
Gertz: Moment of Madness: The People vs. Jack Ruby

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rural Georgia mind this was cause enough to readily believe that he was capable of committing murder and rape.

The Leo Frank Case is both legal and sociological history. In reading this book, lawyers must be aware of that frighteningly true maxim that those who fail to learn from history will be condemned to repeat it.

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Moment of Madness: The People vs. Jack Ruby. By ELMER GERTZ. Chicago: Follet Publishing Company, 1968. Pp. 564. \$6.95.

Shortly after noon on November 22, 1963, the President of the United States was assassinated within the courthouse area in the city of Dallas. A short while thereafter Lee Harvey Oswald was apprehended, but only after Patrolman Tippitt was killed in an effort to question him. Oswald was placed in the Dallas city jail. Two days later on November 24, in the basement of the city jail as Oswald was being transferred to the county jail, he was shot by [Jack Ruby] . . . at close range, from which wound he died. Countless thousands witnessed this shooting on television.¹

These words briefly describe the occurrence with which the world has now become most familiar—the bloody assassination of President John F. Kennedy and the bizarre events which followed on its heels. With these words, Presiding Judge Morrison of the Texas Court of Criminal Appeals began his review of the conviction of Jack Ruby, the man the world saw shoot and kill Lee Harvey Oswald. “‘The offense is murder; the punishment, death’ ”² had been the decision of the Dallas jury after hearing the most publicized trial in the history of the United States. On October 5, 1966, that decision was reversed. Then—once again—death intervened, and a second trial of Jack Ruby was never had.

Why did Jack Ruby kill Lee Harvey Oswald? Was the shooting part of a conspiracy? What was the relationship between the assassination of the President and the shooting of Oswald? These are only a very few of the questions that linger after more than five and one-half years. Distinguished Chicago attorney Elmer Gertz represented Jack Ruby after his conviction. In *Moment of Madness*, Gertz tells his story.

Especially for those who have followed the series of speculative accounts of the true nature of the assassination of President John F. Kennedy, *Moment of Madness* is an absolute must. It represents the necessary link in that series which began with Mark Lane's *Rush to Judgment*. For those who have read with thirst the various accounts, this writer submits: Elmer Gertz is to Mark Lane as Henry James was to Ian Fleming.

While a series of authors have conjured fantastic speculative ventures into the known and the unknown surrounding the assassination, whetting the appetite for further explorations, Elmer Gertz presents the tedious, clinical chronology of the life, trial, appeal, and death of Jack Ruby. Every seedy detail is covered.

¹ GERTZ, *MOMENT OF MADNESS* 432 (1968).

² *Id.*

While Gertz does tell the reader something of the personality of Jack Ruby, there are three basic themes in the book: the trial, the appeal and the question of conspiracy. Salted through almost every chapter, however, is a minute description of the behind-the-scenes maneuvering of the team of lawyers who represented Jack Ruby. The author sets forth, on page after page, a description of the interplay between the onslaught of lawyers who thought about representing Ruby, or refused to represent him, or played some part in his representation, and those who actually did represent him at one point or another. From an apparent quagmire of legal machinations, the most celebrated defendant of the twentieth century received his day in court. As to this day in court, Gertz describes, without the emotional involvement of Melvin Belli, the meaning of "Dallas Justice."³ If the reader has deep faith in the legal profession, he may only be surprised by the account rendered. If the reader has no faith, his view will be, at least subjectively, confirmed.

