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## Problem in Ethics

Clarence J. Ruddy

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# THE NOTRE DAME LAWYER

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## A PROBLEM IN ETHICS

Of all the pseudo-humorists who annoy law students, the most obnoxious is the one who asks if a lawyer is really justified in defending a man whom he knows to be guilty of the crime charged against him. Such an inquisitor can not be dismissed with a stifled yawn or an inane remark, as can other less subtle wits; he must be accorded all the deference due a sane questioner. This poor fellow is the most dangerous of all the wits, for he insists on being taken seriously; if he is refused an answer he will understand there is none. He is a philosopher, and must receive a philosophic reply. He is intensely moral, and to wave away his question with a careless gesture is to admit that lawyers are immoral. Therefore, to save the imputation, some kind of a reply is necessary—for even a pseudo-humorist has friends and followers, and some might listen to his story of how he "baffled" a law student.

At the outset, it should be borne in mind that the word "guilt" has a double meaning; there exists guilt both in law and in morals. With moral guilt we are not concerned; God alone is the judge of that, and God needs no finite evidence to aid him in discovering the truth. The lawyer is not trying to tell the Almighty that a man morally guilty is innocent. What he is attempting to do is to argue that his client is not *legally* guilty. And of legal guilt the state alone is the judge; the state has specified certain facts which must be proved before it will adjudge a man guilty of the crime charged against him. The state has declared quite emphatically what constitutes guilt, and has just as emphatically asserted that a man is innocent until he has been conclusively proven guilty. And the only judges of an accused criminal are the court and jury; the lawyer has never been given the right to say whether his own client deserves punishment. An attorney may even be absolutely convinced that the man before him is stained with a dead man's blood, but still he is not empowered to deny him the privileges guaranteed by the government.

In his treatise on Legal Ethics, Warvelle sets forth this interesting case. Two brothers, by name Boorn, were arrested in Vermont and charged with the murder of one Colvin. The evidence against them was indisputable; the defendants had been known to have threatened the life of the deceased, and they had actually been engaged in violent personal combat on the day of the crime. Indeed, the prisoners even confessed to the murder. They admitted that they had brutally attacked Colvin, and had left him lying on the field where bones "not dissimilar" to his were found. The result of the confession was inevitable; the brothers Boorn were convicted and sentenced to death. Before the execution, however, it was discovered that the man Colvin was still alive—he had merely been knocked unconscious by his attackers, and after their flight had managed to stumble away. . . . If in this case, the lawyers defending the Boorn's had refused to undertake their task, the prisoners would never have had a chance.

So a lawyer can never be certain that his client is guilty—even after a confession. The prisoner might believe that he is a criminal, and that he merits punishment, but he might still