

Code of Ethics: A Legal Mystery Short Story

Aaron D. Martin

“Everything I tell you is confidential, right?”

“Right.”

“Attorney-client privileged, right?”

“Right.”

The fifty-something man sitting in one of the two wingback leather chairs in Chuck Hastleton’s office shifted his weight uneasily and exhaled audibly.

“Okay. I wanted to be sure because I have to tell you why I’m here. I’ll probably need a lawyer after tonight.”

Chuck stared across the five-foot expanse between his chair and where his new client sat. Nothing but a deep walnut desk separated them.

“Why will you need a lawyer?” Chuck asked, trying to keep his voice as even as possible.

“It’s not an answer I’m proud to give,” the client responded, “but tonight I’m gonna kill a man.”

* * *

Charles Linney Hastleton had grown up on the outskirts of the town where he now practiced law. Buntsville had a population of approximately thirteen thousand and was the largest municipality by population in the western part of the county. Chuck had done well in college, even better in law school, and had worked hard over the past six years to reach the brink of partnership. That’s part of what made his present circumstances so challenging.

The partners at Honeycutt & Carver—a firm as button-down as its name suggested—wanted lawyers who could work independently, bring in high-paying clients, and avoid scandal. The would-be homicidist sitting in Chuck’s office earlier that afternoon had produced a cashier’s check for ten thousand dollars as an initial retainer. Right there. On the spot.

Shane Werkheiser was the client’s name. At least, that’s the name he gave. Chuck had eagerly accepted the cashier’s check before realizing the possible implications of the engagement. The man had just said that he intended to commit a crime—possibly a capital crime—and had prepaid for his representation. Did Chuck have a duty to notify the police?

He consulted the ethics rules. They were of little help. It appeared that a lawyer was permitted to report a client's stated intention to commit a life-endangering crime, but the duty to report wasn't mandatory. So what was he to do? The client hadn't even told him whom he intended to kill. He only knew that it was the guy who had "stolen" the client's wife from him. The wife and the boyfriend were living together in a house on Ash Street, and they were rubbing their relationship in the client's face every day. At least that's what the client claimed. But the client also claimed he knew no reason why his wife had left him. Chuck had been in divorce court enough to know that *something* usually preceded a split. Financial pressure, if nothing else.

Now Chuck had knowledge that something criminal was going to happen. And he had received the information after solemnly assuring the client of an impregnable wall of secrecy in the attorney-client privilege. Why hadn't he been more nuanced? Why hadn't he told Shane about the exceptions? It was a cruel dilemma. Reporting the information risked a loss of the retainer. Worse, it risked a malpractice claim since Chuck had told the client that he would never disclose any information given to him. But if he did nothing, someone might be murdered, and that was a lot of conscience-weight to bear.

Chuck had thought of consulting with one of the senior partners, but that would have shown an uncertainty on his part that Honeycutt & Carver certainly didn't want within its partnership ranks. It also would have endangered the fee he held in his hands. Even at conservative Honeycutt & Carver, a nice retainer was considered an acceptable substitute for any temporary cheapening of the firm's currency that might come from a high-profile criminal representation. (Even if successful, the firm's involvement in such a case would never make it into any of the glossy brochures that were handed out to its moneyed clientele.)

Chuck reached over from his desk to turn off the green-shaded lamp that stood on a side table. To Chuck's surprise, it was already 11:15 pm. It was time to go home. But instead of putting the check in the firm's safe and sending an email to the office manager to open a file, he put the check in his vest pocket, donned his overcoat, and walked out into the night.

* * *

The phone call came at 9:03 the next morning.

"Mr. Hastleton?"

"Yes."

"It's Shane Werkheiser."

Chuck's heart rate quickened.

"Where are you?"

"County prison. I need to meet with you to give you some more details on what we talked about last night. I can't talk about it on the phone. There's no privacy here. How soon can you be here?"

"I'll come over right now."

“Good. I don’t feel safe. I want the guards to see I’ve got a lawyer. It might get them to back off on the name-calling.”

