



The Law Office of Spinella & Associates is located at historic One Lewis Street, on Bushnell Park in downtown Hartford.

What's *Inside*:

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Remembering Melvin Belli, "The King of Torts"

In this issue of the Newsletter I focus on two people who mean a great deal to me as a practicing lawyer. My client "Citizen Doe" who died at the hands of the police and the legendary trial lawyer, Melvin Belli. One a victim, the other a champion of victims — each has much to teach about being a lawyer.

Killer Police Officers Roam Our Streets

These days, even the most ardent law enforcement loyalists find their allegiances shaken. From coast to coast, police officers are beating and killing ordinary citizens in complete disregard to the rule of law and the promise they made to uphold it. Every day brings new stories of police brutality, absent prosecutors, and a judicial system where citizens are wrongfully charged and compelled to plead guilty for crimes they never committed. The names Freddie Gray, Eric Garner, Laquan MacDonald, and Walter Scott should be isolated cases; instead they are a cultural shorthand for police misconduct in America:

2014, Eric Garner – choked to death on video by police for allegedly selling a single cigarette illegally on Staten Island, NY. The case settled out of court. The police officers involved were not charged and face only departmental disciplinary charges over four years later.

2014, Laquan MacDonald – 17-year-old male shot 16 times from 10 feet while walking away from a police van. The Chicago police department suppressed video footage for 13 months. In a nationally followed trial, the police officer was convicted of murder.

2015, Freddie Gray – lost his life when his neck snapped during a "rough ride" in a police van in Baltimore. Charges against all six police officers were either dropped or dismissed.

2015, Walter Scott – shot 8 eight times in the back by a police officer after a traffic stop for a broken taillight. Eventually, this murder surfaced in a video and the police officer is now serving 20 years.

The list grows longer by the day. Even if you or your neighbor never look down the barrel of a police officer's gun, do not think this epidemic does not affect you too.

Cases of horrific law enforcement violence have become routine in my practice. As I write this, I am in the initial stages of representing the estate of a young, unarmed prisoner beaten to death right before his release. In this case, at least five prison guards beat him so savagely (while others looked on) that he was virtually unrecognizable by his own mother.

Equally shocking are the thousands of people imprisoned for crimes they did not commit. These are "convicts" in name only, convicted by police lies and manufactured evidence. Since it was founded in 2004, the Connecticut Innocence Project has used DNA matching evidence to overturn wrongful convictions. The first of these was James Tillman, wrongfully imprisoned for 18 years because of evidence and identification procedures manipulated by the police. His case sparked more Innocence Project reversals across the country as use of DNA evidence has become routine. But most wrongfully charged citizens are not so fortunate.

The extent of police violence, murder, fraud, perjury, and framing is well-documented in everything from scholarly studies to social media. The website "Police Prosecutorial and



Spinella & Associates
ATTORNEYS AT LAW

Advocating for the rights of citizens

One Lewis Street
Hartford, CT 06103-3402

P 860-728-4900 F 860-728-4909
attorneys@spinella-law.com

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Judicial Misconduct” documents hundreds of police misconduct cases across the country in impressive detail.

With everything we know, why can't we stop this epidemic? The short answer is accountability. In many towns and cities, police operate like street gangs: loyal to their own code of silence and impervious to outside inquiry. Shielded by a self-created “blue wall,” public prosecutors will not pursue bad police officers. Not all police are criminals and killers—in fact, most are not. But there are far too many without a natural enemy, a prosecutor, to stop them. Case in point: Only one police officer has ever been prosecuted in Connecticut for murder despite numerous wrongful death verdicts and settlements in subsequent civil rights lawsuits.

In the absence of a prosecutor, police accountability often falls to juries. But there too, the system does not work. It is expensive, arduous work to bring a police misconduct case in federal court. The pool of civil rights lawyers is limited and even skilled ones cannot fully compete with the powerful insurance companies and municipalities on the other side.

