

SIRHAN IS CALLED UNABLE TO PLAN

Lawyer Says His Condition Before Killing Is Vital

By DOUGLAS ROBINSON

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The chief defense attorney for Sirhan B. Sirhan suggested today that if the jurors really believed that the defendant killed Senator Robert F. Kennedy while in a self-induced trance, they would have to find him "not guilty by reason of insanity."

Thus, the attorney, Grant B. Cooper, appeared himself to be highly skeptical of testimony by a defense psychiatrist that Sirhan was in a "dissociative state" at the time of the killing.

Mr. Cooper, who, in his closing argument, has been pressing the jury for a conviction of murder in the second degree, said that "it is beside the point" whether Sirhan was in a hypnotic state when he shot the Senator.

"The question is not what his condition was at the time he fired the shots," Mr. Cooper told the jury, "but his condition during the time of premeditation. This is the issue in this case."

Three Options Explained

The attorney, who began his summation late yesterday, has consistently hammered away at the theory that Sirhan was unable to act in a "mature and meaningful" way in carrying out the assassination of Mr. Kennedy at the Ambassador Hotel.

Mr. Cooper, speaking in a school-masterish voice, spent a good part of the morning session lecturing the jury on the various verdicts they could return — first degree and second degree murder and manslaughter. He referred frequently to charts on brown wrapping paper that he had placed on a blackboard.

He repeatedly returned to his theme that a conviction for second degree murder would be based on a finding of "modified" premeditation and deliberation as well as malice aforethought, only slightly less than a finding of complete premeditation and deliberation in a first degree murder verdict.

"If you have any doubts in your minds so that you can't say to a moral certainty that Sirhan maturely and meaningfully planned, premeditated and reflected on this crime, then you must find him guilty of second degree murder," Mr. Cooper said.

Yesterday, in his opening statements to the jury, Mr. Cooper stressed that he was not there "to free a guilty man." The defense, he continued, was not asking for acquittal of Sirhan. "Under the acts of this case, he deserves to spend the rest of his life in the penitentiary," Mr. Cooper said.

Psychiatrist Recalled

The attorney recalled the testimony of Dr. Bernard L. Diamond, a psychiatrist who had described Sirhan's mental state as "going downhill for at least a couple of years" and had said that "his brakes wouldn't hold."

In the same context, Mr. Cooper reminded the jury of Sirhan's explosive outbursts in the courtroom that kept on even after Superior Court Judge Herbert V. Walker had threatened to control him with a leather face mask and leg irons if he continued to interrupt the proceedings.

"Notwithstanding that admonition, the glue wouldn't hold," Mr. Cooper told the jury. "He couldn't control himself. Now, I ask you, are these the actions of a man acting maturely and meaningfully?"

The defense lawyer also talked of Sirhan's notebooks and how he persisted in saying he could not remember writing the threats against the lives of public officials, including Senator Kennedy.

"He said on the witness stand that although he couldn't remember writing them, these

were the thoughts in his head at the time," Mr. Cooper said.

"He didn't try to hide that these were his thoughts," the attorney continued. "Maybe there is something to this amnesia, because he wasn't trying to hide his guilt."

Mr. Cooper also referred once again to the testimony of Dr. Martin M. Schorr, the San Diego psychologist who was the defense's initial witness as to Sirhan's mental state and who had given the defendant a battery of personality tests in his jail cell.

Describing Dr. Schorr as "the little man in the green suit," the lawyer said he was "not too happy with his testimony," especially when the psychologist admitted that he had taken some of the language of his report from "A Case Book of a Crime Psychiatrist" by a New York psychiatrist, Dr. James A. Brussell.

"Frankly, I could have crawled under the table," Mr. Cooper said with a laugh. "Imagine, copying someone else's work because it sounded better."

Defends Raw Data

He pointed out, however, that the psychologist's raw data from the tests given the defendant were "in Dr. Schorr's

own words and in Sirhan's own words."

"There was nothing wrong with Dr. Schorr's diagnosis that Sirhan was a schizophrenic paranoid because other psychologists and psychiatrists, who judged the data independently, arrived at the same conclusion."

At least two of these experts, he reminded the jury, had originally been retained by the prosecution.

In the afternoon, as Mr.

