REVIEWS

DALLAS JUSTICE. By Melvin M. Belli. New York: David McKay Co., 1964. Pp. 298. $5.50.*

Attorney Melvin M. Belli wants to talk about Dallas, Texas. Talking about it — its citizens, its civic leadership, its newspapers, its courts — offers the only hope for "curing" this American city's ills, Mr. Belli advises us in his book on the trial of Jack L. Ruby for the murder of Lee Harvey Oswald. As the San Francisco practitioner who was Ruby's chief defense counsel reminds his readers, "We were not able to stop syphilis until we were willing to speak of syphilis."[1] The rest of *Dallas Justice* is equally charming and informative.

The initial chapter of *Dallas Justice,* entitled "Judgment by a City," paints Dallas as a city ruled by an oligarchic Establishment that indirectly encouraged "a climate of hatred . . . that . . . was directly responsible for the assassination there of President Kennedy."[2] After he entered the Ruby case, writes Belli, "much of this hatred tended to focus upon me."[3] This opening chapter is also employed to picture the Ruby family, and especially Jack's brother Earl, as penny-pinching ingrates who interfered with Belli's conduct of the trial — "They had called at odd hours" —,[4] failed to pay Belli's fee and then, shortly after the trial's disastrous culmination, fired him. In his next two chapters the author sketchily recounts the assassination of President Kennedy and the arrest of Oswald for the tragic crime, the killing of Oswald by Jack Ruby and the circumstances surrounding Melvin Belli's entry into Ruby's case. Chapter Four is an attack on the American and Dallas Bar Associations for what Belli considers their failure to provide Oswald with legal counsel.[5] The

*Shortly after the trial of Jack L. Ruby terminated, the author of this book review, together with a colleague, Associate Professor John Kaplan of Northwestern University School of Law, received a grant from the Walter F. Meyer Research Institute of Law to support a detailed study of the trial. The study, now virtually complete, has not yet been published. [Ed.]

1. P. 3.
2. P. 5.
3. *Ibid.*
4. P. 7.
5. At each of his two arraignments — one on a charge of murdering Dallas policeman J. D. Tippit and one on a charge of murdering President John F. Kennedy — Oswald was advised by the presiding justice of the peace of his right to secure counsel. On Friday evening, November 22, the day of the two crimes, representatives of the American Civil Liberties Union visited the Dallas Police Department and were advised that Oswald was being allowed to seek an attorney. Oswald sought by telephone to reach a New York lawyer of his choice but was unsuccessful. On the afternoon of Saturday, November 23, the president of the Dallas Bar Association interviewed Oswald and inquired whether he desired the association to secure counsel for him. Oswald declined the offer, stating that he preferred to get his own lawyer. As late as Sunday morning, November 24 — the day of his death — Oswald stated that he desired no assistance in obtaining counsel.

REPORT, THE PRESIDENT'S COMMISSION ON THE ASSASSINATION OF PRESIDENT KENNEDY 200-01 (G.P.O. 1964).

remaining chapters, bearing such headings as "Right to Bail — Dallas Style," "Conscience of a City," "The 'Establishment' Jury" and "Judgment on a City," catalog the author's numerous adverse judgments concerning the city of Dallas, Henry Wade's prosecutorial staff, Judge Joe B. Brown and the jury that convicted Jack Ruby.

Jack L. Ruby's name nowhere appears on the cover of this book but the name of its author is printed on the spine in letters as large as those in the title. And in fact *Dallas Justice* is not really a book about Ruby; it is Melvin Belli's feverish defense of his conduct of Ruby's trial. Although the book was ghost-written,[6] the frustrated rage of a fighter who was heavily favored, only to be floored by blows he never saw coming, smoulders throughout this minor footnote to history. Melvin Mouron Belli is a very sore loser.

