

BOOK REVIEWS

SOMETIMES YOU CAN'T MAKE A DENT, BUT THEY KNOW YOU'VE BEEN THERE: THE LAWYER AS GOD'S WITNESS

The Word and the Law. By Milner S. Ball.¹ Chicago: University of Chicago Press. 1993. Pp. 216. \$27.50.

Reviewed by Clark D. Cunningham²

I. INTRODUCTION

A. The Threat of Death

In 1956 William Stringfellow graduated from Harvard Law School. Twenty-six years later he wrote that he “enjoyed the law school, but . . . did not take it with the literally dead earnestness of those of my peers who had great careers at stake.”³ He explained what he meant by “literally dead”:

Law students . . . are subjected to indoctrinations, the effort of such being to make the students conform quickly and thoroughly to that prevailing stereotype deemed most beneficial to the profession and to its survival as an institution, its influence in society, and its general prosperity. At the Harvard Law School, this process is heavy, intensive, and unrelenting. . . . The demand for conformity in a profession commonly signifies a threat of death.⁴

Stringfellow reported that he resisted this indoctrination and emerged “as someone virtually opposite of what a Harvard Law School graduate is projected by the prevailing system to be.”⁵ He went directly from Harvard to the slums of East Harlem where he undertook a subsistence-level practice representing poor people in civil and criminal matters. His autobiographical account of that practice,

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³ WILLIAM STRINGFELLOW, *A SIMPLICITY OF FAITH: MY EXPERIENCE IN MOURNING* 128 (1982).

⁴ *Id.* at 126–27. Stringfellow entered law school following a period of military service; he did not use the word “indoctrination” lightly. *See id.* at 125.

⁵ *Id.* at 128.

My People Is the Enemy,⁶ was published in 1964, and had a wide readership that included Robert Kennedy, who convened a national conference to address issues of poverty law after reading it.⁷ Stringfellow was an active lawyer in both the civil rights and anti-war movements of the 1960s; Father Daniel Berrigan, while a fugitive from the FBI, was arrested at Stringfellow's home. After a lifetime remarkable for its commitment to representing the poor, oppressed, and outcast, Stringfellow nevertheless reported a "relentless tension" that caused him to ask "nearly every morning, whether my remaining an attorney condones — or appears to condone — the decadence against which I complain."⁸ He concluded his retrospection on his life as an attorney with these words: "I continue to be haunted with the ironic impression that I may have to renounce being a lawyer the better to be an advocate."⁹

Discomfort and even despair about the moral life of the conventional practitioner have become an ever more common refrain. This statement in a recent *Newsweek* column entitled "Why I Quit Practicing Law" is representative:

I am astounded that I was able to practice law for more than two years of my life. It was not any single event that pushed me over the edge. It was an uneasiness, an uncomfortableness that was always there for me. I was tired of the deceit. I was tired of the chicanery. But most of all, I was tired of the misery my job caused other people.¹⁰

Stringfellow's reflection, though, is more startling because he had lived a seemingly exemplary life of public interest lawyering. Yet some of the harshest critiques of the lawyer's role now appearing in law reviews are written by former public interest lawyers who criticize their own work as "inevitably" subordinating clients despite their best efforts to empower them.¹¹

⁶ WILLIAM STRINGFELLOW, *MY PEOPLE IS THE ENEMY: AN AUTOBIOGRAPHICAL POLEMIC* (1964).

⁷ See STRINGFELLOW, *supra* note 3, at 129.

⁸ *Id.* at 132.

⁹ *Id.* at 133.

¹⁰ Sam Benson, *Why I Quit Practicing Law*, *NEWSWEEK*, Nov. 4, 1991, at 10, 10; see also Alex M. Johnson, Jr., *Think Like a Lawyer, Work Like a Machine: The Dissonance Between Law School and Law Practice*, 64 *S. CAL. L. REV.* 1231, 1260 (1991) (reporting widespread "disillusionment and despair" among former students).

¹¹ Lucie E. White, *Goldberg v. Kelly and the Paradox of Lawyering for the Poor*, 56 *BROOK. L. REV.* 861, 861 (1990) ("[T]he advocate, no matter how 'rebellious' she aspires to be, inevitably replays the drama of subordination in her own work."); see Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 *YALE L.J.* 2107, 2128-29 (1991); Christopher P. Gilkerson, *Poverty Law Narratives: The Critical Practice and Theory of Receiving and Translating Client Stories*, 43 *HASTINGS L.J.* 861, 864 (1992). For a response to these critiques, see Robert D. Dinerstein, *A Meditation on the Theoretics of Practice*, 43

B. Against Death, Joy

Milner Ball's highly original and challenging new book, *The Word and the Law*, can be read to address both the young Stringfellow in law school and the self-doubting veteran attorney who wrote twenty-six years later, and by extension, all law students and lawyers who are haunted by the sense of something deadly lurking in the law.

Ball, who now holds a chair in constitutional law at the University of Georgia, has had a career that looks rather like Stringfellow's in reverse. Stringfellow began his professional life immersed in a daily practice of law and emerged from the Vietnam War era as a semi-monastic on an island off the coast of New England writing highly regarded books of theology.¹² Ball began as a theologian and practicing minister but responded to the tumult of the late 1960s by leaving the ministry to go to law school.¹³ Ball, however, did not enter law practice after graduation but instead became a law professor, a self-described "academic lawyer . . . which is the worst kind."¹⁴ He has become a leader among those American legal scholars who see relevance in theology, as an intellectual discipline, to the study of law.¹⁵ But *The Word and the Law* represents a very different effort by Ball to bring together theology and law, an effort grounded not in legal texts but in legal lives.

