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Not Guilty

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Not Guilty

properly understood the experience, which I have given you above, has proved its unmistakable value; and this endorsement is by a people living under identically the same conditions, having identically the same ideals, as we who are living in California.

Comparison with the Law Societies of England where conditions are different might be open to some criticism, but that criticism fails to have any virtue when we know the experience extending over a great many years of the Bar and the general public of Canada.

I am,
Yours sincerely,
S. S. TAYLOR.

The profession is being criticized for its inactivity. In fact, we all know that the public has to a great extent lost confidence in it, a situation to be deplored and fraught with real danger, but the passage of the proposed legislation will give the profession its first opportunity to remedy the defects.

The bill is democratic because the members will select, by vote, the governing board, all lawyers will have the right to vote and the profession will be represented throughout the entire State through its various dis-

tricts. The State Bar will then be a thoroughly organized, cohesive body composed of all the lawyers of our State and with this comes the opportunity for closer association, better acquaintanceship, necessarily bringing the mutual assistance coming from such closer association.

The legal profession is, by the public and as it should be, charged with the derelictions and incompetency of its members, and this being the case it is certainly only fair that the profession be given some authority over its members, authority commensurate with its responsibilities, and have the right of discipline over those who may, for any cause, prove unworthy and fail to live up to that standard that the public insists shall be maintained.

Other systems have been tried in this country but they have not proven effective nor satisfactory. Four states have passed similar legislation, to-wit North Dakota, Alabama, Idaho and New Mexico and to date the results have been all that could have been expected.

The proposed Bill will be introduced at the next session of the California State Legislature, which meets in January of 1927 and we are confident that it will become the law of this State.

Not Guilty

By ROBERT E. MORE, of the Denver Bar

I.

"WARWICK WHITEWASHES POLICE!"

Commissioner of Safety David Warwick read over the flaring headline again and then dropped his morning paper into the basket beside him.

"We shall see," he muttered. "We shall see."

The Denver Telegram had been conducting an organized attack against the municipal authorities for two months now. The public was beginning to believe that the police were giving protection to con men and bootleggers. Warwick was confronted with the post-war crime wave that every city of any size is now experiencing. But Warwick was on the grill. The owners of the Tele-

gram were already shaping their campaign for the spring election.

That evening all of the police captains were summoned to the office of the Commissioner.

"Men," stated Warwick, "any one who is familiar with conditions in other cities knows that there is no more lawlessness here than elsewhere. I know, and you all know, that we are doing more, considering what we're up against, than any administration that has been in office here for thirty years. Anyone who cares to be fair will admit it. But the Telegram has an ax to grind. It is out to "get" us, and, rotten as that paper is, it has a following and is widely read. The public does not know what motives are actuating the editors of that sheet. The people think we are responsible

for present conditions. In one sense, perhaps they are right. Market Street is a disgrace, and should have been cleaned up long ago. It has got to be cleaned up now—this week—tonight. Who of you will do it?"

There was a moment's hush. Then Patrick Riley and John Conner stepped forward. Warwick motioned the rest to leave.

"I would have bet on it," muttered the Commissioner. "Always a married man. Well, it can't be helped."

II.

Captain Connor should have reported at midnight. It was now three hours after midnight. Pat Riley was making his fifth trip through the dark, lowering precincts of Market Street, in the hope of getting some clue to the whereabouts of his fellow officer. It was too quiet. The Wops were too little in evidence. They were up to something. Pat paused in the shadow of a doorway at the lower end of the street. "What a night for January," he whispered. One never spoke above a whisper at the lower end of Market Street after dark.

"Ah!" Riley came to an abrupt stop. There was movement at last. Half a block away a shadow was moving along the sidewalk, close to the line of buildings. It was moving toward him. Pat shrunk back into the doorway and blessed the moon for lighting only the opposite side of the street. The shadow glided by and stopped. A movement on one of the low roofs across the street caught the officer's eye. In the moonlight the dim outline of a man's crouched figure could be seen.