The question that is important to the larger issues of judicial administration, of course, is whether Jack Ruby's defense counsel has a valid basis for being so vocally furious. Regrettably, but predictably, the answer is not to be found in this hard-cover diatribe. Perhaps no lawyer can speak objectively about his own cases, win, lose, or draw — they are all too painfully personal. And when an ego as apparently substantial as Mr. Belli's is involved,[7] the hope for dispassionate discussion never draws a living breath.

The Ruby trial could have been a fitting climax to any trial lawyer's career at the bar. It involved history's most public killer, caught up in the events of a November weekend that saw two bloody rents torn in the rule of law — first the assassination of President Kennedy and then the murder of his accused assassin. As layer after layer of Jack Ruby's bizarre makeup was peeled away the man's case posed an increasingly obvious opportunity for skilled and dedicated counsel to mount another and perhaps influential effort to wed law with science in the attempt to find a courtroom solution to that most vexing of questions, the insanity defense to a charge of crime. The eyes of much of the world were to be focused on Ruby's trial. But what they perceived was a trial that took place in a carnival atmosphere and a disjointed defense effort which, arguably, violated a number of fundamental rules of the advocate's art.

6. By Maurice C. Carroll, a reporter for the N.Y. Herald Tribune who covered the Ruby trial.

7. Mr. Belli engages in an interesting play to get across the notion that he is really quite a fellow. While he is not averse to saying so himself, he frequently quotes the laudatory comments of others and then modestly shrugs them off. Thus:

> There is a doctor teaching in a medical school in my home town of San Francisco who makes a practice of asking his post-graduate students to name the man who has done the most for medicine in the past century.
>
> "Pasteur?" someone will ask.
>
> "No."
>
> "Lister?"
>
> "No."
>
> "And so on until, having used up all the medical names, they ask him, and he says "Melvin Belli. . . ."
>
> "Be that as it may . . . ."

Pp. 62-63. See also p. 228.

Melvin Belli insists again and again that his was "the most perfect psychiatric defense backed by diagnostic reports I have ever seen."[8] He proclaims, "[O]ur medical case, after it all came together, was a thing of beauty . . . ."[9] But there are men knowledgeable in both law and medicine who, once having studied the transcript of the Ruby trial, would disagree with Melvin Belli's generous assessment of his own handiwork. Belli was seemingly obsessed with the idea that Jack Ruby had killed while in the grip of an epileptic seizure. Dr. Roy Schafer, the highly regarded Yale psychologist, had suggested, on the basis of extensive psychological testing, that Ruby suffered from organic brain damage, possibly associated with psychomotor epilepsy.[10] Dr. Martin L. Towler, a University of Texas neurologist, diagnosed Ruby a psychomotor epileptic on the basis of electroencephalograms which conformed to a brain wave pattern recently dubbed the "psychomotor variant type of seizure discharge" [11] by the eminent Chicago electroencephalographer, Dr. Frederic A. Gibbs, in a dramatic last-minute appearance at the trial, concurred in Towler's finding. But not one of these experts could testify that Ruby had been suffering an epileptic seizure at the time of his violent act. Dr. Gibbs — who came to Dallas to defend Gibbs, not Ruby — remarked on direct examination that "You are safer from being murdered in an institution for epileptics, or if you were totally surrounded by epileptics who were not institutionalized, than you would be just living in your own neighborhood."[12] Among persons afflicted with psychomotor variant epilepsy, Gibbs added, "violent, compulsive and rageful acts only occur in two percent."[13]

Moreover, if the prosecution's eye-witnesses were to be believed, Ruby remembered far too much about the occurrence to have been in the throes of an epileptic blackout. Finally, psychiatrist Manfred S. Guttmacher, the defendant's star witness, flatly refused to testify that, in his opinion, Ruby had murdered Oswald while in an epileptic state.[14] His refusal to do so had been put to Belli in a forceful memorandum on the very eve of trial[15] but, as the author states, "Dr. Guttmacher's estimate was not *precisely* what I would have wished for."[16] Belli, the adept personal injury lawyer, is accustomed to dealing with observable medical data — X-rays, model spinal columns, color photographs, what he has frequently referred to fondly as "demonstrative evidence"[17]

8. P. 56.

9. P. 169.

10. Dr. Schafer's report letter is included, as Appendix A, in Mr. Belli's book, along with — inexplicably — the autopsy report on Lee Harvey Oswald. Pp. 265, 277.

