

APPOINTMENT IN DALLAS

THE UNTOLD STORY

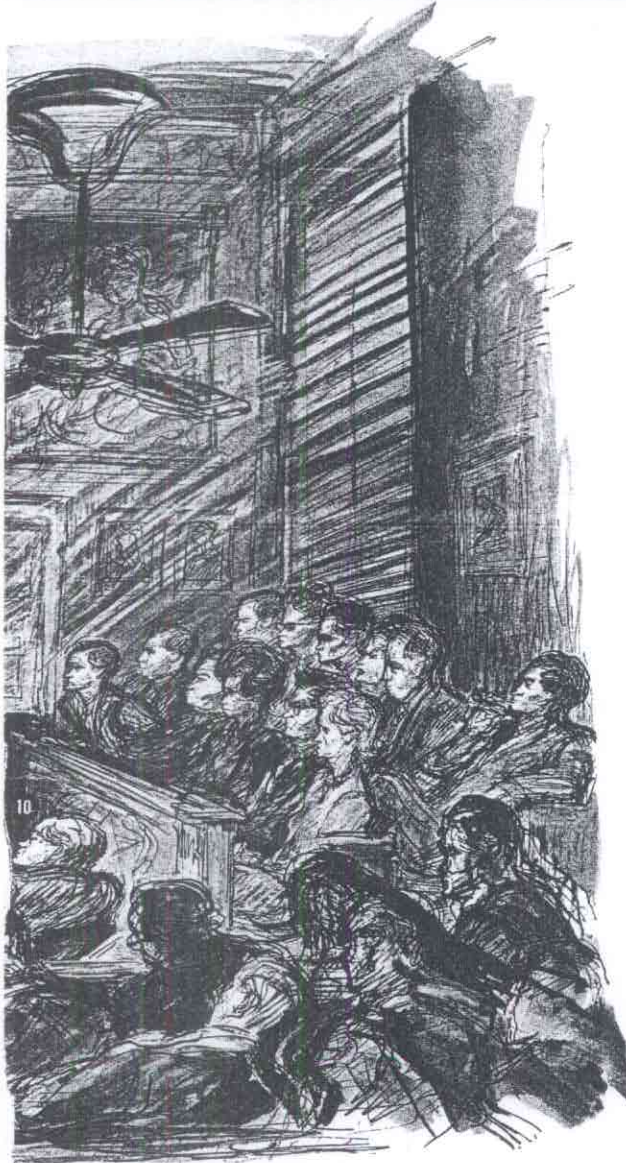
For five weary weeks the world focused its attention on a struggle in a Texas



OF JACK RUBY

By Edward Linn

court, hoping to catch a glimpse into the minds of both a murderer and his notorious victim.



Participants in the Ruby trial included Defense Attorney Phil Burleson (1), Jack Ruby (2), Defense Attorney Melvin Belli (3), Defense Attorney Joe Tonahill (4), Judge Joe B. Brown (5), Assistant D.A.'s Frank Watts (6) and Jim Bowie (7), Little Lynn (8), Assistant D.A. Bill Alexander (9), and D.A. Henry Wade (10).

The St. Patrick's Day parade was held in Dallas on Saturday, March 14, anticipating the actual holiday date by three days in order to have the run of the relatively trafficless downtown streets. Only a few hundred people lined the sidewalks as a green-uniformed band and a thin column of paraders moved slowly up Main Street and past the courthouse. March 14 was also the day on which the fate of Jack Ruby was handed over to the jury. As Bill Alexander, the assistant D.A., came to the courthouse, he cocked an eye at the passing parade. "Dallas is sure crowding its luck," he said, pushing his Stetson to the back of his head, "holding another parade for an Irishman."

The jury had begun its deliberations at 9:15 a.m. At 11:35 a call came up to the D.A.'s office for District Attorney Henry Wade. Wade wasn't there. A minute later an excited assistant D.A. called in, "We've got ourselves a verdict. They've knocked."

The press lined up outside the courtroom, while everybody waited for Judge Joe B. Brown to drive in from his home. Bill Alexander came walking through, and when someone asked him what he thought the verdict would be, he jerked his tie up over his head and made the gargling sound of a man being hanged. By a special ruling of Judge Brown, a camera had been set up at the back of the room to record the verdict. The last circle had closed. The case would end as it had begun—on national television.

Defense Attorney Mel Belli, who is usually dressed like a show horse, walked into the courtroom wearing a black suit and a black sport shirt buttoned to the neck. He looked for all the world like a priest-hangman. "This is going to be rough," he told Ruby. "They're a bunch of no-good bastards. Whatever it is, we'll appeal. You just sit back, Jack. I'm going to take it, not you."

The jury filed into the box, looking grim. The hands of the juror in the near corner of the back row were trembling as Judge Brown read the verdict. For all the emotion in his voice, Judge Brown might have been reading the temperature-humidity index. "We the jury find the defendant guilty of murder with malice as charged in the indictment and assess his punishment as death."

Jack Ruby's eyes blinked. The blood drained out of his already white and sunken face. He bit his lip. As Belli leaped up in his hangman's suit to shout to the jury, Ruby started to rise from his seat—dazed and dutiful—as if he thought that perhaps he was supposed to be on his feet too. The hands of two guards shot out quickly to press him down.

"May I thank this jury for a victory for bigotry. . . ." Belli shouted. As Ruby was led past him, Belli yelled, "Don't worry, Jack. We'll appeal. We'll appeal to the highest court in the land."

For five weary weeks the nation's attention had been focused on that Dallas courtroom in the hope—however illogical—that a glimpse into the mind of Jack Ruby, who had performed one irrational act, might provide a faint glimpse into the mind of his victim, Lee Oswald, who had performed another.

But the trial fizzled. The defense did not show Ruby's mind; they showed only a literal recording of his brain waves. There was no psychiatric testimony that went much deeper than the pity-the-poor-boy-who-never-had-anybody-to-love-him level. The Battle of the Psychiatrists, for which we were waiting so anxiously, turned into nothing more than a mild disagreement among technicians, a quibble over some squabbles on a piece of paper. The best exhibit for insanity was Jack Ruby himself, sitting there all those weeks with a frozen, waxen look of agony on his face.

Jack Ruby entered the courtroom a stranger. He was a Northerner in the South, a Jew among Christians, a striptease-joint

Drawings by John Groth

Trial of Jack Ruby

operator among the Baptists. He was a spectator in a game played among three contestants, the two lawyers and the judge. Ruby, like the defendant in any murder trial, became little more than a wax figure, depersonalized, dehumanized, dejected. Ruby, accustomed throughout his life to hitting out when he felt himself in danger, became that saddest of all things: the man of action delivered into the hands of the talkers. He had to sit there through those endless days and listen to that endless talk, that Niagara of talk on which his life depended.

Most of all he was an outcast because he was being tried, when all was said and done, for interfering with the due process of law. Jack Ruby's crime was not so much that he had killed an assassin but that he was a body snatcher. The body of a criminal belongs to the court no less than the body of a dead man belongs to the church.

The prosecution's line of attack was that Ruby had killed Oswald because he expected fame and glory, a line which they had every reason to believe. Although they were never able to bring it out at the trial, they knew that upon being transported to the county jail, Jack had told Jim Leavelle, the same officer to whom Oswald had been handcuffed, "I just wanted to be a goddamned hero, and all I done was foul things up."

Jack told his first visitors, his closest friends, the same thing. But when a man in Jack's position volunteers what seems to be the most damaging possible admission, he probably is only trying to prevent anyone, including himself, from discovering the real—and to him far more painful and shameful—reason.

Within 15 minutes of the time he killed Oswald, Jack Ruby had given an equally strong sign of premeditation by telling Sgt. Pat Dean, "I wanted to show the world that Jews do have guts."

"You know, I had the feeling that it wasn't really what he meant," Dean told me later. "It was just so ambiguous the way it came out, so out of place."

There is one big hole in the argument that Ruby did it for glory. Everybody who had seen Ruby—including the prosecution's own witnesses—agreed that he did go into a state of deep and inconsolable grief upon hearing that Kennedy was dead. During the trial itself, any mention of the assassination, or even of Jackie Kennedy and the children, would bring tears to Ruby's eyes.

In the early days, when Ruby was being interviewed before every session, he was still choking up with grief whenever he had to talk about Kennedy. It became apparent that nobody could possibly put on an act that successfully. It also became apparent that something was very wrong and even very unnatural. Something that went beyond the mere act of crying. Nobody grieves that much for a stranger, even if the stranger happens to be the President of the United States. You grieve that much for only one person. Yourself.

You don't set out to avenge a stranger either. You avenge only yourself.

In hindsight, the real tragedy of the trial may have been that the kind of defense that would have told us what we wanted to know about Ruby was also quite possibly the defense that might have saved him. To get Ruby off on an insanity plea, the defense had to show that the murder of President Kennedy set off in Jack Ruby the already emerging memories of a time in his life when he

himself felt that his life had come to an end. The defense, in short, had to show that Ruby grieved for himself to the point where there developed a confusion of identity in which he drifted back and forth between Kennedy's death and his own until they became so interwoven, so inseparable, that he had lost all contact with reality. Which means that he did not know right from wrong, the only test of insanity under Texas law.

There's nothing so farfetched about that. The murder of Kennedy did, in fact, set off precisely this kind of crisis in mental hospitals all over the country. And not only in mental hospitals. The assas-



Ruby, left, Tonahill and Belli.

ination practically immobilized the nation for several days, as we sat down and pondered our own mortality, our own inexcusable failings, and our own wasted lives. Because—and we all felt it to some degree or other—if the man who had everything could be wiped out in a second at the whim of some miserable little misfit, we knew how vulnerable we were. We were all brought face-to-face in broad daylight with those intimations of mortality that normally come only in the dead of night.

And there was one other thing that would invariably bring the tears to Jack Ruby's eyes. A reference to the breakup of his own family when he was 12 years old. In the by-lined series of articles he dictated from his jail cell before the trial, Ruby told how he had been shipped off to a farm. "And I died there," he said.

Ruby, in his floating, troubled state, did everything except shout out his confusion. "The poor children," he said after Kennedy was shot. "Those poor, fatherless children." When he was first told of the murder on Friday afternoon, November 22, in the advertising office of the Dallas News, his first words were, "My life is over." Not Kennedy's life; my life. To his sister he said, "I am dead."

To complete the picture, the defense had to show that there was something about Oswald himself, about his physical presence, that would provide the final spark to set Ruby off. In talking to the defense psychiatrist or the police, Ruby used pretty much the same terms about Oswald: "a smirking, arrogant Communist . . . cunning and vicious. . . . I felt like I was looking at a rat."

There was a curious thing that happened during the trial. As Ruby shriveled before our eyes, growing thinner and thinner by the day, he began to look more and more like Oswald. Not only in the contours of his features but in the way he held his head and pursed his lips, in the

expression around his eyes and mouth. Melvin Belli himself noticed it from the beginning. One day during noon recess, he held the pictures of the two men side by side, shook his head in wonder and disbelief, and said, "The resemblance between these two guys is just incredible."

From beginning to end, Ruby was his own best exhibit. Nobody claimed that he was not unstable. He was a man who surrounded himself with dogs and insisted that they be treated with respect. "Don't call them 'dogs,'" he'd tell his friends angrily. "These are my children, and children should be treated with respect." His favorite dog, Sheba, he called "my wife."

