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HEADLINE: MOCK TRIAL OF LEE HARVEY OSWALD BY ABA

BODY:

Neal Conan, host:

At its annual meeting this week the American Bar Association endorsed abortion rights, saying that neither state nor federal governments should interfere with an American's right to choose abortion. The ABA also tackled another of the most controversial issues of our time, the assassination of President John F. Kennedy. The Warren Commission, which conducted its investigation in 1964, concluded that Lee Harvey Oswald acted alone in killing the president. In 1979 the House of Representatives appointed a special committee which concluded that there was probably a conspiracy to kill the president. Oswald himself was murdered two days after President Kennedy died and was, obviously, never brought to trial until this week at the annual meeting of the American Bar Association in San Francisco.

(Begin excerpt from ABA mock trial on Kennedy assassination)

Unidentified Man #1: Thank you very much, Judge. You can bring the jury in as soon as you're ready.

Unidentified Man #2: All right. Bring the jury in please.

(End excerpt from ABA mock trial on Kennedy assassination)

Conan: The televised trial was staged with actors portraying witnesses. There was a real jury, though--and real forensic experts, and prominent members of the bar represented opposing sides in the case of the United States vs. Lee Harvey Oswald. Lawyer Sam Miller helped organize this event, and he joins us on the line from his office in San Francisco.

And welcome.

Sam Miller (San Francisco Attorney): Well, thank you.

Conan: Why did you decide to do this? Was this just a hypothetical? A big what-if?

Miller: At our meeting sometimes we like to put on mock demonstrations or mock trials to demonstrate superior advocacy skills and also to test new ways of presenting evidence, and we had both of those goals in mind when we chose to try the case of United States vs. Lee Harvey Oswald.

Conan: In order to present a case in the amount of time that you had at the convention there, you obviously had to condense it quite a bit. And what were the limitations of the trial?

Miller: We did the entire trial from start to finish in two days. One rule we imposed was that witnesses had to be real in the sense that the evidence had to come from record testimony, either before the Warren Commission or the House Committee on Assassination, and then those record statements were presented through actors that portrayed real witnesses who had testified in one of those proceedings. But we gave each side only about two hours to present their side of the case. In a real trial, of course, this kind of trial would have taken months.

Conan: We have some tape of the proceedings, and here's a section with an actor portraying witness William Newman being cross-examined by the defense.

(Begin excerpt from ABA mock trial)

Unidentified Man #3: I thought I saw president jump up on his feet...

Unidentified Man #4: OK.

Man #3: ... a little bit.

Man #4: And you saw, after you began to hear the boom, you saw the president of the United States standing up in the limousine, right?

Man #3: No, I meant that President Kennedy had--had realized it was a shot and it was kind of an explosion and--and he was standing up.

Man #4: Look at the next sentence. It was just like an explosion and he was standing up. That's what you told the sheriff. He was standing up in the limousine, right?

Man #3: I meant that he was raising himself up--he was standing up...

(End excerpt from ABA mock trial)

Conan: What did the government have to prove in this case?

Miller: We told the government that they had to prove beyond a reasonable doubt that Lee Harvey Oswald was the only participant in this murder, that he shot the shot that killed President Kennedy from the sixth floor of the Texas School Book Depository. In a real case, the US could have charged Oswald as a conspirator or as a participant. But we thought it was more interesting to present a cleaner question to the jury, and that gave the defense the opportunity to suggest that either Lee Harvey Oswald wasn't the person who shot the shot or that the shot came from a grassy knoll or it came from somewhere else--in other words, raising the conspiracy approaches. And that is what raised reasonable doubts in the minds of some of the jurors.

(Begin excerpt from ABA mock trial)

Unidentified Man #5: How many shots did you hear?

Unidentified Man #6: I heard two, and then there was a blend.

Man #5: A blend, meaning?

Man #6: Two shots closely--fired closely together. Man #5: Cross-examine, Your Honor.

