SUPREME COURT

Case May Break New Legal Ground

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WASHINGTON — Legal observers in Washington Saturday foresaw the possibility of interesting new interpretations of the Constitution in the event the Jack Ruby case is heard by the Supreme Court.

If the Texas Court of Criminal Appeals upholds the verdict of the Dallas trial jury, the case is certain to be appealed to the highest tribunal, as indicated by the statements of defense attorney Melvin Belli.

Any appeal to the Supreme Court must be based on federal constitutional questions.

The court in recent years has been broadening its interpretation of what constitutes such a question, and in the Ruby case it could conceivably broaden them still more.

IF THE APPEAL comes to the Supreme Court, the tribunal must decide whether it will take the case or not. If it refuses to issue a writ of certiorari, it will in effect affirm the decisions of lower courts and that will be the end of the matter.

If it issues a writ and accepts jurisdiction, the court will then receive briefs on the case and set it down for arguments. From there on, it can affirm the verdict, reverse it or perhaps issue a conditional reversal based on one or two issues involved in the case.

Attorney Belli has indicated that one question he might raise in an appeal is Dist. Judge Joe B. Brown's charge to the jury. Judge Brown did not acquaint the jury, according to the defense, with either the so-called "Durham Rule" or the legal doctrine of "irresistible impulse."

TEXAS COURTS have recognized neither.

The Durham Rule, which is recognized by federal courts in the District of Columbia, requires the prosecution to show that a crime was not the product of a disease or deficiency on the part of the defendant.

"It makes the prosecution prove a negative," a capital legal expert said. "It's a very difficult thing to do in many cases."

Texas adheres to the traditional "McNaughton Rule" on insanity, in which the defendant's knowledge of right and wrong and awareness of the nature and consequences of his acts are the considerations.

But many states couple this rule with the "irresistible impulse" doctrine in establishing the mental balance of a defendant.

IT IS POSSIBLE the Supreme Court might want to use the Ruby case to establish a new standard for cases in which insanity of any kind is the main issue.

Until recent years, the Supreme Court has held that the first 10 amendments to the federal Constitution—the Bill of Rights—pertained only to federal situations and cases. But lately it has been applying these amendments, a step at a time, to state cases.

The most recent example was the court's ruling that defendants in state courts are guaranteed the right to counsel by the federal Constitution. Previously, it had made similar rulings in state cases involving confessions and illegal searches.

THE COURT has never said, however, that the 10 amendments apply universally to the states and their judicial procedures. It is considered more likely that it will apply such a doctrine on a continuing piece-meal basis.

Any consideration of the Ruby case by the high court will undoubtedly be undertaken with Chief Justice Earl Warren sitting on the sidelines. As head of the special presidential commission investigating the assassination of President John F. Kennedy, he is certain to disqualify himself. In a close decision, this might be an important factor.

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