The trip to the jail took only fifteen minutes, and there was only a ten-minute delay before Chuck was again looking at the same man who had appeared in his office the day before. As they met in a segregated visitation room, only a heavy metallic table separated them. A guard stationed outside the room looked distractedly through the door’s solitary window every few minutes.

“Thanks for coming, Chuck. Do you mind if I call you Chuck?” The client’s voice was restrained and even.

“Of course not,” Chuck responded. “Tell me what’s going on.”

“They’ve charged me with murder. But they can’t prove it.” The client leaned half-way across the table and began to whisper to eliminate any chance that even the indifferent-looking guard would overhear any of his speech.

“They say I killed Jon Frank, my wife’s boyfriend. But I didn’t, and they don’t have a body.”

“Don’t have a body?” Chuck asked incredulously. “What do you mean they don’t have a body?”

“They have blood. That’s all. That’s what they said at my preliminary arraignment in the middle of the night. Jon was murdered and his body stolen—that’s what my wife claims. But they can’t convict me, because I never killed Jon Frank. In fact, I never went into the house. I was sitting outside in my car when the cops responded. I hadn’t even knocked on the door. The cops showed up, found blood on the carpet, spotted me in my car, and arrested me. But you’ve got to understand, I didn’t do anything. I was thinking about doing something, but I didn’t actually do it. My wife probably killed Jon, saw me outside, and called the cops to set me up.”

“I thought they were lovers,” Chuck responded.

“They were. But lovers can quarrel. You know that, right?”

Chuck sat back and looked at the client. He seemed earnest, but how was he supposed to believe that he had had nothing to do with the very crime that he had pre-confessed to?

The check in Chuck’s vest pocket—the only place he had felt safe to keep it—began to burn through his clothes and into his skin. Then the big question.

“Mr. Werkheiser, I think I can help you. If you want me to, I’ll take on your representation. But I’m going to have to ask you for additional money if the case has to go to trial.”

Shane looked at him with a jaded eye, then said, “I expected that. How much more do you want?”

Chuck swallowed hard. One of the hardest things for a young lawyer to do was to quote a flat fee for a case. If he underestimated the work involved, he wouldn’t make his billable requirements for the month. If he quoted too high a fee, he risked losing the client. Technically, even the check in Chuck’s

vest pocket wasn't considered an earned fee until the client formally agreed to the fee quote. He certainly didn't want to lose the money already in hand by scaring off the client with a supplemental quote that was too high.

"I'll need another five thousand for trial," he answered, quoting only a quarter of what he thought he would need to take the case through trial.

"Of course," the client said. "I like you, Chuck. I have confidence that you'll get me off these charges. You strike me as an ethical young man, but one who will fight hard for me. You understand that they want to send me away for life, right?"

"I know, Mr. Werkheiser. I can't promise you anything, except that I'll do my best. And you have my word on that."

"Good," said the client, lifting his right arm and grabbing Chuck's hand in a blood-brother vise grip. "That's what I'm counting on."

* * *

Bill McDouglas, the managing partner at Honeycutt & Carver, was skeptical. A murder case? Defended by Chuck Hastleton? Chuck was bright and a hard worker, but his prior criminal experience—limited to mid-level misdemeanors—hardly seemed to have prepared him for defending a client's lifetime of freedom. At least there was no threat of the death penalty. That would have been a non-starter.

Chuck reassured Bill McDouglas that another fee of five thousand dollars was right around the corner if things went all the way to trial. McDouglas seemed less impressed by the fee than Chuck had expected. "What do I have to do to impress anybody around here?" Chuck thought.

Meanwhile, the charges had become widely known, and reporters started calling Chuck to ask how he intended to defend "the jealous husband." Chuck got a heady feeling from all the calls. He confidently asserted his client's innocence, challenged the evidence as merely circumstantial, and all the while prepared for the preliminary hearing that had been continued (at his request) until a date that was exactly six weeks after the client's arrest. It provided more time to prepare. Meanwhile, the client was still in prison, unable to make the half-million dollar bail the local magistrate had set when he had first been arrested.

