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## Defense of the Guilty

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## MORALITY IN LEGAL PRACTICE

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All of the problems which this department has presented in the past have concerned litigation in areas other than that of criminal law.<sup>1</sup> The present problem is intended to serve as a basis for a discussion of some of the moral issues involved in undertaking the defense of a person accused of criminal conduct. Father Cahill's solution to the problem will appear in the Autumn '59 issue of THE CATHOLIC LAWYER.

### *DEFENSE OF THE GUILTY*

*John Justin has recently established an office in the Village of Green for the private practice of law. For the two years following his admission to the bar, Justin was clerk to an appellate court judge of the State of Green, and for the other three years of his career was a trial assistant in the office of the Green County prosecutor. While he served in the prosecutor's office, Justin became a close friend of Corporal Troop of the State Police.*

*Corporal Troop has today suggested to Mr. Justin that he consider undertaking the defense of Peter Beet who is now under arrest. Beet is charged with "operating a vehicle in a reckless or culpably negligent manner, whereby a human being was killed," a statutory felony punishable by imprisonment not exceeding five years, or by a fine of not more than one thousand dollars, or by both.*

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<sup>1</sup> 4 CATHOLIC LAWYER 5 (Winter 1958); 5 CATHOLIC LAWYER 156 (Spring 1959).

*The corporal has told Mr. Justin the facts and circumstances of Beet's case, as they appear to the police. A patrol found Beet, aged twenty-one, unconscious upon the pavement of the Old Post Road, just south of the village, at two o'clock this morning. Nearby was Beet's car, overturned, and the body of Patricia Patter, aged eighteen. Examination of the evidence on the scene indicates that the open convertible had been moving north on the highway at a speed above seventy miles an hour when it had swerved across the road to the west shoulder. There the car's left wheels struck a culvert abutment. As the car overturned, Patricia and Peter were thrown clear. Patricia fell upon the pavement and died instantly of consequent head injuries. Peter fell among some brush near the east shoulder and crawled a few yards from that point to the pavement where he was found by the patrol. He sustained no critical injury. After Peter had regained consciousness the police surgeon had misrepresented to Peter that transfusions might be needed and he thus obtained a specimen of Peter's blood, which the surgeon used to test for alcohol. The test afforded data which conclusively indicate that Peter was seriously intoxicated. Such data are admissible evidence in criminal proceedings in the State of Green.*

*The mishap occurred after one-thirty this morning, for Peter and Patricia had left a dance hall a mile south of the scene at that time. The police have talked to four witnesses who saw Peter and Patricia leave the interior of the dance hall. The witnesses could not say that either Peter or Patricia had been drinking, but they agreed in saying that both had been very emphatic in maintaining what appeared to be a difference of opinion between them. Although the witnesses had not heard most of the couple's conversation, one or two of the witnesses reported each of the following remarks. Peter had said, "If his trap can do eighty-five, mine can do ninety-five." Patricia later had said, "License or no license, I ought to drive us home." And later still, "I know Jimmy's here — if I could only find him." To this last, Peter had rejoined, "Good, he can see for himself."*

*Patricia's brother, James Patter, nineteen years of age, told police that he was at the dance hall from midnight until they questioned him at three o'clock this morning, when he was preparing to leave the place in his car. Witnesses placed Jimmy in the dance hall between twelve and one, and between two and three; they were not certain that he had been there between one and two. Jimmy asserted that between one and two o'clock he had spent about twenty minutes searching for his draft card, both in Peter's car which was parked in front of the dance hall and in his own which was parked at the rear of the building. He had believed that Patricia had taken it from his wallet before they left home*

last evening. When he had boasted that his car "did eighty-five," she had threatened to hide the card so he could not buy drink. In the State of Green alcoholic beverages may not be sold to persons under eighteen. Shortly before two o'clock this morning he found the card in his own car, where he had concealed it after she had threatened to hide it. Jimmy said he had seen Peter and Patricia as they had entered the hall at one o'clock, but not thereafter.

The police can find no evidence which contradicts James Patter's story. When he was questioned, he was wearing a leather jacket, trousers, cap and gloves. He admitted that he had some body bruises, but said that they were caused in a spill which happened when he was trying a friend's motorcycle early last evening. The owner of the motorcycle supported this statement. Fingerprints found in Peter's car indicate that Peter, Patricia and James had touched the steering wheel and various parts of the dash, but the prints are not such as to indicate certainly that any of the three had driven the car.

Mr. Justin, taking the corporal's suggestion, has talked to Peter Beet. Peter said he had made no statement to the police because he could not remember with any clarity the events of this morning, and because he believed he should say nothing to them until he had had a day in which to clarify his recollection. He is to be arraigned tomorrow morning. Yet he told Justin that he was very drunk when he came to the dance hall about one o'clock, and that he "passed out" when getting into his car to leave the place. And he said that he recalled a quarrel among Patricia and James and himself at that time, but whether the "passing out" preceded, interrupted, or terminated the quarrel, he was not certain. He recalled that he had clutched the steering wheel of his car when he felt the seizure coming upon him. He claimed to have no recollection of who was driving when his car left the dance hall, and said that he remembered nothing which occurred between the time of the quarrel and the time when he became conscious in the ambulance.

Mr. Justin, after seeing Peter, has talked with the boy's father. The man knew his son's story, having heard it from him just before Mr. Justin talked to the prisoner. He believed Peter was driving when the accident occurred, but offered Mr. Justin a generous fee to defend Peter. He said that he had not been able to engage the services of three prominent attorneys of the county to whom he had made similar offers and upon whom he had urged his influence as owner of the single large industrial plant in the area. He reports that these attorneys had said to him that the public indignation aroused by recent unfortunate, though less tragic, examples of young people's irresponsibility will jeopardize the career of any man who spontaneously undertakes Peter's defense.

*Each of them had promised to tell the county judge that he is available for assignment to the defense. The father told Justin that he plans to visit this afternoon two friends who practice their professions in a nearby state. They are a lawyer and a psychiatrist. He said he is anxious to have their advice before he sees his son again this evening. At that time, he said, he "will try to help Peter clarify his recollection of this morning's events." Mr. Beet also told Mr. Justin that when he returns from his out of state visit, James Patter and his father, who work for the Beet Industries, are to meet Mr. Beet at his office. He has summoned them to meet him "because I've got to make them understand that they owe me loyal co-operation in this thing."*

*Moral questions:*

- 1. Is Mr. Justin now warranted to accept the case, or to refuse it?*
- 2. If he is to accept it now, must he make any stipulations or conditions?*
- 3. If Mr. Justin is not to accept the case now, should he refuse it definitively, or should he tell Mr. Beet that he will decide tomorrow, just before Peter's arraignment, whether he will or will not undertake the defense?*
- 4. If now, as Mr. Justin is conferring with Mr. Beet, Peter sends for Mr. Justin and admits that he now clearly remembers that he was driving the car when the tragedy occurred, but says he will plead not guilty at the arraignment, should Mr. Justin undertake to defend Peter?*
- 5. If so, would you suggest any caveats as to how the defense should be conducted?*