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Book Review: The Trial of Jack Ruby, by John Kaplan and John R. Waltz

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THE TRIAL OF JACK RUBY. By JOHN KAPLAN AND JOHN R. WALTZ. LONDON: THE COLLIER MACMILLAN COMPANY LTD. 1965. pp. 392. ($7.95).

The authors are both professors of law with particular interests in criminal law, evidence and procedure. As legal educators, they must feel that the chronicle of events sets a very sad example for their students. This book shows American law and lawyers, but not law professors, in a very bad light. The authors have had to face the problem of reporting what happened, no matter how incredible it might appear, hoping that the intelligent foreign lawyer will remember that there are court rooms in the United States where the client is not lost in a barrage of selfish publicity and shoddy legal tactics. These are the ingredients of Jack Ruby's trial.

The whole affair in Dallas was the ultimate expression of the violence which the United States has experienced in recent years—the racial riots, the clandestine lynchings by the Ku Klux Klan, the overpowering grip of McCarthyism and the verbal assaults of the John Birch Society and the Minutemen. The circumstances under which Oswald was murdered showed the seemingly absurd policy that the public has a right to know—that they should hear from District Attorney Wade the details of Oswald's interrogation, that the press should have the right to photograph Oswald as he changed jails, that they should have the power to televise and broadcast Ruby's appearances in court, that they should be able to have interview privileges with the judge, the accused and anyone else who wished to make for himself a niche in history. This exaggerated desire to publicize, combined with the relentless fulfilment of the profit motive permeates the behaviour of many of the *dramatis personae* of this book.

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Perhaps all these phenomena of freedom have rational explanations. One of the most strongly criticized actions of the authorities was the wide press coverage allowed for the transportation of Oswald from the Dallas Police Station to the County Jail. The Dallas police chief was, in fact, fully aware of the dangers in allowing the press to view and record the actual transfer. He had kept the press waiting and the transfer was not done with split-second timing to accommodate the gentlemen of the press. In addition, he tried to forestall any outside troublemakers, such as Ruby, by sending out a decoy police van in which Oswald would be presumed to be riding. His final decision to admit the press was a triumph for Madison Avenue; he said he allowed it because he wanted to maintain good relations with the press entourage in particular and the public at large and to show the world that the Dallas police had not injured Oswald. Perhaps this explanation is as full of hindsight as that of the critics who said that Ruby should not have been given the opportunity to kill.

The most sickening aspect was the behaviour of so many participants in the Oswald-Ruby drama who wanted to make a dollar, write a page of history or simply become more famous or notorious, depending on one's point of view. There were the numerous deals which were being negotiated to sell Jack Ruby's life story, to sell his suit to a wax works, to sell a photograph of the dead President's corpse. Within twenty-four hours of Oswald's death numerous publishers had offered to buy Ruby's life story. It was finally published before his trial and helped to pay the fees of an army of lawyers, investigators and psychiatrists. When Ruby's family were seeking a "big-name" lawyer, a possible candidate was Jake Ehrlich; a television network which produced a series based on Ehrlich's law practice offered to pay part of that lawyer's fee no doubt, as the authors state, scenting a "tie in".

Everyone seemed to be writing a book, granting interviews or planning some other form of publicity. When Belli became Ruby's counsel, he hired a ghost writer to attend all interviews, conferences and court hearings so that a book could be written about the trial. He also hired a television producer to film a documentary of the events in Dallas. After Ruby was convicted, Belli and other counsel visited him in jail; using a small camera they had smuggled into the jail, they took photographs of Ruby and offered to sell them to *Life* magazine.

Judge Brown, who presided over the trial, had also jumped on the bandwagon. When he assigned himself as trial judge, he hired a press agent. In a court proceeding subsequent to the trial, counsel sought to disqualify Brown as judge because he now had a pecuniary interest in the case. Judge Brown had a contract to write a book on his part in the Ruby case. The judge was a little embarrassed by a letter to his publishers which had somehow fallen into the hands of Ruby's lawyers. In part, Judge Brown stated in the letter:

> About the book—It perhaps is a good thing that it is not finished, because they have filed a motion to disqualify me on the grounds of having a pecuniary interest in the case. I can refute that by stating that there has been no book published or that I have not begun to write a book.
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> We are coming along nicely. We have approximately 190 pages complete . . .[1]

The authors think it must have been equally embarrassing to the judge that in the same letter he should have written:

> As you probably read in the papers the Court of Criminal Appeals tossed the case back to me to determine Jack Ruby's sanity . . . I . . . don't know the outcome but it is my opinion that they will never prove Ruby insane . . .[2]

