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Ruby Retrial Plea Focuses On Statement After Capture

Austin, Texas, 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.

Decision In Fall

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 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 March 14, 1965.

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

"Malice Is Malice"

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 laying on the jailhouse floor, he said, 'I hope the — 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.

"The Critical Thing"

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, a 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."

Phil Burluson, a Dallas lawyer, 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.

Only Member Left

Burluson is the only member of the original three-lawyer defense team still retained by Ruby. Melvin Belli of San Francisco was fired, as was Tonahill.

The attack on the seating of jurors who saw the crime on television was led by Burluson.

"Eleven of the 12 jurors were actually witnesses to this offense," he said. "The only thing left was the matter of punishment . . . if one juror could have been found (that did not see the televised shooting) out of 162 questioned, then by this ratio, a jury could have been found that complied with the statute (against witnesses on juries).