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A Rhetorical Criticism of the Defense in the People v. Sirhan Bishara Sirhan

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A RHETORICAL CRITICISM OF THE DEFENSE IN THE PEOPLE V. SIRHAN BISHARA SIRHAN

BY

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This thesis is approved as a creditable and independent investigation by a candidate for the degree, Master of Arts, and is acceptable as meeting the thesis requirements for this degree. Acceptance of this thesis does not imply that the conclusions reached by the candidate are necessarily the conclusions of the major department.

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CHAPTER I

INTRODUCTION

Origin of the Problem

Within the present decade, the American public has been shocked by the political assassinations of three well known public figures. One of these was Robert F. Kennedy who was assassinated during a victory celebration at the end of the California primary in 1968. The alleged assassin, Sirhan Bishara Sirhan, a Jordanian immigrant to the United States, pleaded that he committed the murder out of love for Jordan and a loss of faith in Robert F. Kennedy.

The public was made aware of Sirhan's trial through the mass media. The coverage of the trial was somewhat restricted because of laws forbidding any form of news media to prejudice the outcome of the case. Many questions were left unanswered. One of these questions had to do with the rhetoric presented by the defense.

The defense lost the case. A California jury found Sirhan Bishara Sirhan guilty and sentenced him to death in the gas chamber. The rhetoric of the defense in the Sirhan Bishara Sirhan trial was not commonly covered in detail by the mass media. One wonders as to what the arguments to save Sirhan's life were. An analysis of the rhetoric of the defense might offer some evidence as to the reason for the outcome of the trial.

Purpose of The Investigation

The purpose of this investigation is to try to determine the effectiveness and the effect of the rhetoric of the defense in the Sirhan Bishara Sirhan trial. These determinations will be attempted through a rhetorical criticism of the defense's presentation.

Procedure of The Investigation

The first step was to determine if other studies had been made on the rhetoric of the defense in the Sirhan Bishara Sirhan trial. A review of the following sources revealed no studies of the rhetoric of the Sirhan defense:

Nelson, Max. "Abstracts of Dissertations in the Field of Speech." Speech Monographs, (August, 1968) (August, 1969).

Auer, J. Jeffery. "Doctoral Dissertations in Speech, Work in Progress." Speech Monographs, (August, 1968) (August, 1969).

Knower, Franklin H. "Graduate Theses: An Index of Graduate Work in Speech, XXXV." Speech Monographs, (August, 1968) (August, 1969).

The second step was to establish the method for the rhetorical analysis. This author relied on the method established by Lester Thonssen and A. Craig Baird in Speech Criticism. This method was referred to as the judicial type of criticism.[1]

> It reconstructs a speech situation with fidelity to fact; it examines this situation carefully in the light of the interaction of the speaker, audience, subject and occasion; it interprets the data with an eye to determining the effect of the speech; it formulates a judgment in the light of the philosophical-historical-logical constituents of the inquiry; and it appraises the entire event by assigning it comparative rank in the total enterprise of speaking.[2]

Following the method outlined above, the third step was to obtain biographical information about the defense attorneys: Grant Cooper, Russell E. Parsons, and Emil Zola Berman. The biographical information was obtained through correspondence with the attorneys as well as through a review of the court records of their past cases. Incidental items of information were taken from newspapers and magazines.

The fourth step was to obtain a transcript of the trial. Four different approaches were used in an effort to obtain the transcript. The County of Los Angeles refused to loan its copy, the price of the transcripts was forbidding, none of the attorneys would mail his transcript outside of the state, and the Governor was reluctant to loan his copy. On March 20, 1970, this writer went to Los Angeles to review the transcript of the Sirhan trial, on file in the District Attorney's Office.

The fifth step was to collect data from the defense attorneys involved in the trial by means of correspondence. While in Los Angeles, personal interviews were held with people involved in the trial. The defense attorneys contacted were:

Grant Cooper: 3910 Oakwood
Los Angeles, California

Russell E. Parsons: 205 South Broadway
Los Angeles, California

Other people who were personally contacted in the Los Angeles area who contributed to an understanding of the defense in the Sirhan trial were:

John Howard: District Attorney's Office

Harry Wood: District Attorney's Office

George Shibley: 19 Pine
Long Beach, California

In an attempt to learn of the delivery of the defense, correspondence was conducted with the six court reporters who covered the Sirhan trial. The response was negative, therefore, nonusable information was obtained concerning delivery of the defense arguments.

The sixth step was to review news publications concerning the trial to gather information in an attempt to reconstruct the historical setting. The major publication used in this thesis was The New York Times. The presidents of American Broadcasting Company, Columbia Broadcasting System, and National Broadcasting Company were contacted regarding information they might have on the trial of Sirhan Sirhan. There was a favorable response from every network except the Columbia Broadcasting System.

The seventh and final step was to analyze the total data received. A rhetorical criticism was attempted of the arguments and presentations of the defense in the Sirhan Bishara Sirhan trial. After the rhetorical analysis was completed some judgment was passed as to the rhetorical effectiveness and the effect of the rhetoric in terms of the outcome of the trial.

Authenticity of The Texts

The texts of the speeches analyzed in this rhetorical analysis were obtained from the official transcript of People v. Sirhan

Bishara Sirhan on file in the office of the District Attorney of the County of Los Angeles. Because of the length of the speeches, they are not included in the Appendix. Copies of the speeches can be obtained at request from the District Attorney's Office, Hall of Justice, Los Angeles, California.

Scope and Limitation

There are many limitations imposed on the conclusions drawn from a rhetorical criticism of the defense in the Sirhan Bishara Sirhan trial. The first of these is that this author did not witness the trial and no information was obtained on the delivery. Therefore, delivery can not be analyzed. Further, because the transcript was over 9,000 pages long, only portions of the rhetoric could be analyzed. Thirdly, because the case was appealed, some of the information which might have been pertinent to this investigation was still privileged.

A fourth limitation is in the nature of the question asked, did the rhetoric of the defense affect the outcome of the trial? If something is lacking in the arguments presented by the defense, then this question can be answered to some degree, although because of the variety of inputs, this question can never be answered completely. The answer involves psychological, sociological, political and economical considerations. The answer to the question can never be limited to a single cause, the rhetoric. The peculiarity of the situation makes the Sirhan trial a complicated trial to deal with.

This study may have shown, however, how effective the rhetoric of the defense was. It did suggest limited alternatives in the rhetoric that may have served to make the arguments more effective. It would be impossible for this study to be the ultimate answer as to the influence of the rhetoric on the outcome of the Sirhan Bishara Sirhan trial. The study did, nevertheless, arrive at an evaluation of what the defense attorneys tried to do.

FOOTNOTES

[1]Lester Thonssen and A. Craig Baird, Speech Criticism (New York: The Ronald Press, 1948), p. 18.

[2]Ibid., p. 18.

CHAPTER II

HISTORICAL SETTING

A rhetorical analysis demands an understanding of the circumstances surrounding the rhetorical act. Before an analysis of the rhetoric can be attempted, the peculiarities of the situation involving the audience, occasions, speaking, and other relevant factors should be adequately understood. Only after a comprehensive study of the factors involved in the background of the speech situation can any conclusions be reached as to the possible effect and effectiveness of the speech delivered.

Biographical Sketches

To fully appreciate the circumstances of an assassination, the people involved should be understood. The men involved in the June 5, 1968, assassination of Robert F. Kennedy were polar opposites. Their personalities and backgrounds added to the historical moment.

Robert F. Kennedy--A Biography

Robert F. Kennedy's life is a matter of public record. He was born in Boston, Massachusetts, in 1925.[1] The story of the Kennedy family has become a great historical tragedy during the twentieth century. Four of the sons served the country in capacities ranging from military officer to President and three of them were killed in various capacities of service to America.

In 1953, Robert F. Kennedy entered the political arena as an assistant counsel on Joseph McCarthy's Permanent Investigations Subcommittee in the Senate.[2] While working with this committee he began his long crusade against the teamster's union. Largely as a result of the evidence provided by Robert Kennedy, the Senate's Select Committee on Improper Activities in Labor and Management was formed in 1957 with Kennedy as the Chief Counsel.[3] After he obtained the conviction of David Beck, Teamster President, he began a battle against James Hoffa, the newly elected Teamster President. In 1959, he resigned his position on the Committee to help campaign for his brother, John F. Kennedy, but he retained his "idee fixe," the conviction of Hoffa.[4]

Robert F. Kennedy was nominated Attorney General of the United States by his brother in 1960. From this new vantage point, he was able to obtain the conviction of James Hoffa in 1964, three months after John F. Kennedy was assassinated.[5]

After his brother was assassinated and Lyndon B. Johnson took over the administration, Robert F. Kennedy was not content within the cabinet. He resigned his post and ran for Senator of New York in 1964. On November 3, 1964, he won his first election and went to the United States Senate as New York's junior Senator.[6] His political career culminated in a decision to run for the presidency in 1968. After only one primary defeat, in Oregon, Kennedy faced the California

primary. He won the California primary on June 4, 1968. Several minutes after midnight, he was fatally wounded by Sirhan Bishara Sirhan immediately following the delivery of Kennedy's victory speech.[7]

Sirhan Bishara Sirhan--A Biography

The Sirhan's were first generation Jordanian immigrants brought to the United States with the aid of the First Nazarene Church and the United Nations United Relief and Recovery Association in 1957.[8] Sirhan was born in 1944 in Jerusalem.[9] He was described as a loner by the Jordanian secret police.[10] During his residency in the United States he attended the Pasadena City College for several months but he gave this up in hopes of becoming a jockey.[11] In 1960 Sirhan was employed by the Granja Vista Del Rio horse ranch as an exercise boy. During this employment he fell off a horse, injuring his head and ending his career as a jockey.[12]

America did not grace the Sirhan family with success. The family became disenchanted with religion. They changed from the First Nazarene Church to the Baptist faith when the oldest son obtained a job as the accountant for the Baptist diocease. He lost his job, however, and at that point the family left the faith.[13] Sirhan became a member of the Rosicrucian order and began to practice mysticism.[14] In an interview with National Broadcasting Company's newsman, Jack Perkins, Sirhan said of his faith:

Perkins: Sirhan, for two years before the assassination, you were reading a great deal about the occult, mind over matter. You were doing experiments . . . can you tell us about some of these?

Sirhan: Well, as I said in court about the candle experiment, where you would concentrate on seeing the flame on the candle as being any color you wanted it to become. You just look at the flame and think red, look long enough and you will see a red flame, and then a green flame, and then a yellow flame, or any . . . and then you get to the point where you can see any color you want.

Perkins: There was another experiment with a pail of water?

