

A MANEUVER ENDS AT SIRHAN'S TRIAL

2 Sides Return to Process of Selecting the Jury

Special to The New York Times

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LOS ANGELES, Jan. 21—Sirhan Bishara Sirhan's attorneys offered today, in a tactical move, to accept a jury made up of six men and six women who had been provisionally seated.

As the second week began in the jury-selection phase of the trial of the 24-year-old Jordanian immigrant who is charged with first-degree murder in the June 5 assassination of Senator Robert F. Kennedy, the prosecution declined the invitation and exercised the second of its 20 peremptory challenges.

The trial was recessed yesterday while Grant B. Cooper, Sirhan's chief counsel, appeared in Federal court to file a motion in another case. But on Friday, Lynn D. Compton, chief deputy district attorney, had made a similar offer to the defense.

As Friday's session neared the regular 4:30 P.M. adjournment time, Mr. Compton, a husky, pipe-smoking former football player, declared that the prosecution would pass its peremptory challenges and accept the jury "as now constituted."

Quandary for Defense

The surprise motion threw the defense into a quandary. Rather than pass in turn at the moment or exercise the peremptory challenge that would have changed the make-up of the jury and abrogated Mr. Compton's offer, Mr. Cooper asked Superior Court Judge Herbert V. Walker to give the defense until today to make its next move. The judge granted the request.

However, it was soon clear that because of a technicality, Mr. Compton had meant his action to be merely strategic.

Only 11 jurors had been provisionally seated at the time. One prospective woman juror had been allowed to remain in the box, but had been instructed by the judge to ask her doctor over the weekend if he thought she could stand the rigors of a trial that is expected to last two or three months.

The dispute that ensued hinged on the phrase "The jury as now constituted." Mr. Compton insisted that, if for any reason, the 12th juror was not seated, the prosecution could then resume exercising its peremptory challenges against any of the other jurors.

Contention by Defense

Mr. Cooper, on the other hand, contended that the prose-

cution had been aware of the indefinite status of the 12th juror and had actually passed the 11 others. If the defense passed those 11, he insisted, the prosecution could then only challenge the seat then tentatively occupied by the woman who had been asked to consult her doctor.

For a time, speculation was high that the jury might be seated in a shorter time than the three or four weeks most observers at the Hall of Justice here have been predicting.

Convinced at first that they had the prosecution locked in on the first 11 jurors, the defense attorneys Mr. Cooper, Emile Zola Berman and Russell E. Parsons—seriously studied the possibility of accepting the jury.

Although several of the jurors were known to be unacceptable to the defense, others were understood to be extremely tempting to Sirhan's attorneys. It was an open secret, for instance, that they felt that Mrs. Dora Jacobi, a former instructor in a neuropsychiatric unit at the United States Armed Forces Institute at Camp Edwards, Mass., and at other schools, would have a sophisticated attitude toward the type of psychiatric and psychological testimony they intend to present.

The Act Not Denied

The defense is not denying that Sirhan shot and killed Senator Kennedy. However, it is trying to establish that at the time of the act his "capacity" or "responsibility" was diminished. In California a defendant may be judged legally sane but still be found to have acted without the "mature" consideration necessary for the "malice aforethought" essential to a first-degree murder conviction.

In their research over the long weekend, the defense attorneys discovered that in a dispute such as existed over the Sirhan jury the judge has final discretion. They also were certain that the prosecution would insist on its right to continue with peremptory challenges.

Still, after a lengthy series of conferences in the judge's chambers, this morning, Mr. Cooper rose in the crowded eighth-floor courtroom and said:

"The defense accepts the jury as now constituted."

Since the 12th juror had been excused for medical reasons and another provisionally seated, Mr. Compton declared that the prosecution felt free to continue with its peremptory challenges against any of the 12.

"I'm not trying to play games with Mr. Cooper," he added.

Judge Walker then told the prosecuting attorneys to make a motion for the withdrawal of their waiver of last Friday. When they did, he upheld the motion.