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Ruby Lawyers Ask Court for New Trial

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AUSTIN — Attorneys for Jack Ruby urged the Texas Court of Criminal Appeals Friday not to commit "judicial murder," but to reverse Ruby's death sentence conviction and give him a fair trial.

The lawyers also charged that District Judge Joe Brown of Dallas did nothing to control the "circus atmosphere" in and around the courtroom during the trial.

RUBY, A 55-year-old former Dallas night club operator, gunned down Lee Harvey Oswald in the Dallas Police Station Nov 24, 1963. His act was seen on nation-wide television.

Oswald is the man named by the Warren Commission as the assassin of President John F. Kennedy.

Ruby's first words to police after he shot Oswald were a big issue Friday in the state's argument against granting the new trial.

William Alexander, assistant Dallas County district attorney, told the court, "While lying on the jail house floor, he said, 'I hope the . . . dies.' Then on the elevator he said, 'I had to do it, you guys couldn't.'"

RUBY'S ATTORNEYS pointed up the sensational treatment the news media gave the case. They also decried Brown's refusal to grant a change of venue; maintained some testimony by state witnesses was false; said 11 of the 12 jurors saw the slaying on television; and objected to the fact that Brown is writing a book about the trial.

Brown withdrew from the case in June, 1965, and was



MRS GRANT, DANN TALK DURING A RECESS
Detroit Lawyer Said Substitution of Judge Was Error

—AP Wirephoto

replaced by District Judge Louis Holland of Montague.

Speaking about the jurors seeing the killing on television, Dallas attorney Phil Burleson said, "the only thing left was the matter of punishment." Burleson is the only one of Ruby's attorneys who represented him at his trial still on the case.

DEFENSE ATTORNEYS also claimed the fact that Brown was replaced on the bench one day during the trial by another judge violated Ruby's right to a fair trial.

Joe Tonahill of Jasper, a member of the original defense team who was later fired by Ruby, charged that the biggest error was admission of testimony of Dallas Police Sgt P. T. Dean, who related a conversation with Ruby shortly after the shoot-

ing.

The statements included, "I hope the . . . dies . . . I did it to show the world that Jews have guts . . . I did it to keep Mrs Kennedy from having to come down here."

THE PROSECUTION claimed the statements were spontaneous, as the law requires for them to be admissible.

Tonahill argued the statements were not spontaneous, but were in response to questions.

"There was no spontaneity, no emotionalism, no impulse," the Jasper lawyer argued. "Take these statements out of the case and the only thing you have left is shooting the gun without malice."

In calm, measured tones, Alexander countered that the

defense had the chance to question Dean.

"OFFICER DEAN was cross-examined on what the defendants now complain of so bitterly," Alexander said. "We contend the statements made to Sgt Dean were res gestae (spontaneous declaration). If they are not the appellant himself opened them up."

During cross-examination Sgt Dean stated that he was mistaken as to the time element involved when he made a report to the Dallas police chief two days after the shooting. Ruby's attorneys claim that it was actually closer to noon when he and a Secret Service agent visited Ruby. Television film taken in the basement showed Dean there at least 23 minutes.

"IT IS appellant's conten-

tion that such testimony is false, not that it was actuated by malice nor deliberately done by Dean, but the net effect of such mistake in time constituted a false premise upon which the trial court admitted certain incriminating evidence relied upon heavily by the state in seeking and obtaining a conviction," the attorneys argued.

The defense attorneys sought to file a formal bill of exception in an attempt to show the evidence, as testified to by Dean, was false, but the trial court refused to allow it. The trial court also refused to allow witnesses to testify on the matter, according to the appellant's lawyers.

AND THEY claimed that the trial court erred when it did not make the state make available to the defense some of the evidence it held, such as Ruby's statement to federal officers that he "worked himself up to a state of insanity."

Other defense lawyers compared Ruby's case with the conviction of Dr Sam Sheppard, which the U. S. Supreme Court reversed because of excessive news coverage.

Attorney Elmer Gertz of Chicago argued that in the Sheppard case, "The (Supreme) Court said it was the duty of the judge to change the place or the time, or both, of the trial" if community feelings made a fair trial im-

possible.

SPEAKING OF Dallas after the assassination and the killing of Oswald, Gertz said:

"Almost every kind of story that would poison the atmosphere was played up."

Sam Houston Clinton Jr of Austin, representing the Texas Civil Liberties Union, said a lot of other things besides murder charges were tried.

"WE WERE told in the course of the trial that the Dallas community was on trial . . . that the entire world was on trial . . .

"There was a semblance

of a trial. There was a trial of public opinion . . . by newspapers and television, trial by phamphleteering, trial by picketing and a trial by ritual," Clinton said. "There was trial by alternating judges, by suppressed evidence and trial by ordeal. Admissable evidence was excluded. There was an outmoded sanity test. There was trial by authors and book-writers. The case will be reversed and the appellant will be given a fair trail."

Gertz based his arguments for a new trial on the unpublished manuscript of Judge Brown's and he quoted from what he said was the manuscript. He said it is Judge Brown's conclusion that "Ruby did not get full justice."

IN ANSWER to criticism of news coverage of the trial, Assistant District Atty Alexander said the defense had offered no complaints about newsmen or news media.

"No pictures were allowed in the court room while the jury was in the jury box," Alexander said. "The jury in the Ruby case was not allowed to talk . . . they were isolated and isolated."

"We of the district attorney's office did not pick the audience before which this killing took place. Jack Ruby picked the audience of 140 million people."

"THE FACT that there were hundreds of people with cameras in the vicinity does not lessen his guilt one iota. Whatever the atmosphere was outside the courtroom the jury was isolated from it and what went on in the outside world."

Defense Atty Saul Dann of Detroit charged that there was not a legally constituted court the day of the trial that Judge Brown was replaced by District Judge J. Frank Wilson. Wilson presided one day when Brown was ill.

"IT WAS JUST as fatal as if one juror was absent one day," he said.

Seated in the front row of the courtroom was Ruby's sister, Mrs Eva Grant of Chicago. Ruby's other sister and his three brothers, were absent.