

JUDGE REJECTS SIRHAN PLEA FOR MISTRIAL BASED ON ARTICLE IN PAPER

By DOUGLAS E. KNEELAND

Special to The New York Times

LOS ANGELES, Feb. 13 — Attorneys for Sirhan Bishara Sirhan moved unsuccessfully today for a mistrial in his first-degree murder trial for the slaying of Senator Robert F. Kennedy.

As court opened today, Grant B. Cooper, chief counsel for the dark, slight 24-year-old Jordanian immigrant, made the motion on the ground that an article in The Los Angeles Times yesterday was prejudicial to the defendant's chances for a fair trial.

The article, which was prominently displayed on Page 1 of the final edition under a two-line banner headline, said that Sirhan "probably will plead guilty to first-degree murder" in the assassination last June 5 of the New York Senator.

Mr. Cooper said that local radio and television stations picked up the story yesterday and gave it further dissemination. To emphasize the point, he read from scripts of newscasts by three radio stations.

Judge Rejects Plea

Shortly after the noon recess, Judge Herbert V. Walker of Superior Court denied the motion.

Before he did, however, Mr. Cooper was given the opportunity to say in open court that several jurors had seen or heard something about the article on radio or television or from friends. All but one were said to have denied that it would influence them.

According to Mr. Cooper, one man said in chambers that after having heard about the article "it would be difficult or hard for him to bring in a verdict of second degree or manslaughter."

Before court opened today, attorneys for the prosecution and the defense met for slightly more than an hour in Judge Walker's chambers. Then they moved to the courtroom, where Mr. Cooper presented the motion.

The 12 jurors and six alternates, who were sequestered at the downtown Biltmore Hotel at 8 P.M. yesterday, hours after the Los Angeles Times article appeared, were not in the courtroom.

After arguments on the motion, the jurors were returned



Grant B. Cooper, left, chief counsel for Sirhan B. Sirhan, speaking with newsmen outside courtroom shortly before he asked Judge Herbert V. Walker to declare a mistrial.

to the courtroom at the request of the defense to be questioned in the judge's chambers as to whether they had read the article or heard radio or television reports pertaining to it.

During the next hour and 15 minutes, the jurors were taken one at a time into chambers for questioning in secret. It

was reliably reported that all of them had denied reading the article.

Judge Walker has constantly admonished the jurors not to discuss the case, read anything about it or listen to any reports concerning it on radio or television. Should they inadvertently learn something about the case through any of these

sources, he has told them, they must completely disregard it.

Opening statements by the defense and the prosecution had been scheduled for this morning but were delayed by the motion for a mistrial.

The prosecution team had set up two mockups in the tiny eighth-floor courtroom at the Hall of Justice. One was of the first floor of the Ambassador Hotel and the other was an enlarged version of the serving pantry in which Senator Kennedy was shot as he left a party in the Embassy ballroom celebrating his victory in the Democratic primary over Senator Eugene J. McCarthy of Minnesota.

The two mockups, each about 3 by 6 feet, usurped much of the space around the prosecution table in the well of the court, obscuring the prosecutors and many of the jurors from spectators in the 75-seat courtroom.

During the arguments on the motion, Sirhan, dressed in his usual blue suit, blue shirt and tie, sat on the right angle of an L in the newly enlarged defense table. At first he smiled and chatted with his attorneys. Then he asked for a pencil and a yellow legal pad, on which he scribbled furiously at times.

Hands Exhibit to Clerk

Once, when Mr. Cooper offered a radio transcript as an exhibit in evidence, Sirhan picked it up, stood and handed it to the clerk. The second time he attempted to do this, Inspector William Conroy of the sheriff's department, who was standing nearby, motioned him down and handed over the exhibit himself.

For the first time since proceedings started Jan. 7, Sirhan's mother, Mrs. Mary Sirhan, and his brother Munir, 21, had been moved from their usual back-row seats. Today they were in the first row, but they were partly hidden from Sirhan by the prosecution's mockups. Finding it difficult to see them, Sirhan stood up at one point and waved.

In arguing vigorously on the motion for a mistrial, Mr. Cooper denied that the information in the Los Angeles Times article had come from any member of the defense team.

"I am not pointing the accusing finger at anyone," he

OVER

declared. "I can only say that this did not emanate from the defendant."

'Deserving of Censure'

At another point he said vehemently:

"The one who gave this information is responsible and is deserving of censure."

The tall, gray-haired attorney went on to contend that Sirhan's case had been particularly prejudiced because he had conceded that he fired the .22-caliber pistol that fatally wounded Senator Kennedy.

"The defendant has told this jury," Mr. Cooper said, "that we were not seeking an acquittal, but that they may only decide whether it was murder in the first degree, murder in

the second degree or manslaughter. That's the only issue."

For this reason, he said, it would be especially harmful if any of the jurors had been led to believe that Sirhan was ready to plead guilty to first-degree murder.

Mr. Cooper added he did not believe that any juror who had read the article would risk being cited for contempt of court by admitting it in the face of the judge's admonitions.

In his argument, Mr. Cooper cited a number of cases in which courts had ruled that a defendant's chances of a fair trial had been injured by pre-trial publicity.

Lynn D. Compton, chief deputy district attorney, who is heading the prosecution team, declared that the Los Angeles Times article was "just a surmise."

"I can't believe," he added, "that any reasonable fair-minded person could be influenced simply by the fact that a newspaperman speculated on that."

Sirhan's attorneys have said that their defense will be "diminished capacity." Under California law, a defendant may show that his state of mind was such at the time of the act that he could not have given it the mature and rational consideration that must be proved for a first-degree verdict to be returned.

If the jury can be convinced of this, it must return a verdict of second-degree murder or manslaughter. By conceding the act and pleading "diminished capacity," the defendant eliminates the possibility of a not guilty verdict.