

Sirhan Defense Hinges On His Mental Capacity

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LOS ANGELES—Sirhan Bishara Sirhan goes to trial Tuesday on a charge of murdering Sen. Robert F. Kennedy—and a quirk in California law could save him from the gas chamber if he is found guilty.

The quirk is a hair-splitting technicality, reinforced by several decisions since 1949 but little known outside California, which recognizes a person may be legally sane yet still not fully responsible for his actions.

A number of legal and psychiatric authorities believe the 24-year-old Jordanian's counsel might use a defense known as "diminished responsibility" to seek a verdict short of first-degree murder and a lesser penalty than death.

Presentation of evidence by both sides is expected to take two months or longer. There are indications that more than 200 witnesses will be called.

Some are expected to say that Sirhan waited in a kitchen area of the Ambassador Hotel early last June 5 as Kennedy announced to a gathering of his supporters that he had won the California Democratic presidential primary.

Then, the prosecution will attempt to show, Sirhan began blazing away with a small-caliber pistol as Kennedy and others passed by.

Kennedy and five bystanders were wounded. The Senator died later in a hospital.

The setting of the trial is
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'Diminished Capacity' Is Likely Sirhan Plea

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Superior Court Department 107, an eighth-floor courtroom in the gray stone Hall of Justice.

Quarter-inch steel plates have been placed inside the courtroom's four windows—a precaution taken also for pre-trial hearings on the 13th floor, where Sirhan is held under heavy guard.

Occupying the courtroom's 75 spectator seats will be a hand-picked squad of sheriff's officers, witness and newsmen. Although 114 reporters have been given credentials to cover the trial, there will be space in the courtroom for only 37. The others will observe by closed circuit television in a room four floors below.

Also seated in the courtroom will be Sirhan's mother, Mary, and brothers Adel, 29, and Munir, 21, of suburban Pasadena.

The cast charged with seeking justice for Sirhan will include:

- The presiding jurist, Superior Court Judge Herbert V. Walker, 69, a busy-browed dean of the Los Angeles criminal bench.

- The three prosecutors, led by Lynn "Buck" Comp-ton, 46, pipe-puffing, one-time UCLA football player who won a Silver Star medal when he jumped into France with the 101st Airborne Division at Normandy. He is the county's chief deputy district attorney.

- Three for the defense, led by Russell B. Parsons,

69, wispy, bespectacled lawyer who has tried 5000 cases in nearly 50 years' practice. Parsons is proudest of his role in the 1954 Charles Cahan case, in which the California Supreme Court ruled that evidence illegally obtained cannot be used against a defendant in a criminal case.

The likelihood that Sirhan's attorneys may use the "diminished responsibility" defense arises from the fact that the position has several times won a reduced sentence or even acquittal. In most states, a defendant must be found either sane or insane; in California, he can be held partially insane.

Interviews with lawyers and psychiatrists show these avenues are open for Sirhan:

- The defense may offer evidence that the act was not premeditated, which would make it second-degree murder punishable by five years to life in prison.

- The defense may try to prove that Sirhan's mental capacity was diminished to a point where he was not capable of malice. This would be manslaughter, punishable by up to 15 years in prison.

Diminished responsibility has been claimed in several cases when the defense could not establish legal insanity but could show the person was influenced by rage, fear, obsession, drugs or even alcohol.

Sirhan pleaded not guilty last Aug. 2.

Legal authorities pointed out that the plea of inno-

cence did not necessarily mean Sirhan was denying he killed Kennedy. Since he is charged with murder with malice aforethought, the "not guilty" plea could have meant simply that he was denying malice.

Parsons, at a news conference following the plea, said:

"I haven't seen any evidence yet that he had any malice."

He also said the not guilty plea "permits us to show the what and why—what are the real issues — if he is the man, why did he do it?/"

Parsons himself thus seemed to set the stage for a diminished-capacity defense—which need not be declared prior to the trial.

Paul Caruso, a Los Angeles defense attorney not involved in the Sirhan case, says: "The basic question is not whether Sirhan killed, but if he did, why did he do it? It could be that he wasn't killing a man, but killing a symbol. Kennedy had urged military aid for Israel, a country Sirhan hated. Is it murder to kill a symbol? To me, this betrays an obsession which could diminish his mental capacity."

Caruso, in an interview, cited a 1964 case in which a young woman took a pistol to a meeting with a brother-in-law who was her lover. She testified she had no intent to kill, only to force him to listen to her plea that he give up other women. The brother-in-law moved on her menacingly

and she fired five quick shots, wounding him severely. The man recovered. The woman was placed on probation.

"The defense showed that she was in a state of diminished capacity through terror," Caruso said, "because she kept on firing when it was no longer necessary. You will recall that Sirhan is accused of doing much the same thing. Sen. Kennedy was struck by three bullets, and five other persons were wounded.

"The more bizarre the case, the more unreasonable the act, the better are the chances of a diminished-capacity defense."

Dr. Seymour Pollack of the University of Southern California has been retained by the prosecution to observe Sirhan, but any conclusions he may have reached have not been disclosed.

The concept of diminished responsibility has been developing in California law since 1949, when the State Supreme Court ruled a trial judge erred in barring psychiatric testimony even though the defendant did not plead insanity.

Since then, testimony by psychiatrists has been a major factor in reducing the verdict in several cases.

Dr. John M. Suarez, assistant professor of psychiatry at UCLA, said in an interview that the defense of diminished capacity has developed because California courts became dissatisfied with the inflexibility of the rule followed in most states—that a person is either sane or insane, with no shades or gray in between. **Not Fully in Agreement**

He said he is not fully in agreement with the practice, however, because the psychiatrist is frequently put in the position of judging the degree of guilt.

"I believe the psychiatrist should limit himself to describing the defendant's personality and functioning, and leave the decision-making up to the judge and jury," Dr. Suarez said.

Attorney Caruso said of the Sirhan case: "It looks like a hard one to defend, but it's actually a defense lawyer's dream. Defense counsel can't lose stature—anything short of the gas chamber is a victory."