Cooper moved toward what he called "the home stretch," the attorney characterized the differences among psychiatrists and psychologists on the Sirhan case as "honest differences of

opinion," adding that it was "remarkable that there was the unanimity there was."

He reminded the jury that in their initial examinations before the trial began they had pledged themselves not to be swayed by the fact that the victim was Senator Kennedy.

"Suppose the defendant in this case was a fellow by the name of John Smith, José Gonzales or George Washington Brown—in other words just one of the crowd—do you think you'd hesitate one minute in finding a verdict of second degree murder?" Mr. Cooper said. "No, you'd do just that."

Sirhan Defense Argument

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Following are excerpts from the closing argument of Grant B. Cooper, defense counsel in the Sirhan B. Sirhan trial:

Let me state at the outset that I want this to sink in if anything sinks in—we are not here to free a guilty man. We tell you, as we always have, that he is guilty of having killed Senator Kennedy.

And as I have said before, we are not asking for an acquittal and we expect that under the evidence in this case, whether Mr. Sirhan likes it or not; under facts of this case he deserves to spend the rest of his life in the penitentiary.

I will tell you this as one of the three defense lawyers in this case—I wouldn't want Sirhan Sirhan turned loose on society.

I wouldn't want Sirhan Sirhan to be turned loose because he is dangerous, especially when the psychiatrist tell us that he is going to get worse, and he is going to be getting worse.

There are two sides to Sirhan Sirhan as has been pointed out by the psychiatrists, which I think demonstrates the type of mental illness he has.

Obligation to Society

There is a good Sirhan and a bad Sirhan and the bad Sirhan is a nasty man, but just as Mr. Parsons said, he has learned to love him, so I have learned to love him, the good Sirhan.

But notwithstanding that we as lawyers owe the obligation to do what we think is right for him to the fullest extent of our ability. We also owe an obligation to society. And, I for one, am not going

to ask you to do otherwise than to bring in a verdict of guilty of murder in the second degree.

We can admit that on June 2d he went to the Ambassador Hotel, having in mind that he wanted to kill Senator Kennedy, either then or at a subsequent time; that he went there for the purpose, I think—as Mr. Fitts said in the vernacular that is used, of casing the joint—in other words, looking the place over to see if he could find an advantageous point to shoot him.

We can admit that he made inquiries of the different persons, sometimes on the 2d and sometimes on the 4th, as to the route that Senator Kennedy would take; where he was going to have bodyguards or not—all of these things—all of these things go to show premeditation and deliberation. It shows some planning. It shows some thinking.

But we come back to the law as I have explained it

to you, and whether or not that is mature and meaningful thinking.

Now the important thing is this — remember this — that the issue in this case is the issue of diminished capacity with respect to premeditation and deliberation. It isn't what happened at the time of the firing of the shot, the deliberation took place a long time before that.

I don't care whether he was in a hypnotic state at the time he fired the shot, or whether he was in a trance. This is beside the point.

The question that you are to determine is not what his condition was at the time he fired the shot, but whether he could maturely and meaningfully premeditate; and

from the facts in this case, I think you will agree with me that the premeditation went back certainly to at least May 18th, when he wrote in his book, "My obsession to kill Senator Kennedy," or "my desire to kill Senator Kennedy," or words to that effect, "is becoming more the more of an obsession."

And probably he had an intention of killing somebody and planning to kill somebody, because I remember in one of the writings in his book he planned to overthrow the entire Government of the United States. But he said he hadn't formulated his plans yet.

This is when the premeditation—it isn't what his state of mind was at the time he fired the shots; as a matter of fact as I personally view the testimony, were you to accept the fact that he shot Senator Kennedy in a dissociated state, he would be not guilty by reason of insanity, because he didn't know what he was doing at the time. In other words, "ne makes him crazier than the others."

Now what happened? Sirhan Sirhan became unglued when he shot Senator Kennedy. His glue didn't hold him together. His brakes wouldn't hold. And he had been going downhill, as most of the psychiatrists have told you.

Now, as I have told you—I shouldn't say "as I have told you"; as the law tells you—as I have tried to explain the law—motive is not an essential element of the crime of murder. But motive may be offered in evidence and it is the motive with which a person commits an act that determines the degree of the crime. Sometimes it can aid you in determining the degree.

