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# Ruby Trial Judge Defends Officer Accused of Perjury

By CARL FREUND

Judge Joe B. Brown defended Police Sgt. Patrick Dean Friday against a charge by defense lawyers that the officer testified falsely during the Jack Ruby murder trial.

Judge Brown said the accusation is "merely a conclusion of the defendant which is not supported by, but is at variance with, the official record."

The jurist made the statement as he challenged defense arguments that Ruby is entitled to a new trial.

Defense attorneys Phil Burleson, Emmett Colvin Jr., Clayton Fowler and Joe Tonahill filed 15 formal bills of exception July 28 in which they cited reasons why they think the Texas Court of Criminal Appeals should grant Ruby a new trial.

Judge Brown replied to the arguments in papers filed with his clerk Friday.

Defense lawyers said testimony by Dean was especially damaging to Ruby. They charged that it was false and, in addition, was inadmissible under Texas rules of evidence.

The police sergeant told jurors he heard Ruby state that he intended to murder Lee Harvey Oswald.

Ruby made the statement, Dean related, on the fifth floor of the city jail after shooting Oswald while millions watched on television Nov. 24. Oswald had been charged two days earlier with murdering President Kennedy and Officer J. D. Tippit here.

Judge Brown said he believes the testimony was admissible on these grounds:

—The conversation between Ruby and Dean took place shortly after Oswald was shot.

—Defense lawyers had opened the door by asking questions about statements which Ruby

made after the shooting. Judge Brown, who refused April 29 to grant Ruby a new trial, also fired back at other defense attacks on his rulings.

The jurist said he is still convinced that prospective jurors who saw the shooting on television "were not witnesses as a matter of law" and, as a result, were eligible to serve on the jury if they did not have fixed opinions.

Prosecutors showed television films during the trial without objection from the defense, Judge Brown noted.

In addition, the judge said, defense lawyers showed other television films. Incidents shown in the films "were not contradicted or disputed during the trial," the judge contended.

Judge Brown said the defense must shoulder a major share of the responsibility for the "midnight arguments" about which Ruby's lawyers complained.

(Final arguments in the case did not end until 1:10 a.m. March 14. Defense lawyers said participants in the lengthy trial, including jurors, were physically and mentally exhausted and, as a result, Ruby was denied his constitutional rights.)

Judge Brown said he gave defense lawyer a copy of his proposed instructions to the jury after testimony ended at 10:15 a.m. March 13. The jurist said he instructed defense attorneys to return the instructions before 1:30 p.m. so that arguments could start at 2 p.m., but they kept them until after 7 p.m.

Judge Brown said he asked jurors whether they wanted to hear arguments during the night and they told him they did.

Other comments by Judge Brown:

—There is no evidence to support the defense claim that prosecutors withheld evidence that when Ruby was 10 years old he received treatment in a mental hospital. (Dist. Atty. Henry Wade says he did not have this information at the time of Ruby's trial.) At any rate, defense lawyers could have obtained this information from Ruby or his family.

—He believes jurors were "fair and impartial" despite claims by Melvin Belli, chief defense attorney during the trial, that they were prejudiced against Ruby.

—Defense attorneys waited too long to request a pre-trial sanity hearing and this is the reason he rejected their request.

Papers in the case will go to the Court of Criminal Appeals in Austin. It is expected to hear verbal arguments by attorneys early next year.

(Indicate page, name of newspaper, city and state.)

"The Dallas Morning News" Dallas, Texas

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