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Ruby's Condition Appears Stabilized

Jack Ruby's condition appears to be stabilized, and doctors reported Friday that he is "quite comfortable."

"We'll know more about the course of the disease in two to four weeks," one of the doctors attending Ruby commented. A more accurate judgment of the effectiveness of the drug being used can then be made, he said.

The drug being given the convicted slayer of Lee Harvey Oswald, 5-Fluorouracil, has achieved long-term remission in other, similar cases.

Patients have received as many as 9 to 54 courses of therapy, over a period of years. (The course of therapy varies with the case but it is usually given during a period of several weeks.)

The drug, introduced in 1961, was well-publicized as one of the drugs chosen to treat the then House Speaker Sam Rayburn. Rayburn fell victim to cancer in November, 1961.

The form of cancer which has stricken Ruby is an uncommon one, the doctors — from the University of Texas Southwestern Medical School — point out.

While the primary tumor mass in Ruby may never be

located, the precise cell type has been confirmed with "some evidence" that it began in the air sacs of the lung. However, its origin may have been in a "distal duct" of the pancreas, which secretes a "juice" vital to digestion.

In either case, Ruby's cancer is an unusual form of its family of cancer, known as adenocarcinoma. Of 100 cases of lung cancer, this type would probably be the cause of five cases, the doctor noted.

The drug's effect is to literally trick the cancer cell.

"The cell doesn't recognize that it is an abnormal nutrient and by incorporating the abnormal nutrient it makes the cell unable to divide normally" and thus head off its multiplication.

No other form of therapy is being given, although doctors have left in his chest the drainage tubes to carry off the fluid that continues to accumulate at a decreased rate, in his right chest cavity.

Much of Ruby's day Friday was spent reading, doctors reported.

The bulletin issued late Friday afternoon by Parkland Hospital through the sheriff's office, was a simple one: "No change in status."

(Indicate page, name of newspaper, city and state.)

14A

"The Dallas
Morning News"
Dallas, Texas

Date: 12/17/66

Edition:

Author:

Editor: Jack B. Kruger

Title:

Character:

Classification:

Submitting Office:

Dallas

 Being Investigated

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Is There More?

"Ruby is the last vital link to those three days that shook the world in November, 1963," wrote reporter Kent Biffle in *The News*. "Jack Ruby shouldn't go to his grave without revealing every detail of his role in those events."

That Ruby, now threatened by cancer, has revealed "every detail of his role" is still much a matter of speculation. Reports persist that Ruby and Lee Harvey Oswald were more than passing acquaintances.

Those who would lock November of 1963 away for three generations—including the Warren Commission itself—point to that report as reason enough to let the matter rest. The findings, after the most exhaustive and authoritative investigation in history, are conclusive: Oswald was the

assassin, acting alone.

Without debating that point, this should be remembered: The Warren Commission was basically investigating only one murder—that of President Kennedy. Any light it sheds on the murder of Oswald by Ruby must be regarded as incidental.

Ruby may know more about what happened in Dallas than he has told or has been given the opportunity to tell. Or he may, in fact, have already revealed "every detail of his role."

Either way, only one man has the answer. And that man has been shown to be desirous of "hero" status.

The most heroic deed he could perform for this and future generations would be to leave no loose ends hanging from the awful tapestry he helped weave.

(Indicate page, name of newspaper, city and state.)

2D

**"The Dallas Morning News"
Dallas, Texas**

Date: 12/20/66
Edition:
Author:
Editor: Jack B. Kruger
Title:

Character:
or
Classification:
Submitting Office: Dallas
 Being Investigated

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Pair Claim Jack Ruby Wants Test

Phil Burleson said Monday he was not aware that Jack Ruby wants a lie detector test.

Earl Ruby of Detroit was quoted earlier as saying his brother had asked for a polygraph test "a dozen times" to prove he was not a member of a conspiracy.

Earl Ruby and Elmer Gertz of Chicago told the Associated Press of several purported Ruby desires and a recount of the shooting of Lee Harvey Oswald to support their murder without malice contention.

BURLESON, a frequent Ruby visitor and his lawyer since the murder trial, said, "Apparently Mr. Gertz and Earl had some conversation with Jack when I was not there."

Dist. Atty. Henry Wade said he had not been contacted about a polygraph test.

Gertz said Ruby has no memory of the Oswald killing, although he does not deny it. He said Ruby talked about the time element involved in the shooting—he almost missed Oswald by lingering at a nearby telegraph office — and his leaving his favorite dog in the car.

THESE POINTS are expected to be major defense arguments if Ruby is re-tried. Many lawyers feel the murder without malice case based on chance and emotion were clouded by excess psychiatric testimony in the first trial. A second trial would be more "conventional," one attorney predicted.

Parkland Hospital spokesmen declined to elaborate on Ruby's condition.

The morning report stated, "Mr. Ruby's condition remains stable and is essentially unchanged. He has been troubled by some vomiting but rested comfortably last evening. His therapy continues as before."

Later, the hospital reported, "Mr. Ruby's chest tubes were replaced this afternoon. Mr. Ruby is resting comfortably."

(Indicate page, name of newspaper, city and state.)

20 D

"The Dallas
Morning News"
Dallas, Texas

Date:

12/20/66

Edition:

Author:

Editor:

Jack B. Kruger

Title:

Character:

Classification:

Submitting Office:

Dallas

 Being Investigated

(Mount Clipping in Space Below)

Jack Ruby's Condition Still Serious

Jack Ruby's condition remained serious Tuesday as he lay stricken with cancer at Parkland Hospital.

Doctors reported the slayer of accused presidential assassin Lee Harvey Oswald was "resting comfortably" as drug treatment of the disease continued.

The malignancy was discovered Dec. 10 after Ruby was admitted to the hospital Dec. 9 with symptoms similar to those of pneumonia.

Doctors reported they have replaced tubes inserted into Ruby's chest to remove fluid.

The malignancy is centered in lungs or pancreas, according to doctors. The drug treatment is being used because doctors decided the disease has advanced too far to be treated by surgery or radiation.

(Indicate page, name of newspaper, city and state.)

20A

"The Dallas
Times Herald"
Dallas, Texas

Date: 12/20/66

Edition:

Author:

Editor: Felix R. McKnight

Title:

Character:

or

Classification:

Submitting Office:

Being Investigated **Dallas**

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Brief Attacks Appeal Ruling In Ruby Case

By JOHN GEDDIE

A brief prepared Monday by the district attorney's office suggested that the State Court of Criminal Appeals do its homework before another decision in the Jack Ruby case.

The Dallas document claims that the U.S. Supreme Court would affirm Ruby's conviction if the case reached Washington.

Dist. Atty. Henry Wade and assistant James M. Williamson quoted Texas law on the court's duty to explain opinions and repeated the argument that the Ruby case should not be compared with trials of Dr. Sheppard and Billie Sol Estes.

THE NEW BRIEF is officially an announcement that prosecutors will not make oral arguments when the Austin court convenes Wednesday on a motion for a rehearing in the Ruby case. The state will ask by written briefs that Ruby's reversal be considered and his conviction affirmed.

The short, blunt reply states "it may be helpful" for the court to read "Ethical Problems in the Performance of the Judicial Function" by a New York jurist and Supreme Court comments on the Estes and Sheppard cases.

Wade wrote in a brief shortly after the Oct. 5 reversal that the Court of Criminal Appeals "obviously shirked from its duty" in issuing a general statement void of explanation or guidelines.

IN THE NEW BRIEF, appeal judges were told that their reversal "effectively insulates" their opinion from review by the Supreme Court. Wade and Williamson wrote that the Washington court would affirm the case.

Renewing an earlier plea for an explanation, prosecutors wrote, "Certainly merely avoiding or remaining mute as to the material facts in an individual case, which facts and circumstances in themselves raise novel questions crying out to be analyzed and rationally answered, sets nothing forth in intelligible language."

Joe Tonahill of Jasper, a former Ruby lawyer, criticized the state's original motion for rehearing when he wrote the court last week:

"THE BRAZEN cross-examination by the state of this court in its 'lecture motion' not only spotlights its contempt of appellate review," he wrote, "it spells out the temporary clear and present danger of an accused on trial at the hands and mercy of such calloused men whose only aim is a prejudiced jury verdict . . ."

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1 D

"The Dallas
Morning News"
Dallas, Texas

Date: 11/8/66

Edition:

Author:

Editor: Jack B. Kruger

Title:

Character:

or

Classification:

Submitting Office:

Dallas

 Being Investigated

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Ruby Trial Figure Dies

BALTIMORE, Md. (AP) — Dr. Manfred S. Guttmacher, chief defense psychiatrist in the 1964 murder trial of Jack Ruby, died of leukemia at City Hospital Monday night at the age of 68.

The internationally known psychiatrist championed the cause of psychiatric science in the courtroom, and this led him into many noted cases—including the Ruby trial.

Guttmacher testified that Ruby, a Dallas night club operator, was legally insane when he killed Lee Harvey Oswald—the man identified by the Warren Commission as the assassin of President John F. Kennedy.

(Indicate page, name of newspaper, city and state.)

5A

"The Dallas Times Herald" Dallas, Texas

Date: 11/8/66
 Edition:
 Author:
 Editor: Felix R. McKnight
 Title:

Character:
 or
 Classification:
 Submitting Office:
 Being Investigated **Dallas**

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Hearing on Ruby Reversal Set Nov. 9 in Austin Court

A hearing on the Jack Ruby trial reversal has been set for Nov. 9 before the Texas Court of Criminal Appeals in Austin.

Dist. Atty. Henry Wade last week filed a motion for the rehearing, claiming that the Austin appeals court made four major errors in ruling that Ruby must be re-tried for the murder of Lee Harvey Oswald.

Assistant Dist. Atty. James Williamson, who aided Wade in preparing the rehearing request, said the appeals court will officially accept briefs at the hearing.

The court also allowed the state 20 minutes in which to argue their case, he said. Wil-

liamson said it had not been decided if the state will make an oral argument.

The defense may submit a brief in the case, but Ruby's lawyers will not be allowed to argue.

The trial verdict was reversed by the Court of Criminal Appeals, which ruled that the case should have been tried outside of Dallas, and that testimony which indicated premeditation

should not have been allowed before a jury.

The state will argue that the evidence was introduced after Ruby lawyers "opened up" a conversation. The brief filed earlier also alleged that it is "sheer fiction" to compare the Ruby trial with the trials of Billie Sol Estes and Dr. Sam Sheppard, which the appeals court mentioned as a basis for a change of venue.

The motion for a rehearing also charged that the appeals court "obviously shirked from its duty" in the failure to explain why the Estes and Sheppard cases were used as reasons for the reversal.

Earlier Wednesday, Wade branded as "nonsense" a magazine story which hinted that 10 deaths might be related to the assassination of President John Kennedy and Oswald's death.

"I'm not going to give them any publicity by discussing it," he added.

He scoffed at rumors that Tom Howard, a Dallas lawyer who died of a heart attack, or Dorothy Kilgallen, a newspaper

columnist, might have been silenced because of any conspiracy.

The Associated Press quoted Dist. Judge Louis T. Holland as stating Wednesday that two cit-

ies — Seymour and Andrews — have asked to be the site of a second Ruby trial, expected to be set in January or February if the reversal is upheld by the appeals court.

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16A

"The Dallas
Morning News"
Dallas, Texas

Date: 10/27/66

Edition:

Author:

Editor: Jack B. Kruger

Title:

Character:

or

Classification:

Submitting Office: Dallas

 Being Investigated

44-1639-

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Rehearing Set In Ruby Ruling

AUSTIN (AP) — The Texas Court of Criminal Appeals set a Nov. 9 hearing on whether it should reconsider its reversal of the death penalty conviction of Jack Ruby for the slaying of accused presidential assassin Lee Harvey Oswald.

Dallas Dist. Atty. Henry Wade asked the court last Thursday to reconsider its decision and uphold Ruby's conviction.

The appeals court ruled Oct. 5 that Ruby was denied a fair trial.

