

Post 1-7-69
The Trial of Sirhan Sirhan

There is a lot more to any murder trial than merely determining who pulled the trigger and it appears that much of the argument in the case involving the assassination of Robert F. Kennedy will turn on those other factors. Of course the first thing to be established when Sirhan Sirhan goes on trial in Los Angeles, probably today, is whether he fired the gun that snuffed out Senator Kennedy's life. If he did, his mental condition both at the time of the assassination and preceding it becomes relevant to whether he is guilty of the crime of first degree murder, which carries the death penalty in California, or of some lesser crime or, indeed, of no crime at all.

For generations now, the law has said that punishment for a crime will not be imposed on any whose mind was so deranged that he was not mentally responsible for his actions. This, of course, is the insanity defense which has brought about major struggles in recent years as lawyers and judges have attempted to bring the legal definition of insanity into line with modern knowledge of mental illness.

All indications from Los Angeles are that Mr. Sirhan's attorneys do not intend to claim that he was legally insane at the time Mr. Kennedy was shot. But there is a widespread belief there that if the prosecutors can establish Mr. Sirhan fired the fatal shots, his attorneys will attempt to exercise what is called in that State a defense of diminished responsibility. This is simply that while he may not have been mentally ill enough to be considered legally insane he was sufficiently deranged to be unaccountable for all the elements required in a first degree murder case.

Under the law in most states, and California is no exception, a first degree murder conviction requires that the state prove the defendant killed with malice and premeditation. A killing without both may be second degree murder or manslaughter, which carry lesser penalties, but cannot be first degree. Establishing these elements of first degree murder is often difficult for prosecutors except in cold-blooded situations and it may well be difficult in this case.

In any event, it is misleading to think of this kind of defense as no more than a technicality, a matter of legalistic hair-splitting, for both the mental ability and the intent of a murderer to act with malice and premeditation lie at the very roots of Anglo-American law and justice. These are the elements that help the courts distinguish between deliberate and accidental killings, between those done in passion and those done coolly, between those committed by men who are well and by men who are sick.

It may turn out that the capacity of a jury and of the millions of Americans who will await the outcome to make distinctions of this kind will be on trial as much in Los Angeles as Sirhan Sirhan.