11. Gibbs, Rich & Gibbs, *Psychomotor Variant Type of Seizure Disorder*, Vol. 13, No. 12, NEUROLOGY (1963).

12. Record, p. 1648.

13. Dr. Gibbs did not deny, of course, that it is *possible* for an epileptic to commit murder.

14. Record, p. 1130: "I hadn't maintained that this man [Ruby] was in a state of psychomotor epilepsy."

15. The 3-page memorandum is quoted in part at p. 198 of Mr. Belli's book.

16. P. 199. The italics are Mr. Belli's.

17. See BELLI, MODERN TRIALS *passim* (1954).

— and apparently could not bear to relegate to a secondary role, let alone abandon, the 600 feet of brain wave tracings in Ruby's case. And so only on cross-examination of Dr. Guttmacher did it become clear that he, in deeming Ruby insane within the meaning of the *M'Naughten*[18] rule, relied on the occurrence of a functional psychotic episode — specifically, Dr. Karl Menninger's "episodic dyscontrol."[19] Try as Belli might, through the casting of his questions, to force Guttmacher to hew the defense line on direct examination, the witness' diagnosis and his interrogator's theory of the case had passed like ships in the night. Dr. Guttmacher wanted to talk about that familiar frequenter of the criminal courts, temporary insanity; Melvin Belli wanted to talk about organic brain damage, epilepsy and fugue states. After hours more of quibbling about the Gibbs-Towler diagnosis of psychomotor variant epilepsy, the Dallas jury quickly convicted Ruby and assessed his punishment at death. No matter, says Mr. Belli. "We won it. The Dallas jury was wrong. We tried it in the only honest, ethical, and legal way we could."[20]

What, then, went amiss? Why could not defense counsel convince the jury of the rightness of his theory? It is in answer to this question that much of Belli's book is directed. Melvin Belli did not lose the Ruby case because he had deliberately antagonized the jurors in advance of trial or because he underestimated his well-organized opposition or because his defensive theory came unglued in the middle or because he insisted on an all-or-nothing-at-all tack. He lost, he repeats over and over again, because "Playing with a stacked deck, the home side . . . won."[21] Judge, prosecution and jury conspired against Melvin Belli and his client, perhaps — the author says — unconsciously, in order to preserve the public image of oligarchic, hate-steeped Dallas.

Judge Joe B. Brown, according to Belli, is a genial boob who took his cues from the gaggle of venomous men grouped at the prosecution table;[22] District Attorney Henry Wade possessed a "country-boy style . . . [which] was not put on;"[23] Assistant District Attorney William Alexander is a "ruthless"[24] and "erratic"[25] persecutor with "abysmal" legal ethics;[26] the "rigid-faced"[27] jury panel "had that civically self-righteous Southern white Protestant look."[28]

18. *M'Naughten's Case*, 10 Cl. & Fin. 200, 8 Eng. Rep. 718 (1843).

19. Dr. Guttmacher had discussed Menninger's theory in his book, THE MIND OF THE MURDERER 56-62 (1960).

20. P. 259.

21. P. 2.

22. For some reason that is not altogether clear, Belli excepts one of the four prosecutors — First Assistant District Attorney A. D. Jim Bowie — from his scorn. "Left alone, I think Bowie would have tried a calm, intelligent, interesting case, rather than the hog-calling contest that this deteriorated into." P. 86.