The judge epitomized all that was wrong with the conduct of the trial—the tactics, the procedure and even the law. Judge Brown added to and elaborated upon the problems which naturally surrounded the case. As the authors say:

> The leadership of Dallas knew that Joe Brown's most notable weakness was a passion for the limelight.[3]

The limelight was the last thing that Dallas wanted. The authors describe the "sociology" of Ruby's Dallas:

> [Ruby] was a Jew in an overwhelmingly Anglo-Saxon Protestant city; he managed a striptease joint in the midst of a fundamentalist Puritan area; and he shot down a manacled, defenceless man, thereby robbing justice of its due . . . Finally, in a community noted for its civic pride, Ruby not only had humiliated the police department but had added to the image of Dallas as a city of violence.[4]

There were also plenty of legal anomalies. Although it was a Federal offence to threaten the President of the United States or to kill a variety of Federal authorities, assassinating the President was still only subject to state criminal law. This case accentuated the stupidities of a bail system where the release of an accused depends on wealth not need or the likelihood of absconding. It showed the irreconciliability or the competing concepts of free press and fair trial. The "circus" which was the Ruby trial also brought to light the peculiarities of the Texas law of provocation, the fact that murder with malice in Texas does not require premeditation and that automatism has no place and has never been raised in a Texas murder trial. We saw again the seemingly interminable criminal process in the United States. There were two bail hearings, sanity hearings, an application for change of venue and the selection of the jury, the last of which took fourteen days. The appeals are continuing.

The selection of the jury and the insanity plea raised the most interesting legal points. The Ruby trial was an object lesson in the law and tactics of jury selection. The authors' description of the

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1 P. 362.
2 *Ibid.*
3 P. 19.
4 P. 20.

process is an excellent one.[5] Their discussion raises some interesting questions. What is the legal rationale of the peremptory challenge? Does it serve that purpose? If it simply means that counsel is able to select a jury biased in his client's favour, is it worth the time and effort spent on it? Of course, in our adversary system, both counsel are vying for a jury which will suit their case. The worth of selecting a jury by elaborate use of the *voir dire* only has merit within the whole context of the adversary system. Does the American system ensure a jury which is fairer, better qualified and better informed of its own biases, and more dedicated to its task than its British counterpart?

The principal enemies of the criminal process are time and money; the importance of the latter is diminishing because of free legal advice and representation but in the past it has played a considerable part in making the criminal process less than just. In the context of protecting fundamental rights, both factors still cause problems. The court spent fourteen days in selecting a jury and gave little consideration to the social and economic inconvenience caused the veniremen or the person awaiting trial. At the same time, while this fair jury was being selected, the press were prejudicing the accused's rights by their disclosures. This seems paradoxical. On the other hand, the British system, with its strict rules on pre-trial publicity makes a fetish of justice being seen to be done and yet is content with a jury which is selected in what is perhaps a haphazard fashion. It seems that one must strike a better balance. Both systems, but particularly the American, will allow a defendant to take up court time over a period of years, pursuing a series of appeals which might result in a costly new trial, despite all the precautions supposedly taken. The truth is that a full re-appraisal of criminal procedure has been sadly neglected until the recent decisions of the Supreme Court of the United States have pointed out some of its anomalies. In this country, there are also problems in this area. When the Criminal Code is revised, is sufficient time and thought also devoted to amending the rules and practice relating to bail, legal aid, pre-trial discovery, a feasible set of rules regarding police questioning, a thorough-going study of the jury system, and the workings of magistrates' courts?

All of these may seem remote from the discussion of the Ruby trial but this fiasco, along with the landmark decisions of *Gideon v. Wainwright*[7] and *Escobedo v. Illinois*[8] (and subsequent cases) may have shown that there are faults in the system of criminal justice and that changes must be made. This book discusses them in a very workmanlike manner.

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[5] Pp. 91-94.
[6] But see *Sheppard v. Maxwell* (1966), 86 S. Ct. 1507 which may have a profound effect on subsequent appeals in the Ruby case.
[7] (1963), 372 U.S. 335.
[8] (1964), 378 U.S. 478.