A shot broke the stillness. Wheeling, Riley saw the shadow that had just passed him become a man and start running. He fired low and the fleeing figure crumpled. Riley was upon him. A moment later his prisoner was handcuffed. A pistol, the barrel of which was still warm, was in the captain's possession. But the man was wounded. He could not stand. Riley dragged him to a doorway, and then ran for the police box, a block away. His call in, he started back for his prisoner.

"Ah!" Again Riley became motionless. Another shadow was gliding down the dark sidewalk ahead of him. It paused. A streak of fire pierced the darkness. Riley fired a second

later and the shadow crumpled up. Riley possessed himself of a second warm revolver and handcuffed his second prisoner. There was no sound save the muttered curses of the gunmen at Riley's feet. The figure on the roof had not moved. It was still plainly visible in the moonlight.

The distant clanging of a gong became audible. Riley mopped his brow and sighed with relief. The patrol came into sight and stopped at the box. Riley blew his whistle. A moment later the two handcuffed, wounded prisoners were being loaded in.

"All fixed, Captain?" said the driver.

"Just a moment," returned Riley. He walked across the street and gazed upward. "Come down," he ordered. There was no movement. Riley moved to one side and then started. The figure above was clothed in blue.

"Oh, Donovan," he called. "Come over here and give me a boost."

The driver of the patrol drew near and the two men walked about, seeking a way to the low roof of the tenement where Riley had just been gazing. They did not look long. A six foot board resting against one end of what had originally served as a porch told how the figure on the roof had reached his goal. Even to a man of Riley's bulk, it was no great hardship to reach the low, sloping roof of the tenement. But it was a hardship for Riley to keep calm once he was up. He never doubted what he would find. From the moment he saw that the silent figure was clothed in a blue uniform, he knew what his prisoners had been shooting at, and had a premonition that one or both of the shots had taken effect.

"John, John," he moaned. "Why didn't I see you sooner. And they weren't content to shoot you once, but they had to send a second fiend along to make it sure."

Then his lips drew back in a snarl as he thought of his prisoners. "I have them, John, I have them. Thank God, we can hang men in Colorado!"

Reporters were awaiting the patrol as it came to a stop at the side door of the City Hall. The men on the driver's seat came to the door and helped Riley lift down the still figure of Connor. It bent at the waist, and two of the reporters sprang forward to assist. Riley then climbed back

into the patrol and threw out upon the ground first one and then another handcuffed prisoner. The desk sergeant and a patrolman seized them and dragged them into the office, behind the men carrying Connor.

"Call Reitzman," ordered Riley. "I know they got Connor, but let's hear what he says."

"Right here," answered a voice from the back room. "What is it?"

"They got Connor," repeated Captain Riley. "In the heart and brain, I think."

The police surgeon knelt beside the body that was stretched upon a hastily resurrected cot. A moment later he looked up.

"Either wound would have caused death instantly," he announced. "Did your prisoners do it?"

"They did, and I saw them," returned Riley grimly. "And they are going to hang, I shall see to that."

III.

Upon graduation from law school, Thomas Beaton opened an office in Denver. But no shadow of a client had as yet fallen upon his frosted glass door. Thomas Beaton had diligently awaited such a shadow for three months now and had come to the conclusion that something more than faithful observance of office hours was necessary. What he should do, he did not know. As it was noon, he decided the most pressing business was that of eating, so he made his way up Seventeenth Street to the University Club, where he customarily lunched. On his way he overtook one of the judges of the district court. Judge Ripley had known Thomas Beaton from childhood and had been instrumental in causing him to locate in Denver.

"Well, Thomas, how are things going?" asked the older man.

"Everything is going and nothing coming," answered Beaton. "I am now in a frame of mind where even a criminal case would be welcome."

"If you feel that way, why don't you get one?" asked the judge. "Get a criminal appointment at the West Side Court."

"Can you? Can anyone get an appointment?"

"Well, I can see that *you* do. I am going to lunch with Judge Stevenson, who is now sitting over there, and I

will suggest that he give you the next hopeless murder case he has."

Judge Ripley paused as he turned to join some friends, "Remember one thing, Thomas. Criminal law is different from civil practice. Criminal lawyers are different from the class of people you have associated with. There are tremendous temptations, when a man's life is at stake. An unusual responsibility is being carried. Sometimes that responsibility causes a man to go too far, when he is in the heat of a trial."

