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Austin, Tex., June 24 (AP)- Jack Ruby's first words to police after he fired a fatal bullet through Lee Harvey Oswald's vital organs were the big issue today in the condemned night club operator's plea for a new trial.

Ruby's attorneys and lawyers for the state also argued about whether widespread news coverage of Oswald's slaying and the selection of jurors who saw the killing on television denied Ruby a fair trial.

After a hearing that lasted most of the day, Texas' <sup>ed,</sup> ~~elections~~ three-judge court of criminal appeals took the arguments under advisement for a probable fall decision. The court goes into summer recess Saturday.

What Ruby said, how he said it and under what circumstances is vital, both sides agreed, in showing whether he acted with malice. Murder with malice is punishable by death in Texas. Murder without malice is not.

A Dallas jury found Ruby acted with malice and assessed the death penalty March 14, 1964.

Oswald, identified by the Warren Commission as the assassin of President Kennedy, was killed Nov. 24, 1963, two days after the assassination.

Dallas Asst. Dist. Atty. William Alexander related in a dry, measured voice how Ruby was handcuffed and wrestled to the floor of the Dallas police station basement.

"While laying on the jailhouse floor, he said, 'I hope the son of a bitch dies.' Then on the elevator he said, 'I had to do it, you guys couldn't....'" Alexander said.

"Malice is malice," he added.

Ruby's lawyers, both those presently retained and those whom Ruby~~xxx~~ dropped, tried to show that key prosecution testimony relating to malice was not based on Ruby's spontaneous statements, as it must be under Texas law.

Jow Tonahill of Jasper, who participated in the trial and later was fired, said this is the "critical thing....take that out of the case and the only thing left is shooting the gun without malice."

Tonahill said the biggest error was the admission of testimony of police Sgt. P.T. Dean, who told of Ruby's alleged remarks after the shooting .

"There was no spontaneity, no emotionalism, no impulse," Tonahill asserted, adding that officers testified Rub was "calm, collected, not agitated, not out of breath and appeared normal."

Dallas lawyer Phil Burleson struck a similar note, saying that a time check on television films of the scene of the Oswald slaying revealed that Dean did not talk to Ruby until about 40 minutes after the shooting.

Burleson is the only member of the original three-lawyer defense team still retained by Ruby. Melvin Blli of San Francisco was fired, as was Tonahill.

The attack on the seating of jurors who saw the crime on television was led by Burleson.

"Eleven of the 12 jurors were actually witnesses of this offense," he said. "The only thing left was the matter of punishment ....if one juror could have been found (that did not see the televised shooting) out of 162 questioned, then by this ratio, a jury could have been found that complied with the statute (against witnesses on juries).

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Austin -- first add nl Ruby hearing x x x on juries).

Asst. Dist. Atty James Williamson said however that jurors who had seen the shooting on television had been accepted by Belli speaking of a hypothetical juror who viewed the crime on television, he said:

"Did he see something, or did he just see confusion in which he could not possibly identify anyone? x.x.. the defense admitted Ruby shot Oswald. The identification of Ruby and Oswald (on television) was not based on personal knowledge but on the announcers' statements that they were Ruby and Oswald."

The hearing lacked the color, excitement and confusion of the trial itself. Although the court expected a large crowd, half the spectators chairs were empty. Just a few cameramen waited outside.

Mrs. Eva Grant of Chicago, Ruby's sister, was present. Ruby was not. Neither was Oswald's mother, Mrs. Marguerite Oswald of Fort Worth, who has attended nearly all other proceedings connected with the case.

The murder weapon, Ruby's snub-nose revolver, was in an envelope that included photographs of the shooting, but the court did not call for it. No questions were asked by the judges, a departure from the usual practice.

The issue of the effect of news coverage on the trial was presented by Austin Civil Liberties lawyer Sam Houston Clinton Jr. and Elmer Gertz of Chicago.

"There was a trial by inflamed public opinion. There was a trial by newspaper and television," Clinton said.

Gertz said the U.S. Supreme Court's reversal of the murder conviction of Dr. Samuel Sheppard of Cleveland, because of excessive news coverage, bears on Ruby's case.

He hit at "the pervasive influence of publicity" and said that "despite this second tragedy the same thing continued to go out. Nobody was going to forget this was an earthshaking event, even if all the protections of the Constitution were forgotten."

"Almost every kind of a story that would poison the atmosphere was layed up," Gertz said.

Alexander said there were numerous differences between the Ruby and Sheppard cases, mainly that Jurors in the Sheppard case had access to news accounts and to telephones, while those in the Ruby trial did not.

"The jury was insulated and isolated at all times," he said.

Williamson said Ruby's lawyers tried every trick they could to take advantage of sympathy for Ruby.

"Ruby was an avenging angel -- that's what they werex playing up," he said. "You will notice they hever asked for a continuance (delay in the trial). He had the sympathy ...he had to be tried while emotions were still in his favor and while the memory of Kennedy was still warm."

In final arguments, William Kunstler of New York City said Ruby's execution would be murder.

"We cannot murder Jack Ruby, however we feel about him, in the same manner that he gunned down Oswald," Kunstler said.

"If the enormity of a crime means the end of due process, we are in trouble. Due process should be across the board, whether for Jack Ruby, Sam Sheppard or Joe Doakes."

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