Sirhan: Yes Sir, that involves putting your hand in a bucket of extremely hot water and causing your mind to feel coldness instead of the heat and the scalding of the hot water. And I did that . . . [15]

Sirhan had idealized Robert Kennedy until the Senator made a public statement in support of the Israeli cause. Sirhan described his feelings towards Kennedy as follows:

I thought he was the Prince, Sir, I thought that he was the heir apparent to President Kennedy and I wish the hell that he could have made it.[16]

Sirhan had become intensely interested in the Arab-Israeli conflict, especially after his fall off of the horse at Granja Vista Del Rio. He prided himself in a knowledge of the history of the conflict.[17] He saw his idol, Kennedy, as defeating the Arab cause:

I heard a report about it and it was unreal to me. I couldn't picture President . . . uh, Robert Kennedy wanting to do that. Because just before that, Sir, when he was campaigning, he promised to bring over our boys from Vietnam, and what have you and bring it all back home. Then all of a sudden he wants to send the very same things that we are going to withdraw from Vietnam to Israel. It seemed paradoxical to me. I couldn't believe it.[18]

Sirhan was also disenchanted with the American Dream. He felt the prejudices of belonging to a poor minority and he lost respect for the American social system. He expressed this disenchantment while talking with Perkins:

> Only after the Arab-Israeli War, Sir, when I started. I had no job. I tried . . . I sincerely tried to find a job. After I was dismissed from school and after this Arab-Israeli War and the continuing fighting in the Middle East now, I had no identity. No . . . no hope, no goal . . . nothing to strive for and I suddenly gave up. There was no more American Dream for me. I wouldn't buy it any more.[19]

Sirhan and Kennedy were opposites of each other. In terms of life styles, they came from opposite social structures and their perspectives on life reflected their backgrounds. The setting of the assassination seems clearer when these men are understood for what they were and explored in relationship to their past.

Pretrial Activity

The Assassination

Senator Robert F. Kennedy and five other persons were struck by bullets shortly after midnight on June 5, 1968. The 42-year-old, New York Senator was leaving the Ambassador Hotel after delivering a victory speech celebrating the outcome of the California Democratic Presidential primary election. The five other people hit by the spray of bullets were Paul Schrade, United Auto Worker's regional director; William Weisil, American Broadcasting Company newsman; Irwin Stroll, 17; Ira Goldstein, 19; and Mrs. Elizabeth Evans.[20] The hand that

held the fatal gun belonged to a man identified as Sirhan Bishara Sirhan.[21]

Robert F. Kennedy was rushed to the General Receiving Hospital but quickly transferred to the Good Samaritan Hospital where he underwent three hours of surgery. The surgeons at the Los Angeles Hospital identified three separate wounds in the Senator: the first wound was caused by the bullet entering the brain through the mastoid bone of the right ear, the second wound was a bullet lodged in the Senator's neck, and the third wound was an abrasion of his forehead.[22] The chief surgeon on the operating team was Dr. James Poppen, flown to Los Angeles from Boston. He is the head of neurosurgery at Lakay Clinic in Boston.[23]

Senator Kennedy died on June 6, 1968, at 1:44 a.m. at the Good Samaritan Hospital. An autopsy revealed that the Senator died from the bullet which struck him behind the right ear.[24]

The Arraignment and The Charge

The District Attorney's Office set an early arraignment for Sirhan on June 5, 1968. Evelle Younger, the District Attorney, and Tom Reddin, Police Chief, handled the arraignment proceedings. The People asked that the defendant be held without bail for three reasons:

1. The strong possibilities that one of the victims may die.
2. The fact that the defendant refused to identify himself, making it impossible to conduct any investigation of his background to determine how high his bail might be.
3. The lack of knowledge as to whether any other persons were involved in the shooting.[25]

Sirhan was represented at the arraignment by the Chief Public Defender, Richard S. Buckley, who argued against the motion. The Judge, Joan Dempsey Klein, granted the defense motion and set bail at $250,000. Sirhan was charged with six counts of assault with the intent to commit murder.[26] The charge read as follows:

> On or about the fifth day of June, 1968, at and in the county of Los Angeles a felony was committed by John Doe, who at the time and place aforesaid, did willfully, unlawfully and feloniously commit an assault with a deadly weapon upon Robert Francis Kennedy, a human being, with the intent then and there willfully, unlawfully, feloniously and with malice aforethought to kill and murder the said Robert Francis Kennedy.[27]

Sirhan's identity was established when the Los Angeles Police force traced the ownership of the murder weapon, the .22 caliber revolver, to Munir Bishari Salamah Sirhan, Sirhan's brother. Adel Sirhan confirmed the identity of his brother.[28] Mayor Samuel Yorty, mayor of Los Angeles, without authorization, dispatched investigators to confiscate anything that could be found in the newly named assassin's house. The investigators confiscated Sirhan's personal notebooks with the permission of an older brother but without a search warrant. Yorty began to make statements immediately following the confiscation concerning the possibilities of a conspiracy and a communist plot.[29] All of his statements were unauthorized.[30]

On June 7, 1968, the Los Angeles County Grand Jury charged Sirhan with "one count of murder and five counts of assault with a deadly weapon with an attempt to commit murder."[31] For security reasons, the presiding judge, Judge Alarcon, shifted the trial from the

courthouse to the jail immediately following the indictment. Sirhan Bishara Sirhan stayed in a maximum security cell in the corner of the second floor hospital ward of the jail where he was treated for a broken finger and a sprained ankle suffered during his capture. For security reasons an Officer was kept in his cell, four Officers patroled the corridor and five police cars with two patrol men in each car surrounded the perimeter of the jail.[32]

Anti-Publicity Order

Because of the statements issued by Yorty and because of the graveness of the crime, Judge Alarcon set a new precedent in law by issuing an anti-publicity order on June 7, 1968. He felt that this order would protect the constitutional rights of the defendant. This order was maintained throughout the trial and resulted in one of the major conflicts of law during the trial. The order is a culmination of court decisions on publicity that began with the Sam Shepard trial.[33] The order is important to this trial because it was one of the foremost elements in making the Sirhan trial a classic in modern law by synthesizing the most contemporary decisions.[34] In essence, the order reads as follows:

> [All persons connected with the trial were forbidden to make] public dissemination of any purported extrajudicial statement of the defendant relating to this case, or release any documents, exhibits, or any evidence, the admissibility of which may have to be determined by the court [and they won't be able to give clues as to the existence of such documents or evidence], nor make statements as to the weight, value, or effect of any evidence as tending to establish guilt or innocence. [They can also not release information as to]

> the nature, substance or effect of any statement that has been given or to the identity of any prospective witness, or his probably testimony, or the effect thereof.[35]

According to the court order a violation of the order would result in, "swift action to punish for contempt any offender within the jurisdiction of this court."[36]

Testimony given before the Grand Jury led the police to a second suspect in the murder. The only clue to the suspect's identity was that the girl was wearing a polka dot dress and was seen with Sirhan. She was reported to have said, "We killed Kennedy." A continual search for her arrest began on June 13, 1968.[37]

The defense obtained postponement of the trial until June 28, 1968. Sirhan asked for the American Civil Liberties Union to represent him as private counsel. The court postponed the trial so that the defense could wait for psychiatric evidence before entering the plea.[38]

Early Court Appearances

Seven months separated the day of the assassination from the opening of the trial on January 5, 1969.[39] The first postponement of the trial came on June 28, 1968, when Sirhan made his second appearance in the improvised courtroom in the County Jail Chapel. A three week delay was granted by the temporary presiding judge, Richard Shauer, on a motion by Russell E. Parsons stating that more time was needed to study records and examinations before a plea could be

made. At this court session Sirhan waived his right to a trial within the sixty-day post indictment period.[40]

On July 19, 1968, Sirhan Bishara Sirhan made his third appearance in court. During this appearance, the defense succeeded in obtaining a third postponement to allow for the completion of psychiatric studies and to allow time for new studies to be made on the brain waves of Sirhan. The defense noted that the psychiatric reports had been insufficient to this point and asked that Dr. Roderick Richardson, a psychologist, and Dr. Edward Davis, an encephalographologist, be added to the medical team. To that date, the three court appointed psychiatrists had submitted no final reports and one of the representatives had made no report at all. The judge granted the request and the two new doctors were added. The session was held in a make-shift court on the thirteenth floor of the Hall of Justice, close to Sirhan's maximum security cell.[41]

Sirhan Bishara Sirhan pleaded not guilty to the charge of first degree murder on August 2, 1968.[42] Parsons, representing Sirhan, explained the plea as follows: "I just felt that a not guilty plea would allow us to show the what and why (of the alledged crime) . . . I haven't seen any evidence yet that he had any malice."[43]

Another reason for this plea can be found in the principles of California law. According to the California statutes, the defendant can issue a "not guilty by reason of insanity plea" at any time before

the actual opening of the trial. Until that time, however, under a plea of not guilty, the prosecution is denied free access to the reports issued by the court appointed psychiatrist or to the findings of the defense team.[44] At this hearing, Sirhan also pleaded not guilty to five counts of assault. The trial date was set for November 1, 1968.[45]

From the announcement of the November 1, 1968, date of the trial a great deal of controversy was raised because of its proximity to the November 3, 1968, election date. Kenneth Hahn, County Supervisor, joined with the defense in asking for a postponement because of the memories that the election might revive. The prosecution argued that the selection of jurors would last several weeks past Election Day and, therefore, there should be no postponement.[46] In a court appearance on October 4, 1968, the trial judge was designated as the Honorable Herbert Walker, and a special session on October 14 was arranged to discuss the controversy over the date set for the trial and to consider a possible delay.[47] At this meeting, the trial was delayed until December 9, 1968. The Judge offered several reasons for the continued delay. First, the election might foster more polarization among the jurors. Second, the jury was to be sequestered and such an early November date would mean that the jury would be sequestered over the Holiday season. Third, two new undesignated lawyers were being added to the defense staff, and they could not be ready by the November 1, 1968, date.[48]

The trial of Sirhan Bishara Sirhan enjoyed one more delay. On December 5, 1968, it was decided to postpone the trial until January 7 in order to allow the two new attorneys, Grant Cooper and Emil Zola Berman, time to prepare and to acquaint themselves with the case. It was announced during this court session that the court proceedings would be held on the eighth floor of the Hall of Justice and transmitted by closed circuit television to press representatives in adjacent rooms since only 30-40 seats would be reserved for the press in the actual courtroom.[49]

Appointment of The Court Psychiatrist

The court appointed three psychiatrists to analyze the mental capacity of Sirhan Bishara Sirhan. Originally, two were appointed, Dr. Eric Marcus and Dr. Edward Stainbrook. Dr. Stainbrook refused to take the case after preliminary examinations. Therefore, on June 28, 1968, Dr. George Y. Abe, Superintendent of the Metropolitan State Hospital at Norwalk, was appointed to replace Stainbrook. The court added Dr. Roderick Richardson and Dr. Edward Davis at the request of the defense. These four psychiatrists completed the court medical team until the end of the trial.[50]

On July 26, 1968, Dr. H. M. Benerjii, a parapsychologist, left Hong Kong in order to study the Sirhan case in Los Angeles. He was the director of parapsychology studies at the University of Raipasthan in Jaipur, India. Parapsychology is the science concerned with the investigation by "experimental means of events apparently not accounted

for by natural law and considered evidence of telepathy, claivoyance, and psychokinesis."[51]

