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RUBY'S WORDS KEY IN APPEAL

Issue of Malice Said to Revolve on Remarks

PLEA UNDER A STUDY

Appeals Court to Start Summer Recess Today

Austin, Tex. (AP)—Jack Ruby's first words to police after he fired a fatal bullet into Lee Harvey Oswald were the big issue yesterday in the condemned night club operator's plea for a new trial.

After a hearing that lasted most of the day, Texas's elected, three-judge court of criminal appeals took the arguments under advisement for a probable fall decision. The court will start its summer recess today.

Question of Malice

What Ruby said, how he said it and under what circumstances is vital, both sides agreed, in showing whether he acted with malice. Murder with

malice is punishable by death in Texas. Murder without malice is not.

A Dallas jury found Ruby acted with malice and assessed the death penalty March 14, 1964.

Oswald, identified by the Warren commission as the assassin of President Kennedy, was killed November 24, 1963; two days after the assassination.

William Alexander, Dallas assistant district attorney, related in a dry, measured voice how Ruby was handcuffed and wrestled to the floor of the Dallas police station basement.

"While lying on the jailhouse floor, he said, 'I hope the son of a bitch dies.' Then on the elevator he said, 'I had to do it, you guys couldn't . . .,'" Alexander said.

"Malice is malice," he added.

Claim Not Spontaneous

Ruby's attorneys, both those presently retained and those whom Ruby dropped, tried to show that key prosecution testimony relating to malice was not based on Ruby's spontaneous statements, as it must be under Texas law.

Joe Tonahill of Jasper, who participated in the trial and later was fired, said this is the "critical thing . . . take that out of the case and the only thing left is shooting the gun without malice."

Tonahill said the biggest error was the admission of testimony of P. T. Dean, police sergeant, who told of Ruby's alleged remarks after the shooting.

"There was no spontaneity, no emotionalism, no impulse," Tonahill asserted, adding that officers testified Ruby was "calm, collected, not agitated, not out of breath and appeared normal."

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