Ball describes his book as "an experimental journey" that begins with the depiction of seven people "who work with law"; he begins this way because, he says, "I cannot think about law apart from such

HASTINGS L.J. 971, 983-84 (1992); and Paul R. Tremblay, *A Tragic View of Poverty Law Practice*, 1 D.C. L. REV. 123 *passim* (1992). Perhaps the most balanced assessment of the moral dangers of public interest lawyering is GERALD P. LOPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* (1992).

¹² See, e.g., WILLIAM STRINGFELLOW, *A SIMPLICITY OF FAITH* (1982); WILLIAM STRINGFELLOW, *INSTEAD OF DEATH* (1976); WILLIAM STRINGFELLOW, *AN ETHIC FOR CHRISTIANS AND OTHER ALIENS IN A STRANGE LAND* (1973).

¹³ Ball graduated first in his class at Harvard Divinity School in 1961. He then went to Europe as a Fulbright Fellow for a year and studied with one of the century's most influential theologians, Karl Barth. But, like Stringfellow, Ball did not employ these credentials to obtain a prestigious position; rather, he took the pulpit of a small Presbyterian church in Tennessee. Six years later, while a campus minister at the University of Georgia, he went to the Democratic National Convention in Chicago as part of a protest delegation challenging the exclusion of blacks from the nomination process. That experience catalyzed his decision to start law school that year, while continuing his campus ministry. "Something had to be done," Ball said. "I decided that what had to be done was that I had to get a law degree." Steve Hendrix, *Speaking for the Voiceless: Theology and Activism Meet in the Activism of UGA's Milner Ball*, FULTON COUNTY DAILY REP., Nov. 9, 1990, at 6, 6-7.

¹⁴ *Id.* at 7.

¹⁵ See, e.g., MILNER S. BALL, *LYING DOWN TOGETHER: LAW, METAPHOR, AND THEOLOGY* (1985); MILNER S. BALL, *THE PROMISE OF AMERICAN LAW: A THEOLOGICAL, HUMANISTIC VIEW OF LEGAL PROCESS* (1981); Milner S. Ball, *Studies of Origin and Constitutional Possibilities*, 87 MICH. L. REV. 2280 (1989).

people . . ." (p. 1). Thus, the first third of this short book is devoted to biographical vignettes of a wide variety of "lives in the law": the director of the ACLU's Capital Punishment Project (pp. 7-16), the founder of an Appalachian legal aid program (pp. 16-24), a landlord-tenant judge in Manhattan (pp. 24-38), a Native American tribal judge (pp. 38-49), the head of the Indian Law Resource Center (pp. 49-60), a Yale clinical law professor, and a former student in the Yale clinic (pp. 60-72).

These portraits are worth reading simply for their literary merit — to meet the vivid personalities evoked and to glimpse the dramatic landscapes in which they are found, from the claustrophobic hallways of a drab Manhattan courthouse to the mountains of an Oregon Indian reservation.¹⁶ But they also provide a rather mysterious answer to the deadly portents invoked above, because common to these highly varied lives in the law is a recurring sense of joy amid what seem to be hopeless circumstances. The best way I know to convey a sense of the force and mystery of these lives, and the joy that animates them, is to present a few excerpts from one portrait among the seven.

II. JUDGE MARGARET TAYLOR: "THEY KNOW I'VE BEEN THERE"

Ball finds Judge Margaret Taylor in a tiny courtroom on the eleventh floor of the New York City Civil Court building:

Courtroom 1164B . . . has, in addition to the raised judge's desk and a table and chairs for attorneys, fifty green metal chairs for spectators and a table bearing stacks of books and papers along with a computer terminal. The linoleum-covered floor, fluorescent lights, and blond wood wainscoting give it a harsh air. Above the wainscoting, the white walls are scarred. Broken chairs are piled in a corner (p. 26).

¹⁶ Narratives are becoming an increasingly accepted component of legal scholarship. See, e.g., Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411, 2411-2415 (1989); Barbara Flagg, *Women's Narratives, Women's Story*, 59 U. CIN. L. REV. 147, 155-59 (1990); James B. White, *What Can a Lawyer Learn from Literature?*, 102 HARV. L. REV. 2014, 2018 (1989). One particularly valuable feature of Ball's book is the way he presents the voices of his subjects telling their own stories; his approach thus resembles the important work now being done using ethnographic methods to display the construction of reality within American social institutions. See, e.g., JOHN CONLEY & WILLIAM O'BARR, *RULES V. RELATIONSHIPS: THE ETHNOGRAPHY OF LEGAL DISCOURSE* (1990); Austin Sarat, . . . *The Law Is All Over: Power, Resistance, and the Legal Consciousness of the Welfare Poor*, 2 YALE J.L. & HUMANITIES 343 (1990); Joseph Verloff, Lynne Sutherland, Letha Chadiha & Robert M. Ortega, *Newlyweds Tell Their Stories: A Narrative Method for Assessing Marital Experiences*, J. SOC. & PERS. RELATIONSHIPS (forthcoming 1993) (summarizing studies that use narratives as a research methodology "because in story-telling people reveal the meaning they make of their experience in a way that is different from answering explicit questions about that experience").

Despite this unjudicial setting, Ball describes her as authoritative and attributes her authority in part to an unconventional judicial attribute: "She can be uproariously, raucously funny. She both commands and enraptures audiences" (p. 26).