Completing The Defense and The Prosecution

The trial of Sirhan Bishara Sirhan can rightly be called a classic in the annals of court history. At the cost of $900,000 to the county of Los Angeles,[52] all precautions were taken to insure that Sirhan was tried fairly. Great efforts were taken by Judge Walker to insure against the necessity of another Warren Commission.[53] All of the recent Supreme Court Cases were considered and a primary interest became limiting the possibility of all possible constitutional error. Reddin, Chief of Police, gave some indication as to the precautions being taken in the following quotation: "Undoubtedly there will be some testing of every area of search and seizure: But, the police have checked all their moves with the District Attorney, because we are so terribly concerned about making a constitutional error."[54]

Selection of The Defense Team

The defense

The completed defense team was not named until December 2, 1968.[55] The earliest attempt at organizing a defense team came from Jordan. The Jordanian Bar Association chose four lawyers to represent Sirhan in the American courts. The lawyers named were: Fouad Atallah, Ahmed Al Khahil, Mohamed Barada'h and Hassan Hawwa.[56] The four were chosen at the request of the defendant's father. These lawyers were

discouraged in their efforts by the Jordanian government who felt that they would cause a strain on the United States and Jordanian relationships.[57] Sirhan, himself, asked to be defended by the American Civil Liberties Union and they did grant him counsel in the attorney of Abraham Lincoln Wirin. Wirin tried to obtain private counsel for Sirhan but was unsuccessful. Up until the middle of June, therefore, Wilbur Littlefield, the Deputy Public Defender, stood as Sirhan's attorney of Record.[58] Wirin disclosed on June 11, 1968, that Sirhan had refused an offer of free legal defense from both Melvin Belli and F. Lee Bailey. He added that the American Civil Liberties Union could not defend Sirhan as Sirhan wished because his case did not involve a constitutional or civil liberties issue.[59] By June 20, 1968, Russell E. Parsons agreed to represent Sirhan Bishara Sirhan free. Parsons and another lawyer were picked by Sirhan from a list made up by the American Civil Liberties Union for the defendant. The Public Defender was released from his duties at this time because according to California policy, the county's defense duties are terminated when money is found or an attorney offers his services free.[60]

Finally, on December 2, 1968, the rest of the defense team was disclosed. The late disclosure of the completed defense had allowed them to win two postponements of the date of the trial. Grant Cooper, a Los Angeles lawyer, was named to lead the defense team during the trial and Emile Zola Berman, a famous New York lawyer, was added as a third member.[61] By the end of January, the Chief Investigator for

the defense was disclosed as being Michael McGowan. This was the team that completed the defense during this trial.[62] In January, a young Detroit lawyer, Abdeen Jabara, came on his own expense to Los Angeles to help the defense and to counsel the Sirhan family.[63]

It should be noted that the defense lawyers did not render all of their services free. Sirhan Bishara Sirhan sold the exclusive right to his biography and to his personal views on the trial to Robert Blair Kaiser, Time magazine correspondent in Europe. Kaiser said that Sirhan agreed to be interviewed in his cell for a biography in order to help pay for the defense. A sizeable portion of the royalties for the book that resulted from these interviews and also for the movie that is forecast will go to the defense.[64]

The prosecution

The prosecuting attorneys were named immediately after the assassination. They were Lynn Compton, Chief Deputy District Attorney, John E. Howard, Chief of the District Attorney's Special Investigations Division, and David N. Fitts, Deputy District Attorney.[65] On October 4, 1968, Judge Herbert Walker was named to be the official trial judge.[66] Judge Walker was also the trial judge for the Chessman Case in California.[67]

Before the trial had even begun, constitutional questions were being raised by the prosecution. The most severe attack which persisted throughout the trial was about the constitutionality of the anti-publicity order issued the day after the assassination. The

District Attorney's Office argued that this order infringed on the right of the public to be informed as to the proceedings and was, therefore, unconstitutional. District Attorney Evelle Younger asked for the order to either be modified or vacated as early as July 19, 1968, on the basis of its being too broad in scope. He claimed that it had the effect of denying the public certain information about the case which they were entitled to know. He stated: "We feel that the release of certain information is properly in the public interest and will not prejudice the defendant's right to a fair trial."[68]

John Howard, one of the prosecuting attorneys, said in a personal interview that the District Attorney's Office felt that the publicity order had caused rumors about the trial and about the possibility of a conspiracy to increase. He offered as a point in fact the rumors about a possible communist plot suggested by Mayor Yorty with the use of the mass media. Although the District Attorney's Office had disapproved the existence of such a conspiracy with the aid of the Federal Bureau of Investigation they could not inform the public or convince the public because of the anti-publicity order.[69]

The Trial

The trial of Sirhan Bishara Sirhan opened on January 5, 1969.[70] Seventy-five persons were allowed on the eighth floor of the Hall of Justice and all others had to watch the trial on closed circuit television.[71] The improvised courtroom was well protected

for the safety of the defendant. Metal plates were used to cover the windows and thick metal doors with peepholes closed off the corridor and the courtroom. Guards were posted at each door.[72] Anyone wishing to enter the eighth floor was stopped on the seventh floor and completely searched before given a pass to enter the courtroom area.[73]

The Jury Selection

The selection of a jury was a central issue in the Sirhan Bishara Sirhan Trial. Grant Cooper, chief defense attorney, explained the difficulty that the defense faced in selecting a jury:

> Usually we want liberal-minded people on a jury in a capital case; like students, young businessmen, young college-educated people, teachers, . . . you know. Conservative-minded people are more likely to hand down the death penalty, so we try to avoid what we consider to be conservatives. In Sirhan's case, the liberals were probably supporters of Robert F. Kennedy and would, therefore, have predispositions to the death penalty for Sirhan. So, you can see, an impartial jury was nearly impossible. The selection of the jury become one of the hardest phases of the trial.[74]

The selection of the jury was further complicated by several court decisions by the Supreme Court which governed the selection of a jury in a capital case. The most important Supreme Court case involved in this phase of the Sirhan trial was Witherspoon v. State of Illinois decided in 1968.[75]

Witherspoon v. State of Illinois

The Witherspoon Case was heard between April 24, 1968, and June 3, 1968, before the Supreme Court of the United States.[76] Justice Steward gave the decision that:

> Sentence of death could not be given out where the jury that recommended it was chosen by excluding veniremen [jurymen] for cause simply because they voiced general objection to the death penalty or expressed conscientiousness or religious scruples against its infliction; no defendant can be constitutionally put to death at the hands of tribunal so selected.[77]

The opinion of the court further stated that no prospective juror could be expected to say in advance of a trial involving a capital crime whether he would in fact vote for an extreme penalty of death.[78] The most that can be asked of the prospective juror in a capital case is that he be willing to consider all penalties provided by the state law. The juror should not be irrevocably committed before the trial has begun to vote against the death penalty regardless of facts and circumstances that might emerge in the course of the trial.[79] This was the only limitation to excluding a juror that the court outlined. If voir dire[80] testimony is given and the juror was excluded for any broader basis than this, the death sentence could not be carried out if it was handed down by the appointed jury.[81]

This decision was decided on the basis of "due process of law."[82] The opinion of the court stated that:

> A state may not entrust the determination of whether a man is innocent or guilty to a tribunal organized to convict. (It) can not entrust the determination of whether a man should live or die to a tribunal organized to return the verdict of death.[83]

In other words, it could not be assumed that a juror who opposed the death penalty would discriminate any less than one who supported it in returning a verdict. In effect, by excluding those opposed to the death penalty, the court creates a "hangman's jury."[84]

The Witherspoon decision was weak in several areas and so the states began to test it in their courts. In fact, it included a clause that jurors could not be automatically excluded for cause if they had conscious scruples against the death penalty. The law was not specific, however, in qualifying the degree of objection of a juror. Thus, the lower courts were undecided as to if a juror could not be excluded if he could think of no situation under which he could return a death penalty.[85]

Decisions from the California Supreme Court

In any capital case in California there were two trials. The first trial determined guilt or innocence and, if the defendant was found guilty, the second trial determined the penalty. At the option of the judge there could be separate juries for each of these trial phases. If the second phase of the trial resulted in the death penalty, the judge had the option of reducing the sentence. Again, according to California law, the defendant could waive a juried trial and rest his case with the judge but only at the option of the judge and the prosecution.[86]

The Anderson-Saterfield case in California attempted to make the guidelines by which a jury makes its decisions in a capital case clearer. The two defendants challenged their court decision on the basis of Witherspoon and they won the appeal.[87] Although the Anderson-Saterfield case upheld the Supreme Court decision to its limits, a subsequent case, People v. Beivelman, limited the scope of Witherspoon. In People v. Beivelman case, the original trial court had decided the case for the defendant on the basis of the following reasoning: " . . . that a jury from which venirement irrevocably opposed to the death penalty had been excluded can not answer guilt-innocent questions as favorably to the defendant."[88] On further appeal, the Supreme Court of the state of California ruled that: " . . . there is no merit to the defendant's contention that his guilt was determined by a partial and biased jury."[89] This decision limited the application of Witherspoon in the state of California.

Issues in the selection of the jury

According to California law, both the defense and the prosecution had twenty preemptory challenges which they may begin exercising after twelve jurors have been temporarily seated. The challenges for cause, exercised before the seating of the twelve jurors, were unlimited but had to be upheld by the judge.[90] Any preemptory challenge could be made without explanation and it brought automatic dismissal from the jury.[91]

The jury in the Sirhan Bishara Sirhan trial was to be sequestered during the entire duration of the trial.[92] From the day that the jury

took its oath along with the alternates, the entire eighteen were locked in seclusion. They were quarantined in a hotel, driven to the courthouse in a prison bus and, except for Sunday excursion with the Deputy Sheriff, allowed to go nowhere else. They were allowed no telephone calls and could visit with their spouse of record overnight on weekends. As a group, they were allowed one monitored television and radio, censored by the Deputy Sheriff. They were completely isolated in the hotel, having a common eating, sleeping and living quarter.[93]

When the selection of the jury first began, the judge said that he would ask only two questions of all the jurors. He said that his questions would take into account the recent Witherspoon decision. The questions that Judge Walker asked dealt with, first, whether the juror had such strong convictions against the death penalty that he could not find the defendant guilty of first degree murder, and, second, whether the juror's conscience would permit him to sentence the defendant to death should he be found guilty.[94]

The most important issue in the selection of a jury arose over the seating of Mrs. Alvina Alvidrez. She stated that she was consciously opposed to the death penalty and in no circumstance could she return death as a penalty. On January 16, 1969, argument was heard concerning the seating on Mrs. Alvidrez on the jury. Cooper argued that since California law provides for two trials by separate juries, at the judge's discretion, that her conscientious views should not affect her seating on the first jury to determine guilt.[95]

Despite the arguments of the defense, the judge upheld a prosecution challenge for cause of Mrs. Alvina Alvidrez. Grant Cooper said that this action of the judges provided "the defense with a constitutional issue."[96] Judge Walker justified his decision by saying that he had originally felt that Witherspoon and Anderson-Saterfield did not allow the challenge to be upheld. He felt that the People v. Beivelman decision handed down by the Supreme Court of California on January 10, 1969, supported the right of the prosecution's challenge.[97] Emile Zola Berman said that his decision provided a ground for appeal. In Mr. Berman's words: "We believe that the ruling on conscientious objection affords a constitutional issue."[98]