In reversing the conviction, the court said any second trial for the former Dallas nightclub operator should be held outside Dallas County, where he was convicted in March 1964.

(Indicate page, name of newspaper, city and state.)

19A

"The Dallas
Times Herald"
Dallas, Texas

Date:

10/26/66

Edition:

Author:

Editor: Felix E. McKnight

Title:

Character:

or

Classification:

Submitting Office:

 Being Investigated

Dallas

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Ruby Works To Be Sold At Auctions

A collection of letters and original drawing belonging to Jack Ruby, convicted killer of Lee Harvey Oswald, will be offered for sale at auction by Charles Hamilton Autographs Inc. at 7:30 p.m. Nov. 3 in the Waldorf-Astoria Hotel in New York City.

The letters, written by Ruby in the Dallas County jail, are done in pencil and were addressed to a fellow inmate. Most are unsigned, but have been authenticated. They contain political philosophy, accusations, reminiscences, claims that he was framed and the Nazi action will leave him the last Jewish person left alive in the United States.

The drawings, seven in all, are done in watercolors, India ink and pencil, and are of geometric design with fine detail, shadings and thousands of closely drawn parallel lines with frequent use of rectangles, diamonds, triangles and cubes.

The letters are being sold separately and the drawings together.

(Indicate page, name of newspaper, city and state.)

3D

"The Dallas
Morning News"
Dallas, Texas

Date: 10/25/66

Edition:

Author:

Editor: Jack B. Kruger

Title:

Character:

Classification:

Submitting Office:

 Being Investigated

Dallas

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Wade Brief Hits Ruby Reversal

Dist. Atty. Henry Wade charged Thursday that the Texas Court of Criminal Appeals "obviously shirked its duty" in delivering the Jack Ruby trial reversal opinion.

The district attorney filed 23 pages of accusations and pleas for "intelligible" answers in the brief asking for a rehearing on the Ruby decision.

The strongly worded brief accused the appeals court of legal mistakes in four major areas — on admissibility of evidence to producing "sheer fiction" in comparing the Ruby trial with the Billie Sol Estes and Dr. Sam Sheppard cases.

THE BRIEF, submitted by Wade and Assistant Dist. Atty. James Williamson, attacked the court's ruling on Dallas prejudice and argued that speculation about the proximity of the courtroom and assassination site, noted in the court's opinion, is "wholly nonsensical and unrealistic."

The first 12 pages of the brief cited prior appeal court rulings which, according to Wade, allowed a Dallas police officer to testify that Ruby admitted planning the shooting of Lee Harvey Oswald.

Wade argued that the Austin court reversed the case because Ruby's statements were not spontaneous. The statements should have been allowed in evidence because, under another Texas law, the defense "opened up" the conversation, he said.

"It cannot be fairly disputed or ignored that under the record Appellant (Ruby) himself opened up such a subject of his premeditation prior to his entry into the (City Hall) basement."

WADE ARGUES that Dist. Judge Joe B. Brown would have violated the appeals court's own rules if he had excluded the premeditation evidence.

In his fair trial argument, Wade wrote that the court's "general statement" that the Ruby decision was based on Estes and Sheppard rulings "is a mere unsupported and undemonstrated conclusion of this court."

He called the court's reversal opinion "completely sterile" as to analysis or guidelines by which judges and lawyers could learn about similar cases.

Among a list of "unanswered questions" listed in the brief's change of venue argument, Wade asked, "Did any newspaper or other news media, in connection with the Ruby case, ever editorially or otherwise call on public officials or prospective jurors to secure Ruby's conviction, to disregard any plea of insanity or to suggest the extent of penalty, if any, Ruby should receive?"

IN THE Sheppard case, he said, publicity was of a different nature and the jurors were not shielded from its prejudice.

The brief also claimed the appeals court "erred and continues to err" in permitting Ruby lawyer Phil Burleson and former Ruby lawyer Joe Tonahill to announce that the reversal reduced Ruby's case to murder without malice.

"Certainly such extrajudicial statements obviously made for the purpose of brainwashing and prejudicing prospective trial judges and prospective jurors ... are erroneous and unjustified."

The court was accused of usurping the jurisdiction of the Dallas trial court in ordering a change of venue to another county.

"CERTAINLY SOME, if not all, of the facts and circumstances which this court has seized upon in holding that in February, 1964, Ruby could not and did not receive a fair trial in Dallas County, may have changed in two years.

"This court's jurisdiction is limited to determining and setting out in intelligible language why it holds the venue should have been changed from Dallas County as conditions existed in 1964," Wade's brief said.

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10
"The Dallas
Morning News"
Dallas, Texas

Date: 10/21/66
Edition:
Author:
Editor: Jack B. Kruger
Title:

Character:
or
Classification:
Submitting Office: Dallas
 Being Investigated

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DA to Ask Ruby Case Rehearing

Dist. Atty. Henry Wade will send a message to Austin Thursday charging that the State Court of Criminal Appeals erred in reversing the Jack Ruby murder trial judgment.

The brief, completed late Wednesday, will ask for a rehearing before the appeals court.

Appeals judges will be asked to re-examine their ruling in light of previous decisions in similar cases.

The brief is expected to request explanations of statements in the reversal opinion handed down Oct. 5.

The judgment was reversed because the case was tried in Dallas and "clearly injurious" testimony was allowed before the jury, the appeals court ruled.

The state brief will argue that defense lawyers "opened the door" to the testimony and that in similar cases the court ruled such testimony admissible.

Judge W. T. McDonald, in his change-of-venue opinion, concluded that it was "fair to assume" that Dallas citizens "consciously and subconsciously" felt Dallas was on trial.

He added, "The fact is the shooting of Oswald had been seen on television many, many times on that fateful day, Nov. 24, 1963, in the Dallas County area, by countless thousands of citizens. This alone precluded Ruby from receiving a fair and impartial trial by a Dallas County jury.

"The people of Dallas County had been exposed repeatedly and in great depth to the actual shooting of Oswald on television reruns.

The judges ruled the next trial must be held in "some county other than Dallas."

The district attorney's brief is expected to argue that there was no evidence before the court which indicated that Dallas felt it could "find atonement in the prosecution of Ruby," as Judge McDonald wrote.

(Indicate page, name of newspaper, city and state.)

7D

"The Dallas
Morning News"
Dallas, Texas

Date: 10/20/66

Edition:

Author:

Editor:

Jack B. Kruger

Title:

Character:

or

Classification:

Submitting Office:

Dallas

 Being Investigated

(Mount Clipping in Space Below)

DA Expected To File Brief In Ruby Case

Wade Declines To Reveal His Approach

The Dallas County district attorney's office is expected to file a brief on the Jack Ruby case with the Court of Criminal Appeals in Austin Thursday.

Asst. Dist. Atty. James Williamson was working on the brief Wednesday, and it was expected either to be mailed to Austin Wednesday night or flown to Austin Thursday.

Dist. Atty. Henry Wade refused to comment on what the brief contained, citing publicity as having been a factor in the change of venue ruling issued recently by the Court of Criminal Appeals.

The court reversed Ruby's conviction for the murder of accused presidential assassin Lee Harvey Oswald and ordered a new trial in a county other than Dallas.

The brief being drawn up by the district attorney's office is expected to argue that Dallas Police Sgt. P. T. Dean's testimony in the Ruby trial was admissible on the grounds that the defense had discussed the conversation Dean had with Ruby following Ruby's arrest Nov. 24, 1963.

The Court of Criminal Appeals' reversal was based in part on the grounds that Dean's testimony was inadmissible.

The brief also was expected to contain an argument that the only testimony that prejudice in Dallas existed was introduced by defense lawyers.

The district attorney's office also is expected to argue that the statements made by defense attorneys Phil Burlison and Joe Tonahill after hearing about the reversal were not compatible with Ruby's defense that he was insane at the time of the murder.

Burlison and Tonahill were both quoted as saying that the striking of Dean's testimony automatically reduced the charge against Ruby to murder without malice.

(Indicate page, name of newspaper, city and state.)

21A

"The Dallas Times Herald"
Dallas, Texas

Date: 10/19/66
Edition:
Author:
Editor: Felix R. McKnight
Title:

Character:
Classification:
Submitting Office: Dallas
 Being Investigated

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Malice Issue Debated in Ruby Case

By JOHN GEDDIE

Dist. Atty. Henry Wade and defense attorney Phil Burleson agreed Thursday that the Austin reversal of the Jack Ruby case did not specifically remove malice from the murder of Lee Harvey Oswald.

Wade repeated his pledge to qualify jurors on the death penalty if the case is retried.

A generally expressed opinion among Dallas lawyers after the reversal opinion Wednesday was that Ruby was assured of no more than a murder-without-malice, 5-year term when the Texas Court of Criminal Appeals struck out evidence which alleged that Ruby planned the shooting.

"Malice can be formed in a twinkling of an eye, under our law," Wade explained.

"I think Ruby showed malice when he sneaked into the City Hall basement with a gun in his pocket."

Wade also pointed out that the appeals court reversed the case on the testimony of Sgt. (now detective) P. T. Dean, who said Ruby confessed that he planned the shooting two days earlier.

Testimony of other officers, who said Ruby expressed the hope that Oswald died of the shooting, was left in the case.

Wade's contention Thursday was that these

statements will support a murder-with malice argument.

Burleson said his argument for murder without malice was based on practical, rather than technical, jury application.

"If you use a gun, malice can be presumed, technically, but there have been several verdicts recently here in Dallas alone showing that juries don't always agree."

He said that the court's ruling struck out "the most harmful phase of malice"—Dean's testimony that the shooting was planned when he saw a sarcastic sneer on Oswald's face.

About the other officers' statements, Burleson said, "There is a question of whether they actually heard it. This is something that we will look into."

Wade and Assistant Dist. Atty. James Williamson began work on a motion requesting the appeals court to rehear the Ruby case.

Much of their argument is expected to be an extension of briefs filed earlier. They claimed in one brief that Sgt. Dean's testimony was allowed in the case because the defense "opened up" the conversation first. They cited earlier appeal rulings which allowed such statements.

The appeal opinion did not discuss this

(Indicate page, name of newspaper, city and state.)

10
The Dallas Morning News
Dallas, Texas

Date: 10/7/66
Edition:
Author:
Editor: Jack E. Kruger
Title:

Character:
or
Classification:
Submitting Office: Dallas
 Being Investigated

state viewpoint, but said the admission of Dean's testimony was "clearly injurious."

The state is also expected to repeat arguments against the change of venue portion of the reversal. Judge W. T. McDonald wrote that it is "fair to assume that the citizenry of Dallas consciously and subconsciously felt Dallas was on trial and the Dallas image was uppermost in their minds to such an extent that Ruby could not be tried there fairly while the state, nation and world judged Dallas for the tragic November events."

Change of venue hearing testimony is expected to be examined by the state in an attempt to discover damaging statements leading to the opinion.

On publicity, in an earlier state's brief, prosecutors wrote, "If Oswald assassinated President Kennedy, as Ruby and his defense counsel assumed and stated as an established fact during the Ruby trial, then all the publicity that tended to show Oswald to be such a heartless and despicable assassin of a beloved president would tend to create emotional sympathy in behalf of anyone who killed Oswald . . ."

The state claimed Ruby lawyers tried to benefit from the publicity—by not requesting a continuance—in presenting an "emotional defense before time dimmed memories" of the assassination.

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Members of Jury Give Comments

By CAROLYN BARTA

Members of the Dallas jury that found Jack Ruby guilty of the murder with malice of Lee Harvey Oswald and sentenced him to the electric chair said Wednesday they felt Ruby had had an impartial jury and a fair trial.

But none of the eight jurors queried by The Dallas News Wednesday voiced any objections to the Texas Court of Criminal Appeals' reversal of the death-sentence conviction.

The state's highest court for criminal cases ordered the case tried in some other county.

An opinion written by one of the three appellate court judges, J. T. McDonald, said a judge must determine when to grant a change of venue when "an unfair jury is forced on one charged with crime."