In Judge Taylor's current work — landlord-tenant cases — she has become notorious for her approach to default judgments. When she began hearing landlord-tenant cases, she was "stunned by the routine" (p. 29).¹⁷ Every week she was presented with a stack of hundreds of default judgments; in each case, the clerk's office had stapled the papers so that only the line at the bottom for the judge's signature remained visible:

Discrepancies in the record . . . or facts indicating a tenant in need of medical or other help were stapled out of view. It was not easy for a judge who chose actually to read the documents. [Taylor told Ball,] "It would take me two days just to pull out all the staples" (p. 30).

After raising the issue with fellow judges for years, Taylor succeeded in changing the stapling practices of the clerk's office. Now the stacks come stapled only if a particular judge so requests, with the result that about half the judges actually read the papers and hold hearings on default judgments (p. 30).

Pulling out the staples was only the beginning of Judge Taylor's assault on what landlords had viewed as an efficient business routine. Not content to rest upon the process server's affidavit that the tenant received notice, Taylor personally sends a postcard (at her own expense) to the tenant in advance of the default hearing. Even if the tenant still fails to appear, she often insists that the process server appear in person for examination, not only to assure that correct procedure has been observed but also to learn about what she calls "the real 'questions'" (p. 31): Does the tenant have small children? Is the tenant ill or old? Is there evidence of mental illness so that a guardian may need to be appointed before proceeding against the tenant? (pp. 30-31). Only about twelve percent of these hearings result in a default judgment of possession, and even those do not all end in eviction. Before the judgment is executed, Judge Taylor sends a *second* postcard to the tenant that says "Come NOW." Some tenants do, and the eviction is avoided (p. 32). To a landlord frustrated with the delay her vigilance entails, she says, "I am the one doing the evicting. I need to know who is there. I may need to bring in an agency. You will get your money. There are things I can do. I really do want to know who I am evicting" (p. 31).

¹⁷ Cf. Barbara Bezdek, *Silence in the Court: Participation and Subordination of Poor Tenants' Voices in Legal Process*, 20 HOFSTRA L. REV. 533, 533-42 (1992) (critiquing landlord-tenant court in Baltimore).

Ball reports a dramatic change in Judge Taylor's demeanor when tenants do appear and testify:

At these times, in conversation with tenants, compassion renders her uncharacteristically still and quiet. "Can you pay this rent?" she asks. As she listens to tenants tell about the conditions of their lives and how they believe they can find rent money, she is unguarded and vulnerable. Fatigue shows in her face. She shares exhaustion with the person she attends. . . . She urges the tenants to come back if they see there is going to be a problem in meeting the payment terms they have agreed to. . . . "[C]ome in *before* you can't pay. . . . Once I sign an order, I have only tears." And then, quickly, she smiles, and the Manhattan banter begins again (p. 33).

However, perhaps the most revealing story about Judge Taylor does not take place in the courtroom at all. At one point in her career, she was assigned to a courthouse in Brooklyn and discovered upon arrival that the women's room was not supplied with toilet paper.

Judges could request a roll of toilet paper to carry with them. This meant first checking out the roll and then clutching it while standing in the women's bathroom line with those who had to do without, a circumstance that called for solidarity and meant that Judge Taylor usually emerged empty-handed . . . (p. 29).

She complained to the landlord, who pointed out that the lease required the city to supply toilet paper. She went to city officials, who said there was no money in the budget for toilet paper and that it had not been furnished for five years. Finally, Judge Taylor announced that she would "no longer hold court in cases where there were female court officers, attorneys, or parties, because I would not subject them to such discrimination" (p. 29). Immediately thereafter a huge box of toilet paper arrived at Judge Taylor's chambers, which forthwith doubled as the toilet paper dispensary. The story does not end with this apparent victory over bureaucratic indifference. Rather, the conclusion Judge Taylor told Ball presents vividly the mysterious presence of joy amidst seemingly hopeless circumstances that I find the most compelling feature of the lives Ball portrays. After Judge Taylor moved to the Manhattan courthouse, she ran into some court personnel from Brooklyn who reported that the toilet paper stopped with her departure (p. 29). Telling the story to Ball, Judge Taylor says: "Sometimes you can't make a dent . . . but they know I've been there. They remember." And then "[s]he laughs about these things — as she does about many others . . ." (p. 29).

III. YES . . . AND NO. IN THAT ORDER.

As much as I enjoyed reading the portrayal of Judge Taylor and the other "lives in the law," as I concluded Ball's first chapter, I felt

some resistance and skepticism. These portraits seemed a bit idealized and sentimental — their joy facile and unexplained. Yet as I proceeded through the rest of the book, I discovered that Ball, with great deliberateness, refrains from explicating these lives to produce an essay on the way to live a good life in the law. Instead, the book takes a startling and unsettling turn after the portraits. Chapter Two begins with reference to the “monumental, architectural” theology of Karl Barth, widely regarded as one of the most influential modern Protestant theologians (p. 73).¹⁸ Ball follows Barth in distinguishing between religion and biblical faith: “[F]aith *rather than* religion corresponds to God’s self-revelation God’s self-revelation does *not* correspond to religion but *contradicts* it” (p. 100 (emphasis added)). Ball then goes on to illustrate how God’s self-revelation could nonetheless adopt religion with examples of African-American worship as described in William Faulkner’s *The Sound and the Fury* and Toni Morrison’s *Beloved* (pp. 82–95).

Chapter Three continues the exploration of Barthian theology (including an illustration from Stringfellow’s Harlem practice) (pp. 97–98), and Chapter Four engages in learned analysis of some very grim passages from the Old and New Testament that seem to show the futility of human efforts to understand and obey God (pp. 106–28). Chapter Five then turns to a scene from *King Lear* to draw analogies between aesthetic meaning and God’s revelation (pp. 129–35).

