Disorder in the court

By James E. Clayton

THE TRIAL OF JACK RUBY. By John Kaplan and Jon R. Waltz. Macmillan. 416 pp. $6.95.

This book begins in the tragedy of a President's assassination and ends in the tragedy of the law's inability to provide a convincingly just result in a murder trial. It has no heroes. Every major figure who moves through its pages—and most of the minor ones—is diminished by what he did. But even more troubling than the stains this sordid episode leaves on men's lives are the doubts that the trial of Jack Ruby casts about the foundations of our nation's criminal law.

One finishes this book greatly dissatisfied. Not dissatisfied with the account of the trial of the man who killed Lee Harvey Oswald, for that is skillfully and carefully written; the book provides a ringside seat with expert commentators on hand to explain the legal problems, strategies, and tactics as events unfold. It is the expert commentry that inspires the dissatisfaction and creates the doubts about the whole legal process. One wonders whether Jack Ruby actually received justice from the jury that sentenced him to death. One suspects that this trial, given different lawyers and a different judge, might have come to a different conclusion. One is not certain whether Jack Ruby was sane or insane when he committed the nation's first murder on live television. One is sure of only one thing: this trial was a circus from start to finish.

The authors know, of course, that the facts they report create doubt about the justice of the jury's verdict. They seem unaware, however, that thoughtful readers of their book may also begin to question the processes on which we rely to achieve justice in all criminal cases. The portraits they paint of the leading figures—Judge Joe B. Brown and defense counsel Melvin Belli—raise some of those questions.

Early in the book the authors write of Brown, "It was only partly because of their low opinion of his legal talents that civic and business leaders in Dallas were in vocal despair at the prospect of Judge Brown presiding over the Ruby trial. . . . [They] knew that Judge Brown's most notable weakness was a passion for the limelight." Nothing in the book detracts from that appraisal of Brown.

Belli, a San Franciscan hailed widely by himself and others as a great trial lawyer, comes out no better than Judge Brown—perhaps worse. The authors, one a professor of law and the other a practicing attorney, imply that his choice of strategy and his alienation of the jurors by repeated attacks on their city of Dallas cost Ruby a good chance for no worse punishment than a short jail sentence. Several times they claim Belli had not done his homework. Again and again they note Belli's fascination with publicity which went even to the

Jack Ruby (left) and Melvin Belli

point of attempting, after the death sentence had been returned, to take pictures of Ruby in jail for sale to magazines.

But the fundamental doubts about our system of criminal justice are raised when the authors attempt to explain why the only question in this case—whether Ruby was sane when he pulled the trigger and, if he was, what his punishment should be—were handled as they were. The theory espoused by Belli that Ruby shot Oswald during a psychomotor epileptic seizure seems, on the evidence, rather thin. But the diagnosis of episodic psychosis advanced by Dr. Manfred Guttmacher, director for over three decades of the psychiatric clinic of the Baltimore criminal courts, seems, at least to the authors and to me, more plausible. Because of the defense's preoccupation with epilepsy and the prosecution's preoccupation with winning a conviction, no attempt was made to explore Guttmacher's theory which might have provided the true answer to the key question. It is here that the authors' unemotional comment on such a tactical decision by the defense becomes profoundly disturbing: "In litigation, as in many other areas of life, a 'correct' decision may lead to disaster, whereas

an 'incorrect' one might have carried the day. The hard fact is that our adversary system must rely to a great extent not only on both sides being represented with equal skill but also upon their having approximately equal amounts of luck."

Those words strike to the heart of the criminal law. Is it morally justifiable to put men on trial for their lives under a system in which skill and luck can so vitally influence the outcome? Is it justifiable to condemn a man to death or imprisonment because, or even on the chance that, his lawyer is not so skillful or not so lucky as the prosecutor?

Questions of this kind often seem to be overwhelmed by the centuries of history of Anglo-Saxon jurisprudence which accept the adversary system of trials as the best method of finding the truth. But they persist throughout this book. Is the best way of learning the truth about a man's mental condition to place experts who disagree on the witness stand and let opposing lawyers poke fun at their statements? One assistant prosecutor said of Belli's defense theory, "I wonder if they got their psychomotor variant from the psychomotor pool," and described a psychologist who gave Rorschach tests as a man "who thinks he can diagnose anything with inkspots." Is it justifiable to let tactics play as dominant a role in the outcome of trials as they now do?

The dulling of sensitivity to these questions in the legal community could hardly be better illustrated than it is in this book by its lawyer authors. Explaining by an anecdote why it is dangerous for a lawyer to omit certain evidence in hope that it may unwittingly be presented to better effect by opposing counsel, they say: "Most laymen perhaps might feel that the point of the story is that a clever trick by an attorney can mean the difference between life or death for a defendant. Lawyers, however, merely derive from it the injunction that one must never rely on cross-examination to develop the information which one needs on direct."

If lawyers derive from such a story nothing more than an instruction on how to ply their trade, if they have lost the layman's instinct that something is amiss when the search for truth theoretically embodied in a criminal trial can be doomed by disparities of skill or luck, then the criminal processes that rest so largely in lawyers' hands become a subject of grave concern. Lawyers may be right in accepting the dogma of their profession that the adversary system, despite its flaws, is the best available method of finding the truth. But to accept tactics and skill and luck as determinative factors in a search for truth is to invite loss of public confidence that such a search is actually being made. And lack of public confidence is already, it seems to me, a serious problem for American law.