"Makes him rely on technicalities, doesn't it?" asked Beaton.

"I don't mean that," said the Judge. "If for some technical reason, the man is not to be judged guilty, then his lawyer should see to it that the client is freed. You and I are not responsible for the law. It is your duty to see that all meritorious defenses, whether technical or substantive, are presented. It is my duty to see that these matters are observed. No, what I mean is that in a criminal case, there is so much at stake that at one time or another during the trial, the advocate is in danger of being carried away by the situation, and counting too much on tricks of effect, and too little on the facts and the law. I hate to see the real issues obscured by clever stage play, and a guilty man turned loose because his counsel can outguess the district attorney."

"But how about the guilty man, who is turned loose on a technicality?" persisted Beaton. "Surely that is just as reprehensible, morally, and the profession and society suffer just as much?"

"No, Tom, it is a different case. Under the canons of ethics of the American Bar Association, you are bound to raise every real defense in your client's favor, and do it earnestly. Good-by."

"Perhaps he is right," mused Beaton. "It does seem strange, though, that we are bound to free a guilty man, if there is a loophole in the law, and turn him loose to prey on his fellow men again. I suppose I shall get the professional viewpoint after awhile."

IV.

At eleven A.M. on January sixth, Thomas Beaton was informed by the clerk of the West Side Court that he had been appointed to defend John Kresevic and Frank Lombardi, both

of whom were charged with murder in the first degree. The papers had been full of the brutal murder of Captain Connor, and even the Telegram had directed its attack upon other departments of the city administration for the time being. Both defendants had confessed. Captain Connor had been leaning over, observing the operation of a still through a skylight in the roof of Lombardi's dwelling at the time of his death, and Kresevic was a Bolshevik who had taken oath to break down governmental authority in every way he could. Both men had seen the officer climb to the roof of Lombardi's house, and each, when he thought the time was favorable, fired with intent to kill.

"Judge Stevenson surely gave me a hopeless case," thought Beaton. "Not only confessions from each defendant, but an eye witness to each shooting. Let's see what the books say."

During the next two weeks, Beaton spent all of his time in the law library at the State House. The day before that set for the trial, he found himself unable to concentrate, and went home shortly after four in the afternoon. As he was walking from the street car to his residence, he suddenly stopped with an exclamation. "They won't do it if I don't supply the evidence, and we are told that no lawyer is compelled to make his adversary's case."

Thomas Beaton slept little that night.

V.

January 21st was a lowering day. The narrow windows of the West Side Court allowed little light in the court room on bright days, while at times like this, it was difficult to distinguish the faces in the back of the room. There were many spectators. Captain Connor had been a universal favorite. For the first time, murderers had been apprehended red-handed. The district attorney had announced that he would try the cases himself and ask the full penalty. Upon Beaton's request, the trial of the two defendants had been consolidated.

Beaton had become conspicuous by having his clients change their pleas from "guilty," to "not guilty." He ceased to be an obscure lawyer. Beaton was very nervous as he entered the courtroom. A reporter or two asked him what his defense would be. "Not guilty," he invariably replied.

Shortly before ten, the two prisoners were brought into the court room. Riley had shot each of them in the leg, and Lombardi was wheeled into the room in an invalid's chair. As the under sheriff made his appearance with his men, a rumble that resembled a low, menacing growl arose. The prisoners cowered, and the deputy sheriff gave Kresevic a none too gentle push into the dock.

Then everyone arose as Judge Stevenson entered, and the bailiff droned his monotonous "Hear ye! Hear ye!"

The jury was selected in record time. Neither side exercised a single preemptory challenge. The opening statement of the district attorney was terse and forceful. He called attention to the crime wave that was sweeping the country. He deplored the fact that detection was often difficult, and conviction and punishment accordingly impossible. But he exulted that in this case there could be no question. The defendants had both voluntarily confessed to this brutal murder, and officer Riley had been an eye witness of both shootings. Then, with the artistry of the born advocate, and the technic learned in the long practice of his profession, the State's Attorney related to the jury the dramatic events of the night that John Connor was shot to death. At the close of the statement, the spectators moved restlessly, and again the prisoners cringed and cowered in their seats.