By the time I reached the final chapter, I felt like the reader of an intricate English murder mystery. My head was spinning with seemingly unconnected details that seemed to be red herrings, and I was eager for the revelatory moment in the detective’s smoke-filled parlor. My expectations were dashed by Ball’s last chapter, which presents examples of “death in law” in constitutional interpretation, and ends with only a few conclusory remarks that loosely connect the seven lives with each other and with the heavy theology and literary criticism I had just trudged through.

I was frustrated — and I believe that is exactly how Ball wanted me to feel. After all, he had told me in the first sentence of the book that I would be taking an experimental journey; the emphasis was equally on “experiment” and “journey.” He went on to explain:

I do not here make a linear argument or advance a set of propositions toward a conclusion designed to compel readers’ assent by the force of its logic. . . . I try [instead] for a performance, for affect and understanding more than agreement. By constructing juxtapositions, I hope to create occasion for the reader’s participation and invention (pp. 1–2).

¹⁸ Ball studied under Barth in 1962. See *supra* note 13. Barth, a Swiss theologian, is best remembered for his multivolume *CHURCH DOGMATICS* (T. & T. Clark 1956) (1936).

Later Ball tells the story of another frustrated audience that asked his former seminary professor, Paul Lehmann, whether he opposed abortion, "yes or no?" Lehmann's considered answer was: "Yes . . . and no. In that order" (p. 102). Ball endeavors to create in his book a dialectic similar to that revealed in Lehmann's answer, a dialectic very different from the familiar Hegelian pattern of thesis-antithesis-synthesis because it yields no conclusory, satisfying synthesis (p. 102).¹⁹

Ball applies this dialectic to the question, can one lead a good life in the law? He initially seems to answer "yes" through his portrayal of seven specific, exemplary lives. But the next chapters seem to say "no" by condemning all human efforts to achieve goodness — archetypically through religion — as contradictory to God's revelatory action in the world:

The characteristic of religion . . . [is] its attempt to reach beyond the present world toward a god whom it postulates and whose help and protection its adherents invoke. This attempt at self-transcendence is worthy and noble. . . . [But] [r]eligion expands the believing self from which it cannot at last break free. . . . [F]rom the biblical perspective, religion is unbelief. . . . Strive though we may after God, we end up . . . exploring ourselves (pp. 79–81).

The relation between Ball's critique of religion and the problem of living a good life in the law became more clear to me when I discussed *The Word and the Law* with a former student, who had left a well-established career in architecture to attend law school. He began law school a year after his wife started seminary; both shifted careers out of a desire to serve God more fully. Now a year after graduation, he is struggling over how to achieve that desire in a small business law practice.²⁰ His tentative answer is to serve God in his individual client relationships, but he wonders how that kind of ministry differs from his former architectural work. He explains that he never saw architecture *as such* to be a way of serving God, but only as a way of offering occasional opportunities to do God's will; in contrast, he had seen law practice — as his wife had seen ordained ministry — as work that could *inherently*, by its very nature, make him an instrument of God's will.²¹

¹⁹ Ball describes this "dialectic of a penultimate No and an ultimate Yes" as inspired by Barth's theological analysis of the relation of the human and divine in the person of Jesus (p. 102).

²⁰ In law school he took clinics that exposed him both to legal aid and public defender work. He decided he did not want to be a public defender and, like many idealistic students I have known, has tried unsuccessfully to get a legal aid job. He is now preparing to do estate planning work.

²¹ In contrast to my former student, Stringfellow had no sense when he entered law school that "God had called me . . . to be an attorney, or for that matter, to be a member of any profession or any occupation." STRINGFELLOW, *supra* note 3, at 125–26.

Ball seems to tell us that such hopes are not only futile but also dangerous to our souls. As theologian Bill Wylie Kellermann points out, it is possible to construct a biblical history of Satan in which the Devil begins his career as God's lawyer, the prosecutor in the divine court.²² ("Satan" literally means "adversary" in Hebrew.) It was, for example, this lawyerly duty that caused Satan to bring before God the case of Job and to obtain from God authority to afflict Job to test his faith.²³ By degrees Satan expands his power from prosecutor to tempter and finally to executioner. Yet "[t]hroughout his tragic history his zeal for justice remains unimpaired."²⁴ Kellermann concludes that "Satan has made an idol of the law and so becomes himself the raging power of death."²⁵

But Ball's dialectic continues to work. After he tells us that God pronounces a "No" upon religion, Ball says, "This profound negative judgment, however, is penultimate. The ultimate judgment about religion is a 'Yes.' God does embrace religion" (p. 82). Ball effectively illustrates this apparent paradox with examples drawn from African-American Christianity. Certainly the enslaved Africans brought to America would have been justified in considering the Christian religion demonic. Christianity was their masters' religion, imposed upon them along with their chains and used to justify their enslavement and their degradation as beasts. Yet Ball finds in African-American Christianity tremendously powerful evidence of God's Word breaking into the world, illustrated both in William Faulkner's fictional account of an Easter service,²⁶ and in the following excerpt from Toni Morrison's novel, *Beloved*, about the freed slave and itinerant preacher, Baby Suggs:

"Here," she said, "in this here place, we flesh; flesh that weeps, laughs; flesh that dances on bare feet in grass. Love it. Love it hard." . . . [S]he stood up then and danced with her twisted hip the rest of what her heart had to say while the others opened their mouths and gave her the music.²⁷

I believed then, as I do now, that I am called in the Word of God — as is *everyone* else — to the vocation of being human, nothing more and nothing less. . . . Within the scope of [that] calling . . . any work, including that of any profession, can be rendered a sacrament of that vocation. On the other hand, no profession, discipline or employment, as such, is a vocation.