"It is to be noted that all 12 of Ruby's jury entertained some concepts of his guilt one way or the other," Judge McDonald said. Jurors who heard the case in February and March of 1964 generally took issue with Judge McDonald's remarks.

Max E. Causey of Garland, a military electronics analyst for Ling-Temco-Vought Inc., who was foreman of the jury, said:

"Of course, we were all human. To completely deny that the jurors had any preconceived idea of his guilt would be getting into elements of the mind. I'm not even certain the appellate court is capable of doing that."

Mrs. Gwen English, a bookkeeper for Bodcaw Oil Co., added, "That's just one man's opinion. I don't think he has any way of knowing what the jurors thought or felt."

Most of the jurors ~~said they didn't feel~~ that a change of venue would have made any difference in the verdict rendered.

Mrs. Louise Malone, the 12th juror chosen in the two weeks taken to get a jury, said, "I believe the evidence was conclusive."

"If the same evidence was presented in the same manner, I think any jury would return the same verdict," Mrs. Malone has been an accountant for American Liberty Oil Co. for more than 30 years.

A change of venue?

"I don't think that would have made one iota of difference in the verdict," said Luther E. Dickerson of Mesquite, vice-president of Fritz Chemical Co., who, at 27, was the youngest to serve on the jury.

Causey agreed. "I think the defense tried to imply that jurymen from Dallas County were trying to cleanse the name of Dallas. This was not true. We

based the verdict on the evidence we heard."

James E. Cunningham of Richardson and J. Waymon Rose of Dallas commented that it would be impossible to say what might have happened had the trial been held outside Dallas County.

"That's one of the things the court has to decide. One of the reasons we have courts is because laymen can't make that kind of decision," said Cunningham, an electronics engineer for Texas Instruments Inc.

Rose, a furniture manufacturers' representative, maintained "Ruby had a fair trial." But, he added, "I don't mind seeing anybody get another chance if he has it coming to him. Apparently Ruby does, if the court decided it."

J. G. Holton Jr. of Grand Prairie, a mailman, said there is no doubt in his mind that Ruby received a fair trial. He added, however, that appeals are "part of our judicial system and we have to go along with them."

Mrs. Aileen B. Shields, an employe of Southwestern Bell Telephone Co. for some 39 years, had no comment other than she sees no reason a change of venue would have made any difference.

Unavailable for comment were four other jurors: Douglas J. Sowell, an employe of Braniff International who has moved to Renton, Wash.; Mrs. Mildred McCollum of Garland, mother of six; Allen W. McCoy of Irving, engineer for Fritz W. Glitsch & Son, and Robert J. Flechtner Jr. of Richardson, an employe of the Lithographic Division of Storm Printing Co.

(Indicate page, name of newspaper, city and state.)

10A

"The Dallas
Morning News"
Dallas, Texas

Date:

10/6/66

Edition:

Author:

Editor:

Jack B. Kruger

Title:

Character:

Classification:

Submitting Office: Dallas

 Being Investigated

(Mount Clipping in Space Below)

Reversal Makes Ruby Kin Happy

"My heart feels a little lighter tonight," Mrs. Eva Grant said late Wednesday in the visitors' waiting area of the Dallas County jail.

Jack Ruby's sister issued exuberant comments and excited recounts of much of the murder trial as she scribbled a note to Ruby.

She told Ruby in the note that it was too late for her to visit him, that she had talked with all their family and "they're all happy about the reversal."

After she grabbed and kissed a passing reporter, Mrs. Grant

said, "I want to thank the appeal judges for having an open mind and being so fair in taking time to read the transcript.

"I do believe Jack went into some kind of a shock or trance and it carried over into the Oswald incident."

She said she learned the news when Phil Burleson, Ruby's lawyer, called her and shouted, "We've won!"

"You screamed," Burleson said.

"You screamed, too," she retorted.

Later, Mrs. Grant repeated statements from the opinion which freed Ruby from the death sentence, including the ruling which struck out an alleged statement by Ruby that he decided to kill Lee Harvey Oswald two nights before the killing.

"Jack never said it," Mrs. Grant insisted. "They never heard what Jack said. I questioned Jack shortly after and he said he never said anything like that."

Mrs. Grant said that the facts show Ruby did not plan to walk in the basement of the City Hall and shoot Oswald. She said he wandered on the scene in a daze and did not plan a getaway.

"What kind of a guy in his right mind would have done that (the shooting in front of reporters and police witnesses)?" she asked.

Mrs. Grant said she planned to visit her brother Thursday.

(Indicate page, name of newspaper, city and state.)

10A

"The Dallas
Morning News"
Dallas, Texas

Date:

10/6/66

Edition:

Author:

Editor: Jack B. Kruger

Title:

Character:

or

Classification:

Submitting Office: Dallas

 Being Investigated

(Mount Clipping in Space Below)

Mrs. Oswald Happy Ruby Won Reversal of His Trial

FORT WORTH, Texas (UPI) —The mother of Lee Harvey Oswald said Wednesday she was glad Jack Ruby's conviction was reversed because "the truth will now come to light" about the death of her son.

But Mrs. Marguerite Oswald added she hopes Ruby will not be freed on bond for killing her son because "he wouldn't live two minutes."

She fears that some indignant person would kill Ruby and thus keep him from disclosing possible new facts about the assassination of President Kennedy in Dallas on Nov. 22, 1963.

"I want him (Ruby) alive," Mrs. Oswald said. "I am against capital punishment and don't want to see him go to the electric chair."

Mrs. Oswald maintains that her son was only a suspect in the killing of President Kennedy and should not be called the assassin. She sent a telegram Wednesday to a broadcasting network (NBC) that said Ruby killed "presidential assassin-Lee Harvey Oswald."

"I'm indignant about this, so many people call my son the presidential assassin. He was only a suspect," she said.

"I'm not too surprised at the reversal of the Jack Ruby conviction. What is more important is the sanity trial at which he was declared sane. It could lead to his taking the witness stand at a new trial and giving the other side a chance to cross-examine him."

(Indicate page, name of newspaper, city and state.)

10A

"The Dallas
Morning News"
Dallas, Texas

Date:

10/6/66

Edition:

Author:

Editor: Jack B. Kruger

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Classification:

Submitting Office: Dallas

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Marina Comments

GREENVILLE, Texas (AP)

The widow of accused presidential assassin Lee Harvey Oswald, Marina, now Mrs. Kenneth Jess Porter of Greenville, said she had no comment on the trial reversal won by the slayer of her husband except "that I don't want him to go to the electric chair or anything like that. I think he's been punished enough already . . ."

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10A

"The Dallas Morning News"
Dallas, Texas

Date:

10/6/66

Edition:

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Editor: Jack B. Kruger

Title:

Character:

Classification:

Submitting Office: Dallas

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Belli Comments

HOUSTON, Texas (AP)—Melvin Belli of San Francisco, one of Jack Ruby's trial attorneys, said here he was pleased with the opinion. "Once a change of venue (to another county) was denied," Belli said, "we knew we couldn't win it." Wednesday's ruling "was the only decision the appellate court could have rendered under the law," Belli said.

(Indicate page, name of newspaper, city and state.)

10A

The Dallas Morning News
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Date:

10/6/66

Edition:

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Title:

Character:

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Submitting Office: DALLAS

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Wade Won't Give Up

D.A. Will Ask Court Restudy Ruby Reversal

By WAYNE KING
Staff Writer

The next move fell to the prosecution Thursday in the wake of the reversal of Jack Ruby's conviction for the murder of accused presidential assassin Lee Harvey Oswald.

That move probably will be a motion for a rehearing in which attorneys for the state will try to persuade the Texas Court of Criminal Appeals to reverse its ruling.

Dist. Atty. Henry Wade said Thursday morning he had not yet seen the court's opinion, but under the law he has 15 days to file a brief with the court, answering its findings of error in Ruby's trial.

"It's unlikely they will reverse their ruling in a case of this magnitude," Wade said, "but we will exercise our right to ask them to."

The appeals court's ruling, issued Wednesday, reversed Ruby's conviction on two grounds:

1. The admission into evidence of testimony by Police Sgt. P. T. Dean that Ruby told him he had thought about killing Oswald two days before he shot him in the basement of the Dallas police station on Nov. 24, 1963.

2. The failure of Judge Joe B. Brown to grant a defense motion for change of venue.

Dean's testimony was that Ruby told him in the jail after the shooting "that he had seen Oswald in a police lineup two nights before and that when he saw the sarcastic sneer on Oswald's face he had decided that if he got a chance to do so, he would kill him," the opinion said.

It continued: "Obviously this statement constituted an oral confession of premeditation made while in police custody and therefore was not admissible. The admission of this testimony was clearly injurious and calls for a reversal of this conviction."

"The defense asked two officers whether Ruby in the same conversation asked if they had found his car parked across the street with a dog inside," said Wade.

"We then went into the same conversation and got Dean's testimony about Ruby's remark," he continued.

CONCERNING the change of venue, Wade said the state will cite the record of the trial to the appeals court. "If they (the judges) say Dallas was prejudiced, they got it from the newspapers, not from anything said during the trial."

If the state's motion for rehearing is unsuccessful, there are two possibilities: a plea of guilty by Ruby in exchange for a sentence worked out between the prosecution and defense, or a new trial.

RUBY'S NEW TRIAL, if it is held, will be in some other large Texas city, observers think. District Judge Louis T. Holland of Montague would give no encouragement to speculation on which city might be chosen.

If the tall, balding judge chooses to try the case himself, it will likely be in the court over which he presides in Montague.

"If it is moved to another court, then the judge of that court will try it if he wants to," said Judge Holland, who

was put in charge of the Ruby case after Judge Brown, the original trial judge, excused himself.

IN THE EVENT a guilty plea cannot be worked out between the prosecution and defense, said Wade, the state will again seek the death penalty. "We think it was murder with malice. He was indicted for murder with malice and he will be tried for that offense."

Attorney Phil Burleson, one of Ruby's lawyers, said during a visit with Ruby at the Dallas County Jail that he would "seriously consider" a plea of guilty to murder without malice.

If this were permitted, Ruby would probably go free within

a few months, considering that he has three years' "back time" in the Dallas County Jail.

But Wade termed such a proposal "ridiculous."

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Times Herald"
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Date: 10/6/66

Edition:

Author:

Editor: Felix R. McKnight

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Text of Opinion For Ruby Appeal Explains Errors

AUSTIN, Texas (AP)—Here is the text of the Texas Court of Criminal Appeals sentence verdict in the slaying of Lee Harvey Oswald:

Jack Rubenstein alias Jack Ruby, appellant, from Dallas County.

OPINION:

The offense is murder; the punishment, death.

Shortly after noon on Nov. 22, 1963, the President of the United States was assassinated within the courthouse area in the City of Dallas. A short while thereafter Lee Harvey Oswald was apprehended, but only after Patrolman Tippit was killed in an effort to question him. Oswald was placed in the Dallas city jail. Two days later on Nov. 24, in the basement of the city jail as Oswald was being transferred to the county jail, he was shot by appellant at close range, from which wound he died. Countless thousands witnessed this shooting on television. Four days later this appellant was indicted for Oswald's murder. His sole defense was that of insanity in that he was suffering from psychomotor epilepsy.

On Feb. 10, 1964, a change of venue hearing began in Criminal District Court No. 3 of Dallas County upon the motion of appellant to transfer the case to some county other than Dallas. The court did not grant the change of venue; the selection of the jury began on Feb. 17, was completed on March 3, and a verdict of guilty with punishment set at death was returned on March 14.

The voluminous record in this appeal finally reached this court and the case was set for submission on March 10, 1965.

Prior to submission a serious question arose as to which of many lawyers should be recognized by this court as appellants' counsel on appeal. In view of this, we entered an order directing the trial court to hold a hearing to determine whether or not appellant had become insane since his trial and thereby rendered incapable of rationally selecting his counsel. Such hearing was held, and the record reached this court containing a finding that appellant was presently sane, and we promptly set the case down for submission.