As Professor Erwin Chemerinsky writes in *How the Supreme Court Protects Bad Cops*, even the Supreme Court prevents intentional misconduct lawsuits against police officers by giving them immunity. A lack of organized data on the use of deadly force by police officers also contributes to low prosecution rates and judicial resistance to police accountability. Although police departments are required to keep data, by and large, they do not.

Professor Geoffrey Alpert, a leading expert witness in criminology and police procedure, and someone I have used in several trials, calls the absence of a universal database a “national scandal.” Without a statistical context for police misconduct, bad police officers escape prosecution and punishment, and it falls on the lone Plaintiff's lawyer to be the bulwark against police corruption.

SUING THE POLICE IN CONNECTICUT

On August 20, 2011, two municipal police officers beat a 52-year-old resident of a large Connecticut city to death with fists and batons. The citizen in this case (herein referred to as Citizen Doe because of confidentiality imposed by the resolution in this case) was unarmed and posed no threat of harm to anyone. He was transported by ambulance to the hospital with a ruptured spleen and severe internal bleeding. Doctors could not save Citizen Doe and he died less than 3 hours later.

Citizen Doe was beloved in his community. At his funeral, more than 500 people showed up to honor his life and share memories. His family retained myself and New Haven attorney John Kennedy to bring a wrongful death suit against the large city where Citizen Doe resided.

Wise trial lawyers know that there is nothing more powerful in the courtroom than the truth. There the truth trumps first impressions and smooth-talking lawyers. But speaking truth is not enough; it must be proved through hard work and tireless preparation.

In our case, this meant conducting depositions of police and witnesses; compelling production of documentary evidence with subpoenas, discovery motions, Freedom of Information requests; hiring a private investigative team to uncover witnesses and evidence; and obtaining expert witnesses.

We learned that Citizen Doe was a regular at a popular neighborhood bar. The night he died, the bar owner asked Citizen Doe to leave. He left and returned, at which point the owner called his friend, an off-duty police officer on his mobile. The off-duty officer made a dispatch call for Sergeant A and Officer B. Upon arrival, Sergeant A and Officer B chased Citizen Doe, threw him to the ground, and beat him nearly to death.

The police officers' story was inconsistent from the start. They claimed they were dispatched to the bar because of a knife fight.



When they arrived, they claimed that they followed Citizen Doe in a cruiser, got out, and seized him after he tripped and fell over a stone wall, which ruptured his spleen. They then called an ambulance because Citizen Doe appeared intoxicated.

Over the next 24 months, our exhaustive investigation revealed the true story. There was no bar fight. There was no knife. There was no accidental trip over a wall. There was no pre-existing spleen condition that caused Citizen Doe's death.

Pre-trial testimony from over two dozen witnesses revealed no one remembering a fight and only one witness who possibly recalled seeing a knife (a buddy of the bar owner). Nor did the dispatch tapes mention a possible weapon at the bar where the officers were headed. What did surface was the tight friendship between the bar owner and the police officer who he personally called to the scene.

More importantly, initial police reports made no mention of Citizen Doe's knife, any search for weapons, or the use of deadly force, including baton strikes to Citizen Doe's “red zone” (chest, head, and central torso). Nor did the officers file a required Use of Force Report.

The police officers' initial story changed dramatically after they learned of Citizen Doe's death. In fact, that's when the presence of a knife was alleged, along with a hastily filed Use of Force Report. With an alleged dangerous weapon (for which he was never charged) Citizen Doe was now a threat, which purportedly justified pushing him to the ground and beating him with fists and a baton which was now fully admitted.

It came down to one eyewitness courageous enough to tell the truth, even with the threat of police retaliation. While walking

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Killer Police Officers Roam Our Streets

with his girlfriend, he saw Citizen Doe proceeding up the Avenue leading from the bar with two police officers pursuing him on foot, not a cruiser. He saw the officers shove him to the ground and push him flat on his stomach with hands outstretched. He saw one officer dig his knee into Citizen Doe's back while striking him repeatedly with a baton. After being handcuffed, he was brutally beaten again with batons by both officers.