23. P. 84.

24. P. 60.

25. P. 85.

26. P. 58.

27. P. 252.

28. P. 118.

The defendant "was to be the sacrifice to civic indignation, the scapegoat for the unpunishable guilt of a community."[29] Thus Belli declares that he was "right, profoundly right"[30] when, after announcement of the jury's verdict and in full view of the television cameras which publicity-happy Judge Brown had permitted in the courtroom at the last, he shouted to the world, "May I thank the jury for a verdict for bigotry and injustice!" and branded Judge Brown's a "kangaroo court."[31] Again, Belli was "right, profoundly right" when he screamed that Ruby had been "railroaded" and that the jury had made Dallas "a city of shame forever more."[32]

Belli is insistent that his all-or-nothing approach to Ruby's defense was strategically and morally unimpeachable. In his closing argument — which will never be employed as a model by would-be advocates[33] — he at no time delivered an alternative plea for mercy. "[T]his man should be acquitted as insane. That's all you can do."[34] If the jurors convicted the accused of a felony, "he won't be eligible for Veteran's Administration."[35] Although the author quotes in its entirety a newspaper report suggesting that Clarence Darrow would have liked his summation,[36] Belli disavows the comparison as being "too kind."[37] Seasoned criminal defense lawyers will be inclined to agree with the disclaimer. They are likely to be puzzled by Belli's explanation of a plea which, in all effect, required the jury either to acquit or electrocute.

> ". . . Henry Wade said that we tried the case incorrectly, that what we should have asked for was mercy. Forget for the moment the impossible legal position created by admitting everything and asking for forgiveness, the foreclosure of any redress from an appellate court outside the stricken city. Would it have been moral to take this sick man, this mental cripple, and have him grovel . . .?"[38]

Assessment of Belli's scattershot charges as well as the propriety of his client's conviction must depend upon painstaking, objective analysis of the trial transcript. Belli's book provides no such analysis; quite the contrary. When the facts of record are inadequate to his purpose, Belli improvises. By way of example, at one point, in discussing a ruling favorable to the defense, the author states, "This is the first objection or motion by the district attorney in the entire trial that was not sustained by the trial court!"[39] While it can

29. P. 253.
30. *Ibid.*
31. P. 257.
32. *Ibid.*
33. It should be borne in mind that Belli was forced to commence his argument shortly before midnight on the twenty-second trial day when it was obvious that at least he, who had carried the defense almost single-handedly, was physically and mentally exhausted.
34. P. 242. Belli added, "You can't free him completely, he's already had four months." *Ibid.*
35. *Ibid.*
36. Pp. 226-28.
37. P. 228.
38. P. 259.
39. P. 235.

be fairly asserted that Judge Brown was solicitous of the prosecution, Belli's comment is demonstrably inaccurate: the record of the Ruby trial, which I have recently read and reread, contains a substantial number of rulings adverse to Henry Wade and his staff.

Although *Dallas Justice* is a flawed commentary on the Ruby trial, it raises one provocative question. There are those who will wonder at the propriety of publication by trial defense counsel of a work of this ilk at a time when the appellate aspects of the case have barely commenced.[40] Melvin Belli's unelaborated justification — "the premature leak"[41] of Ruby's testimony before the Warren Commission — seems short on relevance since *Dallas Justice* publicizes information infinitely more harmful to Ruby than anything the prisoner told Mr. Chief Justice Warren. Lawyers are certain to question the extensive quotation in the Belli book of remarks attributed to defendant Ruby. The quoted remarks purport to have been made by Ruby during the course of private consultations between the accused and his chief counsel. And there is nothing innocuous about them. We are told, for example, that at one juncture prior to trial Ruby turned to his defender and said:

> . . . What are we doing, Mel, kidding ourselves? . . . We know what happened . . . . We know I did it for Jackie and the kids. I just went in and shot him. They've got us anyway. Maybe I should forget this silly story that I'm telling, and get on the stand and tell the truth."[42]

