

RUBY IS INDICTED AS OSWALD KILLER

11/27/63
Conviction May Mean Death
— Trial is Expected to
Begin in Mid-January

By GLADWIN HILL

Special to The New York Times.

DALLAS, Nov. 26 — Jack Ruby, the self-appointed avenger of President Kennedy's assassination, was indicted by a Dallas County grand jury today for killing Lee Harvey Oswald "voluntarily and with malice aforethought."

He is expected to go on trial in mid-January in the Criminal District Court here for his shooting of the suspected killer of Mr. Kennedy in the Dallas police garage on Sunday.

The charge against Ruby carries a maximum penalty of death in the electric chair at the Huntsville State Prison.

Under Texas law, the 52-year-old nightclub operator, even if convicted, could receive as little as a suspended two-year prison sentence.

His principal lawyer, Tom Howard, said today he would seek a verdict of not guilty on the ground that Ruby was insane at the time of the crime.

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The prosecution will ask for the death penalty.

Mr. Howard gave his version of how Ruby joined the group of newsmen and detectives that assembled Sunday to observe the transfer from the city jail basement, on the way to the county jail.

The lawyer quoted Ruby as having said he walked up to the exit of the basement garage ramp on Commerce Street just as the policeman on guard there stepped to the curb to talk to another officer in a car.

Unobserved, Ruby simply walked down the ramp, and joined the group of 50 or more men at the bottom, Mr. Howard said.

He carried a .38 caliber revolver, the lawyer contended, because he often carried one while transporting large amounts of money. On Sunday morning the lawyer said, Ruby had several thousand dollars in his car.

Mr. Howard said Ruby, now in the county jail, had been examined by a psychiatrist for the county, and would be examined by one for the defense.

Tells of Head Injury

The lawyer again declared that his client had been emotionally overwrought by sympathy for the Kennedy family. He also said that Ruby had had a metal plate in his head since 1940 as a result of a Chicago street fight.

Texas law does not specify degrees of murder. But the inclusion of the words "voluntarily and with malice aforethought" in the indictment made it the equivalent of a first-degree charge, involving the death penalty.

The trial jury, Assistant District Attorney Jim Bowie explained, could impose a sentence of life imprisonment or any number of years it chooses, with a minimum of two.

A sentence of five years or less can be suspended if a defendant has no felony record in any state. Ruby is not known to have any such record, although he has been held a half-dozen times here on misdemeanor charges.

"Our whole judicial system," District Attorney Henry Wade of Dallas County said today, "will be on trial, as to whether we live in a land of government by laws or by men."

Trial Delay Expected

Criminal District Court Judge Joe Brown, who received the indictment from the grand jury, said he would set Dec. 9 as the trial date. However, a continuance of at least a month is virtually automatic in capital cases, and one is expected in this instance.

Meanwhile, Mr. Howard plans to ask a hearing seeking bail for his client. It is considered unlikely that bail will be permitted.

It took only a half-hour for the grand jury of 11 men and a woman to hear the case against Ruby presented and to vote the indictment.

The jury, seated on the outside of a long U-shaped table, met behind closed doors at its daily starting hour of 8:30 A.M., central standard time, in a third-floor room of the Dallas County Records Building.

District Attorney Wade, seated in the center of the U, called only four witnesses—the four police officers who were escorting Oswald from the jail doorway to the van, 75 feet up the ramp, when he was killed.

9 Votes Needed

The four were Capt. Will Fritz, chief of the police homicide bureau, who headed the investigation of both the Kennedy assassination and the Oswald killing, and Detectives J. R. Leavelle, L. G. Graves and C. N. Dhority.

Participants in grand jury proceedings are forbidden by law to reveal any details of testimony or deliberations. The votes of nine members are required to return an indictment.

At 9 A.M., the jury foreman, Durwood A. Sutton, a banker of suburban Grand Prairie, rang a buzzer for a messenger to receive the indictment.

The indictment said the jury had found that "one Jack Rubenstein, alias Jack Ruby, on or about the 24th of November in the year of our Lord One Thousand Nine Hundred and 63 did then and there unlawfully, voluntarily and with malice aforethought kill Lee Harvey Oswald by shooting him with a gun contrary to the form of the statutes in such cases made and provided and against the peace and dignity of the state."

Chicago Seeks Data

Special to The New York Times.

CHICAGO, Nov. 26 — The Chicago police said today that fingerprints of Jack Ruby had been requested from the Dallas police for further checking on Ruby's background.

Ruby, born in Chicago, has been described as a "little guy" who liked to give the impression that he was acquainted with the Chicago underworld. He left Chicago about 15 years ago. So far no criminal record on Ruby has been found here.

Luis Kutner denied today published reports saying that he had been Ruby's lawyer. Mr. Kutner said he had been an adviser to Senator Estes Kefauver and Rudolph Halley, counsel for the Senate crime-investigating sub-committee that the Tennessee Senator headed in 1951. Both the Senator and Mr. Halley have died.

The lawyer said Ruby had not been an "adviser" to the sub-committee, as reported and that he (Mr. Kutner) had been a personal adviser to the Senator and Mr. Halley not a subcommittee adviser. Mr. Kutner said he had sent Ruby to Mr. Halley after Ruby had volunteered information about the Chicago crime syndicate.

A brother of Jack Ruby, Hyman Rubenstein, a Chicago flower salesman, has offered the theory that Ruby killed Oswald because Ruby was afraid Oswald would be put into a mental institution, and regarded that as inadequate punishment.