Id. at 126.

²² See BILL WYLIE KELLERMANN, *SEASONS OF FAITH AND CONSCIENCE* 83 (1991).

²³ See *id.*

²⁴ *Id.* at 83 (quoting GEORGE B. CAIRD, *PRINCIPALITIES AND POWERS* 37 (1956)).

²⁵ *Id.*

²⁶ See WILLIAM FAULKNER, *THE SOUND AND THE FURY* 308–16 (Vintage Books 1962) (1956).

²⁷ TONI MORRISON, *BELLOVED* 88–89 (1987).

God's love so fills Baby Suggs that her whole body is needed to express that joy, and her dance is all the more powerful because the hip that traces her movements had been twisted by her sufferings in slavery. In response to her preaching and dancing the gathered children laugh, the men dance, and the women cry "until the dancing and laughing and crying were all mixed up together" (p. 91).

If God says both no and yes to religion, what then can be said of the law? Ball may be inviting us to say yes again to the possibility of doing good in the law, but he does not provide an ultimate answer. By breaking free from linear argument, Ball hopes to achieve at least two effects. First, he wants to avoid simplification of profound issues; he strives to represent their complexity with discordant juxtapositions. Ball is forced by his medium to express sequentially what he wants heard all at once — yes, then no, rather than some more true utterance at one moment. He envies the polyphony the composer can achieve: "If this were a piece of music instead of a book, different voices could express multiple, even contradictory, views simultaneously. As it is, I must take up matters *seriatim*" (p. 104). Forced to represent three-dimensional life in this two-dimensional space, Ball, like many artists, must resort to contortion and distortion. But he does not want us to be satisfied with his artistry; he wants us instead to unfold his distorted images and erect structures of meaning in the multi-dimensional space of our own minds.²⁸

This leads to the second aspect of his approach: he does not mind, and indeed hopes, that different readers will erect different structures. Ball is particularly aware that most of his readers will come to the book with legal training and may therefore be conditioned to expect an argument with a thesis clearly stated at the outset, defended vigorously throughout, and reasserted as "the right answer" at the conclusion. In one of the book's most felicitous phrases, Ball says of law: "[I]t locks up deals and people and wants to leave no openings" (p. 136). He points out that law is often described as a "seamless web" (p. 146) without apparent awareness of the metaphor's implications — bonds that resist movement, strangle and suffocate, and hold fast for impending death. Ball wants to break open the closed loop of

²⁸ In discussing the Gospel of Mark, Ball cites with approval the analysis of literary critic Frank Kermode, who points out that the narrative structure of Mark is notable for its "intercalation" or "interleaving" (pp. 124–25): one story is suddenly interrupted by another without transition and later completed. These puzzling interruptions "deepen and complicate the sense of the narrative; . . . they are indications that more story is needed . . . if the story is to make sense" (pp. 124–125 (quoting FRANK KERMODE, *THE GENESIS OF SECRECY: ON THE INTERPRETATION OF NARRATIVE* 134 (1979))). Although, characteristically, Ball does not make an explicit analogy between Mark's use of "interleaving" and the structure of his own book, Kermode's observation describes the effect of Ball's style as well.

legal thought; thus he "closes" his book with the hope that his reflections will be for the reader "openings rather than closings" (p. 151).²⁹

In this review, I intend to accept Ball's open invitation. Fueled by my initial frustration, I went back through the book, ripped it apart, and reassembled some of its pieces in a form that seems meaningful to me. This review will not summarize or evaluate the book in the conventional way; instead, like the book itself, it will attempt a performance designed not to persuade but to display one reading in order to encourage other, and different, readings.

IV. ONE READING

A. Daring to Speak of God

The key word in this book is "Word," capitalized not only in the title but throughout the text to signify that Ball means the Word of God. By openly invoking the Name of God, and doing so from a plainly disclosed position of personal faith, Ball may be taking a risk. If this book were authored by a legal scholar from Egypt or India who spoke of how his understanding of the law relates to Islam or Hinduism, I would expect academic audiences to read its union of law and theology with tolerance and interest. But, I suspect, a different reception awaits this book, perhaps because Ball writes about what is for most Americans the religion of their own culture. He must therefore contend with all the personal baggage this audience brings to the topic, ranging often from vague unease to outright rejection of a religious tradition associated with childhood. Further, many readers, regardless of their religious backgrounds, may be wary of evangelism disguised as scholarship.

Such wariness should not dissuade any reader from tackling this book. In many ways, nothing could be less like a stereotype of

²⁹ I see foreshadowings of Ball's own open-ended conclusion in his analysis of the ambiguous ending of Mark's Gospel. Unlike the other three gospels, there is no vision of a risen Jesus in Mark; the only evidence of a possible resurrection is the empty tomb itself and the words of a mysterious young man in a white robe who tells the three women who have come to anoint the body that Jesus has risen. See *Mark* 16:1-16:8. The women respond to this evidence by fleeing in fear. The final words of the Gospel are "they [the women] said nothing to anyone, for they were afraid." *Mark* 16:8. As Ball points out, this conclusion is puzzling because, if the women told no one, how then is this account preserved (p. 127)? Further, if the conclusion of the story of Jesus is only fear and silence, how did Mark's Gospel come to be written (p. 127)? Ball suggests that the Gospel's author deliberately chose to raise these questions without answering them: "[I]f you look through the text, you will see an empty place that must be filled Mark's interest lies in what happens in the space not between text and tomb behind, but between text and reader. There is space for the power of the Word" (p. 126). Likewise, Ball wants to leave space at the conclusion of his text for the Word to be heard by each reader in a personally meaningful way (p. 5).