When the day arrived for the preliminary hearing, the wife testified that she had been at the house with Jon and gone upstairs at about midnight to fold laundry. (She hadn't had a chance to get to it earlier in the week with all the overtime she'd been working at the clinic—she was a phlebotomist by training.) When she had come downstairs half an hour later, blood was all over the floor, and the boyfriend was nowhere to be seen.

Chuck pushed back on her testimony in cross-examination.

"Did you ever see Mr. Werkheiser that night?"

"No."

“Then what makes you so sure that he killed Mr. Frank?”

“I’m not saying that he did. I just don’t know of anyone else who could have done it. Given that Shane was in the area, it seems most logical that he’s the one who did it.”

“But, Ms. Roop,”—the wife had kept her maiden name—“wouldn’t you agree that you never obtained a protection from abuse or other restraining order against my client?”

“No, but I wanted to. I didn’t like the way he looked at me and would talk to me when our paths would cross. It was no secret that Mr. Werkheiser hated Jon Frank.” The witness broke down and began to cry as both the defense and prosecution announced that there would be no more questions.

Next came a witness Chuck had not expected.

“The prosecution calls Dr. Roger Ames,” announced Shelley Dampman, the prosecuting attorney.

“Objection, Your Honor! The defense was never notified of the prosecution’s intention to call this witness! That’s a *Brady* violation. Further, we have no knowledge of what testimony this witness could give that would possibly be relevant to this case.”

Magistrate Judge F. Lindsay Abraham looked out from over his spectacles. Judge Abraham was not a lawyer and had never practiced law, but he had made up for it by intense self-study, judicial education and twenty-seven years of service as Buntsville’s front-line of the judiciary.

“First of all, Counsel, *Brady* disclosure requirements do not apply at this level. But, I do think you have a valid point in asking the prosecution for what purpose the witness is being called. Madam District Attorney, for what purpose is the prosecution calling Dr. Ames?”

“As an expert, Your Honor. Since there is no body in this case, we are attempting to establish the fact of death by expert testimony. Dr. Ames visited the scene of the incident and will testify that the amount of blood spilled on the carpet was, to a reasonable degree of medical certainty, sufficient that it would have led to death. Dr. Ames has also compared the blood to some blood that Mr. Frank had previously given and stored for his own use and will testify that there is a match.”

“Any objection to Dr. Ames testifying, Mr. Hastleton?”

“No, Your Honor.”

The witness was qualified and testified just as predicted by A.D.A. Dampman.

As Dr. Ames was testifying, the client grabbed Chuck’s ear. “Let me testify, Chuck,” he whispered. “I know the judge will believe me over them.”

“No, Mr. Werkheiser, it’s not about believability, it’s about whether they have enough evidence that, if believed, would make out all the elements of the

crimes charged.” Chuck had to reach back to his law school class in criminal law to recite the formula.

“Chuck, I can prove my innocence if you just let me testify.”

“That would be crazy, Mr. Werkheiser. You would give up your Fifth Amendment right for trial and the prosecution could use anything you said against you.”

“So you’re telling me not to testify—that’s your recommendation?”

“Yes.”

“Okay. On your recommendation, I won’t testify.”

“Good,” Chuck said, happy that the client had finally agreed to follow the advice typically given to defendants in his client’s position.

Along came a second witness that Chuck had not expected—Officer Hans Arveseth of the Buntsville Police Department.

“Your Honor, for what purpose does the prosecution call Officer Arveseth?”

Judge Abraham lowered his spectacles and with a half-reproving tone answered, “Well, Mr. Hastleton, Officer Arveseth is the arresting officer in this case. It is typical for the prosecution to call the arresting officer, is it not?”

“Yes, Your Honor,” Chuck replied meekly.

Through the officer’s testimony, A.D.A. Dampman brought out the sequence of events from the 9-1-1 call by Joann Roop until the officer’s arrival on the scene and arrest of the defendant.

“Officer Arveseth, why did you arrest my client?” Chuck began the cross-examination. “What information did you have to link him to the actual *commission* of a crime?”

“Sir, we had an excessive amount of blood on the floor, a missing person, and a story from Ms. Roop that was internally consistent.”

