A Better Climate for Ruby?

By Edward Linn

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THE SECOND trial of Jack Ruby will probably be held next January or February in the tiny town of Montague, Tex., the county seat of Montague County. The state will once again ask the death penalty.

Montague (pronounced Montaig) is about 100 miles northwest of Dallas and is the home town of Judge Louis T. Holland, who was appointed to take over the case from Judge Joe B. Brown. The town consists of little besides the courthouse. There is one title insurance company, one cafe and a couple of filling stations. There is no motel closer than 12 miles away.

If the normal routine is followed for a change of venue, the local district attorney will select the jury, because he is presumed to be more familiar with the local people, the local customs and the local prejudices, and then turn the trial over to the Dallas District Attorney's office.

Dallas DA Henry Wade won't be there himself because he has an office to run, but Bill Alexander, who was the actual prosecuting attorney in the original trial, will prosecute again—aided by Frank Watts, who was the No. 4 man at the first trial. The No. 3 man, A. D. "Jim" Bowie, is now a Criminal Court judge.

Wrong Information

AFTER THE ORIGINAL verdict was overturned, there were stories out of Dallas that the state's murder-with-malice (death penalty) case had gone out the window when the Texas Court of Criminal Appeals threw out Sgt. Pat Dean's testimony on Ruby's "oral confession." (The ruling was based on Texas law and not, as was automatically assumed, on recent Supreme Court decisions.)

Because murder without malice carries a sentence of from 2 to 5 years, the thrust of the stories was that Jack Ruby was already eligible for parole and would probably walk out a free man.

This was wrong on every possible count. "We have just as good a chance right now of getting a death verdict," Wade says, "as they have of getting five years."

One of the Appeals Court Judges, K. K. Woodley, wrote in his concurring opinion that "there is sufficient evidence aside from Dean's testimony to sustain the jury's verdict." (What effect will that statement have on the qualifications of prospective jurors for the second trial who read newspapers?)

Dean's testimony established motive and premeditation, but under Texas law, malice does not require proof of either. "Malice . . . is a condition of the mind which shows a heart regardless of social duty and fatally bent on mischief, the existence of which is inferred from acts done or words spoken." Malice can be formed, the Courts have ruled, "in the twinkling of an eye."

The fact that Ruby was carrying a loaded gun (itself a violation of the law) when he walked down the ramp of the City Hall basement that Sunday morning can be offered as malice in itself. Other policemen testified that while they were struggling with Ruby in the basement he had cried out, in what were patently spontaneous (and therefore admissible) statements such things as "I hope I killed the sonofabitch," and "I intended to shoot him three times." They will presumably be available to testify again.

A Unique Turn

AND, MOST INTERESTING of all from a legal point of view, it is possible that in another unique turn, Ruby hung malice on himself during those special hearings that were held during his long struggle to disengage himself from one of his original attorneys, Joe H. Tonahill.

On the hearing to exclude counsel in May, 1965, he took the stand, was sworn and in a long, rambling, painful monologue, he kept drifting back to that disastrous Sunday morning until he was describing how he had found himself walking down the ramp just as Oswald was coming out.

"It certainly was a terrible Act of God, Your Honor, that he had to come down at that particular time. It was then I first met the man I made deceased. I saw him and I wanted to do away with him—that is the frame of mind I was in at that time . . ."

Who knows what is admissible in a criminal trial anymore? While it was certainly a statement made while he was under arrest, it was also a statement he insisted on making over the advice of his attorneys—another bit of information he generously volunteered from the stand.

On the other hand, there is no indication that he was warned that anything he said during the hearing could be used against him in the event of another trial.

The question before the jury has never really been whether Ruby killed Oswald with malice aforethought. The underlying defense has always been that Ruby is the man—and an unstable one—who killed the man who assassinated the President.

A malice verdict does not carry a mandatory death sentence anyway. It is possible to come out with a lighter sentence on murder with malice than on murder without malice. A Texas

jury is omnipotent; it not only comes back with the verdict, it sets the punishment. On a malice case it can come back with anything from 2 years to death and, if the sentence is anything under 10 years, it can order a suspended sentence.

