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First Lead Jack Ruby

By Tom Johnson

Dallas, May 24 (AP)- Earl Ruby of Detroit testified today that he believes his brother, Jack Ruby, slayer of President Kennedy's assassin, is insane.

The Detroit man was the first witness at a hearing to determine who will be the lawyers for the man who killed Lee Harvey Oswald.

The question of insanity is a key one in the struggle between the lawyers since Jack Ruby's original attorneys contend the defendant cannot fire them because he is mentally unsound.

Earl Ruby made the statement on his brother's mental condition under cross-examination by Joe Tonahill, whom the family is seeking to oust from the appeal maneuvering.

Earl Ruby testified that neither the Ruby family nor Jack Ruby employed Tonahill. He said the Jasper, Tex., lawyer was hired by Melvin Belli, chief ~~att~~ of the defense for the murder trial in February and March last year.

Belli was fired from the case. Jack Ruby is under death sentence, but has appealed, and a sanity hearing has been ordered by the Texas Court of Criminal Appeals.

Among witnesses sworn for today's hearing by Judge Louis T. Holland were Judge Joe B. Brown, who presided at the murder trial, and Dist. Atty. Henry Wade, who prosecuted Ruby.

Judge Holland, of Montague, Tex., sitting for Judge Brown, said he may rule on a motion to disqualify Judge Brown from further participation in the case and whether to hold the sanity hearing outside Dallas.

Questioning of Earl Ruby turned to accusations by Tonahill that the opposing lawyers plan to exploit the Ruby trial commercially.

Earl Ruby said Tonahill and Belli themselves tried to exploit the case, shooting a picture of Jack Ruby in his cell after his conviction.

The witness said Belli and Tonahill sought to sell the picture to LIFE magazine. ~~But~~ He said the family stopped payment on a \$3,000 check for legal fees after learning of the picture incident.

Earl Ruby also said, "I lost confidence in them (Tonahill and Belli). They were supposed to be handling Jack's trial but here ^{they} there were out making a movie."

Judge Brown testified he would not have appointed Tonahill as Ruby's counsel if he had been aware that Ruby had signed an affidavit dismissing Tonahill.

The judge admitted that the affidavit was on his desk when the appointment of Tonahill was made but he said he had not gotten around to reading it.

Judge Brown temporarily stepped out of the case and Judge Holland was appointed.

Two groups of attorneys seek to represent Ruby.

On one side is Joe M. Tonahill of Jasper, Tex., member of Ruby's original defense team. Opposing him is a group of out-of-state lawyers appointed by the Ruby family. These include the firm of Kunstler, Kunstler and Kinoy of New York, Sol Dann of Detroit and Elmer Gertz of Chicago/

Ruby, heavily guarded as usual, was brought down on an elevator from the jail a half hour before the hearing began.

A newsman asked him which lawyers he preferred. and Ruby replied, "the lawyers my family are getting for me." This would be the Kunstler-Dann-Gertz group.

Ruby was dressed in a dark suit and white tie and appeared much the same as in his murder trial in February and March a year ago.

Tonahill has refused to leave the case, contending Ruby signed a contract with him.

The attorney says Ruby was sane at the time, but has since become insane and thus not oga ly competent to break a contract for counsel. He also noted that Judge Brown appointed h9m and Dallas attorney Phil Burleson to represent Ruby.

The Kunstler group contends Ruby signed an affidavit requesting Tonahill's dismissal and that the convicted man's constitutional rights would be abridged unless the affidavit were honored.

The Kunstler group appealed to a Dallas federal court and to the 5th U.S. Circuit Court of Appeals, but the case was returend to the state courts without a ruling.

Ruby's case was to have been heard this spring by the Texas Court of Criminal Appeals, but the high court ordered a sanity hearing for Ruby.

The outcome of the sanity hearing may have a bearing on who represents Ruby in the appeal. The high court order has been interpreted to mean that if Ruby is found sane, the Kunstler froup will represent him, and if found insane, Tonahill will remain ~~xxx~~ in the case.

Another complication in the case is a clash between Tonahill and Judge Brown. The attorney claims that Judge Brown is writing a book on the Ruby case and therefore has a pecuniary interest. Judge Brown recently told reporters that he has received a \$5,000 advance from a New York publishing firm. ~~xxxxxxx~~

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