At another point Belli writes that he asked his client, "Did you intend to kill Oswald?" and received the answer, "Yes."[43] While these revelations may cast light on the significance of the Foreword to Mr. Belli's book — "This book is offered as an informed answer to the questions that have arisen by reason of the repeated public statements made by and about Jack Ruby and the conduct of his trial . . . ."[44] — that is hardly an end to the matter. It would appear that Belli is determined to counter his ex-client's statements, to the Warren Commission and others, that Belli frustrated Ruby's desire to take the stand in his own behalf. However, although obviously nettled by Ruby's remarks, Belli does not deny that it was his decision that Ruby remain mute at trial; he simply asserts that his client was amenable to the decision.[45] It therefore seems far-fetched to suggest that Ruby's testimony before the President's Commission worked a complete waiver of the attorney-client privilege, paving the way for

40. As these lines are written Ruby's appeal is pending, but has not yet been briefed or argued, in the Texas Court of Criminal Appeals.

41. P. vii. Ruby's testimony was leaked to newspaper columnist Dorothy Kilgallen and thereafter was printed in newspapers throughout this country and abroad. I have been advised by a member of the Commission's staff that the leaked transcript was accurate.

42. P. 39. Mr. Belli states that Ruby's "story of trying to protect Mrs. Kennedy from a harrowing court appearance . . . was a story in which he persisted off and on to the end." P. 41. Belli, however, concluded that it "did not add up," *ibid.*, and that Ruby felt compelled to fabricate the story to fill amnestic gaps in his memory. Pp. 39-41.

43. P. 41.

44. P. vii.

45. Pp. 53-54.

defensive or retaliatory revelations so intimate as to include purported confessions.[46] Whatever the author's reasons for publishing conversations had with the defendant, one is inevitably moved to inquire as to the source of any right to make such disclosures. Belli nowhere intimates that he received authority from his former client to make these conference-room divulgences. If Ruby himself or, if he is mentally incompetent, someone in adequate authority did not consent to these disclosures, they would appear to constitute breaches of the attorney-client privilege and of the legal profession's canons of ethics[47] the enormity of which can be fully appreciated only when it is recalled that the possibility of a new trial for Jack Ruby will remain alive until his last post-conviction remedy has been exhausted. All who read *Dallas Justice* will desire an answer to the inquiry which Mr. Belli's disclosures prompt.

Dallas Justice, then, is not simply a well-meaning, if misguided, attempt to right the public record for the benefit of a wronged client. The author is concerned not with what the world thinks of Jack Ruby but with its view of Melvin M. Belli. Few readers of this transparent work of self-justification will be convinced that, alone among the *dramatis personae* of the Ruby trial, attorney Belli was always "profoundly right."

JON R. WALTZ†

46. *Cf.* cases wherein defendant, seeking post-conviction relief, brands his trial defense counsel an incompetent. United States v. Butler, 167 F. Supp. 102 (E.D. Va. 1957), *aff'd,* 260 F.2d 574 (4th Cir. 1958); United States v. Thompson, 56 F. Supp. 683 (S.D.N.Y. 1944); see also CANON 37, A.B.A. CANONS OF PROFESSIONAL ETHICS, quoted note 47 *infra.*

47. Canon 37 of the American Bar Association's Canons of Professional Ethics reads in pertinent part:

> It is the duty of a lawyer to preserve his client's confidences. This duty outlasts the lawyer's employment .... If a lawyer is accused by his client, he is not precluded from disclosing the truth in respect to the accusation.

Canon 11 provides: "The lawyer should refrain from any action whereby for his personal benefit or gain he abuses or takes advantage of the confidence reposed in him by his client." California, where author Belli lives and practices, has enacted a Business and Professional Code which contains the following provision: "It is the duty of an attorney: ... (c) To maintain inviolate the confidence, and at every peril to himself to preserve the secrets of his client." CAL. BUS. & PROF. CODE § 6068(c).

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