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LOS ANGELES AP - The judge in the Sirhan Bishara Sirhan murder trial today upheld a prosecution challenge of a prospective juror who said she could not vote for the death penalty under any circumstances.

Alvine Alvidrez had been tentatively seated as Sirhan's eighth juror.

Attorneys said seating the graying hardware store employe could have made the trial of Sirhan, charged with murdering Sen. Robert F. Kennedy, a landmark case in U.S. law.

Sirhan's defenders wanted Mrs. Alvidrez on the jury. They cited a 1968 Supreme Court ruling which held juries that exclude persons opposed to capital punishment "constitute hanging juries."

But Superior Judge Herbert V. Walker said the high court ruling, known as the Witherspoon case, did not apply.

The defense has indicated that rejecting Mrs. Alvidrez or any other juror for opposition to the death penalty would lay groundwork for an appeal should Sirhan be convicted of first-degree murder.

Walker said he based his ruling on a week-old California Supreme Court ruling which held a juror's unalterable opposition to the death penalty is "just and sufficient reason to be dismissed for cause."

Chief defense counsel Grant B. Cooper said, however, that in the State Supreme Court case jurors were questioned only on the penalty phase of that particular trial.

California divides trials into separate phases dealing with guilt or innocence and with the penalty, and Cooper said the defense was entitled to have Mrs. Alvidrez as a juror during the guilt-or-innocence phase.

Mrs. Alvidrez, a bespectacled woman in her 30s, has said she feels qualified to judge the question of the 24-year-old Jordanian's guilt or innocence.

Deputy Dist. Atty. John E. Howard said, however, that by keeping Mrs. Alvidrez on the jury panel the judge would have risked a mistrial or the problem of double jeopardy—trying a defendant twice on the same charge.

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