

DECLARATION OF GRANT B. COOPER, CHIEF TRIAL COUNSEL FOR
SIRHAN BISHARA SIRHAN

I, GRANT B. COOPER, ESQUIRE, served as Chief Trial Counsel for the Defendant in the case of People v. Sirhan Bishara Sirhan, Superior Court Case No. A 233 421. After the Defendant had been convicted by a jury of First Degree Murder and certain lesser charges on April 17, 1969, and had been sentenced to death by that same jury on April 23, 1969, a motion for new trial, any further relief and sentencing, if appropriate, and for a reduction in sentence, was slated for May 21, 1969. A considerable number of issues of sizable legal import were carefully briefed by myself and submitted in writing to the Court on May 14, 1969, in anticipation of their careful and impartial consideration by the Honorable Herbert V. Walker, Presiding Judge at the trial. A copy of these motions was timely and appropriately served in the office of the District Attorney, so that he might have an opportunity to comprehensively answer them.

On May 21, 1969, Judge Walker denied the motion for new trial, other assorted motions and declined to reduce the degree of the homicide or the sentence, both of which options were available under California Penal Code Sections 1181.6 and 1181.7. The law is clear that the trial judge must conscientiously and impartially assess the defense contentions in support of the motion for a new trial and must make an independent determination

as to whether the appropriate penalty for the murder conviction should be life imprisonment or death.

Until recently, I had assumed that the Judge had acted in an impartial spirit in deciding to deny the defense motion for a new trial, and other ancillary motions, as well as declining to reduce the sentence, which the jury had awarded Sirhan, from death to life imprisonment.

However, recently, Attorney Luke McKissack, who now serves as Sirhan's attorney on appeal, transmitted to me a transcription of certain proceedings held sub rosa on May 16, 1969, in the chambers of Assistant Presiding Judge, Charles A. Loring, which leaves me simply astonished. That conference, which was not bipartisan, included Judge Loring, the Assistant Presiding Judge of the Los Angeles Superior Court System, Judge Herbert V. Walker, Presiding Judge at the Sirhan trial, David Fitts, Deputy District Attorney, representing the Prosecutor's office throughout the trial of the Sirhan case, Robert A. Houghton, Deputy Chief of the Los Angeles Police Department and Chief Investigative Aide to the Prosecution, two representatives of the County Clerk's Office hierarchy, Mrs. Alice Nishikawa, Judge Walker's Court Clerk, and Vesta Minnick, the Official Court Reporter, who transcribed those amazing proceedings. Again, it must be noted that no representative of the Defendant was present, and, in fact, no representative of the defense was invited to be present, or even told that such proceedings were to be held.

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Those proceedings encompassed a wide variety of subjects, all having to do with the Sirhan criminal case, and all requiring the presence of both the prosecution and the defense, in view of the marked debate and differences of opinion concerning legal problems which manifested themselves during the 33-page transcribed colloquy held on May 16, 1969.

① I am, of course, disturbed that the question of how certain Exhibits, marked for identification, or received in evidence, were to be treated for purposes of appeal, was discussed in my absence [see pp. 2-33] ② I am further perplexed as to why the police department and the District Attorney's Office "abstracted from the file" [p.6, line 13] some materials pertaining to their assessments of various witnesses with whom they conducted interviews and why some items of investigation were regarded too secret that they were barred from anyone, except the District Attorney, the F.B.I. and the Los Angeles Police Department [pp. 5 - 8].

③ But, above all, I am appalled to learn that during that secret session, on May 16, 1969, the District Attorney's Office, an emissary from the Los Angeles Police Department, and the Trial Judge discussed the grounds for new trial, with the Judge indicating implicitly, but nevertheless clearly, that the case was going up on appeal - an event which would never transpire if the motion for new trial,

yet to be argued on that date, were granted. **.

At pages 25 and 26 of the supplemental transcript, appears the following discussion:

MR. FITTS, Yes, I know, but that is what I am working on right now if you are interested. He picks from the transcript that which suits his purpose and omits from the points and authorities that which defeats his purpose, and somebody, if the thing is going to be prepared properly, has to sit down and include what he omitted. That is what I am doing. I am in the process.

JUDGE WALKER: I don't want you under that kind of pressure because it is very important you have a proper answer in. Why don't you come in, say, Monday morning and ask for some more time?

MR. FITTS: I don't want to. That is the last thing in the world I want to do, to ask for time.

JUDGE WALKER: Well, I don't want you to.

MR. FITTS: We will do the best we can, Judge, but I am not going to ask for time. If this motion is going to be denied and this guy sentenced, I

** Parenthetically, when the discussion reached the question of the ACLU-presented argument concerning the death penalty, Deputy District Attorney Fitts declared,

"I'm not worried about the ACLU little thing." [p.25, line 7]
The Judge responded,

"That is of no concern." [p.25, line 8]

Would like to have it happen on the first available date. We have not been asking for time before and I don't want to ask now.

JUDGE WALKER: Well, in any event, as a practical matter, when it goes up on appeal, whoever handles it on appeal, will have ample time to hit the whole transcript and put all of that stuff in so you would have what is left out. I have read through his briefs. [Emphasis supplied.]

Judge Loring volunteered further that any reversal by the California Supreme Court would be "through inadvertence" [p.28, line 26]. The parties present even considered the prospects of a new trial and a subsequent appeal, which provoked Judge Walker to remark,

"...I am hopeful that the nature of the Court will change by then." [p.30, line 26 and p.31, line 1.]

After reviewing the entire transcript of the proceedings held on the date of May 16, 1969, it is perfectly clear that the Trial Judge had decided to rule adversely on the motion for new trial prior to the hearing on that motion. Furthermore, it appears that with the finding of guilt and the rendering of the death sentence by the jury, the trial court regarded the role of defense counsel as extinguished.

This appears to me as a colossal violation of the
Constitutional and statutory rights of the accused.

I declare under penalty of perjury that the foregoing
is true and correct.

Executed on _____, at
Los Angeles, California.

GRANT B. COOPER