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Book Reviews: THE TRIAL OF JACK RUBY. By John Kaplan and Jon Waltz and BAsIC PROTECTION FOR THE TRAFFIC VICTIM. (A Blueprint for Reforming Automobile Insurance.) By Robert E. Keeton and Jeffrey O'Connell

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BOOK REVIEWS

THE TRIAL OF JACK RUBY. By *John Kaplan and Jon Waltz.* Pp. 392. Macmillan, New York, 1965. $7.95.

These authors have done more than justice to their subject. Their work should stand high on the reading list of anyone concerned with the workings of our criminal law.

Having said this, one should add that the trial itself had little to recommend it. It was a mess. As the most notorious criminal proceeding of our time, however, it may command a wide audience for its chronicle; and the authors have produced one which exposes in painstaking detail how the adversary system works—fails, rather—in criminal cases at the trial level. Too few of us, students, practitioners and laymen alike, have occasion to follow this process at first hand; and fewer still have opportunity to do so under such competent guidance.

The experience is fascinating, although it can scarcely be called happy. As we are taken step by step through the processes of law in action, troublesome questions arise at almost every stage; and the answers afforded give little satisfaction. The bizarre character of the crime[1] did, to be sure, obviate most of the problems which frequently arise concerning procedures of detection and arrest.[2] From that point on, however, every facet of the proceeding insistently raised the questions:

> How can an accused identify and attain legal representation which conforms to his needs?
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> How can an accused be assured of a proper forum in which to be tried?
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> Can an accused to whose conviction the powers of the government are genuinely committed hope to match the resources arrayed against him in obtaining access to facts and to expert assistance?

The narrative leaves little room for doubt. The solutions Ruby obtained were less than gratifying to defenders of our criminal justice.

1. Ruby shot his victim while the latter was manacled to a police officer. He did so in the presence of city, county and federal officers and of radio microphones, television cameras and representatives of local, national and foreign communications media of all sorts, not to mention an omnium-gatherum of unassorted spectators.

2. His arrest on the spot was plainly proper. He was then put through the procedures of charge, warrant, commitment and detention with textbook precision. Later questions relating to the admissibility in evidence of statements given or elicited at and immediately following arrest were not the result of official conduct which could well be criticized, given the circumstances.

This conclusion, moreover, does not require uncritical acceptance of all of the authors' strictures, informed by hindsight, upon the tactics of defense counsel and upon the conduct of the prosecution and of the court. Nor is there much comfort in the consideration that this was a unique case—a "state" trial in the strictest sense. While the character of Ruby's crime undoubtedly aggravated his problems, it did not create them from whole cloth. They, or some of them, are shared, although not at the same level of intensity, by many criminal defendants.

In the matter of selecting, and obtaining counsel any layman is at a disadvantage. It is by no means clear that the lawyers who enjoy the widest public reputation are the ones who can best serve the needs of a particular client, nor is legal service a commodity which can be valued in accordance with its cost—even if the client can afford the most expensive. Ruby, as it happened, seemed to have escaped the latter difficulty. The nature of his act had stirred such a public sensation that his "story" could almost certainly be sold for enough to cover counsel and expert witness' fees, inordinate or no.

The problem of selection was something else. Ruby, his life obviously in jeopardy, faced a Texas trial, if not one immovably placed in Dallas, for a crime which Dallasites and other Texans might feel reflected on their city and state. He was not himself a native Texan. His background and occupation were not such as to evoke local sympathy. It should have required neither hindsight nor any special foresight to shun the addition of a further alien element. Nevertheless, Ruby and his lay advisers chose counsel whose personal flamboyance was enhanced, as a factor promising conflict with local mores, by the fact that he came from a rival state as ebullient as Texas itself.[3] One could wish that our system contained some analog of the family solicitor to aid in making this vital choice. The authors imply, persuasively, that their choice might have been the practiced, if unsung, local criminal attorney, Tom Howard.

The second problem—that of obtaining a suitable forum—was exceptionally acute in Ruby's situation, although, again, other defendants are confronted at times by similar difficulties. In the situation which followed the assassination of the President and the wounding of Texas' Governor extremes of notoriety were inevitable;[4] and Ruby acted in

3. A colleague has been unkind enough to say that the only proof required of Ruby's insanity was his choice of counsel. This seems less than just. Belli's reputation—whatever one may think of his methods of attaining it—was outstanding. True, it was won chiefly as a torts lawyer; but he did not lack experience in criminal trials. No layman could be expected to doubt his competence or, perhaps, suitability.