Judge Stevenson then nodded to Beaton, who stepped forward and said, "No statement, your Honor."

"Then call the witnesses," ordered the court.

Patrick Riley was the State's first witness. That Connor was his best friend was well known. And so, too, that he had sworn to make Kresevic and Lombardi hang. In a voice of hate, he related the events of the fateful night. When he told of finding Connor's dead body, his eyes caught those of the widow, surrounded by her four small children, and his voice broke, while his body was shaken with great, repressed sobs.

As Beaton rose to cross-examine, the witness, the jury and everyone in the court room issued a silent challenge to him. The lawyer for the defense was nervous. His voice trembled, and words came with difficulty.

"How do you know that these defendants are the ones you say you saw shoot Connor?"

"Because I shot them and handcuffed them on the spot."

"Had you known either of these men prior to this time?"

"No."

"Or seen either of them before?"

"Not that I know of."

"So you didn't recognize either defendant when you handcuffed him?"

"It was so dark I couldn't have recognized them there on the sidewalk if I had known them."

"Was there not a moon?"

"Yes, but on that side of the street it was dark."

"How long was it between shots?"

"Three or four minutes."

"That is all," said Beaton.

Dr. Reitzman was the next witness. He testified that he had found one bullet in Captain Connor's brain, and one in his heart. That each bullet was a Colts, forty-five automatic bullet, and was similar to the other bullets found in the revolvers taken from the men.

His cross-examination, too, was short.

"Was each revolver an automatic Colts forty-five?"

"Yes, sir."

"And each bullet a bullet such as a gun of that sort would shoot?"

"Yes, sir."

"I believe you stated that each wound was fatal?"

"Yes, sir."

"And death would result instantly from either?"

"Unquestionably."

"There was no way of telling which wound was first?"

"Of course not."

"That is all."

Commissioner Warwick was the last witness. He stated that both prisoners had finally told him that they had, each unknown and independently of the other, decided to shoot the deceased when he was seen climbing upon Lombardi's roof. Each had carried his intention into effect, with the result that they had been shot and captured by Riley. Neither prisoner had known of the other's intention, nor, indeed, had ever known the man himself, prior to the shooting.

The defense made no cross examination of the last witness.

"We rest, your Honor," said the district attorney.

Judge Stevenson turned to Beaton. "Proceed," he ordered.

Beaton bent over the table and picked up a law book. Then he laid it down and sat rigidly in his chair, gazing fixedly ahead of him. The jury stirred restlessly and the spectators began coughing.

"Are you going to introduce any evidence?" asked the judge sharply.

Beaton rose to his feet. He stood motionless for several seconds. Then he stepped forward and spoke in a clear voice.

"Your Honor, under the law, both of these defendants must be discharged by the court. We so move."

"Upon what ground?" asked the judge in staccato tones.

"Upon these grounds, if the court please," said Beaton. "The State's own witnesses have established the following facts: First, two wounds were inflicted upon the deceased, each of which was of such a nature as to cause death *instantly*. Second, *three or four minutes elapsed between the shots*. John Connor was therefore dead when the second shot was fired. Third, *there is no proof as to which defendant fired the first shot*. The result of these facts is this: One of these defendants shot a dead man. To shoot a corpse, even with intent to kill, is not murder. Both defendants are charged with murder. One is not guilty of that crime. Since the burden is on the State to prove which one is guilty—and to prove that beyond a reasonable doubt—and since the State's own evidence discloses that it is impossible to tell which of these defendants is the guilty one, *both must be discharged. There is nothing to go to the jury.*"

Beaton sat down. Judge Stevenson looked at him. Then he turned to the district attorney. "The motion is well taken. I hold as a matter of law that each defendant is not guilty."

VI.

In the Telegram that evening there was an editorial upon the recall of judges.

In September of the following year, the registrar of Johns Hopkins University entered Thomas Beaton as a first year medical student.



In the Rocky Mountain National Park.