Christian evangelism than *The Word and the Law*. Ball vigorously criticizes Christian religion as ultimately self-centered, because it represents the effort to expand self in the vain attempt thereby to know God. Religion does not express but rather contradicts the Word of God, because the Word is spoken from God to humans, not vice versa (pp. 80, 98–100). Reliance on religion, a human institution, can muffle and even block hearing the Word of God. In daring to talk about God and law in the same breath, Ball is emphatically *not* promoting Christian superiority: “We can be genuinely in the hands and under the protection of God, and we can truly participate in human freedom, in other forms than that of real Christianity” (p. 101). Indeed, of the seven people he portrays, three are of Jewish heritage. The frustrating juxtapositions of theological discourse, biblical exegesis, and literary criticism that comprise the chapters following the first have the primary purpose of displaying what “the Word” means to Ball, a meaning too profound and subtle for definition or standard exposition. In tearing apart these chapters and overlaying their pieces on the seven lives portrayed, I eventually focused on another word, present but not expounded in Ball’s text, that helped me understand how the seven lives relate to the rest of the book. Following Ball’s example, I introduce this word through narrative rather than exposition.

B. Witness to the Word

Imagine the following plot. Someone is on a city street heading for the store or a movie. Suddenly violence breaks out in front of her — a blade flashes or a shot rings out. As she ducks for cover, she glimpses the victim crumple to the ground and the killer dash off. A crowd gathers around the fallen man. Her assistance is not needed, and she decides to leave before the police arrive. Perhaps she just doesn’t want to get involved; perhaps she fears retaliation from the killer or his possible associates. But she reads with interest newspaper accounts of the murder investigation and ensuing trial. As she reads of the trial, a detail catches her attention that makes her wonder whether they arrested the right man: perhaps the defendant is right-handed and she saw the weapon wielded with the left, or the defendant has a prominent facial scar that she knows she didn’t see. To her dismay the defendant is convicted and given the death penalty. She struggles with herself and decides to call the defendant’s lawyer. A motion for a new trial is filed and she testifies. The conviction is set aside, and with the aid of her evidence, the true killer is caught. The title of this story is, obviously, “Witness.”

She became a witness in two distinct but related senses. First, she was a witness to the event, simply because she was on the scene and had her eyes open. Second, she was a witness in court, because she was impelled to speak by what she had seen. At first she only

observed what others did, but then she became an actor herself by speaking; her speech was her action, and it saved a life.

"Witness" seems to capture several aspects of what Ball means by "the Word," especially as applied to the lives he portrays. First, one does not become a witness by plan, design, or personal effort; like the Word of God, the transforming event hits suddenly and without warning. Second, nonetheless, there are certain prerequisites to becoming a witness: one must be personally present, and one must have one's eyes and ears open. Third, once transformed into a witness, one feels impelled to speak of what has been seen and heard.³⁰ Finally, when one speaks as a witness, those words, as testimony, have force and effect. Ball tells us that "[t]he Hebrew for 'word,' *dabar*, has the sense of power: the word that accomplishes what it says" (p. 120). He associates *dabar* (through the Greek intermediary word *dunamis*) with "dynamics" and "dynamite" (p. 120). Thus, when God's witness is impelled to speak of what she has seen, by that act she herself becomes the Word of God.³¹

Witness and testimony are favorite New Testament metaphors for acts of faith and co-occur with "Word" in Ball's sense. The most famous example is the beginning of John's Gospel. God's first action is to speak the Word: "In the beginning was the Word, and the Word was with God, and the Word was God."³² The first human response to that Word is to give testimony: "There was a man sent from God, whose name was John. The same came for a witness, to bear witness of the Light, that all men through him might believe."³³ From the founding of Christianity down to the present day, expressions and actions of faith are described as witnessing and giving testimony.³⁴

³⁰ I was prompted to imagine the murder witness struggling with the decision whether to call the defendant's lawyer by the words Ball quotes from the Old Testament prophet Jeremiah:

If I say, "I will not mention [God],
or speak any more in his name,"
there is in my heart as it were a burning fire
shut up in my bones,
and I am weary with holding it in,
and I cannot (p. 118 (quoting *Jeremiah* 20:9)).

³¹ Both scenes of African-American worship quoted by Ball — the Easter service in Faulkner's *The Sound and the Fury* and the preaching of Baby Suggs in Morrison's *Beloved* — display the explosive power of God's Word as *dabar*. As I read both passages the recurrent image that came to me was a lightning bolt that illuminates and incinerates at the same time. The image also helps me understand Ball's insistence that the Word cannot be the result of human reaching toward God. Lightning results from increasing polarity between cloud and ground; ever-increasing difference reaches an intolerable point and then is suddenly resolved by the bolt. The lightning bridges a seemingly impossible gap, but the ground does not lift itself to the cloud.

³² *John* 1:1.

³³ *Id.* 1:6-1:7 (emphasis omitted); cf. *Luke* 1:1-1:4 (referring to "eyewitnesses").