Ruby's rabbi, Hillel Silverman, recalls a conversation. "We were standing on my front lawn talking. The dogs were running all around, I said something about them, and he broke down in sobs. He cried and moaned and said something about these were his only children, the only real family he had."

Ruby, in his meandering way, had told Dr. Manfred Guttmacher, a defense psychiatrist, "If only I had been held at the Western Union office a few minutes longer, this never would've happened. . . . If only I'd been able to get married, this never would've happened."

On the stand, Doctor Guttmacher related this as an example of the disconnected thought processes that indicated brain damage. "The first part of it made sense," Doctor Guttmacher said, "but the second. . . ." Then he paused and said, "I did have the feeling that there was something more in there. . . ."

There was, of course. In order to kill Oswald, Ruby obviously had to be where Oswald was, not in the Western Union office. In order to get married, he would have had to be a man capable of marrying a woman and raising children. In other words, he was telling the psychiatrist that if he had not "died" before he had a chance to become a man, there would have been no need to avenge himself.

For weeks Ruby remained in that sort of floating state, in which almost everything he said seemed to have this double meaning—once you made the assumption that he was involved, subconsciously, with his own lost life. Everything he said fitted

into the pattern. Even the slight amount of information about his life and his talks with psychiatrists that came out of the trial screamed for interpretation.

Mel Belli hired Dr. Roy Schafer of Yale University to give Ruby a battery of psychological tests to find out whether Ruby was suffering from any physical or mental disorders. In one test Ruby was told to assemble 33 different objects in logical groups. Schafer concluded that Ruby showed a "concreteness" rather than an "abstract" turn of mind, because he had "perseverated" on a single idea to explain all the groupings. What was the single idea? "He perseverated on the idea that all the groupings had something to do with grownups and children."

Ruby might have been expected to "perseverate" on that point, because there were many other signs that indicated he was completely obsessed with the way he had been treated as a child. But Doctor Schafer, a psychologist, was concerned with these "obsessions" only as they served to show a lack of flexibility of thought.

The defense's two psychiatrists could hardly have picked up much from these indications of Ruby's view of himself and his life, since they examined Ruby before Doctor Schafer made the tests.

The mind put on display in that courtroom in Dallas was not Jack Ruby's; it was the baffling mind of Melvin Belli, the enormously successful San Francisco personal-injury lawyer who, against all logic, became the chief attorney for the defense.

The flower of the world press came to Dallas and found Melvin Belli standing in a pool of light. In those first couple of weeks Belli could not enter the courthouse without the camera lights coming on. And once those lights are on him, Belli cannot stop talking. He is an engaging man, and part of his charm is that he is such a notable example of that good old American species, the publicity bound. Even his co-counsel, Big Joe Tonahill, who considers him a legal genius and was content to walk one step behind him, felt constrained to add, "Of course, he's been bitten bad by the publicity bug."

Belli was not the original lawyer in the case. A Dallas criminal lawyer named Tom Howard, who had once been a



Defense Attorney Mel Belli caught in three characteristic poses.



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Trial of Jack Ruby

nightclub owner like Ruby himself, was hired by one of Ruby's partners an hour or so after the shooting. Howard, who has never lost a client to the electric chair, is a simple, direct man. He disdains the use of notes, since he feels that lawyers win cases by outthinking the opposition. When Tonahill handed him a question to ask a witness, Tom showed his displeasure by saying, "All right, I'll read this just the way Joe Tonahill wrote it."

The defense Tom Howard planned for Ruby was just as simple and direct. His plan was to push the case through as quickly as possible, stirring up as little fuss as possible. At no time did he intend to plead temporary insanity. His case was that Jack always has been insane. He was going to put about 50 witnesses on the stand to testify cheerfully that, sure, everyone knew Jack was a nut. He was then going to put one or two psychiatrists on the stand, preferably from Dallas, but certainly not from outside Texas.

At the end he was going to place Ruby himself on the stand so that he could cry a little and say, "I shot Oswald because I was so worked up about him killing the President and Officer Tippit. I know I shouldn't have done it, and I couldn't be sorrier. Do whatever you want with me, the only thing I ask is, please don't send me to the chair."

Tom would then deliver his famous "death-house speech," in which he walks the jury through death row, details every move from the time the condemned man leaves his cell until the switch is thrown—and finally spends 15 more minutes letting them smell the flesh burning. "But I will go home tonight and lay my head on the pillow with a clear conscience," Tom tells them, "because I know that the blood of Joe Smith is not on my hands. The blood of Joe Smith," he intones sepulchraly, "is, ladies and gentlemen, on your hands."

Tom Howard figured that with any kind of luck, Jack would be sent to an asylum, and after a decent interval of time, say two or three years, would get out. At the very worst, he figured a 10-year jail sentence—which would have meant that Jack would be out in less than five years.

But Jack Ruby, sitting in his cell, was pretty much running his own show and kept insisting that he wanted "a headliner" to help Tom Howard with the case.

Jack Ruby's sister, Eva Grant, was ready to hire Jake Ehrlich of San Francisco, the model for the TV character Sam Benedict. But the Ruby family, concerned about anti-Semitism, decided against a Jewish lawyer. They then tried to hire Charles Bellows, the most colorful criminal lawyer in Chicago. But Bellows made it clear that he expected a five-figure retaining fee, and that killed that.

While this was all going on, Earl Ruby, Jack's brother, was arranging to raise some money by publishing a book about the case. The writer he wanted was William Read Woodfield, a Hollywood photographer who had written a book about Caryl Chessman. Woodfield told Earl that he didn't think the book could sell unless they hired a colorful lawyer to give the trial some box office. When Earl asked him whom he would recommend, Woodfield suggested Belli, a friend.

Belli leaped at the opportunity to make an international reputation and took the case without fee. While the Rubys were to pay expenses, Belli presumably would get his return from a book he would write about the trial. He brought in two

other lawyers—Tonahill, a personal-injury specialist from Jasper, Tex., and Sam Brody, from Belli's own firm. Howard retired before the trial.

Belli's impact was enormous. He always gives people the sense that he is thrusting himself upon their senses—the door of his hotel suite in Dallas always seemed to be open, and the sound of his voice, over the phone, on TV or in simple conversation, hit a visitor halfway down the hall. The very way he dresses is a caricature. There were, for example, the well-advertised cowboy boots with the two-inch heels and the special sidestraps, custom-made by Peal's of London and polished, reputedly, with a special brand of saddle soap. In Texas, where cowboy boots are not ornamental, they were looked upon as a joke. Assistant D.A. Bill Alexander called them "fruit boots."

Then there was the fancy coat with the Persian-lamb collar, and Belli's rather unusual red-velvet briefcase. Even the beautiful full mane of nicely peppered gray hair, thickly coiffured at the sides and joined together neatly in the rear in perfect movie-star style, seemed to be part of a costume.

His soft, even features do give him the look of a matinee idol while he's in action. Close up, though, he has the puffy, dumpling look of a man who has indulged too freely. Or maybe it was just that he came to the trial overweight.

He is a marvelously eloquent and witty man. Once, walking back to his hotel after a particularly galling day, he started to cross the street against the Don't WALK sign but came trotting back when a car came bearing down on him. "I'm going to wait until I can get hit by a Dallas police car," he said. "Oh, how I'd love that. I'd be manipulating three vertebrae out of joint, screaming 'internal injuries' and 'five million dollars,' and leafing to the indicated page of the medical journal before I hit the pavement."

Belli is actually a rather shy man in private, and almost everybody covering the trial liked him. Even while Belli was accusing Dallas of unspeakable crimes against justice, a woman employee in the courthouse could say, "If he'd just take off that \$750 suit and those silly boots, use that beautiful, mellow voice to advantage, and just smile at everybody, he could do his client an awful lot of good."

At first brush Belli seemed to be the perfect defense lawyer for a man accused of a crime against The Establishment. Despite the record verdicts he has won in his principal field, personal-injury cases, there is not much doubt that he is one successful man who identifies with the losers. His special technique is to take

people who have been terribly maimed and make the insurance companies pay them for the loss of, if not their lives, at least their livelihoods.

With it all Belli takes pains to show that he is a winner himself. "I pick them up as losers, that's true enough," he says, "but by the time I put them down again, they're winners." And he is off and running about a recent case where the insurance company had offered his client a lousy \$5,000 and "it went for \$100,000."

Speaking of his battle against The Establishment, Belli says, "What I am against is Big Brother, the people who know what's better for you than you do." When Belli walked into Dallas and found that it was ruled by something called "the oligarchy"—a semiofficial, semipublicized, self-perpetuating group of businessmen—he could no more have kept



Defense Attorney Joe Tonahill.

himself from attacking it than he could have grown a beard, put on dark glasses and hidden himself in a closet.

During the change-of-venue hearing, he did a particularly savage job on Sam Bloom, who handles public relations for the Citizens Council, from whose members the oligarchy is drawn. After establishing that Bloom had volunteered for public-relations work during President Kennedy's visit, Belli shouted, "After the President was shot, did you hand in a report of the warm welcome Dallas had afforded him?" And before he let Bloom go, Belli asked him whether he thought it wouldn't wash away the sins of the city if Ruby were put to death.

"I don't believe Dallas has any sins that need to be washed away," said Bloom. "Well, if that's your belief"—dramatic pause followed by a disgusted wave of the hand—"I don't have any further questions for you."

Belli launched a frontal attack on the oligarchy during the change-of-venue hearing and continued through the selection of the jury (in which he had to attack the prospective jurors as being under the influence of the shadowy oligarchy). He even attacked the Dallas power structure, against what seemed to be his client's best interests, during the trial.

One of the oldest axioms of the legal profession is that when you are defending an acknowledged murderer, you try to put the victim on trial. With one of the most obnoxious victims of all time to work with, Belli decided to put the city of Dallas on trial. He dared that jury to find his client guilty.

The local courthouse reporters—a predominantly young, liberal and extremely



Assistant D.A. Jim Bowie.



Dallas Judge Joe B. Brown.

capable group—had no thought at the beginning that Ruby could get the chair. By the time the change-of-venue hearing was over, they were saying humorously, "There's only one man who can kill Jack. His lawyer."

After a very few days in court it became evident that the original impression of Belli as the perfect defense lawyer was simply not true. Belli is not, at heart, a defense lawyer at all. He is a prosecutor, and the defendant is only the means through which he prosecutes society. In his personal-injury cases where he performs so brilliantly, Belli not only prosecutes society, he literally *makes society pay*. Belli's technique, whether it is conscious or unconscious, is to get the jury to pay his client what he would get normally, plus another 100 percent in conscience money. And when society pays the victim, it also pays Belli his 33 1/3 percent to prove to him he's still ahead.

In the case of Jack Ruby, Belli apparently adopted the defense he was best equipped to make. His case, as it developed in court, was not really that Ruby had killed Oswald because he was insane. Not in the usual sense of insanity, anyway. His case was that Ruby was insane because of a physical damage to the brain, which had been brought about by a lifetime of brawling. Society, having vented its own murderous impulses on Jack Ruby, was obviously getting what it deserved when it was repaid in kind.

This was a defense that did something else for Belli. In coming to the most important case in his life, Belli undoubtedly felt more comfortable about running on a familiar track. Because what Melvin Belli tried in that Dallas courtroom was neither a murder case nor an insanity case. He tried a personal-injury case.

The trouble was that he based it on something called psychomotor epilepsy, which, as it turned out, was extremely difficult to prove in a court of law. And, in my view, he made it worse by giving it away in advance.

