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Lessons learned from 'The Trial of Jack Ruby'

By Rob Bunzel

On October 1, 2018, a piece I wrote on lessons for trial lawyers from a 1960s book by the legendary Louis Nizer ("The Jury Returns," concerning John Henry Faulk and his blockbuster libel trial in the McCarthy era) appeared in the Daily Journal, whose editors have asked for a second installment. Fortunately, there is ample material to mine from the library of books on the law left to my firm by Bill Edlund, who passed in late 2016. The wisdom Bill curated is the basis for this series.

This article concerns "The Trial of Jacky Ruby," by John Kaplan and Jon Waltz (Collier Macmillan, 1965). Kaplan was a Stanford criminal law professor and Waltz was a professor at Northwestern. Together they dissect the transcripts and the trial record from the infamous Ruby trial in Dallas, which years later provide lawyers, law students and judges with insight into the strategies and tactics as to how this trial went so wrong for the defense.

Ruby was convicted by a jury in 1964 of murder with malice for the November 24, 1963 televised shooting of President John F. Kennedy's assassin Lee Harvey Oswald. Ruby successfully appealed, but died of cancer in 1967 while awaiting a new trial. The book by Kaplan and Waltz was published before the appellate decision, and meticulously details the trial itself while highlighting at least three huge failings by Ruby's trial team.

Making the case all about the lawyer.

San Francisco's Jake Ehrlich had been in the running to defend Jack Ruby, but Ruby's family thought it unwise for Ruby to be represented in Dallas by a Jewish lawyer. (p. 24) The Ruby family was instead advised to pick Melvin Belli, who had nurtured his own fame, once remarking that "you have to ring the bell to get people into the tabernacle." (p. 26)

Dallas in the 1960s was a white Protestant city whose primary business was insurance. The authors note, "for an out-of-state personal injury attorney who had become famous attacking insurance companies to pick a jury in Dallas to try a Jewish strip-joint owner would be nightmarish regardless of the crime at issue." (p. 47)

The trial record shows that before being cut off by a district attorney objection, Belli's co-counsel Joe Tonahill told the jury that Belli was "a great man to sit at the elbow of, a wonderful humanitarian, a kind, thoughtful, considerate man." In truth, Belli's ego and obstinance were on full display in the Ruby trial. It is telling that by as soon as the second day of trial, courtroom spectators felt "genuinely sorry for the sagging Belli." (p. 161)

The closing argument transcripts show Belli lauding himself: "I graduated from Boalt Hall at the University of California, in 1933 ... I have my own views of penology ... I'd go before my own governor ... [as] an avowed foe of capital punishment ... I say, collectively as the thirteenth juror ... I told you the category this man is in." The authors note, "Melvin Belli was inviting his Dallas jurors to try Melvin Belli." (p. 331) No one liked Belli in Dallas, and since he made the case about himself, it is no surprise that the jury quickly convicted his client.

In a shocking bit of attempted profiteering, Belli and Tonahill went to see Ruby in jail the day after the verdict, and using a small Japanese camera they had smuggled in, took photographs of the condemned man and later offered to sell them to Life magazine. The sale fell through only when "Ruby's family found out about this and objected." (p. 341) Those who think Michael Avenatti's recent alleged conduct is unique should read more history.

Antagonizing the venire pool.

Despite the fact that newspaper polls showed half of the people questioned believed Ruby should receive no punishment for killing the killer of the president, Belli claimed Ruby could not get an impartial jury anywhere in Texas, and especially not in Dallas. (p. 72) Belli brought a change of venue motion supported over three days by 41 live defense witnesses, creating an atmosphere of "disorder and acrimony." (pp. 75-6) The authors conclude that the most powerful reason for prejudice against Ruby in Dallas were Belli's own attacks on the city as reported in the press. (p. 81)

Smartly downplaying Belli's live witness theatrics, the prosecution called no witnesses to defend the venue motion, but submitted 38 affidavits from Dallas citizens who all swore Ruby could receive a fair trial. Judge Joe Brown did not grant a change of venue and instead left it to jury selection as to whether an impartial Dallas jury could be empaneled. This forced Belli in jury selection to establish that no impartial jury could be found, rather than salvaging the best from the available panel and potentially positive defense jurors. (p. 104) Offending the community of remaining jurors is a disastrous strategy in jury selection and in the exercise of peremptory challenges. In doing so, Belli ignored the very advice given in his own books on trial-craft.

