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Vast Legal Implications Put Spotlight on Ruby Appeal

By CARL FREUND
Austin Bureau of The News
AUSTIN, Texas—Because of the far-reaching legal implications, judges and lawyers across Texas are awaiting decisions of federal judges in the Jack Ruby murder case.

If the jurists agree with defense attorneys, they would drastically change the procedure for appealing cases after defendants are convicted in state courts.

ALTHOUGH THERE have been rare exceptions, federal courts have followed a policy of refusing to interfere with appeals while they are pending in state courts. The U.S. Supreme Court has said that, unless there is an obvious abuse of constitutional rights, defense lawyers should not go into a federal court until they have "exhausted all legal remedies" in state courts.

Ruby's appeal from his death sentence is pending in the Texas Court of Criminal Appeals. The state court has yet to hear arguments from defense lawyers who claim he did not get a fair trial when a Dallas jury convicted him of the murder of Lee Harvey Oswald, the 24-year-old Marxist accused of assassinating President Kennedy.

Even though the case is still in the state courts, Ruby's attorneys are urging the federal courts to take jurisdiction over it. They contend Judge Joe B. Brown violated Ruby's civil rights when he rejected requests that he move a sanity hearing to another county, disqualify himself and remove Joe Tonahill from the defense staff.

U.S. DIST. JUDGE T. Whitfield Davidson rejected the defense plea.

Then attorneys for the former striptease club manager turned to the U.S. Fifth Court of Appeals. They asked it to overrule Judge Davidson and, meanwhile, to bar further proceedings in the state court.

The federal appeals court has scheduled a hearing in Jacksonville, Fla., during the week of April 19.

First Assistant Dist. Atty. A. D. Jim Bowie of Dallas will argue that "chaos would result" if the federal courts adopt a policy of assuming jurisdiction over cases while they are still under consideration in state courts.

If turned down by the federal appeals court, defense attorneys could ask the U.S. Supreme Court

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to hear arguments. This process could take months.

MEANWHILE, RUBY'S original appeal would still be pending before the Texas Court of Criminal Appeals. But the hands of its judges would be tied as long as there was a federal court order which barred further action in the state courts.

Prosecutors across the state also ask this question:

Suppose the federal courts rejected the defense contention and cleared the way for Judge Brown to go ahead with a sanity hearing. Could defense lawyers then

object to a ruling by Judge Brown during the hearing and stall proceedings by going into the federal courts again?

Prosecutors also ask:

If the federal courts can assume jurisdiction while a case is on appeal in the state courts, couldn't the federal courts also assume jurisdiction of a case before it is tried in a state court?

SUPPOSE THE JUDGE of a state court rejected a defense request that he postpone a trial. Could defense lawyers delay the trial indefinitely by going into the federal courts?

These prosecutors note that Dallas County has sufficient money to send members of Dist. Atty. Henry Wade's staff to Jacksonville or Washington to argue before federal judges. But, they point out, many small counties would lack funds.

The Texas Court of Criminal Appeals asked Judge Brown to determine Ruby's mental condition. The court said it wanted to know whether Ruby realized what he was doing when he said he wanted Tonahill dropped from the defense staff.

Judge Brown scheduled a hear-

ing March 29, but postponed it until he learns what position the federal appeals court will take.