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RUBY

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RUBY (450)

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ASSOCIATED PRESS WRITER

AUSTIN, TEX., NOV. 9 (AP)-THE TEXAS COURT OF CRIMINAL APPEALS WAS SCHEDULED TODAY TO CONSIDER THE STATE'S MOTION FOR REHEARING IN THE JACK RUBY CASE.

DIST. ATTY. HENRY WADE OF DALLAS SAID YESTERDAY HIS OFFICE WOULD NOT USE THE 20 MINUTES ALLOTTED FOR PROSECUTION ARGUMENT. THE COURT THEN OFFERED WADE 45 MINUTES. A SPOKESMAN SAID WADE WOULD LET THE COURT KNOW BEFORE IT CONVENED WHETHER HE WOULD ACCEPT.

NO DECISION WAS EXPECTED ON THE MOTION TODAY. THE TRIBUNAL RARELY RULES ON A CASE THE SAME DAY IT IS CONSIDERED.

THE COURT REVERSED RUBY'S DEATH SENTENCE FOR MURDER OCT. 5.

RUBY SHOT LEE HARVEY OSWALD BEFORE TELEVISION CAMERAS IN THE BASEMENT OF DALLAS POLICE HEADQUARTERS NOV. 24, 1963, TWO DAYS AFTER PRESIDENT KENNEDY'S ASSASSINATION. THE WARREN COMMISSION SUBSEQUENTLY IDENTIFIED OSWALD AS THE ASSASSIN. THE LOSER MAY DECIDE TO RELY ENTIRELY ON THE MOTION FOR REHEARING, BUT THE LOSER MAY DECIDE TO RELY ENTIRELY ON THE

PRESIDENT KENNEDY'S ASSASSINATION. THE WARREN COMMISSION SUBSEQUENTLY IDENTIFIED OSWALD AS THE ASSASSIN.

ONLY THE LOSING SIDE IS ALLOWED TO MAKE ORAL ARGUMENTS ON A MOTION FOR REHEARING, BUT THE LOSER MAY DECIDE TO RELY ENTIRELY ON THE MOTION AND BRIEFS.

COURT OBSERVERS DOUBTED THAT WADE WOULD SEND ANYONE TO ARGUE BECAUSE BOTH THE MOTION, FILED OCT. 20, AND A BRIEF IN SUPPORT OF THE MOTION, FILED YESTERDAY, ARE HIGHLY CRITICAL OF THE COURT.

IT SAID THE FAILURE OF A COURT TO USE INTELLIGIBLE LANGUAGE IS THE "COMMONEST DISSERVICE TO THE ADMINISTRATION OF JUSTICE."

FIRING BACK AT THE STATE'S MOTION, JOE TONAHILL, ONE OF RUBY'S TRIAL LAWYERS WHO WAS LATER FIRED, CALLED IT A "VERY EMOTIONALLY LADEN LECTURE-MOTION" IN WHICH THE PROSECUTION "TAKES EVERYONE TO TASK EXCEPT THEMSELVES FOR PRODUCING THE INCREDIBLE TRIAL, THE

PREJUDICE-INFECTED RECORD, AND THE CRUEL, UNHUMAN AND UNCIVILIZED DEATH VERDICT."

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THE HIGH COURT SAID TWO REVERSIBLE ERRORS WERE MADE BY THE TRIAL COURT:

--DALLAS POLICE SGT. P. T. DEAN SHOULD NOT HAVE BEEN ALLOWED TO TESTIFY ABOUT REMARKS MADE BY RUBY AFTER HIS ARREST, SUCH AS RUBY'S ALLEGED STATEMENT THAT HE DECIDED TO SHOOT OSWALD AFTER SEEING OSWALD'S "SNEER" ON TELEVISION. THESE REMARKS WERE MADE AT LEAST 10 MINUTES AFTER RUBY'S ARREST AND WERE THEREFORE NOT SPONTANEOUS, AS THEY MUST BE TO BE ADMISSIBLE, THE COURT SAID. THE STATE RELIED UPON THE REMARKS TO PROVE PREMEDIATION, NECESSARY FOR A FIRST-DEGREE MURDER CONVICTION.

--THE TRIAL SHOULD HAVE BEEN TRANSFERRED TO ANOTHER COUNTY BECAUSE OF WHAT THE COURT CALLED PREJUDICIAL CONDITIONS IN DALLAS.

WADE CONTENDED IN HIS MOTION THAT THE APPELLATE COURT MADE FOUR ERRORS:

"THROWING OUT THE POLICE TESTIMONY.

--"PERMITTING AND CONDOMING" DEFENSE COUNSEL AFTER THE OCT. 5 DECISION TO "BRAIN WASH" PROSPECTIVE JUDGES AND JURORS IN ANY NEW TRIAL INTO BELIEVING

--"PERMITTING AND CONDONING" DEFENSE COUNSEL AFTER THE OCT. 5 DECISION TO "BRAIN WASH" PROSPECTIVE JUDGES AND JURORS IN ANY NEW TRIAL INTO BELIEVING THE STATE CAN GET ONLY A MURDER-WITH-OUT-MALICE CONVICTION WITHOUT THE POLICE TESTIMONY.

CONVICTION WITHOUT THE POLICE TESTIMONY.

--ORDERING ANY NEW TRIAL TO BE HELD OUTSIDE DALLAS COUNTY.

--HOLDING THAT RUBY DID NOT RECEIVE A FAIR TRIAL BECAUSE OF PREJUDICIAL CONDITIONS IN DALLAS.

WADE SAID THE RUBY CASE WAS NOT SUBSTANTIALLY SIMILAR TO THE DR. SAMUEL SHEPPARD AND THE BILLIE SOL ESTES CASES, WHICH WERE OVERTURNED BY THE U.S. SUPREME COURT ON THE GROUND OF EXCESSIVE NEWS COVERAGE.

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