Completion of the jury

By January 24, 1969, the jury selection was completed. The action took two weeks, a much shorter time then anticipated.[99] On February 5, the jurors were sworn in and the court began to question the alternate jurors.[100] It took one week to complete the jury, then the entire eighteen were sequestered. When the decision finally went to the jury, after two days of deliberations, a foreman was picked. The foreman was Bruce D. Elliott.[101]

Defense motions to quash the indictment

During the opening days of the trial, the defense introduced several motions concerning the validity of the jury system in the state of California. The most important of these was a motion to quash the

first degree murder indictment because the Grand Jury and the petit jury in the state of California were improperly constituted. The defense claimed that the California Grand Jury was "blue ribbonish."[102]

This motion stemmed from the process of jury selection in California. In this state, the Superior Court judges nominated people to serve on panels from which the Grand Jury was drawn. The final panel of twenty-three jurors was chosen by lot.[103] Grant Cooper suggested that this process made the jury unrepresentative of the people. He suggested that since California had the same process for selecting petit juries that they were also unconstitutional.[104]

For support of this motion the defense relied strongly on lengthy testimony in the case of the People v. Castro being heard at the same time as the People v. Sirhan in Los Angeles. In People v. Castro the defense contended that the petit jury was improperly and unfairly drawn and they provided testimony to support this contention.[105]

Cooper further supported his contention that the jury was not composed of a cross-section of the community and was therefore unconstitutional by subpoening all of the County's Superior Court Judges to testify as to their methods of selecting jury nominees.[106] Grant Cooper stated that he wanted to prove the following: "Our contention is that the system itself has the effect of being discriminatory. This is a question of constitutional dimension."[107]

The chief witness for the defense was Dr. R. E. Schultz from the Department of Finance, University of California. He had made a

study showing that the California jury system did not represent young adults, Negroes, working class people, the lower classes, and generally, those without a college education.[108]

In order to facilitate the findings, the defense sent questionnaires to all Superior Court Judges that could be filled out and returned in place of their appearance in court. Three judges did answer the subpoena and appeared in court: Edward R. Brand, Arthur L. Alarcon, and Kenneth N. Chantley. They all testified that they had never purposely discriminated. Further, William A. Goodwin, Los Angeles County Jury Commissioner, testified that for the last several years the judges have been cautioned not to discriminate in making Grand Jury selections.[109] To refute these testimonies, the defense called Sirhan and his mother to the stand to testify that this economic class was not represented on the jury.[110]

Mr. Cooper tried to obtain two postponements to research his motions on the Grand and petit juries. He argued that without time he could not do a proper job of presentation before the court. The judge ruled that there had been enough postponement and he refused both requests.[111]

On February 4, 1969, Sirhan and his mother took the stand for the first time. Their statements constituted a dramatic testimony on poverty. The mother stated that her annual income had been between $1471.00 and $1752.00 a year. After their testimony, however, Judge Walker denied all of the motions because he reasoned that it was

irrelevant to the case at hand and belonged in an Appelate court.[112] This was still another ground for future appeal.

The defense made another motion for two different juries to hear the two phases of the trial. This motion was also denied by the judge.[113] In a third motion, held in closed chambers, the defense asked to change the plea to guilty.[114] According to California law, the defense is permitted to plead guilty to first degree murder with the specific provision that the sentence be life imprisonment. This is known as bargaining in closed chambers. Such an arrangement must be approved by the judge and the prosecution. Before the jury was sequestered, the defense tried to bargain for life imprisonment. The motion was refused by the judge but the information about the motion reached the press. In essence, it had the effect of admitting to Sirhan's guilt and, what is more important, the leakage violated the anti-publicity order. This information could have very easily reached the jurors and made an impartial jury impossible. This resulted in creating another motion for appeal.[115]

Arguments of the Defense

Law of diminished capacity

The defense appeared to rely completely on the law of diminished capacity in the Sirhan trial. Mr. Harry Wood, Head of the Appelate Divison for the County of Los Angeles, wrote in an article about the use of diminished capacity in the Sirhan trial:

> Specifically, it was argued that because of one of any combination of the following abnormalities (intoxication, hypnotism, schizophrenia-paranoid type, paranoia) the

> defendant was unable to maturely and meaningfully premeditate and deliberate. Since premeditation and deliberation are two of the essential elements necessary to prove first degree murder under California law, evidence of intent or state of mind in this regard was crucial. In Sirhan, the defense sought to present evidence of diminished capacity to reduce the degree of the homicide from first to second degree.[116]

The law of diminished capacity was a derivative of the M'Naughton Rule.[117] This approach eliminated any line of attack except that the crime was not premeditated. The punishment was limited to second degree murder or manslaughter.[118]

The M'Naughton Rule was established in the English courts in the nineteenth century. In the findings of the court, the purpose of M'Naughton was:

> To establish defense on the ground of insanity, it must be clearly proved that at the time of committing the act, the party accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature or quality of the act he was doing; or, if he did know it, that he was not aware he was doing what was wrong.[119]

In California, the M'Naughton Rule had been limited in scope. There were types of insanity that could not be used as a defense. These were as follows:

1. Moral or Emotion Insanity--does not deprive a person of the capacity to distinguish right from wrong.
2. Irresistible Impulse--characterized as moral insanity.
3. Miscellaneous Mental Disorders--defined as melancholia epilepsy, homosexuality, addiction to drugs, etc.
4. Delusion--seldom upheld, was defined in the People v. Griffith case. The findings read as follows: Whenever partial insanity or insanity delusion or hallucinations are relied upon as a defense to a crime, the

> evidence must show that the crime charged was the product of off-spring of such insanity, insane delusion or hallucination and that the defendant did not know that his crime was wrong.[120]

The law of diminished capacity was one of the most controversial laws in the state of California. It had been criticized mainly as being unjust. Mr. Wood opened his article on diminished capacity by displaying an attack of its use. He said:

> The recent and widely publicized case of the People v. Sirhan Bishara Sirhan furnishes a prime example of a growing concept in criminal trials which threatens the foundation of our system of criminal justice. In Sirhan, the defense relied upon diminished capacity.[121]

The controversy had centered around three major criticisms concerning the application of M'Naughton in California. They were as follows:

1. The test of diminished capacity was devised without proper consideration of the factual situation in any particular case.

2. The principle of law is based in part on medical reliefs of past centuries which is irreconcilable with modern psychiatric findings and practices.

3. The law of diminished capacity is an obstacle to penological reform. On the one hand, it permits full criminal punishment of many persons whose mental illness is established; and, on the other hand, it does not assure the continued detention for a sufficient period of persons dangerously and legally insane.[122]

Although the law of diminished capacity was under attack, it was still widely used in capital cases. Several changes had been proposed by the advocates of the law in an effort to make the principle more acceptable to both sides. The advocates argued that

the law should be maintained because no substitute had been found, injustices had been minimized, and the rule was practical and necessary.[123] The changes that had been accomplished in California were as follows:

1. The Durham Rule: 1954

   This case rejected M'Naughton and announced a loose test of whether the act was a result of a mental disease or defect.

2. Model Penal Code Rule: 1955

   This proposal rejected the Durham Rule and suggested that a person was not responsible if he could not appreciate the criminality of his actions and it defined mental disease to exclude abnormalities manifested only by repeated criminal or anti-social action.

3. Theory of Diminished Responsibility: 1957

   This rule allows the consideration of mental abnormalities which substantially impair the responsibility of the defendant. The effect of the proof is not a complete defense, but a reduction in the degree of the crime.

The California M'Naughton Rule was established in the case of the People v. Wolfe. In effect the decision of the court defined insanity as "a diseased or deranged condition of mind which renders a person incapable of knowing or understanding the nature and quality of his act or to distinguish right from wrong in relation to that act." This decision established a test for insanity for the first time since M'Naughton. The test was if the defendant had sufficient mental capacity to know and understand what he was doing and if the defendant understood that his action was wrong and that he had violated the rights of others.[125] In essence, this case broadened

the interpretation of M'Naughton because it required that the defendant have an understanding and appreciation of the nature and quality of the criminal act before the defendant may be found sane.[126]

Sirhan's outbursts in court

Twice during the course of the trial, Sirhan Bishara Sirhan had to be restrained in the courtroom. Sirhan's outbursts in court helped the defense in their plea of diminished capacity but it hurt the development of pathos for the defendant.[127] Sirhan's first outburst came as a result of the prosecution introducing his notebooks into the court as evidence. Sirhan disturbed the court proceedings twice saying that he would change his plea to guilty if the notebooks were introduced. Finally, the judge had to dismiss the court in order to accept the notebooks from the prosecution.[128] Sirhan, outraged by the introduction of his notebooks, interrupted the court on February 27 to demand that he be allowed to change his plea to guilty and to request his own execution. He said:

> I want to withdraw my plea of not guilty and plead guilty to all counts as charged . . . I want to disassociate myself from my counsel . . . I killed Robert F. Kennedy willfully and premeditatively and with twenty years malice aforethought.[129]

The judge denied the request saying that this had to be proved in a court of law. The timing of this outburst was poor since it came on the first day of the presentation of the defense's case.[130]

Following this outburst, Grant Cooper and the other defense attorneys volunteered to resign saying that they had been receiving no cooperation from the defendant. They offered as evidence a list of twelve witnesses that had to be called over Sirhan's objections. Judge Walker denied this request.[131]

Sirhan's last outbreak in court came during the testimony of the prosecution's witness, Dr. Seymore Pollack. Dr. Pollack said that he thought Sirhan was lying when he took the stand. He also indicated that he thought Sirhan had lied during psychiatric investigations. Dr. Pollack could not accept that Sirhan was unable to remember his notebooks or the incident of Kennedy's assasination. Sirhan leaped to his feet during the testimony and said, "I am not going to let him call me a liar." The judge ordered Sirhan restrained and warned him that he would be found in contempt of court if there were any further outbursts.[132]

Psychiatric testimony in support of diminished capacity

According to one of the prosecuting attorneys, John Howard, one of the weakest phases of the defense was the psychiatric testimony. In presenting medical testimony, the two most important witne

1. guilty of first degree murder
2. guilty of second degree murder
3. guilty of voluntary manslaughter
4. acquittal[170]

On April 16 the jury asked for Judge Walker to clarify his instructions on the second degree murder charge.[171] He did so and the jury resumed deliberations until Thursday, April 17 when the jury found Sirhan guilty of first degree murder in the fatal shooting of Senator Robert F. Kennedy.[172] The prosecution announced at this time that it would not press for the death penalty at the request of Edward Kennedy and the family.[173]

On April 23, 1969, the jury passed sentence on the penalty that Sirhan should receive. He was condemned to the gas chamber after 11 hours and 45 minutes of deliberations. The formal sentencing was scheduled for May 14, 1969.[174]

Goals of The Defense

The defense team in the Sirhan trial realized the limits which they faced in obtaining the goal of second degree murder or manslaughter. From the opening of the trial, the defense told the prospective jurors that they did not deny that Sirhan killed Robert F. Kennedy, they only questioned the degree of his guilt because of diminished capacity.[175]

Russell E. Parsons outlined what he considered to be the major goals of the defense considering the circumstances of the trial and the defendant. He listed three goals:

1. to lay the groundwork for an eventual appeal
2. to attempt to delay the trial as much as possible
3. to prove that Sirhan had a diminished capacity.[176]

In a personal interview, however, Grant Cooper defined the goals of the defense as being simply to reduce Sirhan's crime to a second degree murder charge or manslaughter.[177] Emil Zola Berman agreed with this analysis of the goals when he said of the defense in the Sirhan trial: "It will be the principal concern of the defense to save Sirhan from the gas chamber."[178]

After the data and research had been completed to present to the court, its validity was weighed by the rhetoric that introduced it. An analysis of the rhetoric of the defense may give an insight as to why the primary goal was not obtained.

