

Jurors in Sirhan Case Seek Ruling on Second Degree

BY DAVE SMITH
Times Staff Writer

The jury in Sirhan Bishara Sirhan's murder trial returned to the courtroom Wednesday to ask Superior Judge Herbert V. Walker to clarify his instructions on second-degree murder.

After listening for about five minutes and nodding that they understood, the jurors filed back to the jury room, where they deliberated for another hour without reaching a verdict. At 4 p.m. they were locked up, ending the second full day of deliberation.

Judge Walker re-read his original instruction, but added another interpretation to help clarify it:

"If you find from the evidence that, at the time the defendant shot and killed Sen. Robert F. Kennedy, his mental capacity had been substantially reduced, whether caused by mental illness or intoxication or a combination of mental illness and imbibing of intoxicating beverages, or any other cause, and if you find that to the extent that you have a reasonable doubt whether he did or could maturely and meaningfully premeditate, deliberate and reflect upon the gravity of his contemplated act or form an intent to kill, you cannot convict him of a willful, deliberate or premeditated murder of the first degree, but you may find him guilty of murder in the second degree if you are convinced beyond a reasonable doubt that he had the mental capacity to harbor or entertain malice aforethought."

Speculation Underscored

The jury's question and its lengthening debate underscored speculation that the panel is undecided whether the killing of Kennedy was first- or second-degree murder.

Speculation also arose that speculation itself was premature.

More than 150 exhibits were entered during the 15-week trial, and jurors wishing to appear fair-minded might feel obliged to examine them all, even if they had arrived at a private decision.

Sirhan's controversial notebook alone would require two hours for each of the 12 jurors to read.

Verdicts of acquittal or voluntary

manslaughter—both possible under the instructions given the jury by Judge Walker Monday—are considered highly unlikely.

If Sirhan is convicted of first-degree murder, his trial would proceed the next day to a penalty phase, in which he could receive either a death sentence or life imprisonment.

This phase would be short—possibly just a few hours, almost

surely not more than a day or two.

After three weeks of psychiatric testimony, attorneys for both sides feel there is little left that could be offered by way of mitigation for Sirhan's crime, and that the jury's decision will depend chiefly on attorneys' final arguments.

Further, the prosecution has already said it will not urge the death penalty.

If Sirhan is convicted of second-degree murder, the court will sentence him to

five years to life in prison, with the exact term to be set later by the California Adult Authority.

Should the jurors find themselves unable to agree on a verdict, a hung jury probably would not result in a retrial of the case. It is considered most likely that Judge Walker would take the case from the jury and, depending on agreement by the defense and prosecution, accept a guilty plea from the defense and simply sentence Sirhan to life imprisonment.