 2008).

38 *Id.*

39 *Id.*

40 *Id.*

41 *Id.*

42 *Id.*

43 Interview with Logan, *supra* note 20.

44 *Id.*