

Issue of New Tests For Ruby Discussed

By CARL FREUND

A dispute arose Wednesday over new laboratory tests for Jack Ruby.

Dr. Hubert Winston Smith, Ruby's new chief defense attorney, told reporters he will ask Judge Joe B. Brown to order new tests for the condemned slayer.

First Assistant Dist. Atty. A. D. Jim Bowie said prosecutors will vigorously oppose the tests.

Dr. Smith, a University of Texas law professor, said he wanted tests which would show "once and for all" whether Ruby suffers from psychomotor epilepsy or any other brain disorder which could affect his behavior.

"If these exhaustive tests showed he did not have psychomotor epilepsy, we could cast that aside," the defense lawyer said. "On the other hand, if there is evidence that he does have a brain disorder, that evidence should be available to us."

He said the tests could be given at the Austin State Hospital.

Bowie said there is no legal basis for additional laboratory tests.

The prosecutor suggested that Dr. Smith concentrate on getting a new trial for Ruby instead of thinking about evidence they could introduce at that trial.

"In ~~no~~ way they could use results of laboratory tests in their

attempts to get a new trial," Bowie continued. "Our laws provide for new trials if there is newly discovered evidence which would have an important bearing on the guilt of the accused. But the results of new lab tests would not fall within this classification. "We had testimony during Ruby's trial about the tests he received in January. Results of new tests would merely represent cumulative evidence."

Three psychiatrists analyzed results of the January tests. Two said they did not believe Ruby suffered from any brain disorder which could have led him to shoot Lee Harvey Oswald, the 24-year-old Communist sympathizer accused of assassinating President Kennedy.

The third said he concluded Ruby suffered from a brain disorder.

Defense lawyers told jurors that a psychomotor epilepsy seizure caused Ruby to "black out" seconds before he shot Oswald. Prosecutors said Ruby planned the shooting in the mistaken belief it would bring him "fame and fortune."

Bowie said he sees only one way the defense could make immediate use of new laboratory tests.

"Defense lawyers could contend Ruby became insane after the verdict," Bowie said. "If they presented sufficient evidence to Judge Brown, he could order a jury trial on this issue. And, if the jury agreed he was insane, his case would be 'frozen' until he regained his sanity."

Dr. Smith stresses scientific evidence.

His contract with Ruby and his family states:

"All parties hereto recognize that the Jack Ruby case involves complex scientific questions going to the very borderland of the existing knowledge of the behavior sciences . . ."