

POLICEMAN TESTIFIES SIRHAN WAS NOT INTOXICATED WHEN HE SHOT KENNEDY

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LOS ANGELES, Feb. 20—A policeman declared today that in his opinion Sirhan Bishara Sirhan was not intoxicated, as the defense has said it will prove, when he shot Senator Robert F. Kennedy.

Testifying at the first-degree murder trial of Sirhan in the crowded eighth-floor courtroom in the Hall of Justice, Patrolman Travis R. White said that he administered a "pupil reaction" test to the 24-year-old Jordanian immigrant shortly after his arrest.

Patrolman White said that he had shined a flashlight in Sirhan's eyes in a darkened room to see if his pupils contracted quickly as would have been normal, or were dilated, which he said would have indicated the use of alcohol or narcotics.

The Patrolman said Sirhan's pupils had "contracted quickly."

However, under sharp cross-examination by Grant B. Cooper, chief defense counsel, Patrolman White conceded that in a deposition taken last September he had said only that he "believed" he had administered such a test to Sirhan.

Earlier Statement Read

By reading the earlier statement, Mr. Cooper also brought out that the patrolman had said at the time that Sirhan's eyes had been "very near" normal. He also was recorded as having said that he had intended to check the defendant again later but had not had the time.

"Is your memory of this occasion better now than it was on Sept. 13?" Mr. Cooper, a tall, graying 66-year-old asked.

Patrolman White said he thought it was better today.

"What have you read, what have you seen to refresh your recollection as to your memory being correct today?" Mr. Cooper continued.

"Nothing," replied the patrolman, who appeared in civilian clothes, a gray jacket, green shirt and striped tie.

"Did you ask him whether he had had anything to drink?" Mr. Cooper asked Patrolman White.

The defense counsel also elicited from the patrolman that

he had not mentioned in any report that he had administered a test of any kind to Sirhan.

"Officer White, when was the first time any of your superiors asked you whether you had given him a test for alcohol?" Mr. Cooper went on.

"I don't recall," the patrolman repeated.

"Did you ever get a bawling out for not making that report?" Mr. Cooper asked.

"You mean me?" Patrolman White answered. "No."

"As a matter of fact," Mr. Cooper said sarcastically, "you didn't give him an eye examination on that morning, did you?"

"Yes, I did," the patrolman replied.

"I have no further questions," Mr. Cooper concluded, a note of disbelief in his voice.

Conceded by Defense

Although the defense has conceded that Sirhan fired the gun that mortally wounded Senator Kennedy, the slight, dark youth has pleaded not guilty to first-degree murder.

His lawyers are attempting to prove that he had "diminished capacity." In California, if a defendant can show that his state of mind was such that he could not have given rational and mature consideration to his act, the jury must find him guilty of a lesser offense, second-degree murder or manslaughter.

Since to plead "diminished capacity" the act must be conceded, a finding of not guilty is not possible.

In Sirhan's case, his lawyers have said they will show that he was intoxicated the night of the shooting and in a "trance" induced by a form of self-hypnosis that he practiced in mystical experiments.

In a closed session in the chambers of Superior Court Judge Herbert V. Walker, who is presiding, defense lawyers asked again that a mistrial be declared on the basis of publicity prejudicial to the defendant. The judge denied the motion as he had a similar one made Feb. 13.

Again the defense objected to a Page 1 article in The Los Angeles Times. Today's article confirmed what had been common knowledge in courthouse circles for more than a week,

that Judge Walker had refused to allow Sirhan to plead guilty to first-degree murder with a stipulation that the sentence be life imprisonment rather than a possible death sentence.

In this state, if a defendant is found guilty of first-degree murder, the trial moves into a second phase in which the jury must decide without guidelines whether the penalty is to be life or death.

However, a defendant may plead guilty to first-degree murder with the agreement that the penalty will be life in prison. Such a stipulation requires the approval of the presiding judge as well as of the defense and prosecution.

According to the transcript of the chamber proceedings, which was made public by the judge, the motion was denied on the ground that the jury was sequestered and could not have read the article.

Moreover, Judge Walker said that he had telephoned a reporter at the Los Angeles Times and had initiated the article, which said that the judge had suggested Sirhan could plead guilty and then leave his fate up to the jury at the penalty phase of the trial.

Although reliable sources have said that the District Attorney's office was willing to urge the jury not to impose the death penalty, Sirhan and

his lawyers rejected such a plea, feeling that there was no guarantee that the jury would not send him to the gas chamber.

The earlier article to which the defense objected appeared in the Los Angeles Times on Feb. 12. It reported that Sirhan "probably" would plead guilty to first-degree murder.

In the chamber session, Judge Walker said of today's article:

"Well, let me say that I gave some of that information out myself. I told them the plea had been offered and I had refused the plea, but that I would take a plea on first degree and that the jury would try the penalty."

"I felt it had leaked out, the other half, and I wanted them to have the whole of that, and that is all I told. This is so the record may be clear on this."

Noting that he felt such an action had been unfair to his client, Mr. Cooper said:

"I assign your honor doing that as misconduct."

Since shortly after Senator Kennedy's assassination at the Ambassador Hotel as he left a party celebrating his victory in the Democratic primary on June 4 over Senator Eugene J. McCarthy of Minnesota, everyone connected with the case had been under a court order not to discuss anything pertinent to the trial.