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Unusual Question Faces Judges In Ruby's Case

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By LEE JONES

AUSTIN, Tex. (AP) — The question probably never occurred in the wildest dreams of the first Texas Court of Criminal Appeals in 1876.

But for the television age judges of the court, and for Jack Ruby, the question demands an answer: Is a man who sees a crime committed on television a witness?

Eleven of the 12 jurors who sentenced Ruby to death for killing Lee Harvey Oswald either were watching television when Ruby pulled the trigger or later saw filmed repeats.

Oswald, whom the Warren commission identified as President John F. Kennedy's assassin, was gunned down in the basement of the Dallas police station Nov. 24, 1963, two days after the assassination.

Dist. Judge Joe B. Brown ruled that persons who had seen the shooting over television could sit on the jury.

Melvin Belli, Ruby's chief lawyer at the trial, failed in an attempt to get the Texas Supreme Court to order Brown to keep such persons off the jury.

Television cameras from the major networks were trained on the handcuffed Oswald, who was being transferred to the County Jail, when Ruby stepped out of a crowd of police and newsmen and shot him.

"There was trial by ritual when 11 of the 12 jurors said they saw it on TV, then went through the ritual of asserting they could set aside all preconceived notions," Sam Houston Clinton Jr., a civil liberties attorney here, said.

Clinton led off the defense Friday in the long awaited hearing before the appeals court on Ruby's conviction.

Attorney Phil Burleson of Dallas said Brown committed a fatal error in allowing the eleven persons who saw the crime to sit on the jury. He called them "juror witnesses."

Texas law, Burleson went on, prohibits a witness to a crime from serving on the jury. He contended that if 1 person out of 162 questioned had not seen the televised killing, 11 more could have been picked from Dallas' 70,000 eligible jurors.

He cited several cases to show, as the appeal brief said, that "the fact that the jurors were watching a mechanical device and thereby became witnesses does not render their testimony inadmissible."

A recent U.S. Supreme Court decision, he noted, reversed a Louisiana conviction because four jurors were watching when a television news program showed the defendant confessing.

But Asst. Dist. Atty. James F. Williamson of Dallas had another view of the problem.

He said that the action had happened so quickly, with Ruby's back to the camera most of the time, that it was difficult to tell it was Ruby.

"Did he (a viewer) see something, or did he see just confusion in which he could not possibly identify anyone?" he said.

"The identification of Ruby and Oswald was not based on personal knowledge but on the announcers' statements that they were Ruby and Oswald."