Summary

On June 5, 1968, shortly after midnight, Senator Robert F. Kennedy was shot in the Ambassador Hotel after delivering his victory speech celebrating the outcome of the California presidential primary. The assailant was identified as Sirhan Bishara Sirhan, a 24-year-old Jordanian immigrant to the United States. On June 6, 1968, Kennedy died and Sirhan Sirhan was charged with first degree murder in the County of Los Angeles.

Seven months after the assassination, on January 5, 1969, Sirhan went to trial in an improvised courtroom on the eighth floor of the Hall of Justice in Los Angeles. Even before the trial opened a new precedent in law had been established when on June 7, 1968, the judge presiding over the arraignment issued the controversial

anti-publicity order. This order was debated by the prosecution until the close of the trial.

The defense team representing Sirhan was comprised of three outstanding attorneys. There were: Grant Cooper, chief defense attorney; Russell E. Parsons, Los Angeles; and Emil Zola Berman, New York. The prosecution was complete with David N. Fitts, Lynn D. Compton, and John Howard, all from the District Attorney's Office.

The most controversial phase of the trial involved the seating of the jury. This phase became a testing ground for the Witherspoon decision, the Anderson-Saterfield decision and the People v. Beivelman decision. The defense's major motion was made during this phase of the trial.

The defense argued diminished capacity throughout the trial and their stated goal was to reduce Sirhan's guilt to second degree murder or manslaughter. On April 17, 1969, the jury found Sirhan guilty of first degree murder and on April 23, 1969, Sirhan was sentenced to death in the gas chamber by the same jury.

FOOTNOTES

[1]M. Q. Mehdi, Kennedy and Sirhan, Why? (New York: New World Press, 1968), p. 8.

[2]Jay Jacobs, R. F. K., His Life and Death, ed. by American Heritage (New York: Dell Publishing Co., 1968), p. 57.

[3]Ibid., p. 69.

[4]Ibid., p. 73.

[5]Ibid., p. 99.

[6]Ralph de Toledano, R. F. K., The Man Who Would Be President (New York: G. P. Putnam's Sons, 1967), p. 320.

[7]United Press International, teletype release, June 5, 1968, (provided by William McSherry, Television News Director, Western division, American Broadcasting Company, (See Appendix C.).

[8]The New York Times, January 13, 1969, p. 29.

[9]Mehdi, Kennedy and Sirhan, Why?, p. 8.

[10]The New York Times, June 10, 1968, p. 28.

[11]The New York Times, June 30, 1968, p. 42.

[12]The New York Times, January 13, 1969, p. 28.

[13]The New York Times, June 30, 1968, p. 42.

[14]The New York Times, June 9, 1968, p. 64.

[15]Sirhan Bishara Sirhan, Private interview held with National Broadcasting Company's newsman Jack Perkins on May 14, 1969, p. 2, (See Appendix A.).

[16]Ibid., p. 3.

[17]The New York Times, January 13, 1969, p. 30.

[18]Sirhan Bishara Sirhan, p. 4.

[19]Ibid., p. 5.

[20]District Attorney's Office, Weekly Report I, June 10, 1968, p. 1, (A series of reports issued by the District Attorney during the course of the Sirhan trial; on file in the District Attorney's Office in the County of Los Angeles).

[21]Ibid., p. 21

[22]The New York Times, June 5, 1968, p. 1.

[23]The New York Times, June 6, 1968, p. 20.

[24]District Attorney's Office, Weekly Report I, June 10, 1968, p. 6.

[25]Ibid., p. 3.

[26]The New York Times, June 6, 1968, p. 20.

[27]Ibid., p. 20.

[28]Ibid., p. 20.

[29]The New York Times, June 7, 1968, p. 22.

[30]Ibid., p. 22.

[31]District Attorney's Office, Weekly Report I, June 10, 1968, p. 7.

[32]The New York Times, June 6, 1968, p. 22.

[33]The Sam Sheppard Case was heard in front of the Supreme Court of the United States and dealt with the use of mass media coverage of trials. Sheppard was released of murder charges because the court felt he had been tried by the press.

[34]The New York Times, June 9, 1968, p. 62.

[35]People v. Sirhan Bishara Sirhan, No. A233421, Vol. I, June 7, 1968, (Unpublished transcript of the Sirhan trial on file in the District Attorney's Office in Los Angeles.).

[36]Ibid.

[37]The New York Times, June 14, 1968, p. 1.

[38]The New York Times, June 9, 1968, p. 62.

[39]The New York Times, January 6, 1969, p. 1.

[40]The New York Times, June 29, 1968, p. 1.

[41]The New York Times, July 20, 1968, p. 11.

[42]The New York Times, August 3, 1968, p. 1.

[43]"A Defense for Sirhan," Newsweek, August 29, 1968, p. 29.

[44]Ibid.

[45]The New York Times, August 31, 1968, p. 1.

[46]The New York Times, August 24, 1968, p. 30.

[47]The New York Times, October 5, 1968, p. 69.

[48]The New York Times, October 15, 1968, p. 22.

[49]The New York Times, December 6, 1968, p. 25.

[50]The New York Times, June 29, 1968, p. 10.

[51]The New York Times, July 27, 1968, p. 23.

[52]The New York Times, April 22, 1969, p. 27.

[53]The Warren Commission was a presidential appointed committee under the direction of the late Chief Supreme Court Justice Earl Warren organized to investigate the rumors of the assassination of John F. Kennedy, President of the United States.

[54]The New York Times, June 22, 1968, p. 11.

[55]The New York Times, December 3, 1968, p. 38.

[56]The New York Times, June 18, 1968, p. 7.

[57]The New York Times, June 20, 1968, p. 22.

[58]The New York Times, June 24, 1968, p. 27.

[59]The New York Times, June 12, 1968, p. 32.

[60]The New York Times, June 20, 1968, p. 22.

[61]The New York Times, December 5, 1968, p. 38.

[62]The New York Times, January 31, 1969, p. 18.

[63]The New York Times, January 16, 1969, p. 31.

[64]The New York Times, September 1, 1968, p. 43.

[65]United Press International, teletype release, June 13, 1968, (William McSherry).

[66]"A Defense for Sirhan," p. 29.

[67]The New York Times, October 5, 1968, p. 69.

[68]District Attorney's Office, News Release, July 18, 1968.

[69]John Howard, personal interview with Mrs. Suzanne Kiesby in Los Angeles on March 24, 1970.

[70]The New York Times, January 6, 1969, p. 1.

[71]The New York Times, January 17, 1969, p. 20.

[72]The New York Times, January 6, 1969, p. 8.

[73]The New York Times, January 8, 1969, p. 31.

[74]Grant Cooper, a personal interview with Mrs. Suzanne Kiesby on March 20, 1970, in Los Angeles.

[75]Witherspoon v. State of Illinois, U S 20 L. Ed., 2d 1770 (1967).

[76]Ibid.

[77]Ibid.

[78]Ibid., p. 1771.

[79]Ibid.

[80]Voir dire testimony is the legal term for testimony given by the jurors before they are seated on the jury as to information pertaining to the case at hand.

[81]Witherspoon, p. 1773.

[82]Due process of law is the application of the fourteenth amendment to the decision in front of the Supreme Court.

[83]Ibid., p. 1777.

[84]Ibid., p. 1784.

[85]The New York Times, January 17, 1969, p. 95.

[86]The New York Times, July 16, 1968, p. 14.

[87]The New York Times, January 18, 1969, p. 29.

[88]Ibid.

[89]Ibid.

[90]The New York Times, January 25, 1969, p. 28.

[91]The New York Times, January 17, 1969, p. 95.

[92]The New York Times, December 19, 1968, p. 43.

[93]The New York Times, February 4, 1969, p. 16.

[94]The New York Times, January 14, 1969, p. 14.

[95]The New York Times, January 17, 1969, p. 95.

[96]The New York Times, January 18, 1969, p. 25.

[97]Ibid.

[98]Ibid.

[99]The New York Times, January 25, 1969, p. 60.

[100]The New York Times, February 6, 1969, p. 22.

[101]The New York Times, March 16, 1969, p. 15.

[102]The New York Times, January 25, 1969, p. 60.

[103]The New York Times, January 30, 1969, p. 16.

[104]The New York Times, January 10, 1969, p. 34.

[105]Ibid.

[106]The New York Times, January 30, 1969, p. 16.

[107]Ibid.

[108]Ibid.

[109]The New York Times, January 31, 1969, p. 18.

[110]Ibid.

[111]The New York Times, January 9, 1969, p. 16.

[112]The New York Times, February 5, 1969, p. 1.

[113]The New York Times, January 9, 1969, p. 16.

[114]The New York Times, February 12, 1969, p. 21.

[115]Ibid.

[116]Harry Wood, "Diminished Responsibility and Mens Rea," (unpublished article, 1970).

[117]The New York Times, August 3, 1968, p. 16.

[118]The New York Times, August 3, 1968, p. 16.

[119]William Edward Baldwin, ed., Bouvier's Law Dictionary, (Cleveland: Bank-Baldwin Law Publishing Co., 1926), p. 137.

[120]E. E. Witkin, California Crime, Vol. I (San Francisco: Bender-Moss Company, 1963), p. 137.

[121]Wood, p. 1.

[122]Witkin, p. 139.

[123]Ibid.

[124]Ibid., p. 140.

[125]Wolfe, 61 Cal Report 795 (1965).

[126]Ibid., p. 799.

[127]Grant Cooper.

[128]The New York Times, February 27, 1969, p. 28.

[129]The New York Times, March 1, 1969, p. 1.

[130]Ibid.

[131]The New York Times, March 1, 1969, p. 16.

[132]The New York Times, April 2, 1969, p. 23.

[133]John Howard.

[134]Grant Cooper.

[135]The New York Times, March 11, 1969, p. 18.

[136]Ibid.

[137]The New York Times, March 12, 1969, p. 24.

[138]Ibid.

[139]The New York Times, March 13, 1969, p. 24.