Citizen Doe's family was not interested in a long, painful trial, and an equally arduous appeal. They agreed to a settlement. But they knew that no resolution could buy peace of mind.

In the words of the great trial lawyer Melvin Belli, the goal of every case is to get the "adequate award". But for those lawyers fighting police misconduct, that adequate award has bigger stakes. In the words of the United States Supreme Court attorneys prosecuting cases under the Civil Rights Act do so as private attorneys general seeking justice.

Our case gave rise to thousands of pages of documentary evidence, including incident reports, personnel records, training histories, and medical files. We used expert witnesses in police standards and training, as well as emergency medicine and traumatic spleen injury. Our nationally-recognized police expert, testified that a baton strike in the "red zone" can kill, and is permissible only when an officer or third party is threatened by deadly force. He also gave compelling testimony that advancing on someone who may have a deadly weapon is at odds with standard police training and could not have happened. From where he sat, the officers rushed Citizen Doe and beat him with deadly force.

Our expert emergency medical physician testified that Citizen Doe arrived at the hospital with a splenic rupture caused by blunt force. Had the officers reported any details about his injuries, doctors would have been able to identify the source of internal bleeding and operate during the critical "golden hour" after traumatic injury. This information would have saved his life.

Citizen Doe's "pre-existing" spleen condition was easily disproved by the City's own medical examiner, who testified that the injury to his splenic hilar vessel was caused by traumatic blows to his abdomen. She added that in her experience, she had never seen or read of such an injury being caused by falling less than 3 feet such as over the low wall alleged by the police.

Police death cases are some of the most difficult cases to try. Although every trial is different, you can count on juries biased in favor of the police, and plaintiff lawyers portrayed by the media as greedy and ruthless. Defense lawyers representing the insurance companies that insure City police forces turn a blind eye to lying police officers. Perjurious police testimony is so pervasive, it has a moniker: "testilying".

The media does not help uninformed juries. Instead they push a fear driven narrative: police risk their lives and deserve a break; the accused citizen probably deserves it anyway. But citizens are the ones who employ police officers, and we have the right to expect professional conduct, even and especially when the use of deadly force is at play.

The officers involved in this case are no longer wearing the uniform. John a I take some comfort in that. And every case the city resolves is a force for departmental change.

Even though I have fought many wrongful death police cases, Citizen Doe stays close to me. He symbolizes every innocent law abiding citizen who has fallen at the hands of those sworn to protect us.

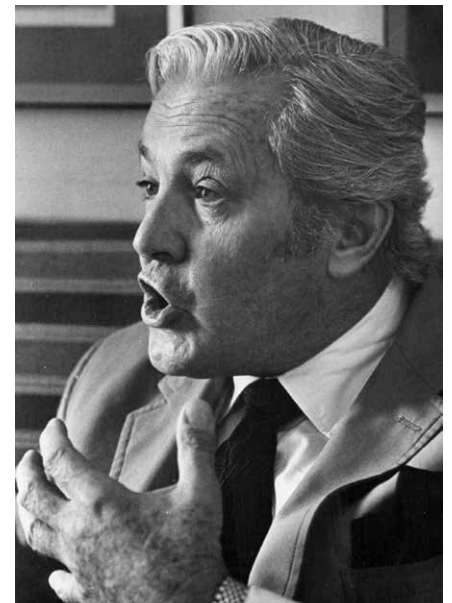
A. Paul Spinella is a Hartford based civil rights lawyer. He is the author of Connecticut Criminal Procedure.

Remembering Melvin Belli, "The King of Torts"

In the course of over 60 years of practice as a San Francisco based lawyer, Melvin M. Belli became the most famous lawyer in America involved in its most famous cases. When he died of the age of 88 in 1996, he had won over half a billion dollars in civil judgments (much more in today's dollars) and represented a roster of clients from Mohammed Ali to the Rolling Stones.

