

# The Washington Post

AN INDEPENDENT NEWSPAPER

THURSDAY, FEBRUARY 27, 1969 PAGE A20

## The Notebooks of Sirhan Sirhan

The extracts from the private notebooks of Sirhan Sirhan, brought into the public domain Tuesday during his trial for the murder of Robert F. Kennedy, are fascinating and disturbing. They appear to establish premeditation and motive for his attack, as the prosecution claims, but they also demonstrate a mind that was disturbed and, perhaps, quite sick, when they were written. Since the principal hope of Sirhan's attorneys seems to be to convince the jury that he was mentally disturbed, if not legally insane, at the time of the crime and thus should not be sent to the gas chamber, the notebooks may help the defense as much as the prosecution.

Far more disturbing than the contents of the notebooks is the way in which they have been made public. The Supreme Court has made it very clear that the Constitution bars the government from seizing anyone's private papers and from using them against him over his objections. That rule is hardly a new one, since it was first announced by the Court in 1886, and hardly open to question since it is deeply rooted in both history and logic. One of the complaints the American colonists, as well as the citizens of England, had against the British monarchy in the 18th century was the seizures of private papers by the authorities as proof of sedition. The Fourth and Fifth Amendments were designed to block that practice, among other things. More than 80 years ago, when the Supreme Court faced this question after a judge had ordered a man to produce his private papers, it said, "Any forcible and compulsory extortion of a man's own testimony or of his private papers to be used as evidence to convict him of crime . . . is within the condemnation of (prior decisions). We have been unable to perceive that the seizure of a man's private books and papers to be used in evidence against him is substantially different from compelling him to be a witness against himself."

The question thus raised about the use of Sirhan's notebooks at this trial is substantial. It may be that his attorneys, really wanting that evidence spread on the record in support of an insanity defense, did not choose to contest seriously its use by the prosecution. But Sirhan himself made his objection well known. He did not want the notebooks used in his trial and it is after all, his constitutional right that appears to have been abridged by their use. Two problems arise from these events: Unless Sirhan is incompetent to make decisions about his own rights, do the lawyers have authority

to override his wishes on so sensitive a question? If the jury should find him guilty as charged, does not the use of these notebooks over his personal objections provide a substantial ground for reversal on appeal?

Beyond this, however, the actions of the prosecution in releasing to the press two pages from those notebooks that the Judge barred from evidence—and the Judge's refusal to stop it from doing so—are indefensible. The Judge said the material on these pages was irrelevant to the trial and possibly "inflammatory." But the prosecution contended, successfully, that this material should be made public (although not given to the jury) "in the interests of the public and the Nation to know what the defendant thought about this country."

The first question that springs to mind about this event is whether this is a show trial or a real one? Who is passing judgment on Sirhan? A jury or a nation? Many of the Nation's judges and lawyers have protested loudly in recent years about what is called "trial by newspaper." Yet in this case, a judge has concurred in the decision of a prosecutor to engage in exactly that. If Sirhan's thoughts are too inflammatory to be allowed to go before the jury which will judge him, are they not also too inflammatory to go before the public that will judge the jury?

It is, of course, interesting to know what Sirhan thought of his adopted country. But is that anybody's business but his own unless he chooses to tell us himself? Is there any essential difference between the seizure and publication of his private writings and the seizure and publication of the private writings of any other citizen? The whole principle of individual freedom in the Western World rests on the theory expressed almost 200 years ago in those famous words delivered by William Pitt in the House of Lords: "The poorest man may in his cottage bid defiance to all the forces of the Crown. It may be frail, its roof may shake; the wind may blow through it; the storm may enter, the rain may enter—but the King of England cannot enter; all his force dares not cross the threshold of the ruined tenement."

For the government to cross that threshold, with or without a search warrant, and to take away a man's private communications is to reduce the freedom each of us has to put down on paper his most intimate thoughts. That is too high a price to pay for a better public understanding of why Sirhan Sirhan killed Robert Kennedy.