[140]The New York Times, March 14, 1969, p. 1.

[141]The New York Times, March 19, 1969, p. 26.

[142]The New York Times, March 16, 1969, p. 31.

[143]The New York Times, March 25, 1969, p. 29.

[144]Grant Cooper.

[145]The New York Times, March 28, 1969, p. 19.

[146]The New York Times, March 25, 1969, p. 1.

[147]Ibid.

[148]The New York Times, March 27, 1969, p. 32.

[149]Ibid.

[150]The New York Times, February 28, 1969, p. 14.

[151]Ibid.

[152]"A Defense for Sirhan," p. 30.

[153]"The Sirhan Trial Begins," Newsweek, January 13, 1969, p. 28.

[154]The New York Times, June 7, 1968, p. 22.

[155]Ibid.

[156]The New York Times, June 8, 1968, p. 1.

[157]The New York Times, June 22, 1968, p. 11.

[158]The New York Times, February 18, 1969, p. 20.

[159]The New York Times, February 19, 1969, p. 22.

[160]The New York Times, May 15, 1969, p. 30.

[161]The New York Times, March 28, 1969, p. 13.

[162]The New York Times, April 5, 1969, p. 10.

[163]Ibid.

[164]The New York Times, March 3, 1969, p. 20.

[165]Ibid.

[166]People v. Sirhan Bishara Sirhan, May 21, 1969, (See Appendix B.).

[167]Letter from Senator Kennedy to Evelle Younger, District Attorney of Los Angeles dated May 18, 1969.

[168]The New York Times, April 9, 1969, p. 18.

[169]The New York Times, April 15, 1969, p. 18.

[170]District Attorney's Office, Weekly Report No. 46, April 23, 1969, p. 1.

[171]Ibid.

[172]Ibid.

[173]The New York Times, April 18, 1969, p. 1.

[174]The New York Times, April 24, 1969, p. 1.

[175]The New York Times, January 14, 1969, p. 1.

[176]The New York Times, January 17, 1969, p. 20.

[177]Grant Cooper.

[178]The New York Times, December 19, 1968, p. 43.

CHAPTER III

RHETORICAL CRITICISM

Procurement of the Text to be Evaluated

It is essential in a rhetorical evaluation of the defense in the Sirhan Bishara Sirhan trial to limit the texts to include those speeches which best express the approach of the defending attorneys. However, before an entire text can be examined it must be obtained. Procuring the text of the Sirhan Sirhan trial was a most difficult assignment.

Unfortunately, up to the completion date of this investigation, the transcript for the Sirhan trial had been neither indexed nor published. Following the formal sentencing, the case was appealed and the immediate transcripts were handed over to those people involved in the prosecution and the defense during the appeal period. The transcripts were in continual use.[1] Four copies of the transcipts were produced after the trial. One copy was given to each of the following: the appellate defense attorney, George Shibley; the appellate prosecuting attorney, John Howard; the Governor of California, Ronald Reagan; and the County Courthouse in Los Angeles.[2] All of these copies were inaccessible unless used in the appropriate offices in California.

According to California law, the court reporter is the only person authorized to sell or reproduce a court transcript.[3] Upon

request, the Los Angeles County Court sent a list of the reporters who covered this particular trial. There were six court reporters in the Sirhan trial: Kathleen Cochrane, Marie A. Flahive, Ronald R. Mastro, Vesta Minnick, Cam Knight and Janet Ward.[4] All of the court reporters were contacted;[5] Vesta Minnick answered saying that the transcript was over 9,000 pages long and would cost 35¢ a page to reproduce.[6] This offer virtually ruled out the purchasing of a transcript.

Ronald Reagan agreed to a transfer of his trancript to Frank Farrar, governor of South Dakota. Frank Farrar subsequently agreed to transfer the transcript to Hilton Briggs, President of South Dakota State University. After some deliberation, however, Reagan decided that shipping the transcript would be costly and risky and he qualified his offer. He agreed to lend the transcript only after all channels had been exhausted.[7]

John Howard, representing the prosecution in the appeal, refused to lend his copy of the transcript even if it was used in his immediate office because he stated that it was in constant use.[8] George Shibley, defense appellate attorney, willingly volunteered his transcript for examination if it was to be used in his office located in Long Beach.[9] On March 20, 1970, this writer went to Los Angeles in order to obtain copies of the transcript. After some complications, John Howard at the request of George Shibley, volunteered the use of his transcript.

Selection of The Texts for Evaluation

Four complete speeches were delivered by the defense in the Sirhan Bishara Sirhan trial. They were the opening address, delivered by Emil Zola Berman; the motion to quash the indictment, delivered by Grant Cooper; the closing argument at the completion of the first trial, delivered by Grant Cooper; and the closing argument heard at the completion of the second trial, delivered by Grant Cooper.

After examination of the transcript and reinforcement from Grant Cooper, only three of these speeches were chosen as being central to the development of the line of argument of the defense. These three speeches were the opening argument and both closing arguments. The motion to quash the indictment was not central to the development of the defense's case because it was not peculiar to the Sirhan trial. As Grant Cooper explained in a personal interview held on March 20, 1970, "the objection to the jury is standard in capital cases." Grant Cooper also saw the speeches chosen for analysis as being the strategy speeches for the defense.[10]

Textual Authenticy

The texts of the chosen speeches were obtained from the official transcript of the Sirhan Bishara Sirhan trial as reported by Vesta Minnick and Cam Knight. The transcript from which these speeches were obtained can be found in the District Attorney's Office in the County of Los Angeles in the custody of John Howard. Because the speeches were

recorded in the official transcript of the People v. Sirhan Bishara Sirhan, there is little doubt as to textual authenticity.

Uniqueness of The Rhetorical Situation

This rhetorical criticism of the defense in the Sirhan Sirhan trial is unique because a defense team is being evaluated rather than a speaker in a singular speaking act. Three separate speeches are being evaluated, which were delivered by two different speakers. These speeches did not represent solely the efforts of the person delivering the speech but rather the team effort of the three defense attorneys.

The above cited situation imposes a limitation on the scope of the attempted rhetorical criticism. The evaluation must be made on the basis of the defense as a team. Final judgment cannot be made on the basis of singular inputs into the speech under analysis. The team effort must be a continual consideration. Another limitation imposed on rhetorical criticism of the Sirhan trial was the limited sampling of texts. Because the transcript was over 9,000 pages in length,[11] it was virtually impossible to analyze the total rhetoric. For this reason, only a limited segment of the rhetoric was criticized. Nevertheless, the speeches chosen represented the main strategy of the defense.

Basis of The Criteria for The Rhetoric Criticism

The basis of the criteria for the rhetorical criticism, unless otherwise mentioned, was Lester Thonssen and A. Craig Baird's

Speech Criticism.[12] Suitable standards of judgment were found in Part V of this text. The basis for the criteria was classical and is, therefore, divided into the five classical cannons of speech: invention, arrangement, style, memory, delivery.[13]

This thesis was begun with the anticipation of receiving information about the delivery of the speeches being analyzed from people in the audience.[14] However, because of a negative response, there was not adequate information from which to draw conclusions on delivery.[15] According to Thonssen and Baird, memory has dropped out of common usage in rhetorical criticism. For this reason, these two cannons were not included in the rhetorical criticism.

Regarding invention, the rhetoric was analyzed under the division of logical proof, emotional proof, and ethical proof. The arrangement of the speeches was criticized on the basis of the emergence of the theme, choice of organizational patterns, and clarity of transitions and main points. The stylistic evaluation was conducted in terms of the attributes of clarity, correctness, appropriateness, and vividness. A judgment on effectiveness follows each critical appraisal. This method of criticism was chosen as the basis for evaluation because of its standardized use in the field of speech.

Invention

Invention can be defined as the context of the speech. It involves the attempt on the part of the speaker to prepare a speech suitable to his purpose. According to Thonssen and Baird, "the concept of invention

includes the entire investigative undertaking, the idea of 'status' and the modes of persuasion--logical, emotional and ethical. . ."[16]

Logical Proof

Logical proof is here defined as the rational demonstration in the speech. In analyzing logical proof, Thonssen and Baird stated that the objective of the critic should be:

> ". . . to determine how fully a given speech enforces an idea; how easily that enforcement conforms to the general rules of argumentative development; and how nearly the totality of the reasoning approaches a measure of truth adequate for purposes of action.[17]

Thonssen and Baird further establish the principal means by which logical proof can be critically analyzed. They are as follows:

1. determination of the intellectual resources of the speaker,
2. determination of the severity and strictness of the argumentative development,
3. determination of the "truth" of the idea in functions existence.[18]

Strategy of the defense

The goals, as they were perceived by the defense, should be established. Once the goals are established, the strategy used to achieve the goals should be determined and critically evaluated. In an effort to determine the effectiveness of the defense strategy, the following critical question will be asked: How wise was the choice of the strategy?

Goals of the defense

There were three lawyers who made up the defense team for the Sirhan Sirhan trial. These lawyers were: Grant Cooper, Los Angeles, Emil Zola Berman, New York; Russell E. Parsons, Los Angeles. These lawyers disagreed to some extent on what the goal of the defense was for this trial.

Russell E. Parsons put the defense of Sirhan in historical perspective when he enumerated three goals. He saw the defense as striving for: 1) an eventual appeal, 2) lengthy postponement, and 3) reduced sentence.[19] Emil Zola Berman and Grant Cooper were rather idealistic in enumerating one goal for the defense.[20] Grant Cooper stated that the defense was attempting to reduce Sirhan's sentence by arguing diminished capacity. Cooper and Berman agreed that any goal other than a reduced sentence was secondary and could not be considered a primary objective.[21]

Obstacles to obtaining the goal

The magnitude of the crime was the primary obstacle to the success of the defense. Sirhan Sirhan was the only political assassin to be successfully brought to justice in the twentieth century. Not only did Sirhan assassinate a popular candidate for the presidency of the United States but he assassinated the brother of John F. Kennedy. This is crucial to an understanding of the circumstances. Four years prior to Robert F. Kennedy's assassination, John F. Kennedy had become the

first American president to be assassinated in the twentieth century. John F. Kennedy had also been the youngest man to serve as President and the only Catholic to hold that office. He was commonly considered a popular President. Robert F. Kennedy shared some of this popular appeal. It would be difficult to overcome the ethical proof inherent in the Kennedy name.

Sirhan himself was another obstacle to the defense. The defense was attempting to establish Sirhan's diminished capacity. When Sirhan was put on the witness stand he appeared extremely well composed and intelligent.[22] His language, his logic and his proved I.Q. were far above normal.[23] He did not appear to be a man of diminished capacity. He was also a cold man who did not invoke sympathy and did not engender a sympathetic response.[24]

A third obstacle of the defense was a lack of ethos. The Friar's Club case did have an effect on Grant Cooper's ethical proof. He had admitted to perjury in front of a Federal Grand Jury.[25] These were some grounds for the jury to doubt Grant Cooper's sincerity. Further, when the prosecution demonstrated that Dr. Schorr, a defense psychologist, had plagiarized on the witness stand this added to the diminishing ethos of the defense team and their witnesses.[26] Even the major line of argument used by the defense, diminished capacity, was under attack in California as being an unjust defense.[27]

A final obstacle that the defense had to cope with was the audience, here defined as the jury, primarily, and, secondarily, the

judge. The most difficult phase of the trial was getting an unbiased jury. Generally, in a capital case, the defense wants liberal-minded people because conservatives are too apt to hand down the death penalty.[28] In this trial, since the liberal-minded people were probably supporters of Robert F. Kennedy, anyone sitting on the jury was more prone to hand down a death sentence.[29] Grant Cooper saw the jury as one of the major obstacles.