What made Belli special was his profound skill and renown as a trial lawyer, similar to an English barrister who makes his living entirely in the courtroom in the prosecution of civil cases as well as the defense of citizens accused of crime.

Belli was famously known as the "King of Torts", a title bestowed upon him in a 1954 Time Magazine article. The word "tort" is a French word meaning "civil wrongs" (as opposed to criminal matters) which became the center of Belli's practice; namely, the prosecution of powerful actors, such as corporations and government officials accused of negligent or reckless conduct.



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Remembering Melvin Belli, “The King of Torts”

Prior to Belli tort cases, as incredible as it now seems, were not worth much of a lawyer’s time and effort. Belli changed that.

Belli showed all lawyers who followed him how to win these cases in the courtroom. The most important task in every case, in Belli’s view, was to make use of demonstrative evidence to “show” a jury the way to a successful verdict and never to “tell” them anything that could be shown instead.

This was at a time when Belli’s most basic illustrative tools, such as blackboard’s and perfectly scaled models, were either not used or discouraged. In many of his cases Belli required a moving van to deliver his exhibits to the courtroom.

In his first legal success, where he sued a cable car company on behalf of a gripman, he reconstructed the cable car intersection in the courtroom along with the defective gearbox and chain.

In another case involving a claim against a railroad for amputation of a leg Belli was told the loss of a leg was no big deal given the availability of artificial limbs. When Belli stood to make his closing argument, he carried with him an L-shaped package which sat mysteriously next to him throughout the trial. From his autobiography:

“I took my time. I plucked at the knots in the string. . . I carefully undid each knot, then slowly peeled off the butcher paper. . . Underneath another layer of the same papers. I took a half-minute to loosen that. When I had milked the moment for all it was worth. I turned to the jury and with a sudden, almost violent move, I held what I had aloft. The defense attorney started to cry out his objection, then fell silent. I was holding up Katherine’s artificial limb with all its lacing glistening metal joints, strappy suction cups and new plastic shaft.

“Ladies and gentlemen of the jury.” I said moving over to the jury box, “this is what my pretty young client will wear for the rest of her life. Take it”. I dumped it in the lap of the first juror. The jury come back shortly after with a large verdict.

The most common word used to describe Belli was “flamboyant.” A striking figure in Saville Row suits, European boots, cruising along the San Francisco streets in his Gold Rolls Royce, he was not one to be ignored. Belli himself would not deny this- in his words even a priest needed to “ring the bell” in order to fill the church. Whenever he won a big case, he would run the Jolly Roger up the flagpole in his iconic San Francisco office building located in the Barbary Coast district, a brothel during the Gold Rush era according to Belli.

But it would be a mistake to view Belli as some publicity hound; in truth while on trial he treated the process and all participants with sober respect. In the words of Gerry Spence, Belli the showman commanded attention and made it permissible to be flamboyant.” Belli was a legal scholar with an astounding historical knowledge of the law. Always a busy barrister, he found time to write over 60 books; innumerable academic/ professional articles; and trial



practice seminars submitted to audiotape and listened to by a generation of young lawyers (including myself), itching to become trial practitioners. He truly loved the practice of law and studied and wrote about the old English common law which underlies our tort system with scholarly insight, wit, and wisdom. His crowning achievement was a five-volume opus, *Modern Trials*, a spectacular trove of information regarding every aspect of trial practice and technique invaluable to trial lawyers everywhere.

