Landmark Issue Looms in Sirhan Slaying Trial

Stage Set by Woman Juror's Opposition to Death Penalty

BY DAVE SMITH
Times Staff Writer

A courtroom wrangle over a woman juror opposed to the death penalty raised the possibility Thursday that the murder trial of Sirhan Bishara Sirhan could become a landmark case in U.S. law and that Sirhan, if convicted in the slaying of Sen. Robert F. Kennedy, might never be executed.

The battle was joined when Dep. Dist. Atty. David N. Fitts renewed his challenge on legal grounds to the seating of Mrs. Alvina Alvidrez, who said Wednesday that "under no circumstances whatsoever" could she vote for the death penalty.

But Mrs. Alvidrez also specified that she felt herself qualified to judge the question of Sirhan's guilt or innocence.

Superior Judge Herbert V. Walker disallowed the challenge Wednesday but was considering arguments Thursday and was expected to hand down a ruling today.

One Phase Left Open

Judge Walker pointed out to Fitts that while he had disallowed the challenge on legal grounds, he had left open whether the prosecution could renew the challenge at the end of the first phase of trial. He added that an alternate juror for any juror opposed to the death penalty could be substituted rather than impanel an entire new jury if a penalty trial is necessary.

Dep. Dist. Atty. John E. Howard argued that if Mrs. Alvidrez or a juror of similar opinion were seated, and that if Sirhan ultimately were convicted of first-degree murder, the court could face the possibility of a mistrial or the problem of jeopardy—in effect presenting a second trial on the same set of facts. The latter case could result, Howard said, if the jury that determined guilt had to be dismissed and replaced by another jury to fix the penalty.

California law offers only the death penalty or life imprisonment on a first-degree murder conviction and also allows for two juries—one for the guilt-innocence phase and one for the penalty phase.

Defense Attorney Grant B. Cooper previously has cited two high court decisions—that of the U.S. Supreme Court in the Witherspoon case last June and that of the California Supreme Court in the case of Anderson-Saterfield last November—which inveigh against the seating of juries who are only in favor of the death penalty.

Cooper earlier quoted the federal decision:

"Under the view of the Witherspoon majority, a jury from which all prospective jurors opposed to the death penalty have been excluded is not an impartial jury but rather constitutes a 'hanging jury'—one that is 'uncommonly willing to condemn a man to die' and one that 'cannot speak for the community' but 'can speak only for a distinct and dwindling minority.'"

Howard, in rebuttal, said that the decisions were not intended to go so far as to allow seating of jurors whose opinions are so irrevocable as that of Mrs. Alvidrez.

'Not Definitely Decided'

"All the Supreme Court has required is that it be shown that a prospective juror has more than a conscientious scruple against the death penalty," Howard argued.

Cooper then suggested that the precise question facing the court has not been definitely decided by the higher court decisions.

He pointed out that in the cases cited the question of a juror's opinion about the defendant's guilt or innocence, regardless of his position on the death penalty, was not raised.

Cooper then argued that the provision for a two-part trial offers a logical solution to the question raised by Mrs. Alvidrez' position.

Both defense and prosecution tentatively seated three more jurors Thursday—Mrs. Sharon A. Engle, Benjamin Glick and Gilbert F. Grace. This brings to 10—5 women and 5 men—the number on the provisional panel.

035