The turning point in the trial came before it began—on January 20, the first day of a two-day bond hearing. Bond hearings serve a special purpose for Texas defense lawyers, even when it is obvious they cannot get their clients out on bail. In Texas, unlike most states, the law does not require the state to turn over police records to the defense or to give the defense much of anything that might help it prepare its case before the trial starts. Being entitled to so little information, defense attorneys have come to use the bond hearings as a means of pretrial discovery.

Mel Belli did the opposite. He gave the prosecution advance information on his plans, and got little in return. He did it,

he says, because he felt the "psychological climate" of Dallas was so frigid that he had to demonstrate as quickly as possible that Ruby was not a cold-blooded killer but a man with a sick mind.

Belli put Doctor Schafer of Yale and a psychiatrist, Dr. Walter Bromberg of Katonah, N.Y., on the stand and asked them detailed questions which clearly established that the defense would be based on a claim of psychomotor epilepsy caused by organic brain damage—and specifically ruled out both schizophrenia and paranoia, the conventional defenses in an insanity plea. Judge Brown had agreed to order a full battery of neurological tests on Ruby, but Belli did not wait to see how they came out. He was betting everything on an examination of Ruby's brain waves.

To District Attorney Henry Wade and his aides, the sight of a defense lawyer laying his cards one by one on the table was dumbfounding. At one point Assistant D.A. Bill Alexander actually objected that Belli's questions to Doctor Schafer were inappropriate to a bond hearing. Then, as it became clear what was happening, Wade laid a restraining hand on Alexander's elbow.

When Belli had first hit town in a burst of publicity, the D.A.'s office had come close to panicking. Morale had sunk so low that Wade called his top men into his office to remind them (and himself) that they had been taking on the best lawyers in Texas for a dozen years and had always been able to more than hold their own. But on the second day of the bond hearing Alexander whacked Wade across the knee and said, "We're gonna cut this guy's butt. All we got to do from here on is to be careful." (In lawyer language that means "make no reversible errors.")

Under the adversary system on which we operate, each lawyer has the right—in fact, the duty—of taking whatever unfair advantage he can. That's what the adversary system means. The third party in the system, the judge, is there to hold both sides within acceptable bounds, and if he cannot do it through the force of his personality, he can fine them or put them in jail. Under Judge Brown the system fell apart. To this observer, Joe Brown is a most amusing and likable character, who seemed constitutionally incapable of maintaining order—let alone respect—inside a courtroom.

We can recall Mel Belli dancing down the street in front of his hotel one evening, snapping his fingers happily and saying, "Can you think of any other court in the country where both Joe Tonahill and I wouldn't have been in jail the first day?" And then snapping his fingers toward the sidewalk, he said, "Git along there. . . I've never had a judge tell me to 'git along' before. Git along if I dogie. . ."

In the early days Belli was still using the common Latin phrases taught in law school and used in most of the courts in the land. In Texas, where the lawyer and the witnesses are frequently on a first-name basis, they see no great reason why the English phrases shouldn't be used. It was common knowledge that Brown had called Belli into his chambers to tell him, "Mel, will you do me a favor and lay off that Pig Latin?"

"I enjoy my daily visits with Joe Brown," Belli said. "He keeps a little can of baking soda in the bathroom of his chambers. I look at it as soon as I walk in. When that can is almost empty I'll know he's just about ready to let the case go to another city." But only a second later Mel Belli was saying, "I love that man. I'd never do anything to hurt him."

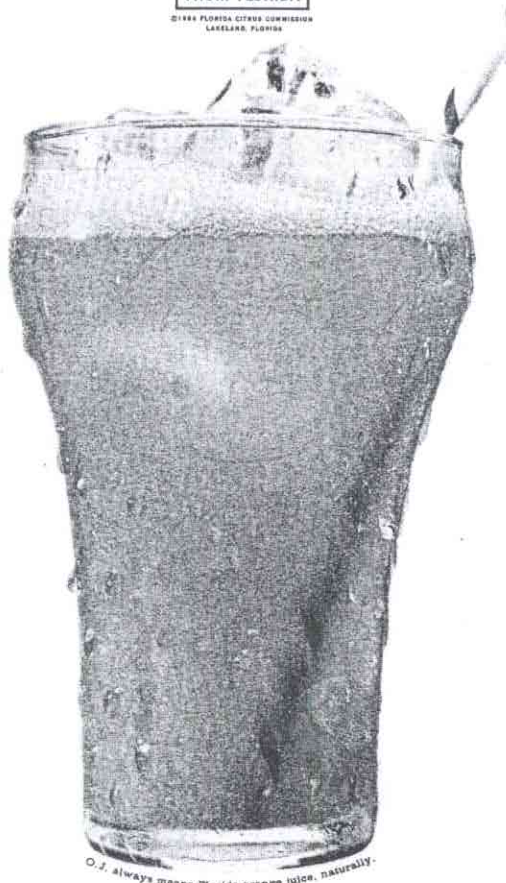
Chilled O.J. is a good thing to give thirsty kids

because it's real orange juice and that's all there is to it. Real Florida orange juice. Full of natural vitamin C. You don't care if your children drink it from breakfast to bedtime, or for that matter even your husband, too. Buy it at the store or from your milkman.



THE REAL THING
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O.J. always means Florida orange juice, naturally.

Trial of Jack Ruby

Judge Brown has many attractive qualities. There was a moment during the trial when all the lawyers were gathered at the jury-box railing to study Jack Ruby's brain tracings. Ruby himself was left alone at the table among the scattered papers, the piles of books and the multi-colored briefcases. In that moment Jack Ruby's wandering eyes met the wandering eyes of Brown. Ruby offered a strained, tentative smile, uncertain whether it was proper to communicate even that indirectly. Brown's lips moved into a compassionate little smile, and he gave Ruby a little nod. It was simply the acknowledgment that they were both human beings, and that if one had somehow ended up in the dock and the other on the bench, it was just the way the ball had happened to bounce. It was perhaps the only time during the entire trial that Jack Ruby was treated as a human being, as opposed to being a defendant or a curiosity.

Joe Brown looks like a judge—nicely grayed and wondrously wrinkled. But no one has ever compared him to Oliver Wendell Holmes in anything save appearance.

Since he was elected to the Criminal District Bench in 1956, 34 of his cases have been reviewed by the Criminal Appeals Court in Austin. Seven of them were remanded, four for what may be described as elementary errors. (On two separate cases he incorrectly allowed the police record of the defendant to be admitted into testimony.)

Until a new court was added this year, there were only two other criminal district courts in Dallas County. The two other judges had 60 reviews with four reversals.

Judge Brown got the Ruby case by an accident of timing. Each of the judges presides over the county grand jury for one quarter. Brown had the last quarter in 1963, and he resisted all pressure to assign the case to any docket but his own.

One member of the D.A.'s office went so far as to visit Brown on his own to plead with him to give it up.

"I love you, Joe, but this is too big for you," he said. "You're just going to make a damn fool of yourself. Do us all a favor and assign it to someone else." But Brown, sorely hurt, refused.

None of the defense lawyers made any

secret of their belief that it would be impossible for Brown to get through the trial without making a reversible error, and much of the trial became a game of unashamedly trying to trap him. The district attorney's office, in turn, had three D.A.'s tucked away in an upstairs office to check every ruling the judge made, so that they would be in a position to rescue him before it was too late.

Brown was cunning enough to know that if the defense was trying to maneuver him into making an error, and the state was doing its darndest to prevent him from making one, the smartest thing to do would be to trust the state not to lead him astray. When the state said "Objection," Brown, almost always, it seemed, would say "Sustained." It got to be so nearly automatic that at one point Belli argued against a "ruling" for 30 seconds before Judge Brown broke in to tell him, "Go ahead with your questions, Mr. Belli. The court hasn't sustained the objection."

In the end Judge Brown hurt both sides in odd and unpredictable ways. He hurt Belli by holding him in such loose rein, because Belli—whether he appreciated it or not—was a far superior lawyer when he tended to business. Brown hurt the prosecution by being so quick to uphold their objections that they finally had to pull back and refrain from conducting as tough and as harassing a battle as they usually do. There are times, after all, when the game calls for one side to make an objection with every expectation that it is going to be overruled. There were times in this trial, in fact, when the state had to fight like a tiger to get its own objections overruled.

When it came, finally, to the selection of a jury, both sides joined battle over the 162 veniremen. The prosecution was faced with the unprecedented difficulty of having to impanel a jury made up for the most part of people who had seen the murder, on television. Even though the court rejected Belli's argument that anyone who had seen it was a witness, Belli still had a corollary issue that a witness who had seen it was unable to give Ruby a fair trial. The whole thing became so ludicrous that for one full afternoon Judge Brown's rulings had pretty much established the formula that if the juror had seen Ruby shoot Oswald, that was

OK, but if, having seen it, he knew Ruby had shot him, he was disqualified.

The formula that was finally settled upon was based entirely upon semantics. If the juror stated that he had "an opinion" of the defendant's guilt or innocence, he was still in the game. If the defense could get him to agree that he had a "fixed opinion," however, he could not then extricate himself by claiming that he could lay that opinion aside.

Through that narrow hole, which expanded and contracted according to each side's alertness and each side's will for battle, the prosecution had to drag, squeeze and carry their jurors.

For a while the game was played almost by rote. Since the prosecution had first crack at every juror, they would immediately establish that he had no fixed opinion.

By the time the defense came to bat, the prosecution knew pretty well what kind of juror they had. If they wanted to fight for him, they would block every attempt by Belli to jockey him into a corner. "This jur-or," Assistant D.A. Jim Bowie would say, alerting both the court and the juror himself, "has already testified that he does not have any fixed opinion. The question is repetitious."

If, on the other hand, the prosecution did not want to fight for a juror, they would simply sit back and let him flounder. Tonahill's style was to get him to agree that the sight of the shooting was a horrible thing for any man of normal sensitivity. "That scene was so horrible," he would say, "that you can close your eyes and see it right now, can't you?"

And then, "It was so horrible that it will stay with you to your dying day."

From there he was only a step or two away from establishing the point that a memory so shattering could only leave a man with his opinion fixed.

For the most part the defense simply bludgeoned from one area to another, asking whatever questions suited them, no matter how irrelevant and improper the questions might be. They were forever volunteering to explore the jurors' unconscious with such scientific aids as a Rorschach test. (Belli had the whole set of ink blots hopefully at his fingertips.)

Tonahill had a remarkable talent for asking the same question six ways and for ignoring the judge's instructions to get on

to something else. In one stretch 46 out of 50 questions were inadmissible.

"You were hurt the way Jack Ruby was hurt," Tonahill would say. "The way a lot of people were hurt?"

"To which we object, Your Honor," Jim Bowie would say.

"Did you even happen to wonder why this man Oswald who killed President Kennedy lived as long as he did?"

"To which we object, Your Honor."

"Would you be a member of the first jury to sentence to death an ex-G.I. who killed the Communist who killed the President? Especially here in Texas?"

"To which we object, Your Honor."

Eventually Bowie didn't even bother to sit down between objections. After a couple of weeks of this it did seem as if the lawyers for the defense were irresponsible and contemptuous of good legal procedure. It inevitably came to seem that the district attorney's office was the only hope for order and sanity.