During the trial, over the strenuous objection of appellant that anything appellant may have said while in police custody constituted an oral confession in violation of the statutes of this state and was not admissible as res gestae, Sgt. Dean of the Dallas police testified as to a conversation which he had with appellant on the fifth floor of the Dallas city jail where he had been incarcerated, undressed and interrogated by other officers before Dean and Secret Service Agent Sorrells arrived at his cell. Prior to answering any of Sorrells' questions, appellant asked if his answers would be made available to "magazines or publications" and after being assured that he was being questioned only for police purposes, appellant replied "I'll be glad to answer your questions."

(Indicate page, name of newspaper, city and state.)

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Morning News"
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The time element which elapsed between appellant's arrest and the conversation in question varies between 10 and 40 minutes depending upon whether Dean's testimony at the trial or his written report made two days after the occurrence is accepted. Be this as it may, appellant was in a jail cell and had been interrogated by other officers prior to this conversation. Under none of the authorities cited in notes 1-3 of Moore vs. State, 380 S.W. 2d 626, could this statement be held to have been spontaneously made. See also Holman vs. State, 243 S.W. 1093; McBride vs. State, 27 S.W. 2d 1100; Bradford vs. State, 54 S.W. 2d 516; Hamilton vs. State, 135 S.W. 2d 476; Trammell vs. State, 167 S.W. 2d 171; Oldham vs. State, 322 S.W. 2d 616; and Furrh vs. State, 325 S.W. 2d 699, cited by appellant's counsel and counsel acting as friends of the court. The test in this state is spontaneity and these facts do not fit the test. One who is cautious enough to inquire whether his answers to the questions to be propounded to him are to be released to news media is not speaking spontaneously.

Sorrells questioned appellant about how he had been able to penetrate the police cordon protecting the transfer of Oswald. At the conclusion of this questioning and as they were preparing to leave, according to Dean's testimony he asked appellant a question and appellant told Dean that he had seen Oswald in a police lineup two nights before and that when he saw the sarcastic sneer on Oswald's face had decided that if he got a chance to do so, he would kill him. Obviously this statement constituted an oral confession of premeditation made while in police custody and therefore was not admissible. The admission of this testimony was clearly injurious and calls for a reversal of this conviction.

What we have heretofore said makes it unnecessary to discuss in detail the error of the court in failing to grant appellant's motion for a change of venue. Both *Estes vs. Texas*, 381 U.S. 532, 14 L. Ed 2d 543, 85 S. Ct. 1628, and *Sheppard vs. Maxwell*,

34 L.W. 4451, were decided after appellant's trial, but each case related to a state court trial held prior to appellant's trial and determines the law applicable to this case, and both are hereby controlling. It is abundantly clear from a careful study of both opinions of the Supreme Court of the United States and the record of this case that the trial court reversibly erred in refusing appellant's motion for change of venue. Not only are we bound legally by the holdings of the Supreme Court, but as practical public servants it becomes our duty to avoid the costs which are taxed against the State of Texas when one of our decisions fails to follow the rules announced by the Supreme Court. See also *Pamplin vs. Mason* (CCA 5th July 27, 1966) affirming *Mason vs. Pamplin*, W.D. Tex. 1964, 232 F. Supp. 539.

Judge Joe B. Brown, who tried this case, has recused (removed) himself from any further connection with the case and we have concluded, properly so.

For the errors pointed out, the judgment is reversed, and the cause is remanded with directions that the venue be changed to some county other than Dallas. It is so ordered.

Morrison, Presiding Judge.
Delivered Oct. 5, 1966.

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High Court Reverses Jack Ruby Conviction

AUSTIN, Texas — Jack Ruby's murder conviction was reversed Wednesday because he was tried in Dallas and a policeman was permitted to testify on statements made in jail about killing Lee Harvey Oswald.

The opinion erasing Ruby's death sentence was unanimous. But the 3-member court of criminal appeals disagreed on some details involved in the historic case, including whether or not anyone who saw television movies of Ruby shooting Oswald could be disqualified as a juror.

Two of the judges also disagreed on the role played by Joe Tonahill, one of the lawyers Ruby fired, during appeal of the case.

All three agreed that Ruby should be given a new trial, in some city other than Dallas. They also agreed that Dist. Judge B. Brown, who presided over the first trial early in 1964, "properly" excused himself from any further connection with the case.

DIST. ATTY. HENRY WADE of Dallas has 15 days in which to file a motion asking the court to reconsider its decision. Tonahill, noting that the court had been considering the case for more than three months, expressed confidence that such a motion will be denied.

Tonahill predicted that another trial will result in a 2-to-5-year sentence for the former Dallas nightclub owner.

"All he'll need to handle his business now is a law school graduate," said Tonahill, "since the court knocked out the policeman's testimony and ordered the case transferred from the scene of the blood."

He contended that "malice" cannot be proven without the testimony of Dallas Police Sgt. Patrick T. Dean and, therefore, Ruby cannot be sentenced to death if convicted again.

The main opinion, written by presiding Judge W. A. Morrison, noted that Ruby's sole defense for slaying the accused assassin of President Kennedy was "that of insanity and that he was suffering from psychomotor epilepsy."

A STATEMENT Ruby made to Sgt. Dean less than an hour after the fatal shooting of Oswald was cited as the first reason for reversing the case.

Ruby told Dean "that he had seen Oswald in a police line-up two nights before and that when he saw the sarcastic sneer on Oswald's face he had decided that if he got a chance to do so, he would kill him."

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Date: 10/6/66

Edition:

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Title:

Character:

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Classification:

Submitting Office: Dallas

Being Investigated

"Obviously this statement constituted an ~~oral~~ confession of premeditation made while in police custody and therefore was not admissible," said Morrison's opinion.

It did not go into detail on "the error of the court" in failing to transfer the trial to another county but cited the U.S. Supreme Court decisions in the Billie Sol Estes and Dr. Samuel Sheppard cases. Excessive publicity kept Estes and Sheppard from receiving fair trials, the Supreme Court ruled.

Judge K. K. Woodley, in a concurring opinion, said there was sufficient evidence aside from Dean's testimony to support the guilty verdict but the errors deprived Ruby "of a fair trial on the issue of the punishment to be assessed by the jury."

WOODLEY SAID Tonahill should not

have been permitted to make oral arguments to the court on the case ~~when that~~ privilege was denied to Melvin M. Belli, who had been chief defense attorney during the trial.

"In view of another trial and future trials," added Woodley's opinion, "it should also be clearly understood that the majority does not hold that a juror who saw the shooting of the deceased on television is, for that reason alone, disqualified... as being 'a witness in the case.'"

Judge William T. McDonald, whose term on the court expires Jan. 1 since he failed to win re-election, praised Tonahill for "an outstanding job in briefing and presenting" the case. McDonald cited television films of the Oswald shooting in declaring that Ruby "was forced to trial under the most adverse, unusual and extraordinary circumstances that this member of this court has yet had occasion to consider."

"The fact of (sic) the shooting of Oswald had been seen on television many, many times on that fateful day, Nov. 24, 1963, in the Dallas County area, by countless thousands of citizens," said McDonald's concurring opinion. "This alone precluded Ruby from receiving a fair and impartial trial by a Dallas County jury. A fair and impartial trial is the rightful boast of Western civilization."

MCDONALD NOTED that Ruby was tried in a building "situated approximately 100 yards from where Lee Harvey Oswald assassinated President Kennedy."

"It is apparent from the record that President Kennedy's assassination occurred at a site on a Dallas street so close to the Ruby trial courthouse that it could be seen daily by the jurors," said McDonald. "At the time of this trial this location was being visited by the public who were placing wreaths at the historic spot out of respect to President Kennedy. Traffic was even then becoming jammed in the area by spectators."

"Dallas was being blamed directly and indirectly for President Kennedy's assassination and for allowing the shooting of Oswald by Ruby," said McDonald. "The feeling and thought had been generated that Dallas County's deprivation of prosecuting Oswald could find atonement in the prosecution of Ruby."

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Ruby Case Taken Under Advisement

By **ERNEST STROMBERGER**
Austin Bureau

AUSTIN — The Texas Court Criminal Appeals adjourned Monday for a constitutionally required recess until October, with the Jack Ruby case to occupy them during the summer. The court took the Ruby case under advisement Friday after hearing an unprecedented four hours of arguments. Ruby is under a death sentence for killing Lee Harvey Oswald, accused of assassinating President John F. Kennedy on Nov. 22, 1963, in Dallas as the president passed through downtown Dallas in a motorcade.

ATTORNEYS FOR RUBY, a former Dallas nightclub owner, opened their arguments with a thorough attack on the publicity given the case, questioned the competence of jurors who had watched televised accounts of the Oswald killing, and closed with strong condemnation of the key testimony of a policeman who said Ruby told him he planned the Nov. 21, 1963, killing for two days.

The Dallas district attorney's spokesmen reviewed testimony they said showed Ruby acted under premeditation, dismissed the juror-witness controversy by saying Ruby—not the prosecution—picked a nationwide television audience for the crime. He said the "planned killing" testimony of the policeman was substantiated by Ruby's statements to other officers.

The three judges, who frequently question attorneys appearing before them, received sometimes impassioned arguments in silence.

"If we feel revolution against the murder of a president, we also must be concerned over the murder of a Jack Ruby," said the final spokesman for Ruby, New York attorney William Kunstler.

"WE CAN'T judicially murder Jack Ruby, no matter how we feel about him, in the same manner he gunned down Oswald," Kunstler said. "You can't, in the name of God, destroy a man on this record."

Ruby, 55, remained in his Dallas County Jail cell where he has been since Nov. 24, 1963, except for court appearances, first for the change of venue hearing and then the trial, which ended in a death sentence in March, 1964, and then for a series of complicated legal maneuvers which delayed a hearing on the main appeal until Friday.

In all, the defense raised 16 points on which the appeals court might grant a new trial.

Most of the points, however, received brief treatment as the attorneys carefully likened conditions surrounding the Ruby case to those in the notorious case of Dr. Sam Sheppard, whose Cleveland, Ohio, murder conviction was reversed several weeks ago by the U.S. Supreme Court because of prejudicial news coverage which was accessible to jurors.

DISCUSSING THE juror-witness controversy, the attorneys said the fact that one of the 162 veniremen questioned had not seen a televised account of the Oswald killing indicated that it would have been possible to obtain 11 more persons who hadn't seen the showing.

Kunstler spent much of his argument on the vital point of premeditation, contending Ruby hadn't planned for two days to kill Oswald, as Police Sgt. P. T. Dean said in recalling his conversations with Ruby.

Oswald was to have been transferred from the city jail ~~at 10 p.m.~~ Nov. 24, Kunstler said, and Ruby would have been

at the City Hall then, instead of more than an hour later as it happened.

"To explain this, the state invented a fabrication of a statement to Sgt. Dean that he intended to kill Oswald after he saw him Friday night," Kunstler said.

"THE RECORD is replete with Dean lying," he said, in court noting what he said are inconsistencies in the officer's testimony.

Asst. Dist. Atty. Bill Alexander said Ruby's statement to Dean was "substantially the same" as other statements Ruby made in which he said he had wanted to fire three times at Oswald.

"Malice is malice," Alexander said. "The substance of these words are implied in Ruby's other conversations."

Alexander raised his voice when he began attacking defense contentions that persons who saw televised versions of the shooting should have been disqualified as jurors.

"We of the district attorney's staff didn't pick the audience before whom the killing took place," Alexander said.

"Jack Ruby killed Lee Harvey Oswald in full view of approximately 140 million people. The fact that hundreds of people with cameras were in the vicinity does not lessen his guilt one iota."

Alexander said the Sheppard case can't be compared to the Ruby case because jurors in the Sheppard case were allowed to make telephone calls and had other freedoms not allowed the jurors isolated all during the Ruby case.

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"The Dallas Times Herald" Dallas, Texas

Date: 6/25/66
Edition:
Author:
Editor: Felix R. McKnight
Title:

Character:
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Classification:
Submitting Office: Dallas
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Crowd to Witness Hearing for Ruby

AUSTIN, Texas — The biggest crowd in the history of the Texas Court of Criminal Appeals likely will attend arguments Friday over the fate of Jack Ruby.