Still, by going for murder with malice, the prosecution exerts some control over the temper of the jury. Each prospective juror, to qualify, has to assure the defense that he could give a man a suspended sentence on a cold-blooded murder and—most important—he has to assure the prosecution that he has no religious or moral convictions against capital punishment.

In the original trial, 62 jurors eliminated themselves on that account, and while it is obviously the easy way out for anybody who wants to duck jury duty, it is just as obvious that the defense loses the most liberal and sympathetic of the prospective jurors—the kind of people who would be the best defense jurors under any circumstances.

What Is 'Life'?

WADE IS WILLING to make one deal—for life imprisonment. That isn't as bad as it sounds. In Texas, parole laws are so liberal that life can mean as little as 7 years.

The way the law works, however, poses a problem for Ruby's attorneys. A lifer becomes eligible for parole after 15 years, but prisoners get credit for 50 days "good time" for every 30 days they serve. (A trustee gets 2-for-1.) In addition, a prisoner can pick up 30 days every year by donating a pint of blood.

Giving Ruby good time and an annual donation to the blood bank, he would be able to serve 15 years in 8 years and 3 months.

But good time applies only to prisoners in the penitentiary. Ruby has not been in the penitentiary. He has been in the county jail pending his appeal. The best a man can get in jail is day-for-day. The worst he can get is no time at all. The sentencing judge has freedom to decide whether to start a man's sentence from the time of his original arrest, the time of his original conviction or the time he actually begins to serve in the penitentiary.

A judge rarely withholds credit for the time spent in jail, and yet Texas attorneys do not consider it wise to break up jail time, after a reversal like Ruby's, by getting their clients out on bail.

Assuming Ruby does get his day-for-day credit for the 3 years he has served, he has nonetheless already lost the 2 years he might have had for good time.

Assuming another stiff conviction and another round of appeals, the possibility exists that Ruby could lose as much as 5 years before he goes to the pen.

Phil Burleson, 34, the Dallas lawyer who has been with the case from the beginning, is fully aware of the mathematics involved. "If Henry Wade wants to talk about life, along with his recommendation that Jack be paroled as soon as he becomes eligible, I'd have to give an awful lot of consideration to it."

No Talk of a Plea

THERE HAS BEEN, however, no talk of taking any plea. Burleson is the lead lawyer at the moment, by order of the court, but even if he were offered a deal that sounded interesting to him, he would have to consult with not only Ruby and his family but with four other lawyers in the case. They are Sol Dann of Detroit, the lawyer for the Ruby family; William Kunstler of New York and Sam Houston Clinton of Austin, the American Civil Liberties Union entry; and Elmer Gertz of Chicago, a trial lawyer of considerable reputation.

Prosecutor Alexander says tartly, "When I started lawyering, the old lawyers used to say, 'If there's no doubt that he did what he did and there's a chance of his getting the electric chair, take whatever else you can get and then worry about getting it cut down later.' They're crucifying that poor son-ofabitch on the cross of their own thirst for publicity."

But Burleson says, with equal force, "If a life sentence means even 10 more years for Jack it's tantamount to the death penalty. At his age, with what he's gone through, he can't survive it. To all practical purposes he's been in solitary confinement for three years, in that he's been unable to mix with the other prisoners. This has been tremendous psychological punishment."

Ruby has been kept not in a cell, but in a 15-foot x 12-foot corridor which leads to the chief jailer's office so he can be kept under observation at all times.

From 'Hero' to 'Goof'

WHEN RUBY FIRST went to jail, he was in high spirits. The mail was pouring in and he felt that he was looked upon as a hero. That changed after the trial began and he came to understand that the state was really out to execute him. As the trial went on and he heard himself being called "a mental defective," "a latent homosexual," and a "goof" by his own lawyer, he fell into a deep depression. Where he had originally been careful about his appearance, he began to lose interest. One morning, he even refused to get dressed for court, until the Chief came in to lay down the law.

