

EB139

NIGHT LEAD (380)

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JACKSONVILLE, FLA., APRIL 20 (AP)-THREE SETS OF LAWYERS SPUN A NEW WEB OF COMPLICATIONS AROUND THE JACK RUBY MURDER TRIAL TODAY IN A 90-MINUTE HEARING BEFORE THE U.S. 5TH CIRCUIT COURT OF APPEALS.

THE COURT WAS ASKED TO DECIDE:

--WHICH ATTORNEYS LEGALLY REPRESENT RUBY, THE PORTLY NIGHT CLUB OWNER WHO SHOT TO DEATH LEE HARVEY OSWALD TWO DAYS AFTER PRESIDENT JOHN F. KENNEDY WAS ASSASSINATED.

--WHETHER RUBY'S SANITY SHOULD BE DETERMINED IN A FEDERAL COURT OR A TEXAS CRIMINAL COURT.

--AND WHETHER ATTORNEYS HAVE EXHAUSTED ALL POSSIBLE REMEDIES UNDER TEXAS LAW.

CHIEF JUDGE ELBERT P. TUTTLE OF ATLANTA INDICATED HE AND TWO OTHER JUDGES WHO HEARD THE CASE WILL DECIDE IN A FEW DAYS THE BASIC QUESTION OF WHETHER THEY WILL DELAY, TEMPORARILY AT LEAST, ANY ATTEMPT TO DETERMINE RUBY'S SANITY IN TEXAS COURTS.

IF THE APPEALS COURT GRANTS THIS, IT PROBABLY WOULD SCHEDULE A MORE COMPLETE HEARING LATER ON THE ISSUE OF WHETHER FEDERAL COURTS COULD TAKE OVER THE BUSINESS OF DECIDING ON HIS SANITY.

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ONE SET OF ATTORNEYS, INCLUDING NEW YORK AND TEXAS COUNSEL FOR THE AMERICAN CIVIL LIBERTIES UNION, ASKED THE FEDERAL COURT TO TAKE THIS FUNCTION OUT OF THE HANDS OF TEXAS CRIMINAL COURT.

THEY CITED THE CIVIL RIGHTS LAW OF 1964 AS THE BASIS FOR THEIR REQUEST--CLAIMING JUDGE JOE B. BROWN OF CRIMINAL COURT AT DALLAS SHOULD BE DISQUALIFIED AND THAT RUBY COULDN'T GET A FAIR TRIAL THERE.

RUBY REMAINS IN DALLAS COUNTY JAIL IN TEXAS, WHERE HE HAS BEEN SINCE NOV. 24, 1963 WHEN OSWALD WAS KILLED IN THE BASEMENT OF THE DALLAS MUNICIPAL BUILDING.

THE COURT WAS ASKED TO HONOR ONE OF TWO DOCUMENTS HE SIGNED DESIGNATING DIFFERENT ATTORNEYS TO REPRESENT HIM.

JOE TONAHILL OF JASPER, TEX., WHO REPRESENTED RUBY IN HIS MURDER TRIAL LAST YEAR, SAID HE HAS A CONTRACT SIGNED BY RUBY AND HIS

SISTER MRS. EVA GRANT ASKING TONAHILL TO CONTINUE AS HIS ATTORNEY THROUGHOUT APPEALS AND ALL FURTHER PHASES OF THE CASE.

WILLIAM M. KUNSTLER OF NEW YORK AND SAM HOUSTON CLINTON JR. OF AUSTIN, TEX., PRESENTED THE COURT WITH COPIES OF A DOCUMENT, SIGNED BY RUBY AND MRS. GRANT DESIGNATING THEM, PLUS SOL A. DANN OF DETROIT AND ELMER GERTZ OF CHICAGO, AS RUBY'S ATTORNEYS.

TONAHILL AND A.D. JIM BOWIE, FIRST ASSISTANT DISTRICT ATTORNEY OF DALLAS COUNTY, WERE ON THE SAME SIDE IN ASKING THE FEDERAL APPEALS JUDGES TO SEND THE CASE BACK TO TEXAS COURTS.

HOWEVER, TONAHILL SAID HE, TOO, FEELS JUDGE BROWN SHOULD BE DISQUALIFIED, AND INDICATED HE MIGHT FILE HIS OWN PETITION LATER FOR REMOVAL TO FEDERAL COURT.

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JACKSONVILLE, FLA.--FIRST ADD NIGHT LEAD RUDY (B139-40) X X X FEDERAL COURT.

THE JUDGE RENOVATED THE RUBY CASE IN TEXAS COURTS.

CLINTON REPLIED THAT, ONCE A CRIMINAL COURT IN TEXAS DETERMINES THE SANITY OF A DEFENDANT, THERE IS NO APPEAL FROM ITS DECISION. THEREFORE, HE SAID, IT WAS NECESSARY TO ACT BEFORE THE TEXAS COURT MADE ITS DECISION.

TONAHILL SAID HE WOULD BE INCLINED TO AGREE WITH CLINTON ON THAT POINT.

BOWIE, HOWEVER, SAID THE TEXAS COURT OF CRIMINAL APPEALS HAD ORDERED THE SANITY HEARING--AN UNPRECEDENTED MOVE--AND WOULD HAVE THE OBLIGATION TO SEE THAT IT IS PROPERLY CARRIED OUT.

JUDGE BROWN AGREED TO POSTPONE THE START OF ANY SANITY HEARING UNTIL THE FEDERAL APPEALS COURT MAKES ITS RULING, BOWIE SAID.

KUNSTLER TOLD THE COURT THAT JUDGE BROWN REFUSED TO RECOGNIZE ANY BUT TONAHILL AND PHIL BURLESON OF DALLAS AS ATTORNEYS FOR RUBY.

"BROWN IS ENGAGED IN WRITING A BOOK FOR PROFIT ON THE RUBY TRIAL," KUNSTLER SAID. "IT SEEMS QUITE CLEAR HE IS DOING THIS, SINCE THERE IS A CONTRACT."

KUNSTLER ALSO ARGUED THAT RUBY WAS NOT REPRESENTED BY AN ATTORNEY AT A HEARING BEFORE U.S. DISTRICT JUDGE T. WHITFIELD DAVIDSON IN DALLAS

MARCH 19. THE NEW YORK ATTORNEY SAID HE AND HIS COLLEAGUES WERE TIED UP WITH OTHER CASES WHEN THE JUDGE SET THE HEARING ONLY ONE DAY IN ADVANCE OF HOLDING IT.

JUDGE DAVIDSON'S REFUSAL TO TAKE FEDERAL JURISDICTION OVER THE SANITY HEARING--REMANDING IT BACK TO THE TEXAS CRIMINAL COURT--IS WHAT KUNSTLER AND HIS ASSOCIATES SEEK TO APPEAL.

JUDGE ORIE L. PHILLIPS FROM THE U.S. 10TH CIRCUIT AT DENVER SAT WITH JUDGES TUTTLE AND WISDOM. ALL THREE INTERRUPTED THE ATTORNEYS FREQUENTLY WITH QUESTIONS.

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