The Dallas strip joint operator under a death penalty for slaying Lee Harvey Oswald in the Dallas Police Building, while the assassin of President John F. Kennedy was being transported to the Dallas County jail.

Ruby's attorneys will ask the court to reverse the death penalty and order a new trial. Numerous violations of the defendant's rights will be alleged by the defense, including excessive publicity before and during the trial.

Presiding Judge W. T. McDonald, Judges W. A. Morrison and E. K. Woodley, Commissioners Ernest Belcher and Wesley Dice will occupy the bench during the hearing which will last approximately four hours.

AFTER ANNOUNCING some decisions in other cases Saturday morning, the court then will recess until October. The judge who will write an opinion on the Ruby case may be chosen by lottery in their chambers after the trial, and his identity kept secret. The judges usually draw for cases after the arguments are heard from opposing lawyers. The system is designed to distribute the workload, and to avoid any assignment of certain cases to specified judges.

Court Clerk Glenn Haynes is making special preparations to accommodate working newsmen at Friday's hearing, but with a limited number of seats. The room in the court building near the Capitol can accommodate about 300 persons, with extra chairs which are being provided. Highway patrolmen will be on hand to maintain order, and admittance will be limited to the number of chairs available.

Dozens of law students reportedly plan to be on hand, hoping to see attorneys in action on the historic case. These students will take their chances with the general public in obtaining seats, however.

The hearing will start at 9:30 a.m.

Five lawyers will represent Jack Ruby here. They are Phil Burleson of Dallas, Sam Houston Clinton of Austin, Elmer Gertz of Chicago, William Kuntzler of New York City, and Sol Dann of Detroit.

THE PROSECUTION will be represented by Dist. Atty. Henry Wade and Assistants William F. Alexander and James M. Williamson.

One hour and a half is allocated to Ruby's attorneys to present their plea for a reversal. The district attorney likewise has an hour and a half. And the defendant's spokesmen get 30 minutes to reply to the prosecution.

Another 30 minutes is set aside for Joe Tonahill of Jasper, one of the attorneys discharged by Ruby. Tonahill will appear as "a friend of the court," and file a 75-page brief outlining why he thinks his ex-client deserves a new trial.

Defendant Ruby will remain in the Dallas County jail while his case is being argued here, and will be there until next October or later. He was jailed Nov. 24, 1963.

RECENT decisions by the U.S. Supreme Court will enter the arguments over his future. Included are decisions that a statement by an accused man should be permitted only in the presence of his attorney, and that trials should be conducted in a calm atmosphere free of "carnival" trappings of photography and glaring lights.

The role of Criminal Dist. Judge Joe B. Brown of Dallas likely will be debated also. Defense attorneys are raising an issue of the judge's contract to write a book about the Ruby case, which he tried.

The hearing on the merits of Ruby's conviction was ordered by the Court of Criminal Appeals after the defendant had been declared sane at a recent trial conducted by Dist. Judge Louis T. Holland of Montague.

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"The Dallas Morning News" Dallas, Texas

Date: 6/24/66

Edition:

Author:

Editor:

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Title:

Character:

or

Classification:

Submitting Office: Dallas

Being Investigated

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Ruby Lawyers List 16 Points During Appeal

STAFF SPECIAL

AUSTIN—The Texas Court of Criminal Appeals ruling in the Jack Ruby case will center on 16 reasons as to why defense lawyers think the convicted slayer should be granted a new trial.

The points were listed in a bulky brief filed by attorneys for the former Dallas nightclub owner.

They included:

—The court erred by not allowing a change of venue.

The contention points to wide publicity on the assassination and murder of Lee Harvey Oswald and states: "These pressures hardly abated from this time (of the assassination) until the trial of Jack Ruby had wound torturously to its conclusion."

—Publicity and lack of control denies due process.

This concerned what defense attorneys claimed was trial court error in failing to protect Ruby from "inherently prejudicial publicity which saturated the Dallas community" and the court's failure to control disruptive influences in and about the courtroom.

—Jurors were used as witnesses.

In this point, the defense contended the trial court erred in overruling challenges for cause of jurors who watched the crime on television. This, the attorneys claimed, resulted in Ruby

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"being tried by jurors who were witnesses in the case."

—Substitute judges.

The defense contended the trial court erred in permitting a substitute trial judge to sit during jury selection and while a motion for change of venue was pending. This occurred when Judge J. Frank Wilson filled in for Judge Brown because of illness on March 3, 1964. The jury selection was completed under Judge Wilson. Judge Brown returned the next day and overruled the motion for change of venue.

—Alleged *res gestae* statements.

This involves testimony of Police Sgt. P. T. Dean as to answers Ruby gave to questions asked after the shooting. According to the defense, the only showing of malice in the case "comes from the lips of Dallas police officers." The defense also claimed that too much time elapsed between time of the shooting and the statements.

—No evidence was permitted on a motion for a new trial.

The defense claims the court overruled a motion for a new trial without hearing any evidence and actually refused to hear that evidence.

—Denial and discovery and suppression of evidence.

Ruby's attorneys stated the court erred in overruling a defense request for "papers, reports and documents bearing upon the transaction for use by the defendant in his trial." They said many matters of a "favorable nature" to Ruby's defense subsequently were revealed by the Warren Commission report, and should have been made available to them prior to the trial.

—Midnight jury argument.

This pointed out jury argument, after the reading of the charge to the court, commenced about 8:20 p.m. March 13, 1964, and was concluded at 1:07 a.m. March 14. It contends the jury and trial judge were "tired and weary" and the short time consumed by the jury in returning its verdict indicates "little or

as-attention was or could have been paid to the forceful arguments of appellant's counsel returning the verdict with the extreme penalty."

—Wrongful exclusion of evidence.

The defense contended the court erred in refusing to admit into evidence that Oswald had been charged with killing Kennedy and denied admission of a taped interview with Dist. Atty. Henry Wade to the effect that Oswald was the assassin.

—False testimony on behalf of the state.

In this point, Ruby's attorneys pointed to testimony of Sgt. Dean in which he first said he and Secret Service agent Forrest Sorrells visited Ruby in his cell 10 minutes after the shooting yet under cross-examination admitted writing a report to the chief of police that it was "approximately noon" when he visited Ruby.

—The trial court erred by not granting a request to file a second motion for a new trial. This, the defense claimed, was "an abuse of discretion on the part of Judge Brown."

—Denial of a pre-trial insanity hearing.

—The trial court erred in charging insanity under the M'Naughten rule.

This concerns the defendant's ability to determine the difference between right and wrong, and the defense claimed it was used by Judge Brown in his charge to the jury although it has been abandoned by the U.S. Court of Appeals of the 2nd Circuit in favor of an American Law Institute rule that a person is not responsible for criminal conduct if his actions are the result of mental disease or defect.

—The trial judge disqualified himself by having a financial interest in the case.

The final three points, all included in this category, sought disqualification of Judge Brown and stated his financial interest—a book he is writing—renders "judgment of conviction in the appellant's case void and subsequent proceedings invalid."

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RUBBY DISRUPTIONS HEAT

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Date: 6/24/66

Edition:

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Classification: Dallas

Submitting Office:

Being Investigated

Sheppard Case Cited in Appeal

By ERNEST STROMBERGER and BEN STEVENS, Staff Writers

AUSTIN—Attorneys for Jack Ruby told the Texas Court of Criminal Appeals Friday that Ruby's trial was interwoven with more courtroom disruptions and prejudicial news coverage than the notorious Cleveland, Ohio, case of Dr. Sam Sheppard.

The attorneys cited appraisals of the Dallas trial by the Warren Commission and Dist. Judge Joe B. Brown's frequent characterization of the trial as "a circus" to compare the case to the Sheppard murder case reversed several weeks ago by the U.S. Supreme Court.

The point was one of 16 raised by Ruby's lawyers in a historic four-hour hearing before the three-judge court, the first return to the main case since Ruby's appeal was broken into a series of complicated legal moves shortly after the March 1964 trial.

Ruby, 35, was convicted of murdering accused presidential assassin Lee Harvey Oswald on Nov. 24, 1963, and was sentenced to die in the electric chair.

RUBY WAS NOT present at Friday's hearing, for which the court had prepared by enlarging seating facilities from 50 to 300 and by securing the help of three Texas Rangers and a uniformed highway patrolman to control the anticipated crowd. Ruby's sister, Mrs. Eva Grant, was a front-row spectator at the hearing.

The five-man defense team spent half of its allotted two hours of argument on the problems at the trial created by extensive news coverage, along with the live television coverage of the actual shooting.

The court advised the first attorney for Ruby, Sam Houston Clinton Jr. of Austin, as he began that the court unanimously denied Thursday the attorneys' request that the controversy over Brown's activities in writing a book about the case be included in Friday's appeal. The attorneys, however, were allowed to discuss the controversy in their arguments.

"THE PURPOSE of our being here is to try to demonstrate one substantial, essential and fundamental matter," Clinton said.

"In the court's decision in the habeas corpus case involving Judge Brown's book, this court said the appellant is due a tolerably fair trial," Clinton stated.

The second attorney was Elmer Gettz of Chicago, who told the court it is fortunate that the Ruby appeal came before it at a time when it has the guidelines set by the Supreme Court in the Sheppard murder case.

"IT IS SIGNIFICANT that in reaching its conclusion, the U.S. Supreme Court cited in the

Sheppard case many circumstances similar to those in this case—the damaging publicity by the police . . . the district attorney's descriptions of prosecution evidence which was inadmissible," Gettz said.

"Judge Brown had the strange notion he could not control what went on around the courthouse—that somehow he was powerless to act," Gettz continued.

"The court doesn't consider merely the actual trial. It has to consider the total framework—everything which makes the atmosphere," Gettz.

"WE HAD A pervasive atmosphere which made a fair trial difficult," he said.

Gettz then quoted comments Judge Brown made during and after the trial, in which he said he felt continued pressure from news media entering into the trial and quoted from the manuscript of Brown's book in which the judge concluded that "Ruby did not get full justice."

"During the trial the judge repeatedly warned the audience to stop laughing and called for order and remarked that the courtroom was 'like a circus,'" Gettz said.

"WHAT ELSE WENT on in the courtroom? Matters far worse than were the basis for the reversal of the Sheppard case," Gettz said, citing the jail break which occurred in the building during the trial.

Gettz acknowledged that the tendency by police, the prosecutors and the judge to grant news interviews during the trial extended even to the defense counsel. He cited a "friend of the court" brief submitted last year by a former Ruby attorney in which he said the fact that other parties in the case were participating in radio and television interviews was no excuse for defense attorneys to do it.

"It was the obligation of the court, as stated in the Sheppard case, to see that neither the defense nor the prosecution, nor anyone else participated in this kind of monkeyshine—this denial of a fair trial," Gettz said.

THE CONTROVERSY over finding jurors who had not seen television coverage of the Oswald killing was discussed by Phil Burleson of Dallas.

Burleson said Texas criminal laws provide that no person who witnesses a crime can be a juror and that persons who saw the live television coverage of the shooting were witnesses who

could have been called to the witness stand and should not have been called as jurors.

Burleson said the fact that one juror of the 12 did not see live or replay television coverage of the shooting indicates that eventually, "the law could have been complied with."

THE COURT SAID that everyone else in the state saw the

television coverage and that the same problem would arise elsewhere. This was totally unsupported by any facts," Burleson said.

Burleson also quoted a Louisiana case reversed by the Supreme Court because four of the jurors saw a television program during which the defendant made a confession.

"Therefore, we feel that, taking these cases and the Shepard case into consideration, the Ruby case should have been removed from the locale of the crime and the court should have accepted as jurors only those

who did not see films of the offense, and then, if no jury could be picked, a change of venue would have been in order."

THE COURT was expected to take the arguments under advisement and recess Saturday until October.