The verdict came as no shock to him, but soon afterwards, with the death sentence hanging over him, he went into a period of deeper depression which extended through the hot summer months.

During this period he began to talk about all the Jews in the country being herded into boxcars and killed because of what he had done. Although the prosecution is convinced that this was all just part of a plan to set up an insanity plea, it is really not out of character. A man who takes it upon himself to be the avenger for the whole country is assigning himself a role of some importance.

Early one morning, he faked sleep so the guard would leave him, poured water on the floor and tried to put his finger into the light socket, but the jailer came running back.

When the weather finally broke, he seemed to come back to life. He began to read the newspapers again. He played dominoes, checkers and card games with his jailers.

"I really flubbed up," he told one of them. "I killed a man who was going to the electric chair anyway. All I did was trade places with him."

About the only thing he has to look forward to, from day to day, are the five phone calls he is allowed to make to the outside world. For a time, he was also writing notes to almost all his

Associated Press Photo

Jack Ruby and one of his lawyers, Sol Dann.

old friends asking them to visit him. Sheriff Bill Decker seems to have permitted almost everybody who responded to the notes to see him.

One of the visitors has been Sgt. Pat Dean. Dean had originally met Ruby while he was driving his patrol car through a downtown Dallas beat, which included Ruby's Carousel Club. Ruby is a cop buff, and Dean, like most other cops, felt safe in going into the Carousel when there was trouble because he knew that Ruby, a good fighter himself, would pitch in and help.

When Dean, who was in charge of security when Oswald was shot, turned out to be the star witness against Ruby, one would have assumed that some strain had been placed upon their friendship. Still, the two men never seemed to feel at all unkindly toward each other.

Irreversible Fact

ALTHOUGH DEAN is out of the new trial, there is no way of really wiping out the fact that the first trial did take place. The new jury is going to know that another jury gave Ruby the death penalty.

Beyond that, the feeling between lawyers has reached the point where Ruby can well become nothing more than the occasion for the battle. The DA's office believes that the Criminal Court of Appeals overturned the case on something other than its merits, an attitude clearly reflected in the petition for a rehearing—which is normally a routine legal move. In this instance, the petition is sharply worded and insulting. And Wade's public comment that he was only asking the judges to read the trial transcript because "they obviously didn't do it the first time" comes close to accusing the court of misconduct.

Both sides are made vulnerable by

the history of the intervening three years. Henry Wade has long let it be known that he would be willing to settle for a life sentence.

On the defense side, almost everybody has, at one time or other, pleaded that Ruby was insane.

Assuming that the defense lawyers do believe that Ruby is legally insane, they are faced with a problem of tactics. The defense is entitled to ask for a psychiatric examination before trial, but what profit would it be to Ruby to go into a mental hospital when he would still have to stand trial when he got out.

However, their client does not seem to be primarily interested in saving his life.

Consuming Fear

HIS OVERRIDING obsession—the consuming fear that has led him to testify at all the hearings and, even before that, to request the lie-detector examination by the FBI and the interview with Chief Justice Warren—is that there is a plot to tie him to the assassination. In reading Ruby's testimony, you cannot escape the conclusion that he would rather die as a man who thought, however wrongheadedly, that he was committing a patriotic act (his current view of himself) than to go free with the smell of a traitor on him.

Ruby has become haunted by a trip he took to Cuba in 1959, apparently to set up a deal to sell guns to Castro, who was then being treated as a hero in the American press. Soon afterward he shipped four guns to a friend in Cuba.

During his period of deepest depression, he seemed to suffer, briefly, from the delusion that one of those guns had somehow got into Oswald's hands, which would mean that they could be tied together and that he however indirectly and innocently, contributed to the death of the man he always refers to as "the beloved President Kennedy."

It is a chilling commentary on our times that Ruby's delusion has come to be no delusion at all. The books attacking the Warren Commission Report do tie Ruby, by implication and innuendo, into a conspiracy.

Ruby's trial is just around the corner and it will be difficult to find jurors who do not know that some doubt has been cast about Ruby's true role in the assassination.