But, of course, it was all just a game among lawyers, and it was only the tide of battle that had cast them in their respective roles. With 10 of the jurors selected, and the defense picked clean of its peremptory challenges, two Negro women came to the stand. Wade had already made it quite clear, by his abrupt and discourteous questioning, that he was making no effort to qualify Negroes. Belli, in fact, had protested indignantly after Wade had pointedly failed to address a Negro venireman as "Mister."

The earlier Negro veniremen had disqualified themselves quickly, but it became apparent that the first of the two women was prepared to go the full route. And suddenly there was Jim Bowie—that champion of common sense—asking her, "From what you heard, did you form any opinion on whether Jack Ruby was the man who shot Oswald down at City Hall?"

No, she hadn't.

Q. "The picture showed the shooting, did it not?"

Well, she answered, it showed a man with a gun.

Q. "From what you saw of the picture and the gun, you formed the opinion that Jack Ruby was the one who shot Lee Harvey Oswald."

And now it was Tonahill who was objecting to the same questions he had himself been asking for two weeks. The state used a peremptory challenge to reject the woman.

The second Negro woman was middle-aged and heavy-set. She was wearing a blue cotton print dress and a frigate of a dark-blue hat, topped by a huge white rose garnished with a hideous green leaf.

Frank Watts, the baldheaded No. 4 man of the D.A.'s team, took the witness.

Q. "Do you believe in the death penalty?"

A. "Yes."

Q. (Incredulously) "The Bible teaches you that?"

Objection!

Q. "Murder with malice is where a murderer does exactly what he intended to do. Wrongfully, intentionally, maliciously. Without justification. You might say he has a wicked heart. Would you consider giving a man as little as two years in the penitentiary for that?"

Belli objected on the same grounds that the state had always used when he asked the same question—in short, that it was necessary to explain that the law allowed such a sentence only "if the circumstances warranted it."

For all their talk, due process is to lawyers what a rag doll is to a child; they

From left, Assistant D.A. Frank Watts, Defense Attorney Jon Tonahill, defendant Jack Ruby and D.A. Henry Wade gaze impassively at proceedings.



embrace it or they kick it around as suits their mood and their purpose.

As the defense lawyers kept interrupting, Watts barked at the woman, "They'll have a chance to talk to you later. Now you listen to me."

The whole social structure of the South was in that voice. Watts did what Belli had never been able to do: He stripped away the court's insulation and put us right into downtown Dallas.

But the Negro woman was not going to let this man make her say anything she didn't want to say. The prosecution used one of its peremptories on her as well.

Finally, after two weeks of ploy and counterploy, Jim Bowie walked into the D.A.'s offices three flights up from the courtroom and called out, "Well, where's Alexander? He's been hollering for a jury and I've got him one. Alex, get the script ready." It was—as Belli had predicted—a white, Protestant jury. It was made up of eight men and four women.

After the jury was sworn in, Jack Ruby was directed to stand. He looked astonishingly changed; Ruby had not only shriveled up but had almost disappeared. The change had begun when the first venireman took the stand, and Henry Wade had begun explaining the jurors' duty to assess punishment. "Since the maximum in this case is the electric chair, we will ask you and the other jurors to render that verdict," said Wade. And Ruby's head snapped as if he had been hit between the eyes. What he had known all along had finally become real, in all its enormity, when spoken aloud in an open court. *They really meant it.* Ruby's face stiffened and seemed to stiffen more through the next few weeks, as though he were building a protective sheath.

Now Henry Wade strolled across to where Ruby was standing and stationed himself directly in front of the defendant. With one hand in his pocket he read off the indictment in a voice that had very little of the snap of accusation. Their eyes never met; each seemed to be looking over the other's left shoulder.

"Mr. Ruby," said Judge Brown, "how do you plead?"

Softly and hesitantly, not quite sure apparently whether he or his lawyer was supposed to speak, Jack Ruby said, "Not guilty, Your Honor."

Somewhat hesitantly, too, Belli broke in to say that Jack was pleading not guilty by reason of being insane at the time of the act and "presently insane, as he stands here right now." As if to demonstrate that lack of mental capacity, he turned to Jack and said, "Repeat it after me, Jack, not guilty by reason —"

Judge Brown broke in quickly to tell him, as Belli undoubtedly knew, that he could only enter a simple plea of not guilty. If Ruby were insane, as he stood there, the trial would have had to be stopped. Belli could have asked for a sanity hearing before they began to select the jury; it was now too late.

Ruby sat down without saying anything more. The four words were the only ones he spoke through the entire trial.

While Belli entered his plea, Henry Wade slouched in his seat. You could scour the whole country without finding a man better cast for the role of district attorney than Henry Menasco Wade Jr. He is an easygoing man, but he is also persistent and thorough—and if he believes one thing more than anything else in the world, it is that men should not take the law into their own hands.

Wade's father, Henry Menasco Wade Sr., had been a judge in Rockwall, Tex.,

about 21 miles from Dallas. Five of his seven brothers are lawyers. Before Henry was born, there had been a lynching in Rockwall that had ripped the little town in half. Judge Wade had been the leader of the faction that had opposed and condemned the lynchers. From his first conscious moment young Henry Wade knew who had taken part in that lynching, and when he went to town and saw one of them walking along the street, he hated him with the fierce hatred of boyhood.

In many ways Wade is both a reflection of and a reaction to his father. "My father wasn't a man who was close to his children," Wade says. "He was a strict disciplinarian of a school you don't see much of now." Wade, for his part, likes to take his five kids, one or two at a time, on long early-morning rides out to a lake or to his own farm, and then drop them off at school on the way back. On the first day of the change-of-venue hearing, the start of the most important case in his life, he rushed home so that he could attend a father-son night at the junior



Police Sergeant Patrick T. Dean.

high school with his 11-year-old son, Kim. He brought his two boys, Kim and Hank, to the night session, and when they got home, they all went out to the backyard, in a light rain, to shoot baskets.

So things were not exactly what they seemed. The defense attorney was a prosecutor at heart, and the district attorney was a pushover for kids.

Wade is also a rough and tough competitor. "If you go hunting," says a Dallas attorney, "Henry gets the biggest deer, and if you go fishing, he gets the most fish. If you play bridge or dominoes with him, he'll beat you. He wants to win. . . ."

In 13 years in office Wade has become widely accepted as the best district attorney Dallas has ever had. His office got convictions on 93.5 percent of its cases in 1963, the best percentage in the country. There is no organized crime in Dallas, no syndicate operation which pays the politicians and the police for grazing privileges. Dallas, once a wide-open town, is closed so tightly because the oligarchy decided after the war that the city's future lay in attracting white-collar businesses.

In Wade the oligarchy found a man who couldn't be touched. He is so honest that his wife, Yvonne, would not dare to drive down to the corner after drinking a glass of wine. "With Henry, right's right and wrong's wrong," she says.

All this, Belli later found, was a factor in the trial of Jack Ruby. With all his other difficulties, Belli was forced to go up against a jury that had great admira-

tion for its law-enforcement agencies—a situation which boggles the mind.

The testimony of a couple of police officers became very important in establishing premeditation. Dallas jurors are predisposed to believe their police officers, because they are confident that their police force is incorruptible.

After eight jurors had been selected, I was walking down the street with Belli, when he suddenly clenched his fist and exclaimed, "Any other city in this country, dammit, and I swear I'd walk this guy out! I swear it!" It seemed an admission that he knew even then that he was not going to walk Jack Ruby out of that Dallas courthouse.

Belli had hurt himself at the bond hearing and may have thrown away the initial impact of his personality in rantings against the oligarchy at preliminary hearings. Yet he started the trial as if he were going to walk on water. The first day was the best day Belli had.

The prosecution's original plan had been to place about five witnesses on the stand to establish the basic legal case that Oswald was dead and Ruby had killed him. At the last minute, however, Wade decided to hang a sort of conspiratorial smoke screen over the trial by demonstrating that Ruby had shown "an unnatural interest" in Oswald's movements.

There was a certain indistinct pattern that could be strung together. On the evening of President Kennedy's assassination, at the very time that Oswald was in the homicide office, Ruby had phoned a homicide lieutenant to ask if he could bring up some sandwiches for the boys. Later that night he had worked his way into the police station with the press, and he was there in the office when Oswald was paraded through. And he had, according to the testimony of a policeman, been standing at the garage ramp the following afternoon at the very time that Oswald was originally supposed to have been moved.

He had also been in the Dallas News building writing out ads for his clubs at the moment Kennedy was shot, and it is indisputably true—if not particularly relevant—that the News is only two blocks from the Texas School Book Depository, where Oswald allegedly fired his rifle.

The strategy of tracking Ruby through those two days was questionable at best. Tom Howard's plan had been to march Jack's acquaintances onto the stand in job lots so they could tell how unstable he was. By putting on the people whose paths Ruby had crossed, Wade, to a degree, was doing the same thing.

The state opened with the two ad salesmen Ruby had talked to at the News. As soon as Belli got them, he was able to establish Jack's shock and grief at the news of the shooting, as well as Jack's general reputation for instability.

For some reason Alexander then put on yet a third employee of the advertising department, Georgia Mayer, a pretty young secretary with a Dutch hairdo. All she did for the state was to corroborate the hardly disputed point that Jack was still in the office after the assassination.

And then she fell to Belli. No, she said, Jack wasn't crying, he was just sitting there with "his eyes fixed toward the back of the office."

Belli leaned back on the rear legs of his chair. "You mean fixed like a fixed stare?" Belli asked, pouncing. He turned to the courtroom, acting out the part of a man with an indisputably fixed stare. "Like this?"

"Yes, and dazed," she said thought-



Assistant D.A. Bill Alexander.

fully. "Just like I'm staring now at the back of the room—just fixed."

For the next five minutes he put to Miss Mayer every question he could think of that would allow him to drive home those two words, "fixed stare."

With each succeeding witness, Belli set to work to draw the portrait of an eccentric but essentially harmless character. He was "a Damon Runyon character," "the village clown," "a character tolerated by the community." And even— with what seemed to be unnecessary cruelty to his client—"some kind of goof around the community."

When Belli is operating well, he rocks back and forth. When he's standing, he rocks on his heels; when he's sitting, he rocks onto the rear legs of his chair. On this first morning he looked as if he were on a rocking chair.

As Henry Wade walked into his office at the noon recess, he growled, "This afternoon let's put on some witnesses for the prosecution."

As the last witness in their tracking operation, the state called Doyle Lane, the Western Union man who had waited on Ruby and, more important, placed the time stamp—11:17—on the money order Ruby had wired to an indigent stripper just before the Oswald murder.

Since the time stamp showed that Ruby had only three to four minutes to walk the 396 feet to the police station, Lane was the defense's own star witness in knocking down the charge of premeditation. By putting him on the stand as its own witness, the state was softening the impact of his testimony just a little—although Belli was careful to let the jury know that the defense had also subpoenaed him.

When Lane's name was called, Ruby, who was apparently well aware of Lane's importance to him, watched in apparent surprise as Lane came to the stand. Throughout Lane's testimony Jack seemed to have trouble breathing, his characteristic look when he was upset—the slightly pursed lips somehow giving the impression that he was letting the air come out slowly in a low whistle.

Lane turned out to be a plump man with a slight lisp quite similar to Jack's, and a somewhat prissy way of speaking. When at the very end he answered a question by saying, "My goodness, I went over that at the other hearing," it seemed just about right.

The tune Belli played on cross-examination could have been titled "11:17."