(Mount Clipping in Space Below)

Arguments Set Friday On Ruby Plea

Austin Bureau of The News

AUSTIN, Texas — Four hours' arguments are scheduled for Friday in Jack Ruby's appeal to the Court of Criminal Appeals for a new trial.

The court has allotted one hour and a half for Ruby's defense lawyers; an hour and a half for Dist. Atty. Henry Wade or his assistants; half an hour for Joe Tonahill as a "friend of the court"; and 30 minutes rejoinder for the defense.

Ruby, under death penalty for slaying Lee Harvey Oswald, gave formal notice that both Tonahill and Emmett C. Colvin Jr. had been discharged as his attorneys and that neither "is to represent me in any capacity in any court."

Currently listed as Ruby's attorneys are Phil Burleson of Dallas, Sam Houston Clinton of Austin, Elmer Gertz of Chicago, William Kuntzler of New York City and Sol Dann of Detroit.

After hearing the arguments, the court will begin a recess until October, before deciding whether Ruby shall be granted a new trial or have his sentence upheld.

(Indicate page, name of newspaper, city and state.)

5A

"The Dallas
Morning News"
Dallas, Texas

Date:

6/23/66

Edition:

Author:

Editor:

Jack B. Kruger

Title:

Character:

or

Classification:

Submitting Office: Dallas

Being Investigated

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Book Made Issue In Ruby's Appeal

The issue of Judge Joe B. Brown's book may come up again Friday as arguments in Jack Ruby's appeal of his conviction and death sentence begin at 9 a.m. before the State Court

of Criminal Appeals in Austin.

Ruby's attorneys have asked the court that the hearing also include questions concerning the book. They contend Ruby's conviction is invalid because the trial judge—Brown—had a financial interest in the outcome through the book.

In part, the motion stated: "The subject matter of both causes are so inter-related that the ends of fairness would be served by such consolidation."

The motion was signed by attorney Phil Burleson.

Also in the hands of the court is a request by Ruby that attorneys Joe Tonahill and Emmett Colvin Jr. not be permitted to appear during the Friday hearing.

The request said:

"I, Jack Ruby, having this day been declared legally sane, do hereby reaffirm that I have and do discharge Joe Tonahill and, if I have not already done so, do discharge Emmett C. Colvin Jr."

The appeals court last month said it would permit Tonahill to present arguments during the Friday hearing. Colvin has said he will not present a case, but will give his time to Tonahill.

Ruby authorized Burleson, Sam Houston Clinton Jr., Sol Dann, William M. Kunsler and Elmer Gertz to represent him.

The district attorney's office had no comment on the request to consolidate the appeal and the habeas corpus hearing on the book issue.

(Indicate page, name of newspaper, city and state.)

44A

"The Dallas
Times Herald"
Dallas, Texas

Date: 6/22/66

Edition:

Author:

Editor: Felix R. McKnight

Title:

Character:

or

Classification:

Submitting Office:

Dallas

Being Investigated

(Mount Clipping in Space Below)

Ruby Asks Including of Book Issue

By JOHN GEDDIE

Jack Ruby asked in a motion filed this week that the State Court of Criminal Appeals hear simultaneously both Ruby's original appeal and an argument over Dist. Judge Joe Brown's book in a hearing Friday.

The appeals court ordered last week that oral arguments in Ruby's appeal from a death penalty conviction begin at 9 a.m. Friday.

The new motion asked the court to include in the arguments a re-hearing of a habeas corpus request to free Ruby on grounds that Judge Brown had a pecuniary interest in the trial—based on the book about the case.

The habeas corpus request was denied by Dist. Judge Louis Holland and his decision later affirmed by the Austin court.

The new motion, signed by Dallas attorney Phil Burleson, stated, "Appellant would show that the subject matter of both causes are so interrelated that the ends of fairness would be served by such consolidation."

The Court of Criminal Appeals was also sent a "designation of counsel" document and an affidavit signed by Jack Ruby.

It read in part, "I, Jack Ruby, having this day been declared legally sane, do hereby reaffirm that I have and do discharge Joe Tomhill and, if I have not already done so, do discharge Emmett C. Colvin Jr. Neither is authorized to represent me in any capacity in any court."

Ruby authorized Burleson, Sam Houston Clinton Jr., Sol Dana, William M. Kuntzler and Elmer Gertz to represent him.

Burleson advised the appeals court that all five attorneys will argue Friday for Ruby.

Dist. Atty. Henry Wade had no comment on the request to consolidate the appeal and habeas corpus re-hearing.

(Indicate page, name of newspaper, city and state.)

9A

"The Dallas
Morning News"
Dallas, Texas

Date: 6/22/66

Edition:

Author:

Editor: Jack B. Kruger

Title:

Character:

or

Classification:

Submitting Office: Dallas

 Being Investigated

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Colvin Shuns Argument on Ruby Appeal

Dallas attorney Emmett Colvin said Friday he will not argue for Jack Ruby before the State Court of Criminal Appeals on June 24 in Austin.

Colvin and Joe Tonahill of Jasper qualified as "friend of the court" attorneys to participate in oral arguments. Both men were Ruby lawyers after notice of appeal, although other attorneys objected, especially to Tonahill.

In his notification to the appeals court, Colvin asked that Tonahill be allowed to argue the full 30 minutes previously to be divided between both men.

Colvin and Tonahill plan to send a joint brief on behalf of Ruby to the court.

"Because of the national significance of such cause, it is, of course, tempting to indulge," Colvin wrote the appeals court.

The court is expected to give Tonahill the additional 15 minutes.

The other Ruby defense fraction, a team of five lawyers scattered throughout the nation, was recognized by the court as Ruby's choice to argue for him. They were granted a total of two hours for oral claims.

They are Phil Burleson of Dallas, Sam Houston Clinton Jr. of Austin, William Kuntzler of New York, Elmer Gertz of Chicago and Sol Dann of Detroit.

Two or three lawyers from the office of Dist. Atty. Henry Wade are expected to represent the state in arguments.

The state will ask that the appeals court affirm Ruby's death penalty conviction for fatally shooting Lee Harvey Oswald.

(Indicate page, name of newspaper, city and state.)

8A

"The Dallas
Morning News"
Dallas, Texas

Date: 6-18-66

Edition:

Author:

Editor: Jack B. Kruger

Title:

Character:

or

Classification:

Submitting Office: Dallas

 Being Investigated

SEARCHED.....	INDEXED.....
SERIALIZED.....	FILED.....
JUN 22 1966	
FBI-DALLAS	

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Both Sides Ready Ruby Arguments

Dallas spokesmen in the Jack Ruby case said Wednesday they will be prepared to argue before the State Court of Criminal Appeals June 24.

Seven attorneys in two defense factions and two or three representatives from the district attorney's office are expected to make oral arguments.

Although the court's order which set the case with only a 9-day warning was considered unusual, attorneys on both sides said their briefs will be prepared before arguments.

Portions of the briefs have been ready since 1964, they indicated, but other parts will be based on Supreme Court decisions returned as late as this week.

Both sides are studying the recent reversal of the Dr. Sam Sheppard murder case and a high court decision this week on statements of defendants. Ruby's comments after shooting Lee Harvey Oswald are being scrutinized for application to the new interpretation.

Emmett Colvin of Dallas said he and Joe Tonahill of Jasper were allowed 30-minute arguments as "friends of the court." They qualified to argue because both were employed as attorneys since the case went on appeal. Ruby's own objections to Tonahill were voided by the court order.

Phil Burleson of Dallas emphasized that he and four other lawyers actually will argue as Ruby's attorneys. He said arguments will be made by Sam Houston Clinton Jr. of Austin, Elmer Gertz of Chi-

cago, Sol Dann of Detroit, William Kuntzler of New York, and Burleson.

Burleson, who said he had not been advised officially of the court setting, said, "This is what we wanted. We are happy we're getting it."

"We will be there with a brief and to present oral arguments on behalf of Jack Ruby."

Burleson said he and other lawyers on the Ruby family legal staff will divide legal points in their arguments.

Dist. Atty. Henry Wade called in assistants Bill Alexander, Wilson Johnston, James Williamson and Marvin Thomas to prepare the state's brief.

Wade said each was assigned certain phases to prepare. He added that no decision had been made on who will argue the state's position.

State attorneys are preparing arguments to 139 "bills of exception" such as the defense objections to failure to receive a change of venue and allowing Judge J. Frank Wilson to sit for Judge Joe Brown during jury selection.

The state is also expected to dissect the Supreme Court ruling on Dr. Sheppard. After the hearing Monday in which Ruby was found sane, Dann indicated the defense will cite that case.

Defense attorneys will argue that excess publicity made a fair trial impossible.

The appeal court made provisions in its order Wednesday to allow supplemental briefs and rebuttals to be filed until late August.

(Indicate page, name of newspaper, city and state.)

9A

"The Dallas Morning News"
Dallas, Texas

Date: 6-16-66

Edition:

Author:

Editor: Jack B. Kruger

Title:

Character:

or

Classification:

Submitting Office: Dallas

Being Investigated

SEARCHED.....	INDEXED.....
SERIALIZED.....	FILED.....
JUN 22 1966	
FBI-DALLAS	

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Appeals Court Sets Ruby Hearing Date

By RICHARD M. MOREHEAD
Austin Bureau of The News
AUSTIN, Texas — The Court of Criminal Appeals, more than two years after the conviction, decided Wednesday to hear the appeal on June 24 on Jack Ruby's death penalty.

Ruby, who was declared sane by a Dallas jury earlier this week, is convicted of slaying Lee Harvey Oswald, the assassin of President Kennedy. He has been in jail since the shooting on Nov. 24, 1963.

The court here had held that it could not consider the main appeal until the question of Ruby's sanity was decided.

Apparently, the ex-nightclub operator will spend this summer in jail too.

The 3-judge Court of Criminal Appeals will recess on June 25, the day after hearing arguments on the merits of the death sentence in Ruby's case. The court will reconvene in October, and probably will hand down an opinion in the case early in its next term.

NONE OF Ruby's five lawyers participated in the sanity trial at Dallas Monday. It is unknown who will represent him here next week, but a "friend of the court" brief will be filed by Joe Tonahill of Jasper and Emmett Colvin of Dallas. In Austin Wednesday, Tonahill said his brief is ready, and will be made public on June 24.

Phil Burleson of Dallas, Sol Dunn of Detroit, and Sam Houston Clinton Jr. of Austin are listed as Ruby's attorneys.

The appeals court will be asked to order a new trial for Ruby.

Since his conviction in March

14, 1964, the United States Supreme Court has made several major decisions in other criminal cases, which attorneys consider will have a bearing on the Ruby case.

THESE INCLUDE the Billie Sol Estes case, from a state court at Tyler, where a conviction was reversed by the Supreme Court on the ground that heavy use of television and other news coverage interfered with the defendant getting a fair trial.

More recently, the U.S. Supreme Court ordered Ohio authorities to grant a speedy new trial to Dr. Samuel H. Sheppard, an osteopath convicted of killing his wife, or to free him. The court said that a carnival atmosphere at the trial brought about by excessive news coverage had denied the defendant his constitutional rights.

One attorney in the Ruby case indicates that a reversal also will be sought on the basis of Supreme Court decisions this week that a defense attorney must be on hand before police question any accused person, and outlawing the use of any statement obtained under other circumstances.

(Indicate page, name of newspaper, city and state.)

9A

"The Dallas Morning News"
Dallas, Texas

Date: 6-16-66

Edition:

Author:

Editor: Jack B. Kruger

Title:

Character:

or

Classification:

Submitting Office: Dallas

Being Investigated

SEARCHED.....	INDEXED.....
SERIALIZED.....	FILED.....
JUN 22 1966	
FBI-DALLAS	

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Date Set For Ruby Argument

Austin Bureau

AUSTIN — The Texas Court of Criminal Appeals Wednesday set for June 24 arguments in the appeal of Jack Ruby's March 1964 murder conviction and death sentence.

Ruby, former nightclub owner in Dallas, was convicted of the Nov. 24, 1963, shooting death of presidential assassin Lee Harvey Oswald.