The defence of insanity was the only strictly legal defence open to Ruby. The use of this shows many of the flaws in Belli's representation of Ruby. Melvin Belli is one of the most successful trial lawyers in the history of American law. He has a vast knowledge of medical jurisprudence; based on this past experience, he decided to rely upon an insanity defence indicated by psychomotor epilepsy which was to be "proved" by eminent specialists in psychology and encephelography. The defence was a difficult one at any time but in the Ruby case, and tried in Dallas, it was impossible. Everything and everyone, it seems were conspiring against Melvin Belli including Belli's irrepressible flair for showmanship. Dallas, guided by the clever prosecuting manoeuvres of District Attorney Wade, defeated Belli. In reading this well-balanced account, one gains the impression that Ruby was never on trial. Belli was trying Dallas and Belli felt that he was being persecuted by Dallas.

Belli, with the help of the prosecution, trapped himself and there was no escape. He started out by stepping up rather than decreasing the meaningless brouhaha surrounding Jack Ruby. His flamboyance and the attendant publicity were extravagances which the citizens (and Oligarchy) of Dallas wanted to avoid. The irony was that Belli's wrongheaded tactics required him to provoke the city of Dallas and to itemize its bigotry and biases against Ruby so that he could obtain a change of venue. Dallas was tired of publicity; it was disgusted with all the talk about violence which was seething beneath its surface. Furthermore, for an outsider like Belli to start a renewed attack some six months after the assassination was too much. Besides, Belli was as welcome in Dallas as Clarence Darrow had been in Dayton, Tennessee at the time of the Scopes trial. Belli was an avowed enemy of the fat insurance companies from whom he won enormous damage suits and Dallas was the insurance capital of the South-West. Belli's allegations of Dallas prejudice continued after his change of venue application was refused. The King of Torts contended that all those who had viewed the shooting of Oswald on television were "witnesses" and therefore disqualified from the jury venire. This legal sophistry was lost on Judge Brown and further antagonized the prosecution and the public.

Although Belli was matched against the prosecution's vast resources of personnel and information, it would be false to give the impression that Belli was just unlucky or a victim of circumstances. He also made some egregious blunders. He seemed to disregard his own advice on trial and jury tactics which he has written about at great length. The authors add to his embarrassment by quoting passages from these works to show where he went wrong. He did not enlist the jury's sympathy but alienated them instead. He squandered peremptory challenges aided, in part, by the devious tactics of the prosecution. He neglected for some unaccountable reason to ask for a continuance when the change of venue motion was denied; this would have enabled passions to cool and the whole atmosphere might

have become more congenial and sympathetic to his client. He made a serious tactical error at the bail hearings. While he no doubt wanted to air Ruby's unusual insanity defence, the prosecution manoeuvered him into divulging the whole basis of the defence's case. His mistakes in the examination of witnesses were gross. He was partly at fault in becoming embroiled in a cross-examination of a police officer who informed the jury in that cross-examination that Ruby had previous convictions. He did not even salvage this situation to show that the relatively minor offence of carrying a concealed weapon was consistent with Ruby's behaviour in the Dallas police station on November 24, 1963. He was entirely at fault, however, when one of his more important defence witnesses destroyed the force of her evidence by testifying on examination-in-chief that she was presently being held on a narcotics charge.

Belli was unfortunate in the fact that Judge Brown's indecision (or lack of intelligence) destroyed much of the effect of one of the three most important expert witnesses.[9] His poorly judged use of Dr. Guttmacher, however, was of his own doing. Belli sacrificed the best psychiatric evidence, for Ruby's particular purposes, for the biggest psychiatric name he could find. Dr.Guttmacher hardly mentioned psychomotor epilepsy and as Professors Kaplan and Waltz say, "[t]he defense's chief attorney and his principal expert passed like ships in the night".[10] Guttmacher was disillusioned by the frivolous pretrial conference he had with Belli and by Belli's poor questioning when the psychiatrist took the stand.

Belli was a beaten man well before the final addresses were reached. The insistence of Judge Brown, who usually ran such a "loose" court, that the trial had to finish that day was a pressuring tactic which did great harm to Ruby's case. The judge gave the defence little time to raise objections to Brown's jury summation. The addresses themselves were extraordinary in that seven counsel made speeches to the jury. The most ridiculous feature of the last day was that the jury heard their last speech (Belli's) at 1:06 a.m. In this final address Belli was far from effective. No doubt he was tired and disillusioned and no doubt armchair critics are always brimming with hindsight. Nevertheless, he did not describe the requirements of murder with malice. He did not try to talk the jury out of the death penalty. He did not talk about Ruby. He talked about Belli. The final address was an apologia and advertisement for Melvin Belli.

