

WOMAN IS BARRED FROM SIRHAN JURY

Judge Upholds Prosecution Challenge for 'Cause'

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LOS ANGELES, Jan. 17—The judge in the trial of Sirhan Bishara Sirhan upheld today a prosecution challenge for "cause" of a prospective juror who had said that she was unshakably opposed to the death penalty.

An attorney for Sirhan, who is charged with first-degree murder in the assassination last June 5 of Senator Robert F. Kennedy, immediately said that he felt the ruling provided the defense with "a constitutional issue."

Two days ago, when the juror, Mrs. Alvina Alvidrez, first voiced her conscientious objection, Superior Court Judge Herbert V. Walker immediately upheld the challenge and then quickly reversed himself when defense lawyers protested. Later he agreed to hear further argument on the issue.

Judge Walker, who took the challenge under advisement yesterday, declared today:

"When I originally ruled on this challenge, I felt that the Witherspoon and Anderson-Saterfield cases, while they did not hold, indicated that the challenge should not be allowed."

Changes His Mind

However, he said that after having read a California Supreme Court decision handed down on Jan. 10 in another case, the people v. Beivelman, he had changed his mind.

Gerald Albert Beivelman had been convicted of robbery, burglary and the first-degree murder of a woman liquor store proprietor in Sacramento and sentenced to death. In his appeal he argued "that a jury from which veniremen irrevocably opposed to the death penalty have been excluded cannot answer guilt-innocent questions as favorably to the defendant."

In rejecting his appeal, Judge Walker said, the California Supreme Court ruled:

"There is no merit to defendant's contention that his guilt was determined by a partial and biased jury."

Following the Beivelman decision, Judge Walker upheld the prosecution's challenge. Mrs. Alvidrez, who works for a hardware manufacturing company, rose from the jury box and made her way slowly through the crowded eighth-floor courtroom where Sirhan is being tried.

Although he would not say definitely at this time that an appeal would be made on this issue, should the 24-year-old Jordanian immigrant be convicted of first-degree murder, Emile Zola Berman, one of three court-appointed defense attorneys, declared in a corridor interview:

"We believe that the ruling on conscientious objection affords a constitutional issue."

Cloudiness Surrounds Case

The reason for Judge Walker's double reversal of self apparently lies in the cloudiness that most legal experts agree surrounds the two cases the judge said he had in mind Tuesday when he decided to disallow the challenge, Witherspoon and Anderson-Saterfield.

Last June's highly publicized Witherspoon decision by the United States Supreme Court held that jurors could not be "automatically" dismissed for "cause" if they had conscientious scruples against the death penalty.

However, the prosecution and the defense here agreed that under the Witherspoon decision such jurors could be excluded if under further examination they maintained that their conscientious objection was irrevocable, that under no foreseeable circumstances could they return with a death sentence.

In the Anderson-Saterfield case, the California Supreme Court declared that under the view of the Witherspoon majority a jury from which all prospective jurors opposed to the death penalty are excluded "constitutes a hanging jury, one that is uncommonly willing to condemn a man to die."

But California law is further complicated by the two-part trial system for first-degree murder cases. If a jury finds a defendant guilty, it must then hold a separate proceeding to determine sentence. Moreover, state law provides, although it has rarely, if ever, been invoked, that two separate juries may sit on the two parts of the trial.

Since the jury determining sentence has only two choices, life imprisonment or death in the gas chamber, defense attorneys have not been insisting that no conscientious objectors could be excluded from that proceedings. However, Grant B. Cooper, the chief defense counsel, has steadily maintained that Sirhan is entitled to jurors with conscientious scruples to decide "guilt or innocence, because there is provision in California law for a second jury."

Motion Is Denied

As the trial began last week, Mr. Cooper moved that the judge permit separate juries to hear each part of the case for this reason. His motion was denied.

As the jury selection proceeded today, George Broomis became the second employe of the Los Angeles Department of

Power and Water to be seated provisionally.

Although the jury was still one short of the 12 who usually are temporarily seated before the prosecution and the defense begin to use the 20 peremptory challenges that each has, the judge permitted the prosecution to exercise its first such challenge while waiting for the 12th juror to see if her employer would permit her to serve for the two or three months the trial is expected to take. A woman employe of the state was promptly eliminated.

At the conclusion of today's

session, the court was adjourned until Tuesday. Mr. Cooper is due in Federal Court Monday to file a motion for a mistrial in another case.