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## Ruby Appeal Weighed by Texas Court

AUSTIN, Tex. (AP) — The Texas Court of Criminal Appeals considered opposing arguments today that Jack Ruby either was an "avenging angel" or "a man gripped by a rage that overwhelmed him."

The state's highest court for state criminal cases heard 3½ hours of argument yesterday from nine attorneys on Ruby's appeal of the death sentence given him for killing Lee Harvey Oswald, named by the Warren Commission as the assassin of President John F. Kennedy.

The court's decision on the Ruby appeal will not be known until fall. The court goes into summer recess today until Oct. 3. Attorneys will be allowed until late August to submit additional written briefs.

### NOT PRESENT

Ruby was not present. He has been confined in the Dallas County jail since a Dallas District Court jury sentenced him to death in Texas' electric chair following his trial in March 1964.

Television viewers saw Oswald shot on Nov. 24, 1963, as he was being transferred from the Dallas city jail to the county jail. Oswald died just two days after he was charged with fatally shooting President Kennedy and seriously wounding Texas

Gov. John B. Connally with a high-powered rifle.

Defense attorney Elmer Gertz, Chicago, based much of his argument on the unpublished manuscript of a book about the trial written by the trial judge, Dist. Judge Joe Brown.

"Judge Brown had the strange notion he could not control news reporters and television people in and around the Dallas County Courthouse to eliminate what he himself called the "circus atmosphere," Gertz said.

"We of the district attorney's staff did not pick the audience before which this crime took place," said Assistant Dallas Dist. Atty. William Alexander. "Jack Ruby picked the audience, before the TV cameras with 140 million viewers. But the fact that he did this on TV does not lessen his guilt."

### NOT FIRED

Phil Burleson, Dallas lawyer, the only remaining member of Ruby's original three-man defense team who has not been fired by Ruby or his relatives, said Ruby was denied a fair trial because 11 jurors said they saw the TV scenes of the shooting.

"These jurors actually made up their minds as to certain facts that the state had the burden to prove," Burleson said. "The only thing that was left was the matter of punishment."

James Williamson, another assistant district attorney, claimed the defense tried to make Ruby "an avenging angel" and said they did not try to get the trial delayed because "They wanted it tried while emotions were still up in his (Ruby's) favor and the memory of John Kennedy was still warm."

Sol Dann, Detroit lawyer, argued the substitution of Dist. Judge J. Frank Wilson for one day of the Dallas trial was "just as fatal as a juror being absent one day. No man should be sent to his death by reason of one of these technicalities."

State Atty. Leon Douglas said it would have been useless to transfer the trial to another Texas county. "The whole world saw it on TV," he said. "If you ruled out jurors who had not seen it on TV you never would have been able to bring him trial."