Sirhan Trial Judge Herbert Van Walker

By LACEY FOSBURGH

Special to The New York Times

LOS ANGELES, April 11— There may still be a few oldtimers left in the green, rolling San Joaquin Valley of Central California who remember Herbert Van Walker when they read about him now as the judge at the Sirhan B. Sirhan trial.

He was the brown-haired boy in the dirty trousers they used to see playing around the Hanford jail, running in and out of the nine empty cells, or climbing over the wooden chairs in the adjacent courthouse.

His father, a quiet man in his late 50's then, was the jailer.

There have been a lot of changes in the law since the early 1900's when the rambunctious boy first frequented the court, but it is Judge Walker's commitment to one abiding concept, as demonstrated in the Sirhan trial, that may earn him a reference in history.

In mid-February, prosecution and defense lawyers wanted to plead the 25-year-old defendant guilty of the assassination of Senator Robert F. Kennedy and accept a first degree verdict with life imprisonment.

Backs 'Right to Know'

When the baldish, gray-haired judge of the State Superior Court was informed of their plans, he said, "No." The trial itself, he insisted, was too important.

"I think I made the proper decision and I'm proud of it," he said recently in his private chambers behind the courtroom. Dressed in a handsome, old-fashioned gray suit with baggy legs, he leaned back in his chair and puffed on a fat pipe just the way Andy Hardy's father would do.

"I think people in this country have the right to know every single fact in this case, to know everything about it," he said, his long, bushy, thoroughly distinctive eyebrows moving with every word.

This, however, is the judge's last big case, since he will retire on July 31, one month shy of being 70 years

old, the mandatory retirement age.

During his 16 years on the bench, Judge Walker has sentenced 19 men to die in the gas chamber. He commuted one of the cases to life imprisonment. Only one of the men was executed.

He is not unfamiliar with controversial and highly publicized trials since one of his 19 death-sentence cases was that of Caryl Chessman, who was convicted of robbery and rape in 1948. Judge Walker in 1960 was the eighth and final person to sentence the celebrated convict-author to death.

No Reliance on Humanities

Today the judge, a conservative gentleman who wears a broad, felt cowboy hat, belongs to the old school.

"He has a very good, strong code of morality and he believes in a fair trial. He's a good judge," one colleague said respectfully.

"But he believes in the dry words of the law and doesn't consider the courtroom an appropriate place for the humanities. Today the humanities are assuming more and more of a role in the operation of justice."

Since Jan. 7, however, some of the most progressive teachers of the American system of jurisprudence have been on display in the small courtroom on the eighth floor of the Hall of Justice where he presides.

Daily the testimony has been of severe mental illness and psychosis, psychiatry and psychology, and what is being told is not only objective evidence as the old school prescribes but also the defendant's state of mind as the new school prefers.

Judge Walker, born Aug. 31, 1899, in San Francisco, grew up in the broad farmland of central California. His family was poor. Later, after serving in the Navy, working in the oil fields, taking bit parts in silent films and roaming around the country, he settled down here and studied law.

He was graduated from the University of Southern California Law School in 1928 and was a deputy commis-



Associated Press

"A very good, strong code of morality."

sioner of corporations for the state until 1943. That year he succeeded Grant B. Cooper, Sirhan's chief defense counsel, as chief deputy district attorney, the position the chief prosecutor in the case, Lynn D. Compton, holds now.

A Furniture Builder

He was in private practice here from 1946 to 1953, when he was named a judge of the State Superior Court.

In 1925 he married Alice Sophia Phelps, and several years later moved into a modest house in Glendale, a Los Angeles suburb, where he is one of the many Republicans. There he still lives now, surrounded, "as often as possible," he says, by his three children and 12 young grandchildren.

In a corner of his basement he has accumulated a number of woodworking tools, which he still uses almost daily.

"I have a little house and I built almost all the furniture inside it," the judge said, recently. "I have my chair and my books, but I don't know what I'll do when I retire. I'm a little worried about it."

"My whole life has been my family and my work," he said proudly, doffing his cowboy Stetson hat to passersby as he walked out of the Hall of Justice into the chilly evening air. "We're simple folk."