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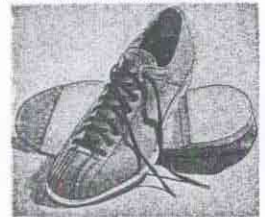
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OUCH HAPPY

Trial of Jack Ruby

He hit the time element from all possible directions, and he passed the money order around the jury box to let them gaze upon those magic figures. When he finally let Lane go, Belli said, "Mr. Wade, would you mind if we circled the time?"

Said Wade drily, "I believe you've mentioned it about five times."

Once the prosecution had managed to extricate itself from the fairly disastrous plan of turning Ruby into Oswald's stalker, Assistant D.A. Bill Alexander got down to laying the foundation for his case.

While Wade had the responsibility and the final word on strategy, it was Alexander who really tried the case. He is Henry Wade's hatchet man, the man who draws the fire and gets the job done, the man who, to use one of his own favorite expressions, "can fade the heat."

Bill Alexander is tall and rawboned in a square-shouldered, flat-backed way that is characteristic of a farmworker. His eyes are narrow—he is tight-eyed—and they somehow seem to be made even more menacing by a quick flash of a smile that spreads up across his face and then is gone almost as soon as it has begun. Alexander's courtroom delivery struck the ears at first as an elocution-class monotone, in the sense that he gives each syllable and letter equal time and weight. It is a style that seemed crude and amateurish when pitted against Belli's beautifully shaded and modulated voice. Once you became accustomed to Alexander's delivery, however, the very lack of modulation gave it a power that day by day seemed to become the remorseless, uncompromising voice of justice—or, more accurately still, of vengeance.

Alexander customarily wears a pistol in court, a habit dating back to the days when he used to ride with the Dallas police vice squads. He didn't wear it during the Ruby trial, because he had been tipped off that Belli intended to leap up and shout, "Your Honor, I fear for the safety of my client. Mr. Alexander carries a gun. I demand he be searched and, if necessary, disarmed!"

His information was probably correct. After the verdict was in, Belli said, "The

intrigues and backstabbing that went on in this case were just unbelievable. They bugged our first meeting here by getting to one of our investigators; then we got somebody in their office, and we were getting a steady flow of information until they found out. I swear that you could never pick up the phone without wondering whether it was bugged." (At one point the D.A.'s office got a tip that Ruby was going to throw a fit in the courtroom and Belli was going to fake a heart attack. They took it seriously enough to station their own doctor among the spectators so he could rush in and examine Belli.)

Alexander's crudeness makes it easy to underestimate his ability. As the trial of Jack Ruby progressed, it became increasingly evident that while Bill Alexander did not have Belli's maneuverability in interrogation and couldn't approach Belli in sheer eloquence, he was—in that courtroom, on that case—the best and the most solid lawyer we were watching.

It was Alexander who called to the stand J. R. Leavelle, 44, the detective who will be identifiable forever as the man in the light suit and the tall Stetson who looked on aghast as Ruby pulled the trigger. At 9:30 A.M. on November 24, two days after the assassination of Kennedy, Leavelle, Detective C. N. Doherty and Detective L. C. Graves were instructed to bring Oswald down from his jail cell on the fifth floor. Leavelle handcuffed Oswald's hands together and delivered him to an office, where two Secret Service men were waiting to question him.

Oswald was still as uncooperative as ever. ("He never gave you a direct answer," one detective says. "If you asked him what time it was, he'd say, 'What time do you think it is?' And if you said, 'We want to know what time you think it is,' he'd say, 'Look up at the clock on the wall and you'll see!'")

At around 11:10 A.M. they finished the interrogation and prepared to move Oswald from the city jail to the county jail. The time of the transfer was purest chance. The plan was to place Oswald in the backseat of an unmarked police car between Leavelle and Graves.

Detective Doherty was told to back the car into the driveway that led from the



Little Lynn, the pregnant stripper.

jail-office door to the ramp. The driveway is perhaps 30 feet long. There was no plan to walk Oswald down those 30 feet. The plan was to show him to the cameras just long enough to prove that he had not been beaten. The plan went wrong when scurrying reporters and photographers cut off Doherty.

At approximately 11:15 Oswald was being walked to the elevator on the third floor between Leavelle and Graves. As the elevator reached the basement, Leavelle turned to Oswald and told him, "If anybody tries to shoot you, I hope their aim is as good as yours was."

Oswald gave him his little smirk. "Nobody's going to shoot at me."

Preceded by the three officers, they walked through the jail office to the outside door. With the door held open, they hesitated for a few seconds, waiting for the all-clear signal. Leavelle could see only the heavily lighted driveway and the officers lining the walls.

In questioning Leavelle, Alexander was almost too casual with the key question: "What, if anything, of an unusual nature happened as you approached a point about three feet in front of the corner?"

"A man came from the crowd of reporters, photographers and"—drily—"police officers.... He came up in front of myself, Oswald and Detective Graves."

Q. "What first attracted your attention to this man?"

A. "When he first dashed from the crowd, I saw he had a pistol in his right hand and he was ready to shoot.... He took two quick steps and fired the gun."

Q. "What did you do?"

A. "I tried to catch the man by the shoulder and did succeed in catching him by the left shoulder."

Q. "What did Oswald do?"

A. "He grunted and said, 'Oh,' and slumped to the floor."

As Oswald went down, he dragged Leavelle down with him. Graves had immediately grabbed Ruby's gun hand and was wrestling the gun away from him. "The right hand was still contracting on the gun as if he was attempting to fire another shot," Leavelle recalled.

Belli had been demanding to see the gun from the first day of the bond hearing, but under Texas law he simply was not entitled to see it until the state was ready to introduce it into evidence.

Belli tries most of his cases in California, where the laws favor the defense. "In California," Belli says, "the district attorney has to turn over everything in his briefcase, including his tapes." If he doesn't turn over the evidence upon demand, he cannot use it in the trial. In Texas a defense attorney is entitled to nothing. He is not even entitled to see the



Court reporter records testimony of defense witness Dr. Towler.

police reports. The dangers such a system holds for the unwary defense lawyer was demonstrated during the second day of the trial, which may well have ranked as one of the worst days that Mel Belli ever suffered in a courtroom.

The state had to prove premeditation, and they had to prove it in the face of the 11:17 time stamp on the money order and the apparent accident of Ruby's arrival at the right place at the right time. That meant they had to prove it out of Ruby's own mouth, even though all of us who grew up on B movies—or Congressional hearings—know a man cannot be made to testify against himself.

But there was one tiny crack in that armor, and the D.A.'s office set out to drive their case through it. The opening shot had been fired on the first day of the trial, when Alexander asked Leavelle whether he had heard Ruby say anything as he was being hustled past Oswald's body in the jail office.

Leavelle had barely begun to answer before the defense attorneys were on their feet to object that, since Ruby was under technical arrest at that time, nothing he said could be repeated in court. The state maintained it was part of the *res gestae* of the case, and the objection was overruled. (*Res gestae*, literally "things done," means anything that comes naturally and spontaneously out of the crime. The classic example is that if you hit me on the nose, and I say, "Ouch," that's *res gestae*.)

The time element is therefore a prime consideration, although not completely binding. And, except in very rare cases, anything said in response to a question would obviously not be spontaneous and would therefore fall outside the scope of *res gestae*. In Texas the definition is left entirely to judicial interpretation.

As each succeeding police witness took the stand, the prosecution embarked upon the delicate job of stretching *res gestae* up the elevator, out into the corridor, into Ruby's jail cell and, finally, into a formal interrogation which could not, under the kindest interpretation, have ended less than 15 minutes after Oswald was shot.

This was by far the shakiest part of the state's case. Since the Fifth Amendment is involved here, it gave Belli grounds on which to bring an appeal to the U.S. Supreme Court. It seemed to be Belli's best hope for a reversible error.

The state's *res gestae* case was taken a step further by Don Archer, a balding, moon-faced detective, who had helped wrestle Ruby to the ground and bring him to a cell. He testified that when Jack was on the ground, he had heard him say, "You all know me, I'm Jack Ruby"—which hardly sounded like a man in any kind of an epileptic fit. Over the objections of the defense, he was also allowed to testify that while they were riding in the elevator, he had said, "Jack, I think you killed him," and Ruby had answered, "I intended to shoot him three times."

Belli, operating smoothly, got Archer to concede that "under the circumstances" Jack had looked exceptionally calm, which is a characteristic of a man in a psychomotor-epileptic fit. He also got him to admit that just before Ruby had said, "You all know me, I'm Jack Ruby," the cries of "Who is it? Who is it?" had been shouted through the basement—the implication being that these cries had jarred Ruby out of his blackout.

Belli asked Archer for a copy of the official report he had made to his superiors. But Archer said he didn't have one.

Q. "When you went over your testi-

mony with the district attorney, was that statement present?"

WADE (quickly): "We don't have any such statement."

Belli insisted that he had a right to see it.

JUDGE BROWN: "You're making a formal request for the statement? Request denied."

BELLI (completely astonished): "We can't have it?"

Once the witness began to testify to the same material he had written up in his report, Belli was—as he said—entitled to see it "for purposes of cross-examination and impeachment."

While Belli was making this point, Phil Burleson, of the defense team, ducked into the bailiff's office to have a subpoena made out for Archer's superior, Capt. L.C. Nichols, instructing him to bring the report into court.

Alexander, tipped off to what was happening, rushed out of the courtroom, met



Defense witness Dr. Roy Schaffer.

Nichols just as he was coming up the stairs, and plucked the report out of Nichols's hand. "Let's make them get it the hard way," he said.

Back in the courtroom Defense Attorney Joe Tonahill shouted that Bill Alexander had defied the court's subpoena. "The statement is not admissible," ruled Judge Brown.

Archer was followed to the stand by Thomas D. McMillon, a detective for seven years. McMillon testified that he had been looking head-on at Ruby as Ruby had come out of the crowd, and had heard him say, "You rat sonofabitch, you shot the President"—which was six words more than anybody else had heard. He also corroborated the exchange between Archer and Ruby, but remembered it in even greater detail. "He said he'd meant to shoot him three times, but we had moved too fast and prevented him from doing so."

On cross-examination McMillon noted that Ruby said, "Somebody had to do it. You guys couldn't do it."

McMillon was an irritating witness for Belli anyway, so irritating that he kept him on the stand for more than four hours. McMillon had a young, friendly, open face, an air of ingenuousness that somehow didn't fit with a detective, and a remarkable inability to understand a question until he was good and ready to understand it.

As Belli became increasingly angry, he started to say, "These other conversations that you have memorized—strike that—that you have testified to here..." Then he paused to look down at his notes as if he were picking up a new line of

questioning, swung his eyes back up at McMillon and—incredibly—he said, completely out of context. "All right, did he say anything about the dog in the car?" (Belli was referring to Jack Ruby's November 24 visit to the Western Union office just before the Lee Oswald murder.) McMillon, frowning as he tried to remember, said, "Later on in the day that came out."

Q. "All right, tell us what he said... that he had left his dog in the car across the street?"

After a couple of more questions about the dog, Belli asked, "... he said that he had left the dog in the car to go over and send the wire, didn't he?"

A. "I can't recall all that conversation." Alexander, having restrained himself through the earlier questions to get it all firmly on the record, stood up—his face flushed in disbelief—and said, "I want to warn counsel that with these questions he is opening up the door to the entire transaction in the jail cell."

And he had. Once Belli himself had introduced the subject of Ruby's jail-cell conversations, he had opened up anything McMillon had overheard and, quite probably, anything else Ruby had said in the cell.

