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# Sirhan Date With Death Distant--if Ever

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If condemned assassin Sirhan Bishara Sirhan ever keeps his rendezvous with death in the apple-green gas chamber of San Quentin Prison, it won't be for a long time.

A multitude of legal avenues are open to Sirhan's defense which could ultimately prevent the death penalty, and which surely will postpone it.

The first will be taken at a hearing May 14 when defense attorney Grant B. Cooper argues for a new trial for the convicted killer of Sen. Robert F. Kennedy.

If the new trial is denied, Superior Judge Herbert V. Walker will then formally impose sentence on the 25-year-old Palestinian Arab. Judge Walker, at his own discretion, could reduce the jury's verdict from death to life imprisonment, but he has done so only once in 19 previous first-degree murder convictions.

Cooper's notion for a new trial will be based, he said, on three grounds:

1—That Judge Walker committed judicial error in rejecting a defense-prosecution agreement on a guilty plea with life imprisonment.

2—That the grand jury which indicted Sirhan was unconstitutional by virtue of its ethnic and racial imbalance.

3—That the seizure of Sirhan's personal notebook and its introduction into evidence was "a grave error of constitutional dimensions."

If Judge Walker rules against these arguments, they can nonetheless serve, along with other motions that Cooper has indicated

he might introduce, as the basis of further appeals.

Under California law, all death penalty verdicts are subject to automatic appeal before the California Supreme Court. Cooper has said it would be at least a year before this appeal would be resolved by the state's high court, and even in the course of this appeal, arguments will

Please Turn to Page 26, Col. 1

### Continued from First Page

be introduced which will serve as the basis for appeal of any adverse ruling.

The most likely argument, expected to be joined in by the American Civil Liberties Union as a friend of the court, is the increasingly frequent contention that the death penalty itself is unconstitutional — a violation of the 14th Amendment, which prohibits "cruel and unusual punishment."

If the California Supreme Court is persuaded to the defense view, it cannot reduce the death penalty to life imprisonment, but it may reduce the first-degree verdict to second-degree murder, which then carries a prison term of five years to life.

If, on the other hand, the Supreme Court upholds the jury's verdict, two roads are then open to Cooper.

Any appeal based on constitutional grounds would be pursued through the federal court system, from district court to appellate court to the U.S. Supreme Court.

Any appeal based on a contention of judicial error could still be pursued through the state appeal courts system and back to

the California Supreme Court on different grounds.

### Chessman Cited

This process could preserve Sirhan's life for at least a decade. Executed rapist Caryl Chessman was able to forestall his execution for 12 years by exercising all possible appeals through all possible courts. He lost his battle and died in the gas chamber in May, 1960.

Efforts on Sirhan's behalf will be taking place in a climate of growing opposition nationwide to imposition of the death penalty.

Executions have markedly decreased in recent years and are virtually nonexistent now in 13 states. Alaska, Hawaii, Iowa, Maine, Michigan, Minnesota, Oregon, Wisconsin and West Virginia have abolished the death penalty altogether, and New York, North Dakota, Rhode Island and Vermont have so severely restricted its use that it is all but gone.

The last execution in the United States was that of Luis Jose Monge in Colorado on June 2, 1967.

In California, which now has 81 men in San Quentin's death row, the last man to die in the gas

chamber was Aaron Mitchell of Sacramento, on April 12, 1967.

It is not known what effect the current climate of U.S. political life — marked by student unrest at universities, urban rioting, the swing of the electorate toward conservatism and a growing concern over "law and order"—has had on public opinion on the death penalty. A few years ago, opposition to capital punishment had grown to the point where polls showed more than half the population disapproving of it.

#### Other Factor

One additional factor could serve to shorten the lengthy appeal process open to Sirhan—and thus shorten his life.

His three-man defense team represented him without fee throughout his 3½-month trial, and Cooper has said he will go forward with the case.

But how long can Cooper afford to do so? If no one underwrites the cost of Sirhan's defense or steps in to assist Cooper in an admittedly unpopular case, he could conceivably exhaust his own resources defending his unremorseful client.