At the time Belli began practicing jury verdicts for personal injury were shockingly low, lagging far behind any accepted consumer price index for valuation of capital assets, in this case bodily assets. Belli mounted a heroic campaign to change all this by academic studies, notably his publication of “The Adequate Award” where he argued that the actual size of personal injury verdicts lagged far behind the commodities of life. He took to the road and campaigned for more realistic verdicts in speeches given to law schools, and professional groups, across the country. Most importantly he brought his argument into the courtroom where he won the largest verdicts of his time, representing a flood tide of individuals in every manner of claim against powerful corporations, government, and the otherwise powerful. He was a fearless warrior, never afraid to stamp “on some pretty big toes”; in the late forties and fifties Belli and a handful of lesser known plaintiffs’ lawyers represented individuals against Southern Motors, Southern Pacific Railroad, TWA, and many other corporations earning large awards.

Even in the last decades of his 60-year career he secured huge verdicts and settlements against Dow Corning for defective silicone breast implants; against the Navy on behalf of women alleging sexual harassment during the Tailhook conventions in 1990 and 1991; against Korean Airlines for the Flight 007 crash; the Kansas City Hyatt walkway disaster; the Las Vegas MGM Grand Hotel Fire; the Benedictine birth defect cases; the Bhopal Union Carbide disaster; and the regime of Philippines President Ferdinand Marcos where he recovered the staggering sum of 2 billion dollars for citizens, who were killed or tortured.

Above all, Belli was a trial lawyer who elevated his profession as a pathfinder who made new law.

To appreciate the enormity of his achievement, he did battle at a time when the idea of an individual bringing suit against a large corporation was novel territory. Most notable was his success in the landmark case of *Escala v. Coca-Cola Bottling Co.*, involving injuries suffered by a restaurant manager resulting from an exploding coke bottle. The California Supreme Court ruled that manufacturers had a duty to all consumers injured by a defective product, not just a direct purchaser; most importantly negligence by the defendant need not be proven.

Armed with the *Escala* decision, Belli brought suit against Cutter Laboratory to gain relief for two young children afflicted with paralysis as a result of a defective polio vaccine. Verdicts were returned for each plaintiff based upon the breach of warranty theory raised in *Escala*. Both verdicts sent shock waves throughout the manufacturing world and set the stage for the consumer and environmental movements led by Ralph Nader and similar figures.

Belli’s campaign against corporations who sold unsafe products is seen best in his four-decade war against the tobacco companies.

After suffering years of pre-trial defeats and defendant victories

before he finally succeeded in winning a case, he was a lone gladiator battling a fabulously well-funded tobacco industry. He persevered without success for years in case after case until he was instrumental in bonding with a group of law firms, each contributing \$100,000 to the campaign. By this monumental effort he was able to match the tobacco companies lawyer for lawyer and dollar for dollar. Ultimately, he helped bring big tobacco to its knees resulting in an industry wide multi-billion dollar settlement with Attorneys General across the country.

For myself Belli's greatest case, and the truest measure of his stature as an American trial lawyer, was his defense of Jack Ruby. Even in this post OJ Simpson era, it was easily the most sensational murder trial of all times. This was the trial of a man who shot and killed the alleged assassin of a beloved President on national TV with millions of witnesses. As Belli's notes in *Dallas Justice*, his book about the trial, Dallas was a "city of hate" looking for a "scapegoat for the unpunishable guilt of a community." He took the case, because:

"Primarily I thought I could do some good for Jack. A lawyer who takes causes instead of clients is in the dangerous position of the surgeon who operates on a disease instead of a single patient. Law and medicine are professions in which you must deal with people one by one; there were many causes in my mind in accepting the Ruby case, but the main cause was the attempt to save the life of this lonely man."

For his defense Belli settled on insanity, making use of several notable psychiatrists to argue that Ruby suffered from "psycho-motor epilepsy." In his words, "this was a big trial that could focus worldwide attention on mental health, and its unsatisfactory, archaic relationship to the law."

He felt strongly that rather than a bargained for plea, Ruby would face a sympathetic jury for exacting vigilante justice against an assassin and either award a short sentence or permit him to seek psychiatric care.

