

# Appeals Court Reverses Ruby's Murder Sentence

10/6/66

Special to The Washington Post

AUSTIN, Oct. 5 — Jack Ruby's conviction and death sentence for the murder of Lee Harvey Oswald were reversed today by a unanimous Texas Court of Criminal Appeals.

The Court held that Texas law prohibited the most damaging testimony by police about Ruby's state of mind in contemplating vengeance against President Kennedy's accused assassin. At issue was police testimony that Ruby admitted he had decided to kill Oswald if he had a chance.

The Court said retrial "in some county other than Dallas" was necessary in light of the Supreme Court's decisions in the Sam Sheppard and Billie Sol Estes rulings. In those cases trial judges failed to protect juries from prejudicial publicity.

Elated defense attorneys immediately claimed that the State had no usable evidence to prove premeditated murder. One predicted that "Ruby can



United Press International

**JACK RUBY**  
... wins new trial

walk free on a plea of guilty to murder without malice."

Lawyers for the State said they would seek a rehearing.

One Judge said that Ruby could not have been tried fairly in Dallas "while the State, Nation and world judged Dallas for the tragic November events."

Justice W. T. McDonald added in his concurring opinion:

"Dallas was being blamed directly and indirectly for President Kennedy's assassination and for allowing the shooting of Oswald by Ruby. The feeling and thought had been generated that Dallas County's deprivation of pros-

See RUBY, A3, Col. 2

**RUBY—From Page A1**

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ecuting Oswald could find atonement in the prosecution of Ruby . . . The citizenry of Dallas consciously and subconsciously felt Dallas was on trial."

Ruby never claimed outright innocence of the crime, which was witnessed on television by an estimated 140 million Americans. But he denied premeditation and claimed temporary insanity.

The prosecution introduced Ruby's statement to policemen—made shortly after the shooting—that he had seen Oswald two nights earlier in a police lineup and that when he saw the "sarcastic sneer" on Oswald's face he made up his mind to kill him.

Texas law demands that such confessions or damaging statements be written and signed. The State courts have carved out an exception for spontaneous statements on the theory that utterances made in the grip of emotion, excitement or pain are likely to be true.

But the Court noted today that Ruby refused to answer questions until he had been assured by police and a Secret Service agent that his answers would not be made available to "magazines or publications."

### Ruby Cautious

"One who is cautious enough to inquire whether his answers to the questions to be propounded to him are to be released to the news media is not speaking spontaneously," the Court ruled.

The decision on the confession issue was thus based entirely on Texas law and did not involve Supreme Court

restrictions on police questioning in the absence of legal advice.

The Court's Opinion, written by Presiding Justice W. A. Morrison, said it was "abundantly clear" that the Sheppard and Estes cases controlled Ruby's case and that Judge Joe B. Brown should have transferred the trial out of Dallas in the first place.

"Not only are we bound legally by the holdings of the Supreme Court," the Texas judges said, "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."

### Judge Drops Out

Judge Brown has disqualified himself from the Ruby case, "and properly so," the Court concluded. The trial judge had been under pressure from defense attorneys after it was disclosed that he was writing a book on the case.

Justice McDonald and Justice K. K. Woodley, who also filed an opinion, disagreed over whether Ruby could ever get a fair trial when millions had witnessed the November, 1963, shooting. McDonald said a fair trial was "not humanly possible" while Woodley took pains to point out that the opinion of the entire court did not concern the question.

Ruby was notified of today's ruling at the maximum security unit of the Dallas County Jail, where he has been since the crime. "He's very, very happy," said Attorney Phil Burleson after leaving the prisoner.