“Yes, Officer, I understand. But you have no evidence that my client actually killed or even kidnapped Mr. Frank, do you? No murder weapon, for instance?”

“We had a phone call, Sir—an anonymous phone call tipping us off that Mr. Werkheiser had said he intended to kill Ms. Roop’s boyfriend at their house.”

Chuck’s ears began to burn. “Objection, Your Honor! A phone call about a stated intention does not establish that a person actually committed a crime. I move that the officer’s answer be stricken from the record.”

“I agree with you, Counsel, to the limited extent that a statement of intent to commit an act does not prove beyond a reasonable doubt that an act occurred. However, we are not concerned with proof beyond a reasonable doubt at this level. We are just concerned with the existence of a *prima facie* case, which as you know, is an inquiry into whether there’s enough evidence to hold a defendant over for trial. And I find that the testimony about the call

is relevant to that inquiry. Objection overruled. Now, do you have any more questions for the officer?”

“No, Your Honor.”

“Any defense witnesses?”

The lawyer conferred with his client for a minute. “Chuck,” the client whispered, “I can clear this whole thing up if I testify. I’m sure my wife phoned in that call. She knew I would be near the house because I always stop by late on Fridays to go up and leave her mail in the mailbox on the front porch.”

Chuck was relieved to hear that the client suspected his wife of having made the late-night call.

“Mr. Werkheiser, I still recommend that you not testify for the reasons that I said earlier.”

“Okay, Chuck. On your recommendation, I won’t testify.”

With the record of the hearing closed, Judge Abraham found a *prima facie* case and bound the client over to the Court of Common Pleas for trial.

* * *

Chuck had considered a pre-trial suppression motion, but there was hardly anything to suppress. The police had drawn the client’s blood without a warrant in order to compare it to the blood found on the living room floor—a Fourth Amendment violation—but there had been no match. If anything, the drawing of the blood had *bolstered* the client’s innocence claim. There was also an un-*Mirandized* statement that the client had given at the police station, but the statement was merely a declaration of innocence—hardly anything incriminating that might constitute an actionable Fifth Amendment violation. In the end, there was simply nothing to suppress.

Chuck felt that his only option was to attack the existence of a *prima facie* case a second time at the Common Pleas level. The Common Pleas judges as a rule had more independence than local magistrates—the ones who interacted with the local police on a weekly basis and who were subject to re-election pressure every six years. At re-election time, an unhappy police force might quietly put out the word that a magistrate was “soft on crime”—the most damaging political accusation of all.

So Chuck prepared a pre-trial *habeas corpus* petition for a second go-round on the *prima facie* issue. Six months had now passed since the arrest. The retainer had been deposited, but Chuck’s estimation of the time for his study of the charges, cost for a private investigator to interview potential witnesses (there was none, his expensive investigator had determined), and twenty-four-hour stress over the case were taking a visible toll. Instead of his usual, beaming twenty-nine-year-old face, he bore a haggard look—sunken eyes from lack of good sleep and a pasty complexion from lack of exposure to the sun. It was May now, and he should have been out on the tennis court or the golf course. Instead, he was holed up in his office by day and his living room by night,

trying to figure out the winning argument to spring his client from prison. All in all, it seemed that he had no option but to gamble with the client testifying at the habeas hearing. There simply was no other means of trying to ward off a trial.

* * *

The day of the hearing was set, and the cavernous Courtroom One of the Vine County Courthouse was nearly half-full with representatives of various news media. Recording media were banned from the courthouse, but two television trucks were parked outside, and reporters armed with note pads sat in phalanx-like formation behind the defendant.

"All rise!" intoned the crier as a hefty, black robed figure emerged from the door that led from chambers and walked onto the bench. "The Court will come to order. The Honorable Howard Klein presiding. God save the United States and this Honorable Court! You may be seated."

A collective "Good morning, Your Honor," went up from the assembled audience as the judge re-arranged the papers in front of him before speaking.

"Mr. Hastleton . . . I have the transcript from the preliminary hearing. Is there some reason why the record needs to be expanded now and some reason why that could not have been done earlier?"