While Belli's legal strategy may have raised some questions there was no second guessing the ferocity and sheer competency of his defense. His first punch was a Motion to Change Venue, a relatively novel legal strategy and amply justified by the emotional maelstrom centered in Dallas following the President's assassination. To prove that the citizens of Dallas must, as he put it, "convict Ruby to acquit the city", Belli provided testimony from more than 150 residents including Stanley Marcus, the founder of the Neiman-Marcus store.

From there Belli moved on to challenge the jurors themselves on the ground that the "jurors were witnesses" and "thus disqualified to serve." In one grandstanding episode Belli had a potential juror served with a subpoena while sitting in the jury box. Belli maintained Ruby's defense with great vigor against a hostile prosecution team and judge but ended losing to a similarly hostile jury.

His closing argument was masterful. From his autobiography:

When "I arose from the counsel table in the dead silence of the expectant courtroom, the fetid orders striking the nostrils, the lights over-head glaring down on the haze from cigarette and cigar smoke . . . I walked the five miles from counsel table to jury rail, it took me several hours. I felt like Alice in Wonderland falling down the hole. My feet didn't seem to touch the floor. I was about to make my plea for Jack Ruby's life."

As described by Reporter Harold Scarlett of the Houston Post as follows:

"It turned out to be a voice whistling at the waves. Still, some who heard it may remember it to their graves. . .

Many lawyers have argued before many jurors. Some fine ones argued eloquently that night, before and after Belli. But at the moment he sat down, Belli seemed to be truly one of the anointed ones.

In less than an hour, he had ranged over a lifetime of learning. Like a mountain goat, he leaped unerringly from Pasteur to the hunchback of Notre Dame, to Anatole France and "Penguin Island," to Humpty Dumpty, to President Kennedy. And Jack Ruby.

"The village clown, the village idiot. . . the little guy who trots coffee to the police station. . . Everything is fine until something happens, but then . . ."

Belli was gifted by nature with a velvety, hypnotic voice that could charm cobras out of their baskets.

Arguing before the jury, he played that voice like a symphony. It was by turns a Stradivarius, a bugle, an oboe, a snare drum racing at breakneck speed through key pages of the trial testimony. . .

Belli himself said later he was too tired, he talked too long, it was not Belli at his best.

But Clarence Darrow would have liked it.

Ultimately, Belli's objection to the lack of due process was vindicated when the Texas Supreme Court overturned Ruby's guilty verdict shortly after his death, finding: "... the Dallas County climate was one of such strong feeling that it was not humanly possible to give Ruby a fair and impartial trial which is the hallmark of American due process of law."

Belli payed dearly for his bold defense of Jack Ruby. He wrote: "In 1963, I had reached a pinnacle in the law. Then, all of a sudden, I was plunged into a whirlpool of hatred from which I have never completely emerged. My crime was daring to defend Jack Ruby, killer of the man officially designated as the assassin of President John F. Kennedy. In the public's mind, I might just as well have been defending Lee Harvey Oswald."

Belli was a warrior until at 88 he ended his career; he was forced to declare bankruptcy when Dow Corning denied him his \$200 million dollar class verdict by themselves declaring bankruptcy.

As a civil rights lawyer I think often of Belli's lawsuit at the end of his career on behalf of three black Soledad inmates murdered by prison guards. He won this impossible case in front of an all white jury at a time when these cases were never brought.

As stated in his autobiography:

"I was asking damages based on a civil rights act declaring that we could seek recompense for a deprivation of rights secured by the United States Constitution, and one of these, the most precious was life itself. You're the ones responsible now, I told the jury, for bringing the Constitution into the most odious of places, into the darkest, deepest dungeon. If you make the Constitution effective to the least of us, then it will be effective for the best of us."

More than anything Belli worked his entire lifetime with unbelievable effort to in his words, make the law "work to the benefit of all the people from the lawlessness of big business and big government". Great trial lawyers require brilliance, skill and courage. Belli had all these things. Courage most of all.

Rest in Peace, King.

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