

CONFIDENTIALITY IN JOURNALISM AND LAW

The Logan Case:¹

In 1982, Alton Logan was convicted of killing a McDonald's security guard—a crime he didn't commit. At the time of the trial, Dale Coventry and Jamie Kunz had knowledge of Logan's innocence. Andrew Wilson, another man who had been investigated for the crime, had already confessed to them that he had killed the guard. Yet Coventry and Kunz did not come forward with this information because they were Wilson's attorneys (representing him on unrelated charges involving the murder of two Chicago police officers). If they came forward, the attorneys argued, they would be violating their professional obligations to their client by putting him at risk of prosecution—and potentially of the death penalty. Moreover, the Illinois ethics code requires that attorneys maintain their client's confidentiality unless providing privileged information is necessary to preserve another's life, or to prevent bodily harm from coming to another. Given this, Coventry and Kunz argued, their statements would have been inadmissible in court and would have opened them up to disciplinary measures. Moreover, as Adam Liptak, a reporter on the case notes, many legal ethicists see this obligation as fundamental: "If clients do not feel free to speak candidly, their lawyers could not represent them effectively. And making exceptions risks eroding the trust between clients and their lawyers in future cases."²

So Coventry and Kunz kept their client's secret for twenty-six years, while Logan served his life sentence. After Wilson died in 2008—and with his prior approval—the attorneys finally came forward with an affidavit detailing the confession. They had prepared (and notarized) the document more than two decades earlier, so that when they were finally allowed to talk upon Wilson's death, their claims would be considered credible. With their help, Logan was eventually released from prison.

Judith Miller and the CIA Leak:³

Valerie Plame was identified as a CIA operative in a news column written by Robert Novak, [appearing] in *The Washington Post* in July 2003 [citing] two unidentified senior Bush administration officials as his sources. [The] column was published shortly after Plame's husband, former U.S. Ambassador Joseph C. Wilson, disputed the [Bush administration's]

¹ This case was compiled from information from the following sources:

Maurice Possley, "Attorney-client privilege keeps wrong man in prison," *The Chicago Tribune*, January 20, 2008. Accessed September 10, 2010. http://www.pantagraph.com/news/article_63f52efb-2619-5d18-ac7c-1da691dbfb19.html.

"26-Year Secret Kept Innocent Man in Prison: Lawyers Tell 60 Minutes They Were Legally Bound from Revealing Secret," *60 Minutes*, May 25, 2010. Accessed September 10, 2010. <http://www.cbsnews.com/stories/2008/03/06/60minutes/main3914719.shtml>.

Adam Liptak, "When Law Prevents Righting a Wrong," *New York Times*, May 4, 2010. Accessed September 10, 2010, <http://www.nytimes.com/2008/05/04/weekinreview/04liptak.html>.

² Liptak, "When Law Prevents Righting a Wrong"

³ From: Dale Jacquette, *Journalistic Ethics: Moral Responsibility in the Media* (Upper Saddle River: Pearson Prentice Hall, 2007), 165-166.

claim that Saddam Hussein's government in Iraq had sought to obtain uranium in Africa in an effort to develop a nuclear weapons program.

[A few days after Novak's column,] Matthew Cooper, a reporter for *Time* magazine, wrote an article [that named] Plame as a CIA agent[.] Judith Miller at the *New York Times* [also] collected research although she did not write about the incident herself. [Wilson argued] that his wife's name had been leaked as retribution for his criticism of the White House. Miller was eventually subpoenaed and ordered to testify about how she obtained her information, which she refused to do, maintaining journalistic privilege in the use of confidential sources.

[Miller was] jailed in contempt of court for refusing to testify to a federal grand jury investigating the leak[.] In particular, Miller refused to [testify] about conversations about Plame she had with I. Lewis Libby, who was then chief of staff to American vice president Dick Cheney. Libby has since been [convicted of obstruction of justice and perjury in the incident]. Miller [was released from jail] after eighty-five days, only when [Libby] absolved her of her promise of confidentiality; she then regarded herself as free to testify in the matter. [Cooper] was similarly charged, but avoided jail time by agreeing to testify, on the grounds that his source had immediately released him from his prior promise of confidentiality[.]

Robert Novak, who began the furor with the report concerning Plame, has declined to say whether he testified before the grand jury. He has nevertheless avoided contempt charges. In the meantime, *Washington Post* reporter Bob Woodward [admitted] that he had kept a conversation with a bush administration official [...] secret for over two years [and] did not reveal his information or its source until Libby was indicted [and the source] released him from his promise of confidentiality. [Woodward] reported to CNN on November 22, 2005: "To get what's in the bottom of the barrel, you have to establish relationships of confidentiality with people at all levels of government. You have to establish a relationship of trust."

Questions for Discussion:

1. Was Judith Miller acting correctly when she refused to reveal her confidential source to the grand jury? Why or why not? When, if ever, is it appropriate for a journalist to break a promise of confidentiality to her source?
2. Were Dale Coventry and Jamie Kunz correct to keep their client's confession a secret until after his death? Why or why not? When, if ever, is it appropriate for an attorney to break the confidentiality of her client?
3. Many experts in the ethics of law and journalism point to the importance of trust for their respective professions. Some argue that confidentiality is no less important for building and maintaining the trust between a journalist and her source, than it is for the trust between an attorney and her client; for this reason, journalists should be shielded from prosecutions in the same way that attorneys are, when it comes to protecting source confidentiality. Do these two situations strike you as analogous? Why or why not?
4. Is it ever appropriate for news organizations to force their reporters to break promises of confidentiality? When, if ever, is it appropriate for the government to compel journalists to reveal confidential information?
5. What are the broader moral implications of the reliance, by journalists, on anonymous sources?