Belli grasped at the highly sophisticated medico-legal straw of psychomotor epilepsy. In a personal injury suit where the plaintiff has the sympathy of all because of his misfortunes, it may have

[9] A nice legal point was raised at this stage. The expert witness concerned was a psychologist who had given Ruby an elaborate series of tests. He maintained that these tests showed that Ruby had brain damage which would be corroborated by encephelographs. Can a psychologist (who is not medically or psychiatrically trained) testify as to the existence of mental disease or defect?

[10] P. 230.

succeeded. In Dallas, it was a new-fangled defence dreamt up for the occasion by a dandified smooth-talking outsider who hated Dallas. Even when junior counsel Tonahill (who has been more loyal to Ruby's cause than most of his numerous counsel) tried to raise sympathy for Ruby, it hit the wrong nerve. On the *voir dire* he asked a prospective juror "Would you feel un-Texan if you were on the first jury to send a man to the electric chair for killing a Communist?" The approach of District Attorney Wade was much more perceptive. In his address to the jury he emphasized the historical destiny of the jury and made a telling point when he said:

> Jack Ruby was a glory-seeker . . . He wanted the limelight, he wanted publicity and he wanted to go down in history as the man that killed an alleged assassin![11] Ruby robbed the people of Dallas of knowing more about Oswald . . .[12]

What course should Belli have followed? He probably should have stayed at home. The events in Dallas needed no more publicity —at least the citizens of Dallas did not think so. He was too flamboyant and he was an outsider. The only person from outside Texas who could have handled the case would have been a very low-key but most eminent senior counsel who would have apprised Dallas of his *bona fides* by assuring them that he wanted no more press conferences, but he wanted Ruby to get the true brand of Dallas justice and this would have been done by handling the matter deftly and quietly.

The best strategy had been planned by Ruby's very first lawyer. Tom Howard was an experienced criminal lawyer but he did not have enough "class" for the Ruby family who caused trouble for all Jack Ruby's legal advisors. Howard's plan of defence was simple and might well have succeeded; at least Ruby would not have been sentenced to death. Howard wanted to minimise the outward importance of the case. He intended to rely on the very wide Texas provocation law. The authors indicate the significance of these tactics by describing them very capably and at some length.[13]

> Howard . . . did not believe that Ruby was insane within the strict requirement of the law and, much more important, he did not think he could convince a jury of this. He knew that juries, and particularly Dallas juries, would be most suspicious of this defence which attempted to let the defendant off scot-free and they would probably be much too sophisticated for the 'pin a medal on Jack cuz Oswald deserved it' defense. The jurors would almost certainly feel that Ruby had done wrong and should be punished. Howard decided that the greatest good he could do for his client was to keep the punishment light. If he asked for an outright acquittal for Ruby, he not only wouldn't get it, but by losing the sympathy of the jury he might end up with a heavier sentence for his client.
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> The defense, then, would be that Ruby's crime was murder without malice, which carried a maximum sentence of five years. Howard would handle the case as quietly as he could . . . It would be 'among us Dallasites' with the only outsider—except for the press representatives

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11 P. 335.
12 P. 334.
13 Pp. 21-23.

> of the world—being Oswald. And Howard would show that Ruby was under the immediate influence of a sudden passion arriving from an adequate cause when he laid eyes on Oswald on that Sunday morning.[14]
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> He would go deeply into Ruby's mental state at the time of the crime. To do this he would rely primarily on Jack's friends and acquaintances to show that the defendant was always a bit of a nut. Though Howard would not assert that his client was not guilty by reason of insanity, he would place one or two psychiatrists—local not imported—on the stand. He would then lead up as if he were about to ask whether or not Ruby was legally insane, but he would not do so. The prosecuting attorneys could do this if they wanted, though Howard felt that they probably wouldn't dare without knowing what the answer would be. All Howard wished from the psychiatrists was the statement that Ruby, through no real fault of his own, was mentally unstable.[15]

In that passage we have a mine of practical legal wisdom which the authors' students probably do not learn in law school. It shows where Belli failed. It shows the criminal lawyer at his tactical and persuasive best. Is it proper, though, for a lawyer to use his forensic skills and his knowledge of the law, mostly the former, to obtain a verdict most advantageous to his client? In the light of the present state of the law of criminal insanity, it may be all that a lawyer can do for a client.

Lawyers or laymen who say they are tired of hearing about November 1963 in Dallas are likely to be pleasantly surprised by this excellent book. The authors have unearthed many facts which escaped the newspaper reporters. They successfully tread a very fine line between talking down to the laymen and boring the lawyer with their legal analyses. It is not at all a sensational book. It is very entertaining and very worthwhile.

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