

EB28

RUBY HEARING (310)

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JACKSONVILLE, FLA., APRIL 21 (AP)-THE U.S. 5TH CIRCUIT COURT OF APPEALS IS EXPECTED TO RULE WITHIN A FEW DAYS ON WHETHER IT SHOULD PREVENT A SANITY HEARING IN TEXAS COURTS FOR JACK RUBY, CONVICTED KILLER OF LEE HARVEY OSWALD.

AFTER THAT RULING COULD COME A RULING ON WHETHER FEDERAL COURTS SHOULD DETERMINE RUBY'S SANITY OR LEAVE IT TO THE CRIMINAL COURT AT DALLAS.

COMPLICATING THE CASE IS A DISPUTE OVER WHICH ATTORNEYS LEGALLY REPRESENT RUBY, THE ONETIME NIGHT CLUB OWNER UNDER SENTENCE OF DEATH FOR SHOOTING THE ASSASSIN OF PRESIDENT JOHN F. KENNEDY.

THE THREE-JUDGE 5TH CIRCUIT PANEL OF ELBERT P. TUTTLE OF ATLANTA, JOHN MINOR WISDOM OF NEW ORLEANS AND ORIE L. PHILLIPS OF DENVER INDICATED IT WILL DECIDE THE FIRST ISSUE IN A FEW DAYS.

THIS WOULD BE WHETHER TO STOP, AT LEAST TEMPORARILY, THE DECISION BY U.S. DISTRICT JUDGE T. WHITFIELD DAVIDSON LAST MONTH RETURNING THE SANITY DECISION TO TEXAS COURTS.

WILLIAM M. KUNSTLER OF NEW YORK AND SAM HOUSTON CLINTON JR. OF AUSTIN, TEX., TOLD THE APPEALS COURT THAT NEITHER THEY NOR TWO OTHER ATTORNEYS RETAINED BY THE RUBY FAMILY WERE ABLE TO BE PRESENT AT THE MARCH 19 HEARING, SET BY JUDGE DAVIDSON ON ONE DAY'S NOTICE.

RUBY HAD TO REPRESENT HIMSELF, THEY SAID.

JOE H. TONAHILL OF JASPER, TEX., WAS THERE. HE DEFENDED RUBY IN THE MURDER TRIAL AND CLAIMS HE STILL DOES. HE SAYS HE CAN'T BE FIRED BECAUSE RUBY IS INSANE.

TONAHILL CONTENDED, AT THAT HEARING, THE CASE SHOULD REMAIN IN STATE COURTS.

HE TOOK THE SAME POSITION BEFORE THE FEDERAL APPEALS JUDGES BUT SAID HE MIGHT SEEK HIS OWN REMOVAL PETITION IF THE CU

RENT ONE IS DENIED.

KANSTLER AND CLINTON USED THE 1964 CIVIL RIGHTS LAW AS THE BASIS FOR THEIR ATTEMPT TO REMOVE THE SANITY HEARING TO FEDERAL COURT. THEY ARGUED THAT RUBY COULD NOT GET A FAIR HEARING IN DALLAS COUNTY CRIMINAL COURT.

JUDGE WISDOM FREQUENTLY ASKED IF IT WASN'T PREMATURE TO ASK FEDERAL COURTS TO TAKE JURISDICTION BEFORE THE ENTIRE CASE, INCLUDING FINAL APPEAL, WAS COMPLETED IN TEXAS COURTS.

CLINTON REPLIED THAT TEXAS LAW GIVES CRIMINAL COURT THE FINAL DECISION IN A SANITY HEARING WITHOUT THE RIGHT TO APPEAL. FEDERAL COURTS SHOULD TAKE JURISDICTION BEFORE THAT STAGE, HE ARGUED.

A. D. JIM BOWIE, FIRST ASSISTANT DISTRICT ATTORNEY OF DALLAS COUNTY, SAID THE TEXAS COURT OF CRIMINAL APPEALS ORDERED THE SANITY HEARING AND WOULD SEE THAT IT WAS CONDUCTED PROPERLY.

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