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Ruby's Words, Jury Figure In New Trial Bid

AUSTIN, Tex., June 24 (AP)—Jack Ruby's first words to police after he fired a fatal bullet through Lee Harvey Oswald's vital organs were the big issue today in the condemned night club operator's plea for a new trial.

Ruby's attorneys and lawyers for the state also argued about whether widespread news coverage of Oswald's slaying and the selection of jurors who saw the killing on television denied Ruby a fair trial.

After a hearing that lasted most of the day, Texas' elected, three-judge court of criminal appeals took the arguments under advisement for a probable fall decision. The court goes into summer recess tomorrow.

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 Mar. 14, 1964. Oswald, identified by the Warren Commission as the assassin of President Kennedy, was killed Nov. 24, 1963, two days after the assassination.

Tells of Handcuffing

Dallas Asst. Dist. Atty. William Alexander related in a dry, measured voice how Ruby was handcuffed and wrestled to the floor to the Dallas police station basement.

"While laying 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.

Ruby's lawyers, 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 police Sgt. P. T. Dean, 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."

Dallas lawyer Phil Bursleson struck a similar note, saying that a time check on television films of the scene of the Oswald slaying revealed that Dean did not talk to Ruby until about 40 minutes after the shooting.