Strategies of the defense

Considering the primary goal of a reduced sentence for Sirhan Bishara Sirhan and the obstacles to obtaining that goal, the main strategy of the defense was diminished capacity. Grant Cooper, addressing the judge in closed chambers, saw diminished capacity as the only strategy. It was a regrettable decision for the defense in the Sirhan trial to rely so completely on diminished capacity, since the law of diminished capacity was under attack.[30]

In support of the defense's contention of Sirhan's diminished capacity, the defense subpoened psychiatrists and psychologists to testify. Unfortunately for the defense, the two key witnesses proved to be the weakest to testify on Sirhan's behalf.[31] Dr. Martin Schorr, the first medical witness, was shown to have plagerized portions of his report, as was previously mentioned.[32] The closing medical witness, Dr. Bernard Diamond, gave testimony so alien to the audience that he did not even expect to be accepted.[33]

The defense also compiled a 751 page biography of Sirhan by which to prove the prolonged diminished capacity of the defendant.[34] Emil Zola Berman relied heavily on the facts of the biography for strategy in his opening address. He introduced the circumstances of Sirhan's childhood as being unique.[35] The prosecution found this line of argument easy to attack. Dr. Seymore Pollack, who testified against Sirhan, said:

> Sirhan was motivated by political reasons to assassinate Robert F. Kennedy . . . his early life was common to all Middle East children . . . there was nothing unusual to create psychotic or paranoid conditions.[36]

There were several effective strategies used by the defense to postpone the trial. The trial did not begin until seven months after the assassination of Robert F. Kennedy.[37] The first postponement was granted on the basis of insufficient medical evidence for the defendant to enter a plea.[38] On August 2, 1968, Sirhan pleaded not guilty to the charge of first degree murder.[39] The trial was further postponed until January 5, 1969, because of the late disclosure of the completed defense team.[40]

Once the trial started, the defense made two more attempts at postponement. In one instance, Grant Cooper called for a mistrial on the basis of Friar Club case publicity. He asked for a thirty-day postponement.[41] In another instance, during the argument on the motion to quash the indictment, Cooper asked for a delay on the basis of too little time to evaluate the results of a survey of the Superior Court of Los Angeles judges.[42] Both of these requests for postponements were denied by the judge on the basis that there had been too much delay.

Grant Cooper, in his closing address at the conclusion of the trial for penalty, introduced a new strategy to this case. He attempted to make the jurors realize the responsibility they had in exacting punishment. Cooper continually repeated that Sirhan's life was at the discretion of each juror's individual conscience.[43] The new strategy may have been unfortunate because the audience had to realize the magnitude of their responsibility. They knew that the world was waiting for their decision. Cooper, in his strategy may have magnified the responsibility that the jury already felt.

Conclusions concerning strategy

The critical question asked concerning the strategy of the defense was: How wise was the choice of the strategy? Considering this question, a judgment can be made on the strategies of the defense.

Using the law of diminished capacity could be considered as an unwise decision for two reasons. The first reason was that the principle of law was under attack for being unethical.[44] The use of this principle of law as a strategy would, therefore, automatically reflect on the sincerity of the defense. Secondly, because the law of diminished capacity is so old,[45] there are many proved effective counter arguments. The defense in the Sirhan trial could have been more original in their approach to the law. An alternative method may have been to argue on the basis of political assassinations that reasons for the assassinations need to be explored. Further, there seemed to be no better

way to study reasons for political assassinations than through the mind of the assassin. This approach was only mentioned once in a concluding paragraph of Grant Cooper's final closing address.

Constructing a biography of Sirhan might have been an effective strategy had the defense been able to prove some uniqueness in the biography. By simply reconstructing the atrocities of war and failure, the prosecution could easily refute the biography as being common to many people.

The most pragmatic goals enumerated by the defense were the postponement of the trial and the establishment of grounds for appeal. The strategies used to achieve these two goals were substantially successful.

Inductive process

The process of induction involves reasoning from particular incidents to a general conclusion. Inductive reasoning involves all of the evidence and support that a speaker brings to the speech.[46] The product of inductive reasoning is a generalization which becomes a premise from which deductive reasoning can proceed.

To evaluate the inductive reasoning used in the arguments of the defense in the Sirhan trial, the following critical question will be asked: Was there sufficient evidence from which to make generalizations?

Intellectual Resources

The intellectual stock of a speaker can essentially be defined as his knowledge and experience. The orator should be appraised on his capacity for formulating ideas, on his recognition of the pressing problems of the time, and on his reflective thinking.[47]

According to Thonssen and Baird, a biography is important in criticizing the intellectual resources. They state:

> Recent studies were based on sound precedent, therefore, in stressing the importance of the orator's background for a full understanding of the speeches subjected to criticism.[48]

Biography--Grant Cooper.--Grant Cooper was the chief defense attorney for the Sirhan Bishara Sirhan trial.[49] He was born on April 1, 1903, in New York City.[50] He traveled with the Merchant Marines after high school graduation for two years until he finally settled with an uncle in Los Angeles.[51] He received an LL. B from Southwestern University and was admitted to the California Bar Association in 1927. He served as Deputy City Attorney, Deputy District Attorney and Chief Deputy of Los Angeles before entering private practice. Between 1962 and 1963, he was President of the Board of Regents of the American College of Trial Lawyers and he is presently serving on the Advisory Committee on Fair Trial and Free Press.[52]

Grant Cooper was considered one of Los Angeles' most successful lawyers.[53] Two of his most famous cases are the Finch-Tregoff Murder Case and the recent Danang Marine Case. The Finch-Tregoff Murder Case involved Dr. Bernard Finch and Carole Tregoff who were both

charged with the murder of Mrs. Finch. Cooper staged a reenactment of the crime in his closing argument. This incident has become a classic court drama. In the trial, he was able to obtain two deadlocked juries before the final conviction.[54] Neither one of the defendants received the death sentence.[55]

The Danang Marine Case occurred in 1967 when Cooper flew to Danang to represent a Marine sergeant charged with the murder of a Vietnamese civilian. He was able to obtain a total acquittal for the defendant.[56]

Grant Cooper was generally a well-respected lawyer, except for the Friar's Club Case, who handled the day to day representation of Sirhan in court.

Biography--Emil Zola Berman.--Emil Zola Berman was described in The New York Times as a "living version of Icabod Crane." He was born in 1903 in Lower East Side. During World War II he flew bombers in "Vinegar Joe" Stillwell's personal wing. For his heroism he received a Distinguished Flying Cross, a Bronze Star, and an Air Medal.[57] He was considered one of the best medical testimony lawyers in the United States.[58] In the Sirhan Bishara Sirhan trial, he delivered the opening address and handled the medical witnesses and the medical testimony.[59]

Mr. Berman was a celebrated New York negligence lawyer. Two of his most outstanding cases were the Cravelle Case and the McKeon

Case. Camille Cravelle was a Louisiana Negro charged with aggravated rape of a white woman. With an all white jury and a white judge, Berman succeeded in obtaining only an 18-month sentence for the accused Camille.[60]

In 1956, Berman defended Sergeant Mathew McKeon, a Staff Sergeant on Parris Island. McKeon faced a six-year prison term for ordering a march on Parris Island which resulted in the drowning of six Marine recruits. Berman was able to obtain for McKeon a reduced six-month sentence.[61]

Emil Zola Berman was essential to the defense team because he was in charge of the psychiatric testimony, one of the essential elements in the strategy of the defense.

Biography--Russell E. Parsons.--Russell E. Parsons was in charge of preparing witnesses and planning the strategy to allow for an appeal.[62] He was primarily a legal researcher and he specialized in developing grounds for appeal.[63] He received his law degree from the University of Southern California and he was in semi-retirement at the time of the Sirhan Sirhan trial.[64]

Two of his most famous cases were People v. Cahan and the "Rattlesnake" James Murder Case. People v. Cahan established a precedent in California law. In effect, it made evidence illegally obtained inadmissible in a criminal court in California.[65] In the 1935 "Rattlesnake" James Murder Case, Parsons was able to delay the

final conviction for seven years when all the evidence pointed to the guilt of the defendants from the beginning.[66]

In essence, Russell E. Parsons completed the defense team by specializing in legal research. He was essential and necessary to formulating grounds for appeal during the trial of Sirhan Bishara Sirhan.

Biography--Summary.--The following quotation taken from the January 13, 1969, issue of the Time magazine found on page 28, gives some indication as to the personalities of each of the individual defense lawyers. The article stated: "low-key Grant Cooper . . . . . 73 year-old veteran Russell E. Parsons . . . . . flashy New York trial lawyer Emil Zola Berman."

Intellectual Resources Utilized.--Intellectual resources were more predominantly used in the last closing address than in either of the other two speeches. To develop the body of this speech, the defense, represented through Grant Cooper, used rhetorical questions. The answers provided to the rhetorical questions were opinion or reflective thinking. An example which illustrates reflective thinking, an awareness of the times and the formulating of an idea comes at the closing of the last concluding argument. Grant Cooper stated:

> Is it not more probable that by sending him to the medical facilty at Vacaville . . . something more can be learned about the human mind and what causes people to want to kill and to kill.
>
> Don't you suppose that through this study some other mentally disturbed individual may be cured--or the reasons discovered

> that might prevent--even one future killing--at least one political assassination may be averted.[67]

Grant Cooper also appeared to exhibit a reliance on intellectual resources in the first closing argument heard after the trial for guilt. This was especially obvious when he would apply the law to the situation in the Sirhan trial. The defense did appear to reflect on how the laws applied peculiarly to the Sirhan trial. The body of the speech was devoted to interpreting the law for the audience. In interpreting the law, the defense relied on intellectual resources.[68]

Emil Zola Berman, representing the defense in the opening address, made little use of intellectual resources. In one instance, however, he did formulate an idea from his own opinion. This incident came in the middle of the speech, when quotations from Sirhan's notebooks were being offered as evidence to the defendant's diminished capacity. Emil Zola Berman stated:

> Later in the declaration he also wrote: "The author of this memoranda expresses his wishes very bluntly that he wants to be recorded by history as the man who triggered off the last world war," which I gather he meant the last war to ever be, and there were such other writings, clear evidence of diminished capacity.[69]

At this point, Berman had to be interrupted by the judge and reminded not to get into argument.

Conclusions concerning intellectual resources.--The defense team was composed of three attorneys, each having a different specialized field. As a team they had the use of the intellectual resources of

Russell E. Parsons, a specialist in the law; Emil Zola Berman, a specialist in medical law and testimony; and Grant Cooper, a specialist in criminal law.