³⁴ Witness and testimony also have direct etymological links with other key terms in Christian theology. For example, according to the Oxford English Dictionary, martyr is derived from the

In Ball's book, the metaphor of witnessing also appears at the beginning, but issues from the mouth of the most explicitly Jewish of his seven subjects, the ACLU's Henry Schwarzschild: "[I am] an American Jew acting out of quasi-theological promptings who has deliberately, consciously played the role of witness" (p. 9). What has Schwarzschild witnessed? First, he observed the passivity of the Germans during his childhood in pre-war Berlin as the Nazis came to power: "Whatever the cost, I would not live in a period of major moral, social events and be a bystander. That I would not do. The Germans had been bystanders. I would not be that kind of German" (p. 9). When he visited a college in Kentucky in 1960, he opened his ears to hear several black women talk about holding a lunch counter sit-in in nearby Lexington. Several days later, when driving home through Lexington, his eyes were open to see the sit-in taking place. Thus was Schwarzschild transformed — without conscious plan or motive — into a witness and impelled into action, becoming the lone white to join the sit-in (pp. 7–8). Thereafter he witnessed the civil rights movement at the side of Dr. King and from inside Mississippi jails.³⁵ He also witnessed the anti-war movement as director of the ACLU's Project on Amnesty for Vietnam War resisters. By the time President Carter had granted the resisters amnesty, Schwarzschild had moved on to the Capital Punishment Project.

Schwarzschild's understanding of himself as a witness is the foundation of his commitment to the fight against the death penalty, a fight he does not expect to win in his lifetime (p. 11). Schwarzschild, who is not a lawyer, distinguishes himself from lawyers he knows who defend capital cases: "Lawyers keep at their work from a belief in the enterprise and the feeling that victory lies just over the horizon" (p. 12). He is neither lured nor sustained by such hopes: "You cannot fight on the condition of success. You cannot do that as a human being. . . . 'It is not given to you to finish the task, but neither are you free to desist from it.' . . . One does not serve God . . . in expectation of a reward" (pp. 13–14).³⁶

Ball asserts that Schwarzschild's life in the law displays the Word rather than religion, perhaps because Schwarzschild does not seek success, either for his law reform projects or for his personal salvation. He acts freely, but not by his own design; the force that motivates

Greek *martus* meaning witness, and testament (as in the New Testament) is related to the Latin word for testify.

³⁵ Describing his role in the civil rights movement, Schwarzschild says:

I took on the role of witness. . . .

[T]here were three times during the Movement era when death was imminent I expected to be killed momentarily. Real life is not lived at this high a plane, but I was conscious of what was happening at the time and of what I was doing there as a witness to principle (p. 10).

³⁶ Schwarzschild quotes *The Sayings of the Fathers*.

him comes from outside himself and is its own justification. Likewise, the witness to the imaginary murder would not have testified in order to achieve any goal of her own. In the trite story I told, the witness's testimony leads to acquittal and apprehension of the real killer, but if the motion for a new trial had been denied despite her testimony, she would have been no less a witness, having fully performed her duty to speak of what she had seen. Not needing success — that may be one of the sources of the joy Ball consistently finds among the lives he describes.

Schwarzschild is the only person portrayed by Ball who so explicitly explains his "life in the law" as a witness. How then does the word "witness" any more than "Word" give me insight into the other lives? What seems to unite all seven is not their piety, nor the structure of their practice, nor even a commitment to "public interest" law. What has transformed them, perhaps unknowingly, into God's witnesses is their immersion into the intimate lives of those touched by the law.³⁷ They are *there* — with their eyes, ears, and hearts wide open. I illustrate this quality by looking again at the portrayal of Judge Margaret Taylor.

C. *Being There*

Margaret Taylor began her legal career in 1956 with a large Wall Street firm, but she did not move directly from corporate practice to landlord-tenant court. Her first stop after leaving Wall Street was a three-year stint as a legal aid lawyer with Mobilization for Youth (MFY), where lawyers served as part of a team that included doctors, educators, social workers, and job specialists working together under one roof to "keep kids going" until they made it to twenty-one (pp. 34–35). "The wholeness of response offered by that program in that setting is a guiding image for what Judge Taylor provides through her present [judicial] office" (p. 35).³⁸

What did Margaret Taylor witness at MFY that shaped her current life in the law? My surmise, based on the evidence given by Ball, is that she saw and heard her legal aid "clients" as fully-rounded personalities, thanks to the physical location and total service design of

³⁷ As Ball puts it: "Those most deeply engaged in life are most likely to be engaged by the Word present in the midst of life . . ." (p. 150).

³⁸ Although Tim Coulter now heads the Indian Law Resource Center in Washington, D.C., his first experience as a lawyer was a legal aid practice that shared MFY's holistic approach. While singing nights at a local coffeehouse, Coulter ran a military law project out of a storefront near Fort Dix. "My legal services . . . were a catalyst for GI organizing. I may have been some help, but they did the organizing themselves. My practice of law was a mechanism for letting other things happen" (p. 59).

