

Excerpted from DALLAS JUSTICE, the Real Story of JACK RUBY and His Trial, by Melvin M. Belli; David McKay Co., Inc., 1964

Chapter Thirteen - Men on the Spot

p.166 Then the projection equipment was removed and we heard briefly from police Captain Glenn King before the prosecution produced its time bomb. His name was Patrick T. Dean, he had been a sergeant in the patrol division eleven years, and he was no blinking, crewcut youngster. Lean, suntanned, a short man with his curly dark hair cut in a high pompadour, he had a crisp, authoritative manner, and he was clearly a very tough cop. Clearly, too, he was in a very tough position. And he knew it. Dean had been in charge of the security in the Police Headquarters basement, and his mission had ended in something less than outstanding success. The prosecutors had found their man.

Texas law is particularly touchy about the manner in which a defendant's own words may be used in testimony against him. The warning that he is under arrest and that anything he says might be used against him must be made formally in writing to a prisoner in Texas, and he must sign an acknowledgment that he has received it before anything he says may become the subject of future testimony. The requirement is clear and rigid. I might also add that the Supreme Court of the United States has held in the Escobedo ruling that the due-procedure clause of the United States Constitution makes it mandatory that the accused must be apprised of these rights.

There is, in Texas as elsewhere, an exception for remarks made in the heat of the alleged criminal act or in its immediate aftermath, when the defendant's mind is supposedly so disturbed that he might be presumed to be speaking with spontaneity. This is what the law calls *res gestae*, things still linked in time and emotion to the act itself.

It was under this doctrine that the testimony of Archer and McMillon had been ruled admissible. Is something said in an elevator by a man already in custody and removed from the scene of the shooting admissible under *res gestae*? The point is certainly debatable. It was debated at the trial and will be debated in the various appellate proceedings.

But in Dean's testimony the prosecution tried - successfully, as far as Judge Brown's rulings went - to extend this even further. There was no contention that the formal arrest warning had been served on Ruby when Dean talked with him, so that *res gestae* was the only possible justification for allowing his testimony.

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Dean said that after some order had been restored in the headquarters basement and he had been interviewed on television, he went upstairs to the jail - it must have been about ten minutes after the shooting, he said - and questioned Ruby.

"Did he tell you," asked Wade, "that he planned to shoot him (Oswald)?"

My objection that the question was leading, the answer inadmissible, was overruled, and Dean replied that Ruby had first thought about shooting Oswald "when he saw Lee Harvey Oswald on the show-up stand." (This referred to the Friday night "press conference," two days before the shooting. If it was true it meant that Ruby, soon after the shooting, said the idea had been simmering in his mind for two days, clear evidence of lengthy premeditation.)

Dean continued that Ruby "said he believed in due process of law but he was so torn up - he and his sister - this man had not only

killed the President but also Officer Tippitt - that he didn't see any sense for a long and lengthy trial that Mrs. Kennedy might be brought down for." (This was a clear and reasonably logical statement of motive allegedly made by Ruby minutes after he had shot Oswald.)

Dean continued, "He said that when he noticed the sarcastic sneer on Oswald's face (on Friday night), that's the first time that he thought he would kill him." (A colorful expansion of the alleged predetermination toward murder.)

And Dean concluded that Ruby had said he wanted to kill Oswald "because he wanted the world to know that Jews do have guts." (Solidifying the premeditation theme and appealing to the prejudice so rampant in white, Anglo-Saxon, Protestant Dallas.)

Dean had stepped to the stand at 11:39 A.M. and his direct testimony was over by 12:04. But its brevity in no way reflected its impact. This was the man the prosecution had needed, the man who would testify to premeditation, who would take some edge off the overwhelming weight of testimony that showed the act itself to have been the spur-of-the-moment culmination of a series of unique circumstances. Dean - the man who had been responsible for protecting Oswald's life - had given the most damaging testimony of all against Oswald's slayer.

We protested the anti-Semitic reference. We demanded to know if Ruby had been warned of his right against self-incrimination. We punched holes in Dean's statement that his conversation with Ruby had taken place about ten minutes after the shooting - already an outrageously elongated extension of res gestae - by getting him to admit that his own written statement after the shooting said the questioning had taken place at about noon, some forty minutes afterwards. "That time element is off, the one in the report," said Dean. "I had been interviewed on TV ... I lost all conception of time."

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Even if the ten-minute figure stood up, we would have protested inclusion of his testimony as an improper extension of res gestae. Even the conviction-bent prosecution were apparently ready to concede that words spoken forty minutes afterward, Dean's figure, before he amended it following conferences with his superiors and the prosecution, would have been too late to be properly admissible. (As a matter of fact a television tape does prove our contention on this matter of time.)

But Dean testified, and the judge upheld his right to testify, and the jury heard him.

His was by far the most damaging prosecution testimony, and it was incongruous that, although this trial was almost buried under voluminous press coverage, Dean never appeared as a leading Ruby trial figure in the reports that the world read. It is doubtful that Dean and his damaging testimony rated much more than a paragraph or two anywhere in the world, because three quarters of an hour after we finished cross-examining him came the jailbreak outside the courtroom that blanketed front pages around the world, almost completely eclipsing what had gone on that day inside the courtroom.

Dean, the most effective prosecution witness, was also the last.