

RUBY FAILS IN BID TO MOVE HIS TRIAL

High Court in Texas Rejects Motion on TV Witnesses

By HOMER BIGART

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DALLAS, Feb. 24—Jack L. Ruby's lawyers lost today what was apparently their last chance of preventing his trial from being held in Dallas.

The Texas Supreme Court in Austin refused to hear a defense plea for an order to prevent Judge Joe B. Brown from seating as jurors anyone who had seen Ruby shoot Lee H. Oswald on television.

Stung by this setback, the chief defense counsel, Melvin M. Belli, angrily insisted there was no hope of Ruby's receiving a fair trial in Dallas.

He exploded to newsmen during a courtroom recess: "This town! It's worse than Scottsboro."

The outburst came just after prospective juror number 57, William W. Holland, who had admitted having a fixed opinion on the case, shook hands warmly with prosecution lawyers upon being dismissed by the court.

"You see what we are up against," said Mr. Belli.

Plea to High Court Weighed

The defense must now decide whether to go on with the trial or appeal to the United States Supreme Court, Mr. Belli said.

The district attorney, Henry Wade, doubted that the Supreme Court would entertain any motion by Ruby's lawyers until they had exhausted every remedy in Texas.

It is futile, he said, to expect any action at that level until Ruby has been tried and the Texas Court of Appeals has upheld the verdict.

Mr. Wade accused the defense of "frivolous delaying tactics" in filing the motion. He said that the State Supreme Court had no authority to interpret a criminal statute and that Mr. Belli should have gone instead to the State Court of Appeals.

Judge Brown said he was not surprised that the state Supreme Court had voted unanimously against hearing Mr. Belli's motion for a writ of prohibition.

"After all, we have been a state since—what was it, 1849?—and this is the first time this has ever been done," he said.

Mother of 6 Children

Mrs. Mildred McCollum, 39, a brunette with soft pleasant features, was sworn in as the third juror in the case at 10:40 A.M.

Mrs. McCollum, the mother of six children, said her husband was a machinist with the Geotechnical Corporation, a concern in suburban Garland that makes siesmographic equipment. She herself works as a secretary for a building contractor. She is a member of the Assembly of God, a small evangelical sect.

Clearly and precisely, wasting no words, Mrs. McCollum said that although she had seen the televised shooting of Lee Oswald she could remember little except that Oswald's face "had an expression of shock or pain."

No, she had not seen a gun in the hand of the figure that lunged toward Oswald, she said.

She said she had not formed any opinion as to whether there was a connection between Ruby and Oswald before the slaying of Oswald.

Says Dallas Is Innocent

She said she did not believe Dallas was on trial for the assassination of President Kennedy and the subsequent slaying of the President's accused assassin. Those events "could have happened any place," she said.

"Do you have any prejudice against Ruby?" Mr. Tonahill asked.

"None whatsoever," she replied.

"Did you know Jack Ruby operated a strip tease club?"

"What he does is his business"

Asked whether she believed Ruby was suffering a brain spasm at the time he shot Oswald, Mrs. McCollum replied: "It's believable if it could be proved."

"Do you believe a person who commits a crime in a moment of insanity should be set free?" Mr. Tonahill asked.

"If it's proven he's of unsound mind he should have treatment," she replied.

"But it would require proof?"

"Definitely."

Mrs. McCollum said that although three of her six children were under the age of 16, she would not be inconvenienced by serving on the jury.

Her 13-year-old son Neal has a cold, it was learned later, and her 15-year-old daughter Patricia, a student at Garland High School, will have to do the cooking at home.

By the noon recess, 53 jurors had been examined. Of the five who were questioned this morning, two said they were unable to set aside fixed opinions of the case and two more said they were opposed to capital punishment.

Mr. Belli said he had accepted Mrs. McCollum as a juror because "we like her, all of us liked her."

"We'll take acceptable jurors," he added. "We are not trying to filibuster here."