The court, in a 2-1 order, allowed attorneys for Ruby and the district attorney's office one hour and 30 minutes each to argue the case, three times the normal time.

The court also allowed Joe Tonahill of Jasper, an attorney for Ruby during the trial but later ousted, to argue for 30 minutes as a "friend of the court." It was this provision in the order to which Judge K. K. Woodley dissented. Judges W. A. Morrison and W. T. McDonald signed the order.

The arguments will be one of the few in the court's history not to be held on a regular Wednesday submission day. The court will recess the day after hearing arguments in the Ruby case for a constitutionally required recess until October.

(Indicate page, name of newspaper, city and state.)

1
"The Dallas
Times Herald"
Dallas, Texas

Date: 6-15-66
Edition:
Author:
Editor: Felix R. McKnight
Title:

Character:
or
Classification:
Submitting Office: Dallas
 Being Investigated

SEARCHED.....	INDEXED.....
SERIALIZED.....	FILED.....
JUN 22 1966	
FBI-DALLAS	

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Guard Calls Ruby Good Gin Player

Five state witnesses testified Monday that Jack Ruby is sane.

One of them, a jail guard, described Ruby as a "pretty good gin rummy player."

Deputy K. H. Croy said Ruby cheated "occasionally" at cards but the officer caught him in the act.

"He didn't like it too much," Croy smiled.

Assistant Dist. Atty. Bill Alexander was told during questioning of four deputies that Ruby knew where he was, what he was in jail for and what penalty had been assessed against him.

Deputy W. S. Elliott testified that during his time guarding Ruby he noticed that he "loved to read" and "knew quite a bit about current events."

"He has a very fine mind," Elliott said.

Deputy Don Standridge said Ruby preferred to read legal material and had an "exceptionally good memory."

While Standridge guarded him, he said, Ruby was concerned with personal appearance and always followed orders, although "he didn't like to."

Deputy Archie F. Watson said he played dominoes and cards with Ruby earlier this year. He said he never noticed any hallucinations or delusions in Ruby's actions.

Dr. John W. Callahan said he met Ruby last Oct. 6—Dr. Callahan's first week as jail physician—and has seen him twice a week since.

Ruby works crossword puzzles and his attitude is "very good," Dr. Callahan said.

He is in good physical condition "in keeping with his age and sex," the doctor testified. His last blood pressure count was 130 over 80 and he had a 72-beat-per-minute pulse.

Asked if Ruby appeared suicidal, Callahan answered "definitely not."

Assistant Dist. Atty. Jim Zimmermann was told that Ruby knows the difference between right and wrong and, in the doctor's opinion, is of sound mind.

Ruby's lawyers presented no witnesses and did not question witnesses called by the state.

(Indicate page, name of newspaper, city and state.)

10A

"The Dallas Morning News" Dallas, Texas

Date: 6/14/66

Edition:

Author:

Editor: Jack B. Kruger

Title:

Character:

or

Classification:

Submitting Office: Dallas

Being Investigated

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Attorneys Point Out Objections

Jack Ruby's five lawyers pointed out several reasons for not participating in Ruby's sanity trial Monday.

The lawyers, in two factions, refused to aid in jury selection and did not question witnesses.

Joe Tonahill and Phil Burleson, spokesmen for the two groups, objected to the sanity trial and each witness against Ruby, including Ruby himself.

Burleson, Sol Dunn of Detroit and Sam Houston Clinton Jr. of Austin made their position clear in motions filed earlier.

They claimed that when Mrs. Eva Grant, Ruby's sister, withdrew her affidavit that Ruby is insane, the sanity issue was no longer before the court. State's attorneys contended—and the contention was accepted by Dist. Judge Louis Holland—that the sanity determination was ordered by the State Court of Criminal Appeals.

Burleson explained that the defense request to drop the sanity issue was to "avoid further legal entanglements."

The attorneys also argued that if the sanity trial were canceled, the State Court of Criminal Appeals could proceed with the Ruby appeal. If Ruby were proven insane, they said, he would be sent to a mental institution.

If the sanity trial were postponed and Ruby's case reversed, he could receive private psychiatric care.

When Judge Holland ruled that the trial be held, the attorneys announced they considered it detrimental and unconstitutional.

In a motion to postpone the hearing, Tonahill and Emmett Colvin of Dallas pointed out similar arguments and added that the purpose of the hearing was to resolve the controversy over attorneys.

They insisted that all attorneys—both factions—had agreed to proceed with the appeal as directed by the Austin court, leaving the sanity question "moot."

In another motion, filed by Tonahill, Judge Holland was asked to delay the hearing on the basis of Mrs. Grant's withdrawal of her affidavit.

Tonahill asked that Ruby be studied by specialists in psychiatry and neurology at Parkland Hospital in Dallas or John Sealy Hospital in Galveston.

He said that Dr. L. J. West, professor of psychiatry at the University of Oklahoma, has agreed to study Ruby and transmit the results to the court.

He said Dr. West had not been available to study Ruby—~~earlier~~

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10A

"The Dallas
Morning News"
Dallas, Texas

Date: 6-14-66

Edition:

Author:

Editor: Jack B. Kruger

Title:

Character:

or

Classification:

Submitting Office: Dallas

 Being Investigated

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Ruby Hearing Quiet, But Where Is Gavel

There was a small security leak at the Jack Ruby sanity hearing Monday.

Armed deputies, headed by Sheriff Bill Decker, moved Ruby in and out of the courtroom with little difficulty.

Guards watched the audience during the hearing and there was no disturbance.

More deputies remained in the hallway, vigilant and watchful of possible outbursts.

But when Dist. Judge Louis Holland returned from lunch, he discovered that someone had stolen his gavel.

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1 D

"The Dallas
Morning News"
Dallas, Texas

Date: 6/14/66

Edition:

Author:

Editor:

Title:

Character:

or

Classification:

Submitting Office: Dallas

Being Investigated

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Jack Ruby Found Sane During Brief Hearing

(Indicate page, name of newspaper, city and state.)

1
"The Dallas Morning News"
Dallas, Texas

Date: 6-14-66
Edition:
Author:
Editor: Jack B. Kruger
Title:

Character:
or
Classification:
Submitting Office: Dallas
 Being Investigated

Jack Ruby was found sane during a brief hearing Monday after he calmly told a jury, "I never tried to camouflage my true mental capacity."

The jury of five women and seven men returned the verdict 11 minutes after Dist. Judge Lee Holland ordered them to begin deliberation of the witness testimony.

Defense lawyers, split into two factions, did not participate in jury selection or questioning of witnesses.

A ruling in the sanity trial, ordered by the State Court of Criminal Appeals but objected to as unconstitutional by defense lawyers, is expected to clear the way for an appeal court ruling on Ruby's original trial, a habeas corpus petition based on a book by Trial Judge Joe B. Brown, or both.

RUBY LAWYERS continued their disagreement over the status of Joe Tonahill of Jasper after the hearing. Tonahill said he is still in the case by appeals court order but other attorneys argued that now that Ruby is legally sane, he can discharge Tonahill.

Over objections by his attorneys, Ruby, under a death sentence for the murder of Lee Harvey Oswald, walked to the witness stand and announced to the jury that he never claimed to be insane.

"I try to answer every question intelligently," he said.

Ruby also objected to the necessity of four other witnesses' testimony that they had observed him in his jail cell and considered him of sound mind.

Ruby's sister, Mrs. Eva Grant of Dallas, shouted out "Phil" to defense attorney Phil Burleson when Ruby rose from his defense table seat. She later explained that she did not want Ruby to testify but added, "I guess he wanted to get it off his chest."

MRS. GRANT blamed Tonahill and former Ruby lawyer Melvin Beli for the current legal tangle.

Witnesses called by the state—four jail guards and the jail doctor—testified they had observed Ruby and found him more intelligent and alert than most prisoners.

Mrs. Marguerite Oswald, mother of Lee Harvey Oswald, watched the proceedings from a seat in the rear of the courtroom.

She explained that she is still investigating the case against her slain son and repeated claims that he was a "patsy" in the assassination of President John Kennedy.

Assistant Dist. Atty. Bill Alexander, who made the only closing argument, explained to the jury that the defense lawyers chose not to participate in the case because of constitutional questions.

"SOMETIMES I THINK we're ~~supposed~~ to get the nose bleed when they mention constitutional rights," Alexander said.

"They started this proceeding and now they want to hold back claiming this constitutional rights business."

Alexander accused the defense lawyers of "piddling around" and added, "I almost feel sorry for Jack."

Tonahill and attorney Emmett Colvin of Dallas said in a motion to Judge Holland that the forced sanity trial "may well immunize Jack Ruby from further prosecution for the murder of Lee Harvey Oswald in the event of a reversal . . ."



—Dallas News Staff Photo by Aleck Pantano.

Sheriff Bill Decker cleared the way to hearing for Jack Ruby.

(Mount Clipping in Space Below)

Guards Say Ruby Acts Sane Enough

Guards at the Dallas County Jail have gotten to know Jack Ruby well during his 2 years and seven months as a prisoner.

Four of those guards testified at Ruby's sanity trial Monday. All had spent months guarding him, and all testified that their relations with him were good.

Here is a profile of the prisoner Ruby that emerged from the testimony of Deputy Sheriffs Archie F. Watson, W. S. Elliott, Donald Standridge and K. H. Kroy.

Ruby sleeps soundly and eats selectively, often leaving food that he does not like on the tray.

His personal hygiene is good. He shaves, bathes and combs his hair often and keeps up his appearance.

Ruby knows the time of day, month and year. He knows when it is mealtime and time for the guard to change.

HE TALKS to his guards and other prisoners, "passing the time of day as they perform their duties."

They said he frequently talks to prisoners confined in nearby cells.

Ruby is friendly and plays games with his guards, such as dominoes, checkers and gin rummy.

"He was a pretty good gin rummy player," said Kroy. "I caught him cheating sometimes, and he didn't like it."

Ruby also does not like to obey the guards' orders sometimes, but he obeys anyway, testified Standridge.

THE PRISONER spends much of his time reading newspapers and legal material and "knew a lot about current events," said Elliott. Elliott said Ruby also spent much time working crossword puzzles.

"He has a very fine mind, and can talk intelligently on a variety of subjects," said Elliott.

Dr. John W. Callahan, the jail doctor, testified that he sees Ruby twice a week in the course of his duties and finds Ruby is in good physical condition "in keeping with his age and sex."

Dr. Callahan said Ruby's spirits are good, and he has gained weight during his stay in prison.

All the witnesses agreed with Watson's summary: "I think Ruby is of sound mind."

(Indicate page, name of newspaper, city and state.)

17A

"The Dallas Times Herald"
Dallas, Texas

Date: 6-14-66

Edition:

Author:

Editor:

Felix R. McKnight

Title:

Character:

or

Classification:

Submitting Office: 10-27

 Being Investigated

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More Ruby Appeals Due

A jury's determination that Jack Ruby is sane has cleared the way for the Texas Court of Criminal Appeals to take up the appeal of his conviction for the murder of Lee Harvey Oswald.

The seven-man, five-woman jury, after only a few minutes' deliberation, returned a verdict Monday after Ruby dramatically took the stand over the objections of his lawyers and said he had no wish to be declared insane.

The Court of Criminal Appeals had ordered the sanity hearing to determine if Ruby is capable of choosing his own counsel. The jury's verdict apparently settled the issue.

Ruby's voluntary statement followed testimony by four of his jail guards and the jail physician. They testified he seemed to be a normal prisoner with a superior mental capacity.

"Never at any time have I tried to make anyone believe I was of unound mind," said Ruby. "I don't know who conspired to do this."

RUBY, SPEAKING calmly and without hesitation, said that during earlier interviews on television he has "tried to answer every question intelligently."

"I never tried to camouflage my true mental capacity," he said Monday afternoon.

Ruby's statement followed a day-long hearing in which his lawyers took no part except to object at every turn that the hearing was unconstitutional.