4. Nor should they, in such a case, have been restrained. Consideration is currently being given to enacting a curb on pre-trial publicity involving matters which will be in (or excluded from) evidence at criminal trials. See FREE PRESS AND FAIR TRIAL, Hearings before subcommittees on Constitutional Rights and Improvements in Judicial Machinery

the very center of their focus. His act, moreover, was one which could be taken to reflect upon the reputation of the locale where it occurred.[5] Whether he deplored this notoriety or not, Ruby's counsel was compelled to recognize its existence and attempt to deal with it. Only two means of doing so were possible: delay to permit a cooling of public excitement, and change of venue. The former was not seriously attempted, and might in any case have proved unavailing. The latter posed a cruel dilemma. A public demand to change the place of trial on grounds of local prejudice (and the demand could not be made without publicity) would of necessity exacerbate tender feelings—especially when made by out-of-state counsel.

Moreover, as the authors point out, a change of venue could move the trial only to some other court in Texas, which might prove small gain; and changes in venue are notoriously difficult to obtain.[6] Accordingly, the effort to obtain such a change was one promising great risk, small reward and little chance of success. So it turned out. The effort failed in a blaze of publicity airing charges which reflected on Dallas and the capacity of its citizens and courts to do justice. Whether Ruby's counsel seized the wrong horn of the dilemma is difficult to say, however.[7] The course chosen provided the opportunity to urge on appeal that the denial was error.[8] And should error be found a new trial may be held in the more tranquil atmosphere that passage of time has made possible—the benefit which might have been sought by delaying tactics thus being achieved by a hair-raising gamble.

The indicated answer to the third question posed by his account of Ruby's trial—that of the defendant's ability to meet the resources of the state—is, perhaps, the most discouraging. The authors leave no room for doubt that Ruby was engaged in an uneven contest with the forces of the prosecution. Such a matter as making an informed choice among prospective jurors was heavily weighted against him and would have been only less so had his chief counsel been a local attorney. Assuming that he did about as well as he could have in obtaining expert testimony concerning his mental condition, it is evident that the prosecution could

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of the U. S. Senate Committee on the Judiciary on S.290, August 17-20, 1965. Any attempt to suppress reporting of such an event as the assassination or occurrences connected with it would clearly have been as unwise as they would have been futile, however. See, *e.g.*, *op. cit.* p. 357.

5. Malicious witticisms at Dallas' expense blanketed the country at the time, *e.g.*: "an Irish curse—'may you be protected by the Dallas police'." The citizens of Dallas, and of Texas, could not have been unaware of these barbs.

6. See testimony of Edward J. Ennis, Esq. in FREE PRESS AND FAIR TRIAL, *supra* n. 4, pp. 353-4.

7. It does seem evident that his manner of making the challenge tended to maximize its irritating qualities.

8. This contention is being made, of course. No conclusion as to its merit is suggested here.

adduce a quantum of evidence on the other side which might prevail by sheer mass—and perhaps did.[9] And this despite the fact that Ruby was able to secure expensive experts and had the advantage, if advantage it was, of being represented by a man regarded as knowledgeable in the field. The entire trial was spotted with incidents which showed the prosecution's superior access to information on points ranging from the significant to the frivolous.

The ultimate question remains when this book is closed: did this trial and its determination that Jack Leon Ruby should be electrocuted serve any desirable end? If it did, it must be only by exposing to public view the frailties of the adversary system for determining and rewarding criminal conduct. Whether or not Ruby was insane, legally or otherwise, his act was highly irrational. It is difficult to believe that his execution would meaningfully instruct the public or deter emulation. Simply to inflict retribution on this silly fellow for however outrageous a crime seems surely unacceptable. The authors are highly persuasive in implying that Melvin Belli contributed heavily to the outcome by his insistence that acquittal by reason of insanity was the only possible alternative; and the unorthodox theory upon which he chose to base his sole reliance seems to this reviewer almost incredibly weak. But the fact remains that the trial afforded full play to our techniques of assessing guilt and providing a remedy for the injury suffered by society. The result can only be described as dismal.

It would be difficult to praise too highly the diligence and expertise these writers have lavished on their work. This reviewer was not offended, as some colleagues were, by recurrent indications that they were less than impressed by the way Belli conducted himself and the trial. Respect for the dignity of the law all but precludes a wholly impartial attitude toward so tireless a seeker of the limelight. If it seems somehow unfair of the authors to emphasize, with benefit of hindsight, the failure of his tactical and strategic maneuvers, one must remember what Belli would have made of a success.[10]

The book reads easily, also. If the style seems at times rather breathlessly journalistic, one can readily imagine how dull it could have been and be grateful. The prolixity, muddled metaphors[11] and elephantine wit of the proceedings needed rescue. The authors were presumably not attempting to vie with Mr. Capote in producing a new genre "The

9. The prosecution specifically argued to the jury that it had produced more (as well as better) witnesses on this issue than had the defense.

10. This need not rest on speculation merely. See DALLAS JUSTICE, THE REAL STORY OF JACK RUBY AND HIS TRIAL by Melvin Belli with Maurice C. Carroll, New York: David McKay, 1964.

11. *E.g.*: "The proof is in the pudding."

