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Files
Legal aspects of request by counsel for Jack Ruby
for information and materials in possession of Warren
Commission.

If any part of the information and materials called
for in Ruby's sweeping request is made available to him
by the Commission before his trial, such action would be
wholly a matter of grace based on reasons of policy, and
is not required by law. The same would probably be true
even during the progress of the trial. On no theory would
he be entitled at any time to all the information and
material requested. 1/

After the trial has begun, Ruby would, under Texas law,
be entitled, at the discretion of the trial court, to inspec-
tion of previously made statements and reports of prosecution
witnesses, at least if these papers are available to the
prosecutor, and would have an absolute right to inspect them
if they are used in any way before the jury. Failure to grant
inspection even when not a matter of right would usually be
an abuse of discretion if inspection is necessary to avoid
prejudice to the defense or to enable the defense to determine
if it has been prejudiced, unless a reviewing court can see

1/ He apparently seeks all the evidence, reports and minutes
which the Commission has. Since his defense will apparently
be not that he did not kill Oswald but that his state of mind
was such that he was not responsible for doing so, he should
logically have an interest only in that evidence in the hands
of the Commission which may bear on his state of mind. Even
the latter category of evidence is broader in scope than
would be covered by procedures for the discovery of prose-
cution or official information under either Texas or federal
law, since under neither law are statements producable unless
the person who made the statement has testified. Received

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from the papers in question that any such error was harmless. ^{2/}

Where, as here, the materials in question are not in the hands of the prosecutor but rather are in federal hands, it is very unlikely that their production could effectively be compelled, either by process of the state trial court or in any independent proceeding that might be brought in a federal court for such a purpose. Apart from the likelihood that any such efforts to obtain production could be successfully resisted on grounds of privilege, sovereign immunity, federal supremacy, and/or other bases, the only sanction ordinarily available to compel production is dismissal of the indictment, striking the testimony of the witness involved, or other action detrimental to a conviction, and this would seem legally inappropriate because it would be a penalty imposed upon the State of Texas as prosecutor because of a federal refusal to produce beyond state control. On the other hand, if some direct sanction such as contempt were sought to enforce production, the effect would be to deprive the federal government of its ordinary option to refuse production at the price of dropping or weakening its case, a price it cannot pay in a state prosecution. ^{3/}

^{2/} Sewell v. State, 367 S.W. 2d 349 (Tex. Cr. App. 1963, first and second rehearings denied 1963) (conviction of burglary affirmed where trial court had denied inspection of police witness's offense report but had attached the report to the appeal papers, so that appellate court could see that denial of inspection had not prejudiced the defense); Gaskin v. State, 353 S.W. 2d 467 (Tex. Cr. App. 1961, rehearing denied 1962) (marijuana conviction reversed where, after testimony of arresting officers, court had denied request to order prosecutor to produce for use in cross-examination reports they made at time of arrest and not used in courtroom, holding such denial was an abuse of discretion); also see Robertson v. State, 361 S.W. 2d 383 (Tex. Cr. App. 1962); Martinez v. State, 354 S.W. 2d 936 (Tex. Cr. App. 1962).

^{3/} Both the Jencks case and the Jencks Act make it plain that the government's duty to produce, when it exists, is part of an option to which the government is entitled of either producing or being disadvantaged or defeated in its prosecution efforts. Jencks v. United States, 353 U.S. (cont'd)

Nevertheless, it is conceivable that a total and persistent denial by the Commission of Ruby's request might indirectly assist in his defense (apart from any sympathy it might engender for him), for it might afford him a basis for a claim that his right to a fair trial has been frustrated and that, if the state court cannot compel production of necessary papers in the Commission's files, it should direct his acquittal. Such a claim might technically be predicated on an alleged denial of due process under the Fourteenth Amendment, or even the Fifth Amendment, or both, on the theory that a fair trial was frustrated by the trial court, the Commission, or both, suggesting a possibility of ultimate review in the Supreme Court. While to reverse a conviction because of failure of efforts to obtain inspection in these circumstances would seem very unlikely, particularly because any such reversal would seem to make federal production of documents on a defendant's behalf a requisite of successful state prosecution, such a result, if deemed necessary to avoid injustice, might perhaps be rationalized as essentially giving defendants the same rights in state as in federal criminal matters, a formula which is hardly novel. An outcome of this nature would seem almost impossible if Ruby's request is dealt with reasonably and fairly on the basis of policy rather than law. Barring legal doctrines that might be fashioned or adapted to rationalize a decision in favor of Ruby on this issue, the only legal obligation of a government to disclose information to a defendant seems to arise out of the prosecutor-defendant relationship, and thus does not exist if the demand is made by one other than the defendant, or as here is addressed to a government other than the prosecuting government.

For these reasons, the Commission would not appear to be legally required to turn over to Ruby the materials requested.

3/ (cont'd)657 (1957); 18 U.S.C. § 3500(d). Contrary to the discussion on p. 7 of the Ruby request to the effect that the Jencks principle calls for federal production of documents in a state prosecution, there is nothing in the cases cited in the request to support such a view.