

Smiling Through

"There will be no denial that our client, Sirhan Sirhan, fired the shot or shots that killed Robert Kennedy," declared defense counsel Grant Cooper, 65, as the Los Angeles murder trial got down to the business of picking jurors last week. What

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was very much in question, however, was the kind of homicide the soft-eyed, 24-year-old Jordanian youth had committed: premeditated murder in the first degree, as the prosecution charged; second-degree murder, mitigated by blind Arab rage at his victim's oft-expressed sympathy for Israel; or even manslaughter. Eventually, the answer would turn on the state of Sirhan's mind at the moment he pulled the trigger—on whether he was then capable of "mature, meaningful reflection" on what he was doing. And the answer, quite literally, would be a matter of life or death: a second-degree conviction draws five years to life imprisonment in California; a verdict of murder in the first-degree could ultimately lead pallid little Sirhan Bishara Sirhan to the gas chamber.

Yet as the trial began, the state of Sirhan's spirit seemed almost blithe. Wearing the pale blue tie and blue-gray suit his mother had bought for him, he bounced into court each morning, waving to her and his brothers, Adel, 29, and Munir, 21, in the back row of the spectator section. As the dogged, repetitious cross-questioning of prospective jurors ground on, moreover, he seemed all smiles—particularly when prosecuting attorney David Fitts, a 46-year-old look-alike for the late screen actor Montgomery Clift, put a grim question to one prospective juror.

Grinning: "Do you think," asked Fitts, "after sitting here for three months with the defendant that you would have the courage to tell him face to face that for the murder of Sen. Robert F. Kennedy he must die in the gas chamber?" In the midst of his query, Fitts realized that Sirhan was leaning forward, grinning ingratiatingly at his subject. "You can see him now," Fitts put in. "For all I know he may smile at you all through the trial." The defendant smiled again and issued his only public statement of the week: "I smile at you too, Mr. Fitts."

But in legal terms, the trial's opening drama turned on technical points well beyond young Sirhan's knowledge. Under California law, once a jury returns a

verdict of guilty of murder in the first degree, the trial automatically enters an additional phase wherein the jury is asked to decide whether the sentence is to be life imprisonment or death. When a prospective juror named Mrs. Alvina Alvidrez, a plump, 40ish Mexican-American, was asked if her feelings on capital punishment would allow her to return a guilty verdict, her response unwittingly went to the heart of California's bifurcated trial system. "Guilty verdict, yes," she replied firmly. "Death, no."

Unseated: Plainly, the defense wanted Mrs. Alvidrez seated—not only for her views on capital punishment, but also to pose the question, in the event of a first-degree conviction, whether different jurists could serve on the two phases of the trial. Just as plainly, the prosecution wanted her removed—and said so with a formal "challenge for cause." After two days of deliberation, Judge Herbert V. Walker ruled that Mrs. Alvidrez had to go, citing a recent California Supreme Court decision that upheld the denial of seats to prospective jurors opposed to capital punishment.

At the end of the week, after 37 prospective jurors and five full days of cross-questioning, the jury box—except for Mrs. Alvidrez's replacement—was provisionally full. Even more surprising, the prosecution announced it was satisfied with the jurors. The defense was saying little, but there were hints that Cooper, too, was pleased. Thus, while both sides still possessed nineteen peremptory challenges with which they could theoretically start the whole jury selection process again, it seemed possible that the trial might be hearing testimony this week.