(End excerpt from ABA mock trial)

Conan: The trial, as you presented it, took place in real time, today, as opposed to, you know, pretending that it was taking place in 1964 or something like that. Why was it important to make that distinction and set the trial in the--the present time and not shortly after the assassination?

Miller: Well, for two reasons. One, because the jury couldn't go backwards in time, and the jury has been influenced by what it has seen and heard, including the movie "JFK" and all these conspiracy books. That was one reason. The second is we wanted to use 1992 technology in analyzing some of the physical evidence, and we actually had experts who presented forensic evidence, including computer simulations, to determine where the bullets came from. It was quite interesting, and the jury found it very interesting and persuasive. Conan: And this--it's important to emphasize--this was a real jury of real San Francisco veniremen.

Miller: That's right. We had, as part of the program, a jury consulting firm select a cross-section of people from the Bay area. So there really was a real jury, and they deliberated for several hours until the end of the program, and they never reached a unanimous verdict. They were split seven for conviction and five for not--a not-guilty verdict.

Conan: What do you think that hung jury verdict says?

Miller: It says that the prosecution couldn't overcome the doubts people have based upon all the things that everyone in the country has heard over the last 30 years in such a short time. Even though the scientific evidence that was developed in 1992 confirmed and corroborated the Warren Commission report, there were still serious questions raised by the defense that lingered in some of the jurors' minds. One thing that was very interesting--we had a panel of seven judges from around the country observing the trial, making comments throughout the trial. We asked each of them to vote. Interestingly, all seven judges said they would have voted for a conviction. In other words, they were satisfied beyond a reasonable doubt based upon the evidence presented at this mock trial that Lee Harvey Oswald acted alone and did kill President Kennedy.

Conan: Sam Miller is a San Francisco lawyer and an organizer of the American Bar Association's trial of Lee Harvey Oswald, which aired this week on cable's Court TV.

You're listening to "Weekend Edition."

Neal Conan, host:

And now we'll play two excerpts from the closing arguments in this week's mock trial of Lee Harvey Oswald. First, you'll hear defense attorney Evan

Chesler; then, the attorney for the prosecution, James Brosnahan.

Evan Chesler: So this man sat at that window, they say, and he fired and he moved that bolt and he aimed and he moved that bolt and he aimed and he moved that bolt three times, about eight seconds, with a target moving away at 11 miles an hour. He had a defectively mounted scope, so the bullet wouldn't go where he thought it was going to go. He had to fire ahead of the president anyway because the president was moving, and every soldier knows he has to lead a moving target. And, miraculously, he accounted for the lead factor, he accounted for the defective scope, he accounted for the fact that he had to operate that bolt and move the gun away from his eyes every single time he did it. You go into that jury room and try to hold this rifle at your eyes, look through it, see something through it, aim it and try to operate that bolt without ever losing sight of the target and pull the trigger. Do it. I've tried to do it. I can't do it. Yet that's the government's theory. No one has ever recreated the sequence of events. No one. Not the FBI, not the CIA, not the Justice Department. No one in 29 years--that's what Dr. McCarthy testified--has ever recreated the sequence of those shots.

James Brosnahan: It hangs over the case, the idea that there must have been an army to take away John Fitzgerald Kennedy. But the facts are so simple. He was seen in the building at 12:15 on the second floor. The stairs go up to the sixth floor. He had this gun, and he had bullets. It happened, ladies and gentlemen. It happened. And as the president drove down Houston on streets with American names, like Main Street and Houston and Elm, he took this gun, he aimed at the president of the United States, and he shot three times. And down below is a citizen like us who is watching his president--Mr. Norman--and what does he hear? He hears shots, and he hears three sounds--sh-chit, sh-chit, sh-chit.

Conan: The jury in the American Bar Association's mock trial of Lee Harvey Oswald was unable to reach a verdict, splitting seven-to-five in favor of conviction.

It's 22 minutes before the hour.

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SUBJECT: TRIALS, ASSASSINATIONS & ATTEMPTS