"Yes, Your Honor," Chuck replied. "My client intends to take the stand in his own behalf."

"Counsel, I'd like both of you to approach."

Joyce Ellis, the court reporter, moved her steno machine over to the sidebar to capture the dialogue.

"Mr. Hastleton, I don't mean to offend you, but I don't recall seeing you here in the Criminal Trial Division before. May I ask if you have ever tried any criminal cases?"

"Yes, Your Honor, I have."

"All right, and how many of your cases have gone to verdict?"

"Two, Your Honor."

"And what was the nature of the charges in those two cases?"

"Simple assault and reckless endangerment."

"Both misdemeanors?" the judge asked, more as an observation than a question. "All right, the reason I called you up here is to make sure that everyone knows that whatever your client testifies to goes in the record. It's not like a suppression hearing where the testimony can't be used against him. Everything's fair game. And if he tries to assert his Fifth Amendment right against testifying at trial, he can do that, but I imagine Ms. Dampman would have something to say about that to the jury, and that would be her prerogative. Do you understand that, Counsel?"

“Yes, Your Honor. I have discussed this issue extensively with my client, and he understands the risk.”

“Very well. Return to your seats and we’ll get started. I don’t want this hearing to go all morning. I have a full docket of cases behind this one.”

After the judge had questioned Shane Werkheiser about his desire to testify, the defendant took the witness stand and was sworn in.

“Mr. Werkheiser,” Chuck began, “what can you tell the Court about the charges that you’re facing today?”

“Well, I can say that I didn’t do it.”

“Can you be more specific?”

“Yeah, I’ve been set up.”

“And what leads you to that conclusion?” Chuck asked, thinking forward to the story he knew the client would give.

“Well, first off, I never tried to kill nobody. The cops don’t got anything on me. I was only at my wife’s house that night because I was going to drop off her mail in the mailbox. Next thing I know, I’m being pulled out of my car and arrested. Jon Frank’s blood wasn’t in my car, and I didn’t have a weapon with me. So why did I get arrested? It had to be because of that anonymous phone call the cops got that night. And that was part of the set-up too. Because you’re the one who called the cops, Mr. Hastleton! You’re the only one I told that I was going to my wife’s house that night! I told you I was going to drop off my wife’s mail. You must have taken it as some kind of threat and called the cops!”

Chuck’s face flushed in a second’s time.

“Objection, Your Honor!” protested the young lawyer, rising from his chair, not knowing what else to do.

“Objection?” the judge responded. “On what grounds?”

“Attorney-client privilege, Your Honor. He’s testifying to alleged confidential discussions between us.”

“Attorney-client privilege? Who holds that privilege, Counsel—the lawyer or the client? Quite obviously, it’s the client. He has already been questioned about his willingness to testify, and now he’s testifying. You’re objecting to his testimony? Your objection is overruled. You may continue, Mr. Werkheiser.”

“Yeah,” the client began, “so that call the cops got was bogus, and I’ve been trying to figure out why my own lawyer called the cops on me. Then I remembered something. I had my mother send me my divorce paperwork and I saw the name of my wife’s law firm on it: Honeycutt & Carver. So it must be a conspiracy against me. My wife, my lawyer and his law firm: one big conspiracy.”

The usual quiet of the courtroom was broken by the furious flipping of note pads in the gallery where the press was undoubtedly taking down every word. Chuck struggled for anything intelligent to say, remembering with a sense of dread that because he had deposited the retainer check late, he had not gone

through the usual file-opening procedures, including a conflicts check. Things could hardly get worse.

No more questions, Your Honor.”

“Prosecution?”

“None, Your Honor.”

“You may step down, Sir. Counsel—approach.” Chuck avoided his client’s gaze as he passed him on his way to the bench.

“Mr. Hastleton, I don’t know what kind of game is going on here, but I’m going to ask you one question and one question only: did you call the police about your client going to his wife’s house on the night of the incident?”

“Yes, Your Honor.”

“Thank you. Please take your seats again.”

After Dampman and Hastleton, esquires, had retaken their seats, Judge Klein began to speak.