Belli's wrath toward Dallas never waned. Press reports show that he inveighed to the jury when the verdict was read: "May I thank the jury for a victory for bigotry and injustice," and "I hope the people of Dallas are proud of this jury." (p. 340) Years later, Belli did not recant his contemptuous views that Dallas should be shamed forever. That an out-of-state showman with such bitter views of the trial venue got home-towned is hardly surprising. When he was fired several days after the trial, Belli acknowledged "Having spoken against Dallas as I did ... I would have fired me too." (p. 341)

Going for a full acquittal using dubious science.

Texas murder law in 1964 adhered to the M'Naughten right-wrong test, without the irresistible impulse defense known in other states. Belli also had the burden of proving insanity by a preponderance. This made acquittal almost impossible. Judge Joe Brown sustained objections to lines of questioning unless defense experts would opine under the M'Naughten rule as to whether Ruby knew right from wrong, often admonishing Belli about this standard "in a tone of voice which is ordinarily reserved for children and the not-quite bright." (p. 197)

Ruby's initial Dallas attorney, Tom Howard, thought a complete acquittal was unlikely. He believed jurors would conclude Ruby had done wrong, and that keeping the punishment light — by proving the Oswald shooting was murder without malice done in a momentary rage — was the right strategy. Howard planned on describing the gruesome details of the electric chair and asking the jury for mercy, putting "Ruby's life no longer in his hands but in theirs." (pp. 21-22) But this sober and experienced criminal defense attorney was not to be in charge of the case. A central lesson of the Ruby trial is that bad things will happen when a lawyer who wants the glory of a home-run fails to pursue a more conservative strategy that most likely would have benefitted the client.

Belli's core defense strategy was to argue — from dubious EEG tracings and demonstrative evidence — that Ruby could not have formed the requisite intent to murder because he was suffering a 'psychomotor epileptic' event at the time of the shooting. This was against the written pretrial advice of his chief testifying psychiatrist Dr. Guttmacher, who had told Belli "it is scientifically unsound and legally imprudent" to try to prove Oswald's murder took place while Ruby was suffering an epileptic attack. (p. 231) Guttmacher believed that at most Ruby suffered from mental dyscontrol or ego rupture. (p. 233). Belli did not heed the advice of his chief medical witness, because the "defense plans were already laid." (p. 232)

After the psychomotor epileptic defense had collapsed during presentation of conflicting and unsupported expert opinions, Belli nonetheless made it the thrust of his closing argument. He rose to speak in closing, without objection and thoroughly exhausted, at nine minutes before midnight following the tenth day of evidence before the jury. (p. 323)

It took only two hours and nineteen minutes for the jury the next morning to reach a verdict of murder with malice and a sentence of death.

Colorful aphorisms on trial lawyering and illustrations of tactics populate the two professors' reporting, including:

- You can't have a rabbit stew without a rabbit. (p. 12)
- If a lawyer has nothing to cross-examine about he should forego the effort. (p. 131)
- After a positive witness answer, the trial lawyer feigns in order for the answer to be made again: "would you repeat that, I didn't hear you,' known as the 'hard of hearing gambit." (p. 132)
- Television to the contrary, it is by no means simple to destroy a witness on the stand. Rarely does a perjurious witness suddenly recant and sob, 'I did it!' or 'I've been lying up to this moment.' (p. 144)
- No lawyer really thinks the jury will, or in fact can, disregard something they have already heard — especially when it has been emphasized by an instruction not to consider it. (p. 147)
- One must never rely on cross-examination to develop the information that one needs on direct. (p. 223)
- An aphorism on the lips of cross-examiners is, 'Would that mine enemy had written a book!' (p. 239)

Despite Belli's strategic missteps, Kaplan and Waltz do not conclude the trial was unfair to Ruby due to counsel's lack of competence. They rather note: "In litigation, as in many areas of life, a 'correct' decision may lead to disaster, while an 'incorrect' one might have carried the day." (pp. 371-2). Indeed, Belli's denied venue change motion based on Dallas bias was a basis for Ruby's successful appeal brought by William Kunstler, winning a shot at another trial. But as a criminal defense attorney in Dallas in 1964, the King of Torts was far out of his depth and overplayed a weak hand. According to a contemporaneous law review of the book (G. Parker, Osgoode Hall Law Review (1966) Vol. 4, No. 2, 243, 251), "Belli probably should have stayed home." ■

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