

# Loophole Could Keep Sirhan Alive

By RALPH DIGHTON

LOS ANGELES (AP) — Sirhan Bishara Sirhan goes to trial Tuesday, Jan. 7, 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 Superior Court Department 107, an eighth-floor courtroom in the Civic Center's 43-year-old gray stone Hall of Justice.

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

The cast charged with seeking justice for Sirhan will include:

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

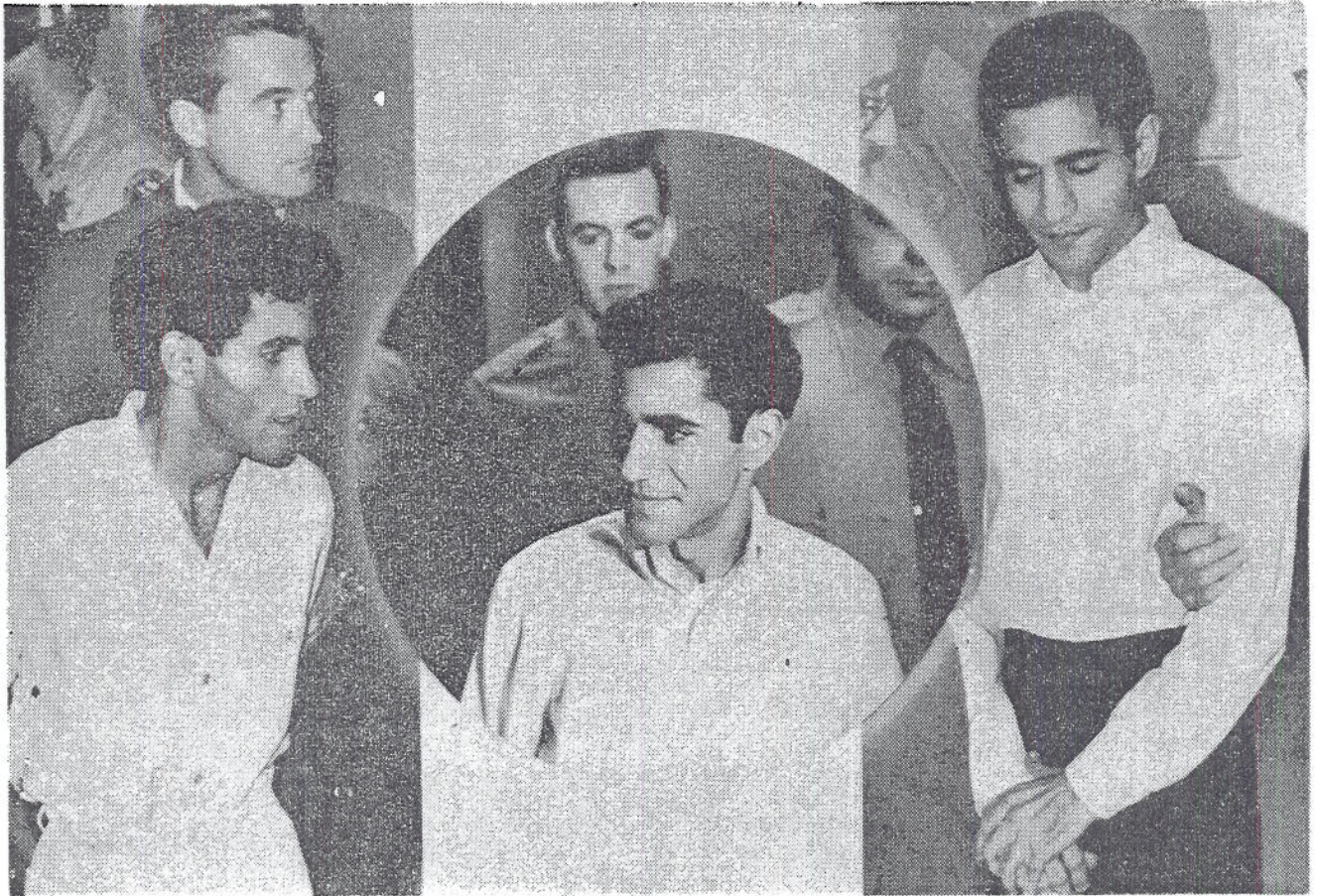
The three prosecutors:

Lynn "Buck" Compton, 46, pipe-puffing, onetime UCLA football player who won a Silver Star medal when he jumped into France with the 101st Airborne

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Sirhan (from left): the night of shooting, at arraignment, winning postponement Dec. 5—(AP)

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Division at Normandy. He is the county's chief deputy district attorney.

Deputy Dist. Atty. John Howard, husky and spectacled, who joined the prosecutor's office 17 years ago after serving with the infantry in Europe in World War II.

Deputy Dist. Atty. David N. Fitts, 46 and graying, seemingly shy and quiet but is scheduled to do most of the talking in the Sirhan trial. He is a 14-year veteran of the district attorney's office.

Three for the defense:

Russell B. Parsons, 69, wispy, bespectacled lawyer who has tried nearly 5,000 cases in nearly 50 years' practice. Parsons, who keeps fit by exercising in the morning and walking two miles each evening, is proudest of his role in the 1954 Charles Cahan case. The California Supreme Court ruled that evidence illegally obtained cannot be used against a defendant in a criminal case.

Grant B. Cooper, 65, former president of the Los Angeles County Bar Association. Like Parsons, he has served in the district attorney's office. His greatest fame is as a criminal defense lawyer the past 20 years.

Emile Zola Berman, 65, of New York City. Berman is best known for his defense of Marine Staff Sgt. Matthew C. McKeon, who was accused of leading 75 recruits from Parris Island, S.C., on a night march into a swamp, where six died. McKeon was convicted of negligent homicide.

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:

1. 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.

2. 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 innocence 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, 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."

Richard Caballero, onetime assistant district attorney now in private practice, pointed to other potential grounds for a diminished-responsibility defense.

"There was testimony before the grand jury that

Sirhan looked like a crazy man the night of the shooting," Caballero said. "There were pictures in the papers and on television showing him wild eyed. All this might well be used to show a diminished mental state."

Sirhan did not enter a separate plea of not guilty by reason of insanity, although this is permissible under California law.

Sirhan's attorney has told newsmen he has never entered only a single plea of not guilty when psychiatrists have found a client legally insane.

Dr. Seymour Pollock 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.

Dr. Maurice Walsh, a Beverly Hills psychiatrist, recalled the testimony of a hotel employe who was among the throng celebrating Kennedy's presidential primary victory the night of the shooting. The employe said Sirhan exclaimed, as he was being subdued by a crowd of witnesses: "Let me explain, I can explain."

"Sirhan apparently felt that his action was justified," Dr. Walsh said in an interview, "and if he did, such an irrational feeling could be interpreted as evidence of diminished capacity."

Dr. Walsh said many assassins have had a hidden paranoia, a mental illness that can erupt violently on occasion although they were known previously as calm and reserved.

"Many persons in all walks of life have a latent personality structure such that others can influence them to commit political assassination," he said. "There is a great need for research to find these people ahead of time, while they are still apparently in good mental health."

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 the University of California at Los Angeles, 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.

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.

Aside from the possibilities offered by the concept of diminished capacity, there is another reason some authorities believe Sirhan never will be executed.

If a man is unbalanced enough to kill in full view of a crowd, they say, the stress of confinement and trial might push him over the vague border between sanity and insanity.

Defense attorney Parsons apparently was referring to this last August when he told newsmen: "Sudden things might develop—people sometimes lose their minds very suddenly."

If this should happen, Sirhan could spend the rest of his days in a mental institution regardless of the verdict.

Attorney Caruso, in summing up the Sirhan case, said: "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."