Nonfictional Novel." They were reporting accurately and in depth. To this they added, without pretentiousness, illuminating, scholarly commentary. That they did so readably is praiseworthy.

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BASIC PROTECTION FOR THE TRAFFIC VICTIM. (A Blueprint for Reforming Automobile Insurance.) By *Robert E. Keeton and Jeffrey O'Connell.*** Pp. 624. Little, Brown and Company, Boston, Massachusetts, 1965. $13.50.

Future historians will find it difficult, perhaps impossible, to accurately appraise the Twentieth Century without any encyclopedic knowledge of the role of the automobile in affecting the political, economic and social life of the great masses living in the asphalt-and-concrete-ribboned area of the globe known as the Western World, with particular focus, of course, on the automobile in the life of the American Democracy.

Basic Protection for the Traffic Victim was produced with a large staff of consulting and research assistants for the purpose of providing a blueprint for reforming automobile insurance. What was accomplished provides the sought-after blueprint, but the statistical information alone, which has been gathered together about the automobile's role in today's world, provides in one handy volume what is certain to be of important interest to future legal scholars. The present, past and future are covered exhaustively for a one-volume work.

A comprehensive review is given of the serious problems confronting the law today with its liability system of compensating those suffering losses as traffic victims. Although highly critical of the existing state of affairs, which to the authors is a literal jungle of uncertainty, unfairness, and waste, a fair and objective attempt is made to present the views of others who strongly defend the status quo. A concise though complete review of reform attempted under the existing liability system is given. Shortcomings in reforms such as compulsory insurance and financial responsibility laws are pinpointed with clarity and conviction. The same treatment of more radical models of reform is covered. Experiments in reform, both in this country and abroad, are covered thoroughly before the authors present the new plan of "Basic Protection Insurance," which would be a new form of compulsory automobile insurance.

It is the thesis of the authors that many of the shortcomings of the

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existing liability system of fault would be eliminated if the liability fault system, itself, were eliminated in those cases involving relatively small dollar damages. The authors would eliminate fault as a requirement for loss compensation in personal injury cases in which out-of-pocket losses are less than $10,000.00 per person, and also in cases where the claim for pain and suffering would not exceed $5,000.00. Tort actions for cases of severe injury where loss would exceed the $10,000.00 and the $5,000.00 exemptions would be preserved. The authors propose no radical changes in the marketing of the basic protection. The best analogy provided for the new "basic protection policy" is the existing coverage known as "medical payments coverage."

An interesting feature of the plan calls for the traffic victim to receive periodic payments during the course of recovery, rather than the traditional lump-sum payment so entrenched in the existing fault system.

The authors have considered carefully the consequences of the enactment of their proposal, including the constitutional problems which will be raised and which they conclude do not present any insurmountable obstacles. A highly detailed model Act is provided, with extensive comments provided for each section of the Act.

The authors are, of course, not the first to pioneer reforms in order to compensate traffic victims. At first glance, there is a great similarity in reforms suggested by others. This viewpoint is, perhaps, unavoidable because any radical reform in the area must necessarily center around the elimination of fault by the defendant as a standard for compensating the victims. The authors, however, have carefully noted differences between their plan and other reforms, both in the automobile field and in other fields, such as Workmen's Compensation.

Criticism of the work is most likely to come from those quarters in which basic philosophical differences exist concerning the wisdom in human society of substituting a collective (though limited to automoble users) "fault" in place of traditional liability, which balances upon the fulcrum of individual responsibility for individual errors. It is perhaps the advocacy of the "idea" which is the noticeable void remaining mostly untouched by the authors. So often in human society evidence indicates that the mechanics of reform in most all fields results only after the appetite of imagination has been whetted sufficiently by the drama and force of the "idea." The "idea" having captured the minds of men, the only lacking ingredient is usually the passage of time before satisfactory and acceptable mechanics of reform evolve without noticeable strain.

Certainly, the automobile field has a uniqueness, as the authors point out, if for no other reason than its gigantic proportions in terms of its yearly victims. The adoption of a basic protection system as outlined by

the authors may very well depend not upon the desirability of reform, for which a competent case has been made; nor upon the clarity of the statute, which has been well drafted; nor upon ability to communicate the elements of the desired reform, for this has been singularly successful; but rather upon the production of an "idea compendium" which, though eliminating the mechanics of the "how," concentrates on the "why" and sparks and captures the legal imagination of a new generation of lawyers.

Without question, a tremendous service has been performed in the publication of the book. It is difficult, of course, to say whether the authors have provided a plan which will turn out to be *the* finally accepted reform in this complicated field, yet, certainly, their thoughtful and thorough contribution cannot help but provide an indispensable milestone for the inevitable many who will venture into the automobile jungle which is fraught with pitfalls at every turn. The authors have presented a case sufficiently strong to warrant a trial of the plan in some American jurisdiction. Perhaps only in the actual experience of trial and error is there any hope for solution.

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