MFY.³⁹ In Chapter Four, Ball struggles with the saying of Jesus that “the people” will “see but not perceive, . . . hear but not understand” (pp. 106–10).⁴⁰ I have frequently thought that this saying describes how I have seen and heard clients without understanding them. The very fact that I give each of the vastly varying personalities I meet the same name — “client” — is symptomatic of my narrowed vision. My professional role as lawyer excludes much of myself — my self as son, father, husband, neighbor, friend — and projects upon the person in my office a complementary, limited role as client. It seems that when Margaret Taylor moved from Wall Street to MFY, she left behind her professional blinders. What she saw clearly and intensely at MFY not only impelled her into her current career; that vision also stayed with her so that she continues to witness anew. This freedom from role constraints links many of her distinguishing attributes as a judge: her determination to treat each case, even defaults, individually no matter how long it takes; her interest in the “real questions” that show the impact the case will have on a tenant’s life; her willingness to take personal responsibility for the harm caused by her judgments; her empathy with the parties before her; and her vulnerability.⁴¹ For me, these qualities were united in Judge Taylor’s striking comment that after she signs a final judgment she has “only tears” (p. 33); few lawyers or judges can publicly admit that they weep about their work.⁴²

The toilet paper story illustrates most vividly the importance of her freedom from role constraints and of just “being there”. In the common bathroom she was vulnerable, just herself. It simply was not humanly possible for her to stand in line clutching her official roll and not share it. As she passed out pieces of her judicial privilege, Judge Taylor received in return bits of her fellows’ indignity and

³⁹ The Yale clinical law professor, Steve Wizner, was led to develop a class action challenge to the state shelter program for the homeless because he and his students had visited shelters, soup kitchens, and welfare motels to deliver legal services in those settings (pp. 67–68). This litigation is discussed by another former Yale student who participated in the case, from a different perspective than that described in Ball’s book, in Gilkerson, cited above in note 11, at 862–64, 926–45.

⁴⁰ The author quotes *Mark* 4:12.

⁴¹ Judge Taylor’s willingness to take responsibility for her own decisions contrasts with Ball’s portrayal of Justice Frankfurter in the *Francis* death penalty case (pp. 137–39, 143–44). In an effort to expand the voices included in this review, I asked two landlord-tenant judges how the Margaret Taylor story illuminated their own work. Both were led to talk about the role of empathy in their judging and about their role models as judges, who were noted more for their compassion than their scholarship. They also shared an elegiac sense that the increasing tendency of judicial norms is to exclude compassion.

⁴² At the trial of the Yale clinic’s class action case, *see supra* note 39, the homeless clients simply told stories of what life was like for them; the judge was reportedly moved to tears (p. 66).

humiliation — and in that communal moment, no doubt shared a laugh or two.

Laughter most often arises when we are shoulder-to-shoulder with other people doing things that are simply human — making food, playing with children, cleaning up a mess, and even sharing a roll of toilet paper.⁴³ Thus, Judge Taylor's experience of being there not only impels her to speech and action, but also sustains her by constantly and repeatedly connecting her with others at moments, like a possible eviction, that touch both lives deeply.

V. CONCLUSION

When Judge Taylor told Ball that “they know I’ve been there,” (p. 29) presumably the “they” referred to the toilet paper-hoarding bureaucrats of the Brooklyn courthouse. But the ambiguity of the “they” is fortuitous. Now many other people will know that Margaret Taylor has “been there,” not only those to whom she has told this parable of humiliation in the lower levels of the legal system, but now the many more who read Ball's book as well. Milner Ball is also a witness, and this book is his testimony. He is a witness to these seven lives and must speak of them. He is further a witness to biblical and literary texts that have challenged and moved him in ways as deep and complex as have these lives, and he must also speak of them. He tells what he has seen and heard — knowing that his knowledge is partial and limited, but that he is not relieved of the burden to speak nonetheless. His speaking is also an action, a performance, and a risking of himself⁴⁴ — and the witnessing does not end with him.

⁴³ Yale clinical student Carla Ingersoll was literally shoulder-to-shoulder with her clients; she started sleeping in the New Haven train station when the city shelters were full. As one of the uninvited guests, she helped defuse a confrontation with police and later persuaded Amtrak to allow sleeping in the station (pp. 67–68).

The other judge among the seven lives portrayed by Ball, Tribal Judge David Harding, is frequently shoulder-to-shoulder with the people he judges; though not a member of the reservation's dominant tribe, he has learned their dances and dances as often as he can. Such dancing is a deliberate part of his effort to break down the white cultural division of “law from . . . life and community” (p. 45).

⁴⁴ When I interviewed Ball for background information, I learned that he is currently engaged in a project he calls “making a movie of the book.” He is teaching a new law school course that combines weekly readings in jurisprudence with pro bono work in the local community. For example, a student will be challenged to connect her work in a soup kitchen with Sophocles' *Antigone* or Melville's *Billy Budd*. Ball told me that when asked by a colleague whether he was “teaching a clinic the way you think it ought to be taught,” his response was, “I am teaching an academic course the way I think it ought to be taught.”

This insistence on immersing law students in the life of the poor in order to think theoretically reminds me of an equally innovative experiment in legal education taking place on the other side of the globe. In India, hundreds of law students are in the midst of preparing for the Second All-India Competition on Community-Based Law Reform Proposals. Modeled loosely

By writing his book as a challenging journey for his reader, one that creates an experience rather than asserts a conclusion, he hopes to make each reader a witness as well — leaving each of us to decide what we must then do.

on national moot court competitions, this innovative program sponsored by the National Law School of India has the object of producing concrete proposals for law reform, such as a draft bill or set of administrative regulations, on the assigned topic (this year "Labor, Workers, and the Right to Work"). A key requirement for participation in the competition is that the student team must spend at least three months (typically between terms) with a specific affected community and develop their law reform proposal out of that community's particular experience. *See* NATIONAL LAW SCHOOL OF INDIA UNIVERSITY, SECOND ALL-INDIA COMPETITION ON COMMUNITY BASED LAW REFORM PROPOSALS (1992) (on file at the Harvard Law School Library). For example, in the first competition, on women and the law, one team from the University of Delhi spent three months with a group of Delhi prostitutes to find out how the presence and absence of law affected their lives.