

Frank Mankiewicz and Tom Braden

## Rogers Backed but Judge Rejected Sirhan Guilty Plea for Life Term

LOS ANGELES — The State Department specifically approved an agreement reached here last week by which Sirhan Sirhan would change his plea to "guilty" in exchange for a sentence of life imprisonment.

Los Angeles District Attorney Evelle Younger advised Secretary of State William P. Rogers in Washington of these possibilities in the bargaining between his office and the Sirhan defense staff and received approval from Rogers for the plan.

Here is the story. Sirhan, of course, faces a conviction of first-degree murder and the gas chamber for the assassination of Sen. Robert F. Kennedy. He did not plead insanity, but instead entered a plea of not guilty, although he and his attorneys have never denied that he did the shooting in the Ambassador Hotel here last June.

Under California law, it is possible to demonstrate a "diminished capacity" of mind, a sort of midstation between sanity and insanity, and thus escape a conviction for murder in the first degree. First-degree murder convictions—of course—require proof of premeditation.

Even if convicted of first-degree murder, Sirhan would then, under California law, undergo a second trial by jury to determine whether the punishment would be death or life imprisonment.

Once a jury was selected

and testimony began Sirhan's plea of not guilty assumed a double importance. It would permit a showing of diminished capacity, suggested by his attorneys in their opening statement, either through drunkenness or an irrational hatred of Israel. In addition, it would permit him to "tell his story"; that is, to have his moment of worldwide publicity in which he could recount the events of his childhood which formed—allegedly—his view.

ON THE OTHER HAND, a plea of guilty would eliminate the necessity of a trial. And if he could receive a guarantee of life imprisonment in return, there would be no risk of death in the gas chamber.

Thus, there began the kind of "plea bargaining" familiar to most criminal lawyers and most district attorneys in which a lesser plea is accepted in exchange for a lighter sentence. Sirhan—in short—was prepared to cop a plea.

His attorneys offered a guilty plea to first-degree murder if they could be sure the death penalty would not be imposed. At that point, Younger went to Washington for some foreign-policy advice and got it.

In conversations with Secretary Rogers, he was advised that the State Department—as a matter of U.S. foreign policy—would find the proposed deal acceptable. If Sirhan were to plead guilty and receive life imprisonment, the reason-

ing went, it could only have a beneficial effect as far as the fierce and violent Middle East passions were concerned.

In the first place, Sirhan's "telling his story" would be avoided, and the story—one of alleged Israeli actions during the 1948 Arab-Israeli war—was bound to be an inflammatory one. In addition, a Palestinian Arab in prison in the United States is far less likely to provoke worldwide conflict than the same man under sentence of death for months, perhaps years, or the worldwide story of his execution.

Armed with Rogers' approval, Younger returned to the scene of the trial here and approved the bargain. All that was needed was the consent of Judge Herbert Walker. To the astonishment of both sides, the judge refused. He insisted that even if the plea were changed to guilty he would submit the penalty question to the jury, which might sentence Sirhan to death even if the prosecution did not ask for it. Sirhan rejected the gamble.

Younger, of course, scrupulously refrained from using the foreign-policy arguments in court, and Judge Walker was entirely unaware of the State Department position. Never has the separation of powers seemed more separate.

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