Since Elmer Gertz represented Ruby at the appeal level, his account of the appeal is revealing. It is in this portion of the book that something of the man, Elmer Gertz, is revealed. As a civil libertarian, Gertz describes with apparent relish the manner in which the conviction was overturned. He carefully sets forth the manner in which errors of evidence law, in conjunction with landmark decisions of the United States Supreme Court, such as *Sheppard* and *Miranda*, secured reversals. For those who are curious as to how (if not why) the United States Supreme Court has reached its recent decisions in the area of criminal procedure, Elmer Gertz describes *stare decisis*, and perhaps reveals the approach of those working to generate this series of cases:

Anglo-Saxon jurisprudence has as one of its basic tenets the deceptive principle that litigants have the right to rely upon the precedents. As the courts have ruled in the past, so are they supposed to rule in the present and future. In fact, the precedents, particularly where great constitutional issues are involved, change frequently. The highest court of the land may conclude that the precedents in a particular situation are wrong or outmoded and should be refined, restated, or overruled. So in every case a lawyer has at least one eye cocked upon the cases pending in the Supreme Court, in the hope that the uttering there of some magical words will vindicate his position.⁴

As to the question of conspiracy, Gertz admirably attempts to dispel the notion that Jack Ruby could have been a participant. The account rendered by Gertz in presenting his case is persuasive. It is most persuasive because he analyzes the facts apart from emotionalism. He challenges the assertions of the long series of critics of the Warren Commission (especially Mark Lane) and attempts to show that Ruby's actions were not premeditated and therefore not part of a conspiracy.

Obviously, the overriding ingredient throughout the book is the question of whether any defendant in a well-publicized case can receive a fair trial. Can substantial justice be done in this type of case? Each of us can hope that more tests will not be forthcoming. However, the cases of James Earl Ray (accused killer of Dr. Martin Luther King) and Sirhan B. Sirhan (accused killer of Senator Robert F. Kennedy) are with us as a constant reminder that the hurdle is still to be cleared. There are no solutions contained in *Moment of Madness*.

³ *Supra* note 1, at 141.

⁴ *Supra* note 1, at 374.

In fact, it may convince the reader that no solution is possible, but if a solution is to be found it can only be found from an understanding of the problem. A degree of understanding comes from a reading of *Moment of Madness*.

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Crisis in the Courts. BY HOWARD JAMES. New York: David McKay, Inc., 1967. Pp. 267. \$5.50.

Every age of civilization is favored with a gadfly who compels attention to the ailments of society. Not very long ago Ralph Nader told us about our automobiles and we were shocked by his revelations. We may not be as stunned by Howard James' revelations about our administration of justice, because it is doubtful that there are as many in contact with our courts as there are drivers of automobiles. But our shock and resolve to right the situation should be no less. Certainly the administration of justice is at least as important to a good and just society as our safety of mobility within that society.

This is a disturbing book. We tend to think and believe that our democracy is just about the most perfect political, social, humane and economic system man has ever known. If there are faults, they are minor. Mr. James makes it obvious that in the administration of justice the faults are many and not minor. Our complacency suffers a shock from which, hopefully, it should not recover.

The scholar should not expect in this book an exhaustive study in depth. Rather, this is a general "bird's eye view," painted in broad strokes that crash against our senses. The range of the author's survey carries the reader from the judge who sleeps on the bench to the bail-bond system. Every practicing attorney will identify with the faults enumerated by Mr. James. Perhaps the practitioner has not seen any judges go to sleep while the evidence was being presented, but not many could say they have not witnessed a judge engaging in a whispered conversation with a visitor while a trial was in progress. Nor can many attorneys say that they have not wondered at the juridical ignorance of some judges. These are just a sample of Mr. James' justified criticisms of our judicial system.

Our law schools do an excellent job in teaching the law. It is not uncommon, however, to hear experienced advocates say that the law school graduate does not have a realistic idea of what the practice of law is until he begins his practice. The law school would do well to make Mr. James' book required reading for graduation. The fledgling attorney might then get some small idea of the legal world he is entering. He might then be somewhat prepared for the legally ignorant judge, the stalling colleague, the frustrations of chokingly clogged calendars, *ad infinitum*.

While this is a very worthwhile book, it too, like its thesis, has its failures. Any field of human activity will reflect human nature; it will claim the successes in human nature, and conversely, it will display the imperfections in human nature. So it is with man's administration of justice. Once one admits the frailties and failings in human nature, one must admit that man's institutions, among them our courts, will reflect those frailties and failings. This need not induce one to the pessimism