ASST. DIST. ATTY. Bill Alexander, making the closing argument for the state in the trial before visiting Dist. Judge Louis Holland, said:

"I think Jack Ruby is in a better condition than his lawyers are. At least he takes a realistic view of this case and knows he is subject to the penalty in this case.

"His lawyers squabbling around and crying constitutional rights are doing what I think is a poor job of representing him. I almost feel sorry for Jack Ruby."

Immediately after the hearing, Sol Dann of Detroit, one of Ruby's attorneys, said the defense will either make a direct appeal to the U.S. Supreme Court to set aside the verdict or ask for a federal writ of habeas corpus, claiming Ruby is being held on a void verdict.

JOE TONAHILL of Jasper and Emmett Colvin of Dallas, who comprised one faction of Ruby's defense team at the hearing, filed a lengthy objection to the proceedings.

The objection said, "It is contended that this trial is being unconstitutionally forced upon defendant Jack Ruby for the benefit of the state after the

(Indicate page, name of newspaper, city and state.)

"The Dallas Times Herald" Dallas, Texas

Date: 6-14-66
Edition:
Author:
Editor: Felix R. McKnight
Title:

Character:
or
Classification:
Submitting Office: Dallas

Being Investigated

affidavit of insanity dated April 27, 1964, which was filed herein by Jack Ruby's sister, Eva Grant, was removed and withdrawn by her on June 9, 1966."

The two lawyers went on to propose the hearing be delayed until a federal court could rule on its constitutionality.

Judge Holland of Montague overruled the motion, saying that the Court of Criminal Appeals had ordered the hearing and he intended to obey the order.

THE OTHER faction of lawyers, Dann, Phil Burleson of Dallas and Sam Houston Clinton Jr. of Austin, made several suggestions to the judge, including one that the press be barred from the courtroom. The judge refused, although he did bar the press from talking to Ruby.

Ruby, dressed in a dark suit and grey tie, stared at his guards and they testified about their day-to-day relations with him. He occasionally smiled and whispered to Clinton who sat beside him.

After each witness was questioned by the state, Tonahill would rise and make an objection, and then Burleson would

say, "we stand upon the motions and verbal representations heretofore filed in this court."

After Tonahill filed his objection, Dann objected to Tonahill's participation in the case. The Court of Criminal Appeals reinstated Tonahill in the case after Ruby and his family tried to fire him. Tonahill had claimed Ruby was insane and thus incapable of choosing his own counsel.

"THE RULING of the court, as we understand it, was an invitation for Tonahill and his associates to walk alongside of us at a respectable distance, but not to join us," said Dann.

Now that Ruby has been found sane, he apparently will be able to fire Tonahill if he chooses. But Tonahill said, "I will continue to work for him. I consider it my duty."

The hearing ended on a pleasant note as Judge Holland thanked the jury, then congratulated the defense lawyers, saying: "You have done your best for your client."

Dann replied to the judge: "You have restored our faith in our judicial system."

(Mount Clipping in Space Below)

Ruby Sister Doesn't Want Sanity Hearing

Jack Ruby's sister said Monday she doesn't know whether or not her brother is insane but the Ruby family doesn't want a sanity trial regardless.

"What we want now is to go ahead and hear the appeal," said Mrs. Grant. She added she believes it is unconstitutional to force her brother into a sanity hearing.

She said Ruby, under death sentence for the slaying of Lee Harvey Oswald, needs friends more than lawyers now.

"Lawyers are a dime a dozen," she said in an interview Monday morning.

Mrs. Grant once again was critical of attorney Joe Tonahill of Jasper.

"We never hired him. He attached himself to this case and won't let go," Mrs. Grant said.

(Indicate page, name of newspaper, city and state.)

8A

"The Dallas Times Herald"
Dallas, Texas

Date: 6-13-66

Edition:

Author:

Editor: Felix R. McKnight

Title:

Character:

or

Classification:

Submitting Office:

Dallas

Being Investigated



RUBY ARRIVES FOR HEARING

Jack Ruby, center, was quiet and subdued Monday as he arrived in the basement of the new county courthouse for his sanity hearing. Escorting him from the jail was Sheriff Bill Decker, left.—Staff Photo.

(Mount Clipping in Space Below)

Jury Set For Ruby Hearing

By WAYNE KING
and TOMMY AYRES
Staff Writer

A jury in the sanity trial of accused slayer Jack Ruby was seated at 11:45 a.m. Monday.

The surprise move — made possible when defense attorneys offered no questions to prospective jurors — came only minutes after the 5-member panel was questioned as a group. About

members were excused for varied reasons at that time, and the 12-man jury then came from the first 12 names remaining.

Seven men and five women were on the jury.

Seating of the jury came after a series of motions by defense attorneys during the morning.

Most of the motions, which ranged from instructions to reporters to a request that the hearing be declared constitutionally void, were overruled by Judge Louis Holland. However, the one motion allowed specified that reporters could not interview Ruby and that no photographs could be taken in the hall or courtroom. Ruby was whisked to the courtroom without incident shortly after prospective jurors were seated at 10:45 a.m. He was accompanied by Sheriff Bill Decker and one deputy.

RUBY WAS wearing a dark suit and gray tie. His condition generally appeared somewhat

better than during his last public appearance about two months ago.

Reporters were cleared from the courtroom as both Ruby and about 75 prospective jurors entered.

The long series of defense motions was touched off in a 20-minute list of objections voiced by attorney Joe Tonahill of Jasper. In brief, the motions declared:

1. The hearing should be declared constitutionally void because it violates Ruby's rights under the fifth, sixth, eighth and 14th amendments to the U.S. Constitution.

2. The hearing would damage Ruby's personal well being and health, and would provide evidence which could be used against him in future trials.

3. The hearing should be continued until a higher court could determine if it was constitutional.

4. The hearing should be continued until Ruby, who has not had a recent psychiatric examination, could be admitted to a mental hospital for thorough testing.

All four motions were overruled by Judge Holland.

IN OBJECTING to the last motion, Asst. Dist. Atty. Bill Alexander pointed out such psychiatric testing was done before April, 1964, and since that time Sheriff Bill Decker had issued orders to make Ruby available for psychiatric testing.

"They (the defense) have shown a lack of diligence in preparing for this hearing which

they themselves have sought," Alexander said.

The other defense motions followed by attorney Phil Burleson of Dallas and Sol Dann of Detroit. Among other things, they asked that Tonahill be barred from the case and pointed out that any compelling association between Tonahill and Ruby's chosen attorneys violated Ruby's constitutional rights.

JUDGE HOLLAND also overruled this motion.

The judge, in making his ruling, stated he would abide by a decision of the Court of Criminal Appeals that Tonahill be associated in the case.

The motion which cleared the courtroom and hall of photographers and reporters came jointly by attorneys Burleson and Dann. The judge stated no photographs would be allowed in the hall or courtroom, and that reporters would not be allowed to interview Ruby.

Any statements Ruby made, the judge declared, would have to be made to the jury.

However, Judge Holland, sitting for Judge Joe B. Brown in Criminal District Court No. 3, overruled three other motions submitted by Burleson and Dann. They had first asked that the hearing be declared unconstitutional and, when that failed, that Ruby not be brought into the courtroom.

WITH THAT also turned down, the attorneys then asked that representatives of all news

(Indicate page, name of newspaper, city and state.)

16A

"The Dallas
Times Herald"
Dallas, Texas

Date: 6-13-66

Edition:

Author:

Editor:

Felix R. McKnight

Title:

Character:

or

Classification:

Submitting Office:

Dallas

Being Investigated

media be barred from the court throughout the hearing.

That, too, was refused by the judge.

The hearing got under way Monday shortly after Tonahill flatly stated that he and other attorneys would "have no part" in the action.

Tonahill told reporters of the defense plan shortly before the hearing began. He also said that in his opinion Ruby presently is insane, but pointed out the withdrawal of an affidavit filed by Mrs. Eva Grant, Ruby's sister, "has tied our hands."

MRS. GRANT'S affidavit, in which she claimed her brother was insane, was withdrawn only one day before Judge Holland ordered the sanity hearing, as scheduled by the Texas Court of Criminal Appeals.

Among the spectators as the sanity hearing began was Mrs. Marguerite Oswald, mother of accused presidential assassin Lee Harvey Oswald—the man Ruby was convicted of killing. She was accompanied by Joe Elstrand, a Fort Worth attorney.

"Certainly I'm interested," Mrs. Oswald replied in response to reporter's questions. "This man shot my boy and deprived the Oswald family and the world of the truth."

Judge Holland, even before hearing the defense motions, had stated no photographs

would be taken in the courtroom and declared he "preferred" none to be taken in the hallway.

Sheriff Bill Decker, who relayed the instructions, explained that Judge Holland cited the recent Supreme Court ruling of a new trial for Dr. Sam Shepard as his reason for banning the photographs in the courtroom.

SPECTATORS PACKED the courtroom even before Ruby and the prospective jurors arrived. Others were turned away as the questioning of the jury panel began.

The date for the present hearing was set about a month ago after the Texas Court of Criminal Appeals reviewed its order of Feb. 4, 1965, that Ruby's present mental condition be determined. Dist. Atty. Henry Wade and assistants Bill Alexander and Jim Zimmerman are representing the state.

A prosecutor said the state's case will depend on what the defense does, since the burden of the proof in the sanity hearing is on the defense and the defense must open the proceedings.

The prosecutor indicated the state planned to put on only a few witnesses if the defense does nothing, but was prepared to offer evidence from both psychiatrists and persons who have observed Ruby in jail if necessary.

(Mount Clipping in Space Below)

Ruby Plea to Cite Sheppard Decision

The U.S. Supreme Court decision in the Sam Sheppard murder case will have "a very important effect" on Jack Ruby's appeal from his death sentence, a defense lawyer said Friday.

"We will certainly cite the Sheppard decision in our briefs in the Ruby case," William M. Kunstler of New York said. "It strengthens our position. There is a close parallel between the Sheppard trial and the Ruby trial."

The Supreme Court voted 8 to 1 Monday to set aside the life sentence which Dr. Sheppard, a Cleveland osteopath, received after a jury convicted him of murdering his wife.

(The State of Ohio Friday ordered a new trial for Sheppard. Cuyahoga County prosecutor John T. Corrigan said another trial will be held because "society has been the victim of a heinous crime which demands redress.")

Associate Justice Tom Clark, who wrote the majority opinion, said Dr. Sheppard stood trial in a carnival-like atmosphere with reporters filling the courtroom.

JUSTICE CLARK said the trial judge should have limited the number of reporters permitted in the courtroom and should have stopped attorneys, police and other witnesses from making prejudicial statements outside the courtroom.

Before Ruby stood trial on a charge of murdering Lee Harvey Oswald, Criminal Dist. Judge Joe B. Brown announced he would limit the number of reporters to seats available for them. He also banned photographers from the courtroom.

But jurors passed television and newspaper photographers upon entering and leaving the building for meals. They also saw long lines of curious Dallas residents who hoped to gain admission to the courtroom.

Melvin Belli, the chief defense attorney at the trial, held press conferences almost daily and, while more reserved than Belli, prosecutors also made comments to reporters.

KUNSTLER believes that, by an ironic coincidence, he helped bring about the Supreme Court decision in the Sheppard case.

An author as well as a lawyer, Kunstler wrote a book, entitled "The Minister and the Choir Singer," about the famed Hall-Mills murder case. When he reviewed the book at the Overseas Press Club in New York, those present included the late Dorothy Kilgallen, a columnist and television personality, and F. Lee Bailey, an attorney representing Sheppard.

Miss Kilgallen compared the Hall-Mills case to the Sheppard trial, which she had covered, and mentioned that the trial judge in the Sheppard case had told her during briefings that he believed the osteopath was guilty.

Bailey questioned her immediately and used the information to build a major point in his appeal.

(Indicate page, name of newspaper, city and state.)

7A

"The Dallas
Morning News"
Dallas, Texas

Date: 6-11-66

Edition:

Author:

Editor: Jack B. Kruger

Title:

Character:

Classification:

Submitting Office: Dallas

 Being Investigated