The state didn't need the *res gestae* cloak to cover it anymore and, frankly, nobody outside the district attorney's office had even been able to see how *res gestae* could be stretched that far.

The day was not yet over. Belli had also been demanding the reports made out by McMillon and had been turned down. As soon as Belli finished his cross-examination, Henry Wade dropped McMillon's statements on the court reporter's desk and offered them into evidence.

Since Belli had spent the greater part of the afternoon expressing his profound belief that the detective's statements, if the jury could see them, would be considerably different from his testimony, Wade was not only snatching what had been shaping up as a strong basis for an appeal away from Belli, he was also turning McMillon into his own corroborating witness.

Belli was up and shouting for a mistrial. "We are being baited. Now if we object to having it introduced, I'll look as if I'm not sincere to the jury."

With nothing much to lose, Belli demanded that Judge Brown allow him to enter Archer's statement, too, carefully noting for the record that he had already subpoenaed it.

Brown refused. "You only have these [McMillon's] reports because the state has tendered it," he said in what seemed like a clearly improper ruling.

Since he was getting no help at all here from the court, Wade finally had to introduce Archer's report himself. Reading the reports quickly while Wade was conducting his redirect examination, Belli came across one damaging quote. Belli ran up to McMillon, clutching all three statements, and yelled, "You remembered the parts that were damaging to Ruby, but you didn't remember everything, did you? How come you didn't tell me that Ruby had said, 'You won't believe this, but I didn't have this planned; I couldn't have timed it that perfectly?'"

McMillon, looking bewildered, denied Ruby had ever told him that. Angrily, Belli shoved the statement under his nose.

"That isn't my statement," McMillon said, brightening. "It's the other officer's." Turning to the front page, he pointed triumphantly to the heading. "See?"

Belli hung his head. "There are days you have to suffer," he said, with exag-

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Trial of Jack Ruby

gerated tragedy. Belli knew he had been reading from Archer's report, of course. But Archer was gone, and he had used the only way available to get that key statement in front of the jury.

Belli was able to point out that the two most damaging quotes McMillon had given were in the second report, made one week after the original one. But McMillon explained that the first had been a security report involving only what had happened in the basement, while the second had been for the specific purpose of reporting on the arrest itself.

By the end of the day Belli's hair was ruffled for the first time in memory. He himself seemed weary and dispirited.

The next day it got worse. The star witness in establishing premeditation was Sgt. Patrick T. Dean, 32, a dark and black-haired young man, whose normal expression is a slow frown. When he got to Ruby's cell after the murder, Dean testified, he found Ruby stripped to his shorts. McMillon, Archer and another detective were with him.

WADE: "And then did you ask a couple of questions?"

Belli entered an objection to any questions about any conversation that might have taken place with Ruby.

Brown overruled him. The case for the appeal was being laid out now, and there were no theatrics. "In Texas law," Belli said, "a question may not be asked of a prisoner, and his answer then repeated in court, if he has not committed it to paper and signed it."

Alexander was up on his feet to argue that Belli had opened the door during the questioning of McMillon. "Not only is it *res gestae* but, having gone into what may have been an inadmissible conversation, they have made the balance of it admissible," he said.

Belli took his exception—the magic word that must be uttered before an objection can be converted into an appeal. The record had been made, and Dean proceeded to an interview between Ruby and a Secret Service man. "Ruby said something to the effect that he thought about the killing two nights prior, when he saw Oswald on the show-up stand."

"Ruby said he believed in due process of law, but he was too torn up and emotional about this event. He said this man not only killed the President but also shot Officer Tippit, and that the outcome of the trial would be that he would be given the death penalty inevitably, and he didn't see any sense for a lengthy trial that would subject Mrs. Kennedy to coming back to Dallas to testify."

Belli was up now, shouting for a mistrial. "That man's Constitutional rights have been violated," he said.

WADE, pressing on, asked Dean what Ruby had said.

DEAN: "He said when he first noticed the sarcastic sneer on Oswald's face, that was when he first thought he'd kill him if he got the chance. And also that he guessed he wanted the world to know Jews do have guts."

WADE: "What was that latter now?" BELLI (Outraged and disgusted): "Jews, J-E-W-S. I want it said loud and clear so that the word will ring out. Jews!"

Belli asked if Dean had made out an "insurance investigation"—and then quickly corrected it to "security report."

Dean, it developed, had not only made out a security report, he had brought a carbon copy of it into court on instructions from the district attorney.

Belli bounded out of his seat, as if he were happy he didn't have to fight for this one. Holding out his hand, he said, "Let's have it."

Dean reached into his back pocket, unfolded a clutch of flimsy sheets, separated one section, refolded the other and, shifting in his seat again, put it back into his pocket.

"What did you put back in your pocket?" Belli demanded. "I want to see that! Your Honor, he has another report there! I want both of them!"

"You can't have it," Judge Joe B. Brown said.

Up from his slouch came District Attorney Henry Wade, drawing out a magnanimous offer. "If that's another report, we have no objection to them having it. As a matter of fact, we'll offer both in evidence."

Before the first sentence was out of Wade's mouth, the blood had drained from Belli's face.

"They're doing it again," he wailed, turning to the bench. "They're baiting a trap . . . a bear trap!"

The whole psychological climate changed, of course, when Belli demanded it and then had to concede that it was favorable to the other side.

The difference in time, Dean explained, was due to his own original miscalculation. Seeing a televised rerun of the events of the day, and particularly the interview, he had realized later how quickly everything had happened.

Although Belli will never believe it, the trap he had walked into had never been set. Wade hadn't even known the second report existed until the previous afternoon. Once Wade saw the date on it, he was perfectly aware that he might do himself more harm than good with the jury by bringing it up.

If the Jack Ruby verdict is ever reversed, it quite probably will be because Judge Brown allowed Dean to testify about that interview. The entire appeal could hang upon the difference between a 10-minute time lapse and a 40-minute time lapse.

With Dean's testimony Henry Wade announced, "Your Honor and ladies and

gents, mitted an act of murder. He had put together a case which looked well on paper. His case was built in three interlocking parts:

1. The psychological examination (Dr. Roy Schafer) that pointed to brain damage causing psychomotor epilepsy.

2. The physical examination (Dr. Martin Towler) that confirmed Doctor Schafer's diagnosis by demonstrating an abnormal brain wave.

3. The psychiatric examinations (Drs. Manfred Guttmacher and Walter Bromberg) that established a low emotional breaking point.

Doctor Schafer got the medical defense off to a roaring start by testifying that the conclusions he had reached as a result of his psychological examinations had been confirmed by Ruby's electroencephalograms. He said he had seen the EEG readings for the first time that morning, and "I came to the conclusion that he does have organic brain damage, the most logical and specific nature of which is psychomotor epilepsy."

It developed, however, that he had not seen the actual brain tracings, but only the report of Doctor Towler, who had supervised the tests. Doctor Towler's report said that the EEG recordings were "abnormal," although he did not use the words "psychomotor epilepsy." He wrote, "This type of seizure disorder most accurately falls into the category of a psychomotor variant."

Wade started the cross-examination and set a high academic tone by asking, "After all those ink blots, did you form an opinion on whether he knew right from wrong?"

Given any kind of a chance, Wade's style is not to engage the witness in any kind of dialogue but to attack him head-on. In examining Doctor Schafer in the bond hearing, where he was truly interested in drawing forth information, Wade had handled the language of psychiatry with competency and ease. Before a jury, though, Wade becomes downright down-country. To hear him pronounce the words "schizophrenic-paranoia" is to be left with the impression that he is not only speaking a foreign language but that it is the language of a country with which we are at war.

With Schafer he quite possibly achieved the pinnacle of his career by stumbling around the words "I.Q. test"—a test not really so exotic as to be unrecognizable, let alone unpronounceable, to a man who graduated at the top of his law class. But all the lawyers played that game—Belli fumbled nicely while questioning Schafer on the "thematic apperception test." Once, when Belli asked a witness to define "extrapolate," a word that hadn't been used more than a dozen times previously, Alexander went one up on him by asking the witness to spell it.

The trial sparkled with such moments of high philosophic inquiry. When the session came to an end at seven P.M., Belli's necktie was loose and his shirt was ballooning out of the top of his pants. He looked for all the world like a prize Siamese who had gotten himself mixed up with some alley cats.

The next day there were only two witnesses, Doctor Towler and Doctor Guttmacher. Between them, Towler and Guttmacher were the whole case presented for Jack Ruby.

With Doctor Towler on the witness stand, Melvin Belli placed into evidence a green shoe box containing 600 feet of brain-wave tracings, which had been folded accordionlike into two books.



Dr. Manfred Guttmacher, principal psychiatrist for defense.

To nobody's great surprise—least of all Belli's—the report he had screamed for was the one that hurt. Dean's original report, dated November 26, ended with the notation that he had been instructed to take the Secret Service man up to interview Ruby "at approximately twelve noon." (The shooting had taken place, remember, at 11:21.) The second report had not been dictated until February 18, 12 weeks later. The first words in this report were, "At approximately 11:30 A.M. Chief Curry approached me . . ." The last words were that the interview had taken place "five to ten minutes after the shooting of Oswald."

Had Belli been able to conduct his cross-examination exclusively off that original report, he would have had a fighting chance of discrediting Dean on the discrepancy between the 10-minute interval he had testified to and the 40-minute interval he had reported in his security statement.

By the time Wade was able to bring out the existence of the Late, Late Report, in his reexamination, it would have had all the force and validity of a belated apol-

gentlemen of the jury, the state rests at this time."

Belli's first witness was Little Lynn, a 19-year-old stripper who had called Jack from Fort Worth on Sunday, November 24, to ask him to send her \$25. The telephone-company records showed that the call had been made at 10:18, an important point to establish right at the beginning, since it had been announced over the radio that Oswald was going to be moved at 10 A.M.

Little Lynn was more than a little pregnant. She was already two days overdue. "If I don't put her on," Belli told the court, "we may lose her as a witness."

She didn't get on right away though. A jailbreak happened to be taking place right outside the door—on camera—and we suddenly had the case of the pregnant stripper caught in a jailbreak. Upon such a note the defense of Jack Ruby began. (At the end of the day—Little Lynn having testified—Belli told the writers, "Some ham convict tried to upstage me. . . .")

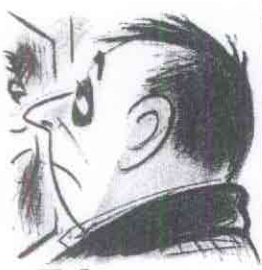
It now fell to Mel Belli to convince the jury that Jack Ruby did not know right from wrong at the moment he com-

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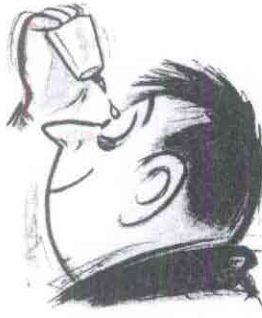
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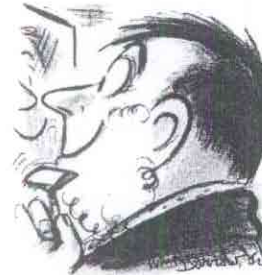
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Trial of Jack Ruby

Even before the EEG tests were performed, Doctor Towler said, Ruby's own description of the numerous head injuries he had received in the course of his brawling life had led him to the belief that Ruby suffered from seizure disorders. Jack had told him that from time to time he experienced painful "pricking sensations in the head." During these attacks, Ruby told him, "I am not as normal as I'm supposed to be. Every fraction of a second I felt something was going to happen. I feel as if my head is cracking open."

