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Disclosure and the Incurious Attorneys

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MORALITY IN LEGAL PRACTICE

The solution of the "disclosure problem" which Father Cahill contributed to the Summer 1958 issue¹ considered the moral obligations of the defendant's attorney only. The scope of that solution was properly limited by the question explicitly asked in the statement of the problem.²

Recently, however, comments received from readers have indicated interest in a discussion of the moral position of the defendant employer and that of the plaintiff-laborer's attorney. Such a discussion will be presented in the Spring 1959 issue of THE CATHOLIC LAWYER. As a basis for that discussion, the "disclosure problem" is restated here, with an added note which frames the new issues.

DISCLOSURE

A sixty-year-old immigrant laborer, admitted to premises to answer the owner's advertisement for Saturday help, fell because a step collapsed as he stepped upon it. A hitherto competent and reliable employee of the owner had known the condition of the step and had violated his employer's instructions to close immediately and repair any passage found to be unsafe.

The laborer sustained a dislocation of the shoulder and a laceration of the scalp which required three weeks' hospitalization. For a month after his discharge from the hospital, he could not return to his regular job.

The laborer, who spoke very little English, brought suit against the owner of the premises where he had fallen. The plaintiff claimed that the injury to his shoulder was of a serious and disabling nature. He also claimed that he suffered from headaches as a result of striking his head at the time of the accident.

Hospital records confirmed that the shoulder injury was sustained and indicated that four sutures were taken in the scalp. The plaintiff's attorneys had no medical examination made of their client. Nor did they ask for copies of the reports made by the physicians employed by the defendant.

¹ 4 CATHOLIC LAWYER 252 (Summer 1958).

² *Id.* at 253.

The attorney for the defendant had the laborer examined by an orthopedic specialist, to ascertain the seriousness of the shoulder injury. In addition, but on the same occasion, examination was made by a neurologist, to meet the complaint of headaches.

The orthopedist confirmed the hospital report on the shoulder injury. The neurologist reported to the defendant's attorney that the plaintiff had not sustained a serious head injury and had no skull fracture, but that the laborer was suffering from an incurable, always fatal, malady of the nervous system called Parkinson's disease. The neurologist counselled that while there is now no known cure, the more painful and disabling stages of the disorder can be delayed in their onset and ameliorated by drug therapy, avoidance of anxiety and fatigue, regular exercise and light massage, and psychotherapy. The neurologist indicated that he did not personally subscribe to the theory that Parkinson's disease can be caused by trauma. Yet he cautioned the defendant's attorney that many eminent men in the field believe that trauma can cause Parkinson's disease and that there is much literature to support this view.

In pretrial conferences it became evident to the defendant's attorney that the laborer and his attorneys had no knowledge that the plaintiff was afflicted with Parkinson's disease, and that if the plaintiff's attorneys suspected that this condition existed, the case could not be disposed of without a protracted and expensive trial.

The defendant, his attorney and the doctors who made examinations in their behalf, at no time intimated to the plaintiff or his attorneys the diagnosis of Parkinson's disease. The court itself, which was instrumental in effecting the settlement, was not apprised that this diagnosis had been made since the defendant's attorney deliberately withheld the information. On the other hand, he freely turned over to the court and the plaintiff's attorneys the report of the orthopedic specialist, describing the shoulder injury only.

As a result of these negotiations, the case was settled between the parties without a trial. The defendant paid a sum which amply compensated the plaintiff for his shoulder injury, and the plaintiff gave a general release as to personal injuries, "whether developed or undeveloped, resulting or to result," from the accident.

Now, a month after the settlement was made, the defendant's attorney has come to feel that he may have a moral obligation to aid the plaintiff. Does such obligation exist, and if so, to what extent?

NOTE

It has been determined that the defendant's attorney is obliged, by the moral virtue of justice, (a) to compensate the loss which the laborer

sustained in the settlement, which took no account of his affliction of Parkinsonism as a probable consequence of the head injury, and (b) to prevent the harm which will come to the laborer if, while his Parkinsonism develops, he is left in ignorance of the character of his affliction.

Now it is asked:

1. Do the plaintiff-laborer's attorneys have obligations similar to those determined for the defendant's attorney?
 2. Does the defendant-employer have similar obligations?
 3. In so far as either of the preceding questions is answered affirmatively, what are the consequent moral relations of the parties' attorneys and the defendant-employer *inter sese*?
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DEFENSE PROBLEMS UNDER THE DURHAM RULE (*Continued*)

further confusion in this field. It would also serve as a sound base from which our legislative body⁴⁷ could work in seeking the

⁴⁷ Although at times it may be a slow and difficult process, it is here that the facilities are available for hearing from all segments of the community — psychiatrists, judges, lawyers, doctors, social workers, teachers, philosophers, penologists, and members of the clergy.

community's idea of what standards should entitle a criminal to hospitalization⁴⁸ instead of imprisonment.

• Public apathy is the only excuse for *Durham* being permitted to hobble along on the feeble crutch of Public Law 313.

⁴⁸ In this connection the standards for release should be thoroughly investigated and revised to assure due process to the individual being committed.