The defense utilized intellectual resources most successfully in the first closing argument. The poorest use of these resources came in the opening address because a hasty generalization was made. At that point, the judge had to interrupt the speaker to remind him not to get into an argument.[70]

Research resources

Research resources can be commonly defined as evidence. Evidence, according to Thonssen and Baird, is "the raw material used to establish proof." It can include testimony, personal experience, statistics, examples, or "any so-called 'factual' items "which induce in the mind of the hearer or reader a state of belief--a tendency to affirm the existence of the fact or proposition to which the evidence attacks and in support of which it is introduced."[71]

According to Thonssen and Baird, the critic's chief function in analyzing research resources is to test the speaker's evidence to determine whether it serves as an adequate and valid substructure of reasoning.[72] In other words, the evidence has to be strong enough to support the conclusions drawn from it.

The defense attempted to obtain the goal, established in Chapter II, of a reduced sentence for Sirhan Bishara Sirhan by using

four different approaches. These four approaches were defined as follows:

1. To develop Sirhan as a loner who was controlled by impulse.
2. To develop a three volume, 751 page biography showing the effect of Sirhan's childhood on his life development.
3. To examine 20-25 witnesses on the stand comprising of psychiatrists and psychologists and, finally, Sirhan and his mother to prove diminished capacity.
4. To prove the effect of head injuries received during a fall from a horse in 1966 when Sirhan worked as an exercise boy at the Granja del Vista ranch.[73]

In a closed chamber session with Mr. Fitts, Mr. Compton, Mr. Parsons, Sirhan, and Judge Walker present, Mr. Cooper stated the main line of argument that the defense intended to use. He said: "I have no hesitancy in stating on the record that the defense in this case will be that of diminished responsibility."[74]

The previous discussion on the M'Naughton Rule and its development in California (Chapter II) gave four alternatives for a defense attorney to use in California if relying on M'Naughton. The defense in the Sirhan Sirhan trial chose the theory of diminished capacity. For a better understanding of this theory, the ideas involved should be further developed. Under the traditional M'Naughton Rule there was either the complete defense of legal insanity or no defense at all. In other words, if the defendant was found capable of distinguishing between right or wrong, he was held fully responsible for the crime regardless of partial insanity or other mental defects. The rule of diminished responsibility was incorporated into the English

Homicide Act in 1957 and it allowed the consideration of mental abnormalities which substantially impaired responsibility. The effect of the proof was not a complete defense but a reduction in the degree of the crime from, for example, murder to manslaughter.[75]

This line of defense limited the research resources to psychiatric and psychological testimony. What had to be proved was that Sirhan had a sufficient degree of insanity to impair his conscious decision making process at the time of the crime. The psychiatric testimony was, therefore, essential to the Sirhan trial. The two main witnesses were already stated as being Dr. Martin Schorr and Dr. Bernard Diamond.

A second research tool for the defense was the law itself. In the motion against the jury selection process in California, the defense relied on the Witherspoon decision. The defense wanted to "set aside the plea of not guilty for the sole and only purpose of making a motion to quash the indictment."[76] To further support the motion, the defense used testimony presented to the court during People v. Castro, a case being heard at the same time as People v. Sirhan Bishara Sirhan.

Further use of the law came when Cooper proposed a mistrial because testimony heard in closed chambers about a possible "bargaining" for Sirhan's life had been released to the press by unknown sources. Cooper said that the headlines in the Los Angeles Times read, "Sirhan Will Plead Guilty to First Degree Murder."[77] Cooper based the defense for the motion for a mistrial on a combination of the Shepard decision

and the anti-publicity order issued by the court to cover the Sirhan trial.[78]

Further, the defense relied on a Brandeis Brief as a research tool.[79] The defense researched Sirhan's socio-economic condition and attempted to show a correlation with his development. The defense developed a complete biography of Sirhan, 751 pages long.[80] The biography was introduced as evidence to Sirhan's social condition. The defense also put Sirhan and his mother on the testimony stand, asking them about Sirhan's childhood in Jerusalem.[81] This completed the development of the Brandeis Brief.

The defense in the Sirhan Bishara Sirhan trial had four main research resources that they utilized throughout the trial. They were as follows:

1. Psychiatric testimony;
2. Previous legal decisions;
3. Statistical studies;
4. Brandeis Brief.

Appraisal of the process of induction

Berman's use of evidence might have been inadequate. He asked the jury not to accept his word but to believe the future testimony of the psychiatrist and the psychologist. The speech was completely undocumented, except for the appeals to future testimony, although the speech consisted of a biography of Sirhan. The speech took the audience from Sirhan Sirhan's early days in Palestine to the moment

of the assassination of Robert F. Kennedy. The major emphasis in the biography as presented by Berman was to show the progression of developing "spells" in the defendant. These spells were traced back to their origins during the first Arab-Israeli conflict and followed through maturity into Sirhan's mystical phase.[82]

Berman used inductive reasoning to arrive at his main generalization. He enumerated ten instances in Sirhan's life when the defendant was not in control of his senses. One of these instances was:

Analysis of the deductive process

It has already been shown that Emil Zola Berman arrived at the generalization that Sirhan was of diminished capacity with insufficient evidence.

Once Berman had arrived at this generalization from a studied biography of the defendant, he argued deductively that Sirhan should receive a reduced sentence according to California law. The major premise was implied in the enthymeme presented by Berman. The premise implied that according to California law, no one of reduced mental capacity could be tried for first degree murder. The generalization, stated above, formed the minor premise and the conclusion as stated by Berman was:

> Sirhan did not have the mental capacity to have the mental states required of murder: namely, maturely and meaningfully premeditate, deliberate or reflect upon the gravity of his act, nor from an intent to kill, nor to harbor malice aforethought, as these are defined by the laws of California.[101]

This was the extent of the deductive process used in Berman's opening address.

Cooper, in both of his closing addresses, relied more extensively on deductive reasoning than on inductive reasoning.

Grant Cooper reasoned deductively in his closing address after the first phase of the trial had concluded. The speech was organized around one major enthymeme. He formed the generalization for the major premise from the testimony heard throughout the trial. This

major premise was implied but not stated. It consisted of a statement that Sirhan Sirhan was of diminished capacity.[102]

Throughout the entirety of the speech, Cooper reasoned inductively by complete examination of the laws, that a person of diminished capacity was not liable for first degree murder charges. The generalization which resulted formed the minor premise. This premise was stated as follows:

> . . . under the evidence in this case and the law as his Honor will give it to you, and the testimony of expert witnesses who testified for the defense in this case, you very well could find a reasonable doubt as to whether or not there is malice aforethought; . . . in which case--malice aforethought is an essential element of murder, be it first degree or second degree.[103]

From these two premises, Cooper drew the conclusion that Sirhan could only be found guilty of second degree murder or manslaughter. Thus, he concluded: "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."[104]

The syllogism presented and supported by Cooper in the first closing argument can be paraphrased as follows:

> Sirhan Sirhan is of diminished capacity. According to California law a man of diminished capacity is not responsible for first degree murder. Therefore, Sirhan is not responsible for first degree murder.

In the final closing argument, the defense represented by Grant Cooper, used deductive reasoning to arrive at their final conclusion. The defense in this last closing argument used a chain

of reasoning. The first proposition was that the jurors had found Sirhan guilty and now had to decide between life imprisonment or death. Cooper stated this as follows:

> You the jurors whom fate and law have destined to judge, have decided that Sirhan Bishara Sirhan is guilty of the crime of murder and have fixed it to be of the first degree . . . These are your only alternatives--life imprisonment or death by cyanide gas in the gruesome little green room at San Quentin.[105]

The second proposition put the burden of the decision on the consciences of the jurors. The premise resulted from the instruction given by the judge and explained in detail by Cooper. Cooper stated:

> Beyond prescribing the two alternative penalties, the law itself provides no standard for the guidance of the jury in the selection of the penalty, but, rather, commits the whole matter of determining which of the two penalties shall be fixed to the judgment, conscience and absolute discretion of the jury.[106]

In a third proposition, Grant Cooper stated that any murder was wrong and that revenge was bad. There appeared to be the implied premise that all of the jurors were good people. Therefore, if murder in any form was unjust, their consciences would force them to grant Sirhan Sirhan his life. The third premise was stated within the context of the speech as follows:

> Taking the life of a human being--as Sirhan took Senator Kennedy's is a degrading act--it not only degrades Sirhan--but it degrades the country as well. But so also--when the law through the intervention of a jury--takes the life of a human being--it too degrades us all.[107]

A final proposition attempted to show the death sentence as being unjust and simply contributing to violence. The premise seemed to be an extention of the idea stated above, it was so worded:

> Sirhan, as you know, though culpable, is the product of division and of hatred and of violence. And if the United States is divided, so is the world, if the United States is full of Hatred so is the world, if the United States is full of violence, so is the world.[108]

The final conclusion in the speech, drawn from the four propositions that have been stated, was stated as follows by Grant Cooper:

> Ladies and Gentlemen of this jury, I beseech you to spare Sirhan's life--for I truly believe that a decision of life imprisonment, in its stead, would be in complete harmony with and would carry forward the true spirit of Senator Kennedy's plea for compassion. . .[109]

In the last closing argument for the defense the chain reasoning can be paraphrased as follows:

1. Since the jurors found Sirhan guilty of first degree murder, they have the choice between life imprisonment and death.
2. There is no guideline for the jurors decision except their own conscience.
3. The jurors are morally good people and should make a moral decision.
4. Murder and revenge are morally wrong.
5. The death sentence is murder and revenge.
6. Therefore, the jurors should not sentence Sirhan to death but rather to life imprisonment.

Conclusions

Were the conclusions arrived at logically? According to the rules of syllogisms, the facts alledged in the premises must be true.[110] Therefore, if one of the premises was drawn with insufficient proof, the conclusion was invalid.

According to this criteria, Berman did not succeed in arriving at a logical conclusion because his minor premise, which was a result of his deductive reasoning was not proved to be true. If one of the premises has not been sufficiently proved to be true, then the conclusion can not be valid.

Cooper, in his first closing argument, did seem to reach a logical conclusion at the end of the speech. In the second closing argument, many of the propositions in the chain reasoning were a result of emotional proof but not logical proof. The third and fourth propositions were virtually unsupported and easily attacked. Neither of the propositions had been preceeded by sufficient inductive reasoning and, therefore, neither of the propositions had been proved to be true. The deductive argument in the last closing address was weak and easily refuted. The argument did not seem to be strong enough to support a logical conclusion.

Ethical Proof

Ethical proof or ethos was defined by Aristotle in his Rhetoric when he said:

> The instrument of proof is the moral character when the delivery of the speech is such as to produce an impression of the speaker's credibility, for we yield a more

> complete and ready credence to persons of high character not only ordinarily and in a general way, but in such matters as do no admit of absolute certainty but necessarily have room for difference of opinion, without any qualification whatever.[111]

Ethical proof is