Did the EEG's show Ruby had psychomotor epilepsy, Belli asked him, or didn't they? "There is no way to look at an EEG," Doctor Towler said, "and say this is the result of a head injury or repeated head injuries."

Belli: "Does that rule in or out the psychomotor epilepsy?"

Towler: "It neither rules it out or in." That was a surprise. This was the defense's witness, and the burden of proof was upon the defense.

Still, Towler's diagnosis was that Jack did have brain injury and did suffer from a "seizure disorder."

"During a seizure a man would behave as an automaton," Doctor Towler testified, "and would probably be amnesiac through the entire spell."

When Towler went to the jury box to show them the EEG's, the actual brain-wave tracings, the jury came to life for the first time, those in the front row huddling in closely around him, and those in the back row craning their heads forward.

As Towler turned the pages, he carefully pointed out each instance where the wavy line broke off into a small pike. He circled these "abnormal discharges" with a red pencil, but as the demonstration dragged on, page after repetitive page, the jurors began to settle back in their seats. Boredom set in all over the courtroom.

Belli, seeing interest flag, took over at the end of the second book and, almost as an act of will, breathed life back into the room. "Here's another!" he'd exclaim, as if they were engaged together in some great voyage of discovery, and the back row of the jury would come forward, all in rhythm, like blown wheat.

Just what did it all come down to then? Wade asked Towler.

"A seizure disorder which we refer to as psychomotor variant."

He still hadn't uttered the words "psychomotor epilepsy," and Belli tried one more time. "Ninety-nine percent of this type have psychomotor epilepsy?"

Towler agreed.

The star witness for the defense, Dr. Manfred Guttmacher, had been around the court for a couple of days, having rushed in at the behest of Melvin Belli to quiet Jack Ruby down. Or, as Belli put it, "Jack feels better now that he knows the nutcrackers are coming in."

He had hardly settled into the witness chair before Belli asked whether Jack Ruby knew right from wrong at the time he killed Oswald.

"I don't think he was capable of knowing right from wrong at the time of the homicide," Doctor Guttmacher answered.

Doctor Guttmacher held the audience all afternoon. After all the talk about tests and brain waves, we were leaving the world of machines and being told about that sad, troubled man, Jack Ruby.

For the purposes of a trial Doctor Guttmacher's analysis of the fears and inadequacies that had driven Jack Ruby over the brink may well have been effective.



Ruby character witness Barney Ross.

And yet anyone who had looked to Doctor Guttmacher to show us the torment that had caused Ruby to lunge toward Oswald could only be disappointed. We got the psychiatric jargon as the full explanation. Doctor Guttmacher read us the label on the jar; we never saw the contents. "I think," he said, "we are dealing with an abnormal individual, with an abnormal personality structure who has a very weak ego structure and was under a very great emotional impact for a couple of days. I think he was struggling to keep his sanity during this period. I think he came upon this perpetrator of the assassination, and with this disruption of his ego... there was a psychotic episode."

Q. "What do you mean?"

A. "I think all his defenses crumbled and his hostile, aggressive feelings came to the fore, and focused on this one individual, with the homicide resulting."

Q. "Is it important that seeing Oswald triggered this?"

A. "Yes. I think it is well-established that people who have psychotic episodes are subject to triggering of the act by strong emotional stimuli."

When he was asked to tell the jury what had led him to his conclusion, he said, "This patient has an abnormal background. His father was an illiterate immigrant drunkard, and his mother and the children were terrorized by him. They were so disorganized that a social agency had to put the children in foster homes. Jack Ruby was put in some half dozen foster homes. His mother suffered paranoid schizophrenia requiring institutionalization. A young brother was hospitalized for depressive psychosis, a sister had involuntarily melancholia, which is a type of depressive psychosis, somewhat more frequent in women than in men."

Jack Ruby's identification with President Kennedy was so strong, Doctor Guttmacher said, that the assassination



Dr. Frederic Gibbs, EEG expert.

was a destruction of his ego. The implication seemed to be—before a squabble between lawyers rendered this point vague—that the ego may have to preserve itself and its sanity by committing a positive act of murder or even, as contradictory as it may seem, suicide.

But why did Jack Ruby have this unusual degree of identification with President Kennedy? The answer we got from Guttmacher was that Kennedy represented to Ruby the idealized father, both in his position as the head of state and as the head of what seemed to be the perfect family group. And something else: "He expressed great love [for President Kennedy] by saying, 'I fell for that man.' Those are the words he used. He talked about him as a man in love."

When Belli asked Guttmacher whether he thought there was a latent homosexual content in these expressions of love, Ruby came alert. There was, again, the parted lips, the held breath, and the slow exhalation. "I think there are suggestions of it," Doctor Guttmacher said, and Ruby turned his head away, in a sort of wincing, incredulous, embarrassed grimace. You could almost see his lips form the words, "Aw, for Crissake!"

The next morning Belli surprised everyone by resting his case. It was now the prosecution's turn to attack the medical case, and he put only one psychiatrist on the stand, Dr. John Holbrook of Dallas, to make the necessary legal point on Ruby's sanity at the time of the murder. His heavy artillery was leveled at what he felt to be the weak underpinnings of the case, those 600 feet of brain-wave tracings in the green shoe box.

Two days earlier, Henry Wade had asked Doctor Towler to name the most outstanding neurologists in the country. The first name out of Towler's mouth was Dr. Frederic Gibbs of Chicago, who had been trumpeted by Belli in court as the great EEG expert. The second name was Dr. Robert Schwab of Boston. Assistant D.A. Bill Alexander had Schwab ready to take the stand for the prosecution. He had mustered a lineup, in fact, that was almost a neurological equivalent of the New York Yankees.

Doctor Holbrook readily conceded that Ruby had an extremely unstable personality. But, he said, "He did know right from wrong and knew the consequences of his act." Holbrook also made the telling point that Doctor Schafer's psychological examinations, taken five weeks after the act, could not be projected back to cover the Jack Ruby who had pulled the trigger.

While psychiatrists do have their own compensatory techniques, the ring of truth was unmistakable there. The Jack Ruby we were looking at as Holbrook was testifying was not even the same man who had come into the courtroom the day before. The psychiatric testimony had done something to him, and there was on his face that bony, grating look that is recognizable to anyone who has ever walked through a mental hospital.

Before he left the stand, Doctor Holbrook also made his contribution to the all-out assault on the psychomotor-epilepsy plea. "I don't believe he has psychomotor epilepsy from the medical evidence," he said. "I don't think you can diagnose psychomotor epilepsy from the EEG alone."

The attack on the EEG's had been launched earlier that day with the state's lead-off medical witness, Dr. Sheff Olinger, in whose small Dallas clinic the tests had been made. "In your opinion, do the

Trial of Jack Ruby

readings show psychomotor variant?" Alexander had asked him.

A. "Psychomotor variant is a term I saw for the first time in an article written last year by Doctor Gibbs. It is a particular type of wave that occurs when a patient is drowsy or sleeping."

Q. "Is it a description of a brain-wave pattern rather than a disease?"

A. "It is a brain-wave pattern."

Now we had it. A definition of psychomotor variant. And the definition was that it was not a disease at all.

The next prosecution cannonball was fired by Dr. Peter Kellaway, 43, a small, crew-cut man. The EEG, he said, was merely a diagnostic aid.

Q. "Is it of value without a diagnosis?"

A. "The EEG in itself never supplies a diagnosis."

Belli could not get Doctor Kellaway to state flatly that he was disagreeing with the redoubtable Doctor Gibbs. All Kellaway would say was that there was a "considerable difference" in Ruby's tracings and Gibbs's definition of psychomotor variant.

The defense seemed to have abandoned psychomotor epilepsy and retreated to psychomotor variant, and now—according to Doctor Kellaway—they didn't even have that.

Belli's most brilliant gambit through-out the medical testimony was his use of Doctor Gibbs, who was unwilling to testify except as a friend of the court. Since he was confident that Gibbs was never going to be there, Belli felt free to wave his name at the jury as if it were a flag, establishing through sheer assertion and repetition that Gibbs was the foremost medical man since Pasteur.

Unable to move Doctor Kellaway, he was reduced to observing, "There is a great deal we don't know yet in this field. We've just barely scratched the surface, isn't that right?"

KELLAWAY (curtly): "I presume so."
The final witness of the day was Dr. Earl Walker of Johns Hopkins, whose credentials set him forth as the nation's leading brain surgeon. The EEG "bursts," Doctor Walker conceded, were unusual. Nothing more than that.

Well, Belli said, if he didn't know what they were, then he couldn't state positively that it wasn't psychomotor epilepsy. And if he couldn't say it wasn't, then he would have to say that it *could* be. Walker agreed with a shrug that indicated he wasn't interested in getting himself involved in that kind of semantic countdown.

And once again Belli was saying, "We haven't done enough work to know what we have here." Doctor Walker was quite willing to agree that there was always a great deal more to be learned. Unfortunately, Mel Belli was charged with proving by a preponderance of the evidence that the defense knew what it was talking about. On Wednesday, the sixth day of the trial, the defense had collapsed.

Why should the top neurologists in the country have been so willing to take time out from their busy lives to come down to Dallas and testify against Jack Ruby? It is safe to say that if these same men had been on the jury panel, most of them would have disqualified themselves because of their opposition to capital punishment. Yet they more or less recommended each other to the prosecution and came almost as a team. The answer takes us back to Belli revealing his case at the bond hearing, and of the bad luck that has always dogged Ruby.

The secret word here is "epilepsy." All leading neurologists are members of the various epilepsy societies that have been working hard for years to erase old superstitions and prejudices and encouraging the public to look upon epileptics as normal human beings from whom society has nothing to fear.

Psychomotor epilepsy is not epilepsy in the normal sense, as the defense had gone to great pains to make clear. But that was in the courtroom, not in the newspapers. The stories that came out of the bond hearing said, in effect, that the murder we had all seen over television with our very own eyes had been committed by a man in an epileptic seizure. The experts were enraged. They were enraged, first of all, because they did not feel that Doctor Schafer had been justified in making such a flat diagnosis off his tests. (That doesn't mean they were right and Doctor Schafer was wrong.)

When they finally did get to see the EEG tracings—which, as far as they were concerned, showed nothing—they were even more enraged.

The greatest brain specialists in the country came down to Dallas, when all is said and done, on a public-relations job.

Before the trial had even started, when Towler's report had come back without the word "epilepsy," Wade had begun to consider the probability that Belli had set up a decoy. When he learned from Alexander that Alexander had a lineup of glittering witnesses who were prepared to pulverize psychomotor epilepsy, he



Jurymen watch the trial intently.

was sure of it. "It just can't be this simple," he said. "Say what you want about Belli, he's beaten everybody in the medical field. Maybe Mr. Belli didn't underestimate us in that bond hearing. We've got to assume now that while we thought we were setting a trap for him, he was setting the trap for us."

To the very end the prosecution was waiting for a trap to be sprung. To the very end they found it difficult to believe it could be that simple.

On Thursday, March 12, the seventh and, it had been made clear, last day of the trial, Alexander still had such top neurologists as Doctors Schwab, Francis Forster and Roland Mackay.