“Ladies and gentlemen, in light of the testimony in court today and a discussion with counsel at sidebar, I am going to issue a rule upon defense counsel to show cause why he should not be disqualified from further representation of the defendant. Mr. Werkheiser, do you have the financial means to retain a new lawyer?”

“Not at all, Your Honor. I’ve already paid Mr. Hastleton’s firm ten thousand dollars and he still wants another five thousand. Meanwhile, I’m left here all alone with a lawyer who’s conspiring against me!”

“Then I will call the Public Defender’s office and arrange for back-up counsel in the event that, as I expect, you will need it in the very near future. The rule is issued upon Mr. Hastleton and returnable tomorrow morning at nine-thirty in this courtroom. Mr. Hastleton?”

“Yes, Your Honor?” came the voice-cracking reply.

“I want Mr. McDouglas here tomorrow morning, too. He’s still the managing partner over at Honeycutt, isn’t he?”

“Yes, Your Honor,” came the second reply, weaker still, spoken in a whisper.

* * *

Chuck was broken, but he still had curiosity—call it morbid—about what was happening in this horrific nightmare that was now his life. After cleaning out his desk of all personal belongings late that afternoon and telling Bill McDouglas in the barest of terms that there was “a problem in the Werkheiser case” that required him to speak with his longtime friend Howie Klein the next morning, he made a trip to the jail. He was nervous about seeing the client, but he wanted some answers.

“Why did you do it, Mr. Werkheiser? Why did you lie about what you had told me?” Chuck asked, sitting in the same visitation room at the same metal table with the same distracted guard standing just outside the door.

“I should ask you that same question, Mr. Hastleton,” came the cold reply. “Why did you call the police after you assured me everything I said was confidential?”

“It was my conscience, I guess,” Chuck answered.

“I really didn’t think that would happen,” the client answered. “I told my partners that I had a good feeling about you—that you could keep your mouth shut—but they didn’t believe me. Turns out they were right and I was wrong.”

“Partners?” Chuck asked quizzically.

“Yeah—Joann and Jon. We’ve got a little thing going you might say—certain enterprises that put us in contact with the law from time to time and that make us need some heavy-duty legal representation by lawyers we can trust—trust all the way, if you know what I mean.”

Chuck sat there dumbfounded, not sure what to make of what he was hearing.

“You mean Jon’s still alive?”

“Of course he’s still alive. You don’t think anyone actually died, do you?”

“But what about all the blood? I thought Joann had killed him and set it up to look like you did it. Where did all the blood come from that matched Jon’s?”

“You really *are* green,” the client responded. “Joann works at a blood bank. Do I have to spell it out for you?”

“But why would you go to jail on a crime that you know you didn’t commit, and hire a lawyer no less?”

“Come on, Chuck. I can think of three million reasons why it makes sense to sit in jail for six months while represented by an incompetent lawyer.” Chuck’s mind flashed to the limits of his firm’s malpractice liability policy—information published on the state bar’s website.

“You know, you’re still going to have to convince a judge to let you go,” Chuck said, more as fatalistic observation than legal conclusion.

“I know that, but I don’t think that’ll be too hard when Jon Frank shows up at the police station next week and announces that he attempted suicide at Joann’s house and then out of embarrassment retreated from sight for a few months. I think a judge, and a prosecutor even, would have to release a defendant from a murder charge when the victim’s body shows up—a body that’s living and breathing.”

Chuck shifted his weight uneasily.

“Chuck, look at me.”

The lawyer lifted his gaze from the dull surface of the metallic table to stare into Shane Werkheiser’s eerily serene face.

“As of this moment, you’re still my lawyer, right?”

“I suppose in theory that’s right.”

“Good. And everything I say is attorney-client privileged, right?”

Chuck didn’t respond.

“I guess that’s not really a fair question. So let me just give you some advice. Joann, Jon and I are partners, and we have associates, if you know what I mean. Some of them are not as nice as I am. Let me recommend that it would not be in your best interest to interfere with our insurance claim against Honeycutt & Carver. We don’t want anyone to have to report a pool of blood and a missing body, do we?”

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