Doctor Schwab is a man who speaks with flat authority. When he said no, you knew the answer was no. When he said yes, you knew it was yes. And when he said he didn't know, you knew that nobody knew. "I have seen this type of brain wave in many tests," he testified. "It is more common in normal people than in people suffering from brain damage."

Belli got nowhere with him, especially when he tried to wave the great Gibbs at him. He disagreed, he said in that voice of authority, with Schafer, with Towler and with Gibbs.

Forster's credentials were above and beyond the merely academic. He had been called in to attend President Eisenhower after his stroke, a biographical note that Alexander didn't insert into the record more than once every minute.

The litany rolled on:

"There is no evidence here that this patient has a compulsive disorder."

"No, these tracings would not support a finding of psychomotor epilepsy or psychomotor variant."

Far from occurring in only one percent of the population, Doctor Forster said, it was a pattern that occurred in 28 percent of the population. Doctor Forster enjoyed himself immensely. His style was to preface his answers with background information and then illustrate them—you could see the schoolteacher here—with amusing little stories. It was perfectly clear that the jury was finding him immensely likable, immensely entertaining—and immensely informative.

This volunteer instructor delivered to us, finally, a definition of psychomotor epilepsy. "Psycho," he said, means mental activity, and "motor" refers to muscular activities. "Epilepsy" is a sudden electrical discharge from the gray matter of the brain. Putting it all together, psychomotor epilepsy meant that both the mind and the body of the victim were functioning, but functioning abnormally. He favored us with an eyewitness report of a friend of his who leaped from his piano stool in the middle of a Christmas carol and began to play bebop and jazz.

In psychomotor epilepsy, he emphasized, the activity was always that silly and, except for a certain amount of embarrassment, that harmless. There is no recall, he said. The patient himself refuses to believe it happened. A psychomotor episode, he said, could never result in the patient pulling out a gun, lunging at another man and shooting him.

Roland Mackay, a mousy little man, is president of the American Epilepsy Society. He testified, like the others, that the EEG's were not even suggestive of psychomotor epilepsy or variant.

Under Belli's scalpel Mackay turned out to be a rigid old boy who had no use for any of this newfangled psychological testing, with its inkblots and its machines. He had found it far more valuable, he said, to just talk to the patient as he was examining him and make his own judgment as to intellectual capacities.

Belli approached him with a letter from Doctor Gibbs, his routine gambit with all these witnesses. The state, as always, objected to its being read on the grounds that Gibbs wasn't there.

From his seat at the defense table, Tonahill shouted, "Gibbs will be here!" Belli came whirling around, low to the ground. "You've just called him, Joe?"

"Yes. We assure you he'll be here."

Wheeling back to the witness, Belli asked, with marvelously feigned confidence, "Now will you read it?"

Objection.

As Wade rested his case for the final time, Belli requested permission to put Gibbs on the stand the following morning. Judge Brown, of course, has a genius for asserting his powers at precisely the wrong time. "No," he said, "I told you we were going to end it today, Mr. Belli, and I'm going to hold to that."

Belli argued his point that the jury



Luther Dickerson, member of jury.

shouldn't really be denied the opportunity of hearing the world's greatest authority. The judge, suddenly aware that they were talking in front of the jury, snapped, "Be quiet till I get rid of—till I get the jury out of here, willya?"

If we can assume that not even Joe Brown, in all his wisdom, had the power to wipe their minds clean, the jurors knew that the trial was being held over for another day for the sole purpose of hearing the testimony of The Great Gibbs.

Understand one thing—the attorneys for the defense had not coaxed Gibbs down. Belli had built him up into such a mythological figure, the fount of all knowledge and wisdom, that the only way Gibbs could live up to his billing would be to materialize in court in a puff of smoke.

But Gibbs had been up in Chicago reading all those terrible things his colleagues had been saying about psychomotor variant and the EEG's, and he had called Doctor Towler and insisted upon coming down to defend himself.

It was altogether consistent with Jack Ruby's journey through life that while Doctor Gibbs had refused to submit himself to cross-examination for the sake of saving Jack Ruby from the electric chair, neither rain nor snow nor Joe B. Brown could keep him from coming down to Dallas, at his own expense, to defend his theories and his machine.

In meeting with Doctor Gibbs over breakfast the next day, to go over his testimony, Belli and Tonahill had discovered that they had a walking time bomb on their hands. Yes, Doctor Gibbs did believe that the tracings definitely showed psychomotor variant and yes, he did believe that psychomotor variant was a definite, if rare, type of epilepsy. No doubt whatsoever about that. It was what he didn't believe that hit them right where their defense lived.

Unlike the victims of ordinary psychomotor epilepsy, he told them, the victims of psychomotor variant remained conscious of everything they did throughout the attack. No, not just islands of memory, fully conscious.

Belli's entire legal case—the necessity to establish that he did not know right from wrong—had been predicated upon the argument that Jack had been in a fugue state, that is, that he had not been conscious of what he was doing.

Now Belli knew very well that his case had already fallen apart. The only question that remained was whether he was going to beat the chair. In capital cases Texas defense lawyers count anything less than the chair a victory, since under the very liberal parole system a life sentence really means 10 to 12 years.

Of all the strange and sometimes inexplicable things Belli did in his handling of Ruby's defense, the strangest of all

may well have been his examination of Doctor Gibbs. He asked Doctor Gibbs, as admittedly he had to, "What did you diagnose from Jack Ruby's EEG?"

Gibbs: "Ruby has a particular, very rare, type of epilepsy—one that does not manifest itself in convulsive seizures."

That was bad enough. But that destructive little word "not" had been tucked in so unobtrusively, and so close to the magic word "epilepsy," that it was possible that neither Alexander nor anybody else at the prosecution table would pick up the implications.

Shortly thereafter Belli laid it right into their laps. "With this particular type of epilepsy," Belli asked, "do you find after the attack that the patient is or is not generally amnesiac or has islands of memory?"

Gibbs: "It is extremely variable. Consciousness is commonly maintained right through the seizure, often accompanied by severe pain. The pain is often so great that the patient threatens to commit suicide."

He had put that question to Gibbs, Belli told us later, only because of his utter contempt for the district attorney's office. "I analyzed them as not being competent enough to pick up the implication that if Jack had been conscious, our case was destroyed. And I was right."

He was right; they didn't pick it up. Such a complete abandonment—a repudiation—of his case, out of his own mouth, at the very end of the trial, was so unthinkable that everybody at the prosecution table had apparently heard the answer they were geared to hear.

Belli, of course, couldn't be sure they were going to miss it. Whether he realized it or not, in his eagerness to show his contempt for the people who had knocked his ears off, he was also telling me that he had based his insanity plea upon a misunderstanding. Psychomotor variant, if it exists at all, apparently is not what Belli thought it was.

The real tragedy, as far as the defense was concerned, is that if Gibbs had been willing to testify from the beginning, Belli

would have discovered the mistake and, presumably, abandoned the EEG machine—as Wade expected him to—and gone on to build a solid psychiatric case. Still, one might assume that before he did go ahead on the basis of a 135-word letter, Belli would have taken the precaution of flying up to Chicago to talk to Doctor Gibbs.

If Alexander missed the import of one part of Gibbs's testimony, he did not miss the fact that Belli had not asked him whether Ruby had known right from wrong at the time of the crime. Alexander did ask that question and, of course, Gibbs could have no opinion.

Doctor Gibbs left the stand at 10 A.M., and the testimony in the case of the State of Texas vs. Jack Rubenstein, alias Jack Ruby, had come to an end.

After a 10-hour recess, Joe Brown read his charge in the toneless, ratchety way that comes when the words do not quite carry the tone and color of the total meaning. Ruby leaned back onto the rear legs of his chair for perhaps the first time in the entire trial, coming forward only when the judge began to instruct the jury on the law of insanity. Now that it was over, he seemed more relaxed than he had been for weeks.

After the long, weary and wearing day of delay, there was a sense of unreality as the lawyers arose, one by one, to stand before the jury box and shout out their final arguments.

Each side had two and a half hours' worth of summation to split up as it saw fit, with the district-attorney's office, as in all states, having both the first and last words. Seven lawyers addressed the jury over the next five hours in styles which held, for the most part, to a sort of early high-school commencement, featuring—on the prosecution side—a great deal of whirling and pointing and condemning in the style of, "You, Jack Ruby!"

Even here at the end the tension built to the climactic moment when Belli would step in front of the jury box for this one last chance to summon up the magic words that would save Jack Ruby's life.

"Here in the early hours of the morning," he began, "when great discoveries have been made in garrets and basements, let us try to rediscover a justice that has never really been lost in your great city."

He had audacity. With his case shot from under him, Belli stood there on the burning deck and asked the jury not for a compromise verdict but for an acquittal. "You know he can't get Veterans Administration treatment if he has a felony on him."

Henry Wade, the man who always gets what he asks from Dallas juries, reminded them that they had sworn at the beginning that they believed in capital punishment. "We believed you then. We believe you now."

The law, he told them, is a chain which begins with the police and ends with the jury. "The weakest heart on this jury can set before the world what we think of this kind of conduct." Here at the end Henry Wade was telling them to contemplate the image of Dallas. Most of all, though, he hammered at the theme closest to his heart. "Set this man loose, and you set civilization back a hundred years. And you set it back to lynch law."

The case was given over to the jury at 1:06 A.M. They began their deliberation at 9:15 A.M.

It has been said that the jury should have stayed out longer, if only for the sake of appearance. At the same time, something should be said in their defense. After they heard the summations, they retired for the night, but there cannot be much doubt that they pondered some more before they went to sleep. They had the case, not for two hours and 19 minutes, but for 25 hours and 35 minutes.

Having said all that, it is also true that they quite probably could have given their verdict without leaving the box. From what we could find out, they took only three votes:

1. Guilty or not guilty.
 2. Sane or insane.
 3. Death or less than death.
- For Ruby the trial had been a torture

chamber. Whatever his reasons for killing Oswald might have been, it was not to hear himself being called "a mental defective" and "a goof." It was not to hear his lawyer tell the jury that "he came from bad stock." Nor was it to hear his friends, the cops, come in, one after the other, to nail him to the chair. If Ruby was sure of one thing, it was, as he told Doctor Guttmacher, that "all the police department loved me." Oswald, at least, died with the image of himself—whatever that weird, haunted image might have been—intact. The trial not only stripped Ruby bare of every shred of dignity, it ripped away the painfully constructed protective network that had kept him sane. This is an odd thing to say, but at the end he had the look of a man who had been violated.

The more cerebral and self-assured among the journalists had been writing, with a terrible air of sanctimony, that we had to give "this poor miserable specimen," his day in court, one of those dreadfully moralistic and self-preserving excesses that destroys what it is presuming to preserve.

Jack was not a specimen. He was not a miserable anything. Looking at Ruby objectively, he was a man who despite almost disabling personal problems had always girded himself up and gone back out to fight the world. He had managed through most of his adult life to take care of not only himself but of his sister, Eva Grant.

It was the trial itself that degraded and debased him. He became a specimen to the experts, the sport of lawyers. Before the professionals were finished, there was not a man in the courtroom who did not feel superior to him. The ultimate disposition of Jack Ruby may well hang on a perplexing question: What happens if a defendant who is legally sane as the trial begins is driven mad by the trial itself?

Jack Ruby had his day in court, all right. Unlike Lee Oswald, he was given the full protection of due process of law. It would have been kinder to have stoned him to death.

THE END



Members of Dallas jury were out only two hours, 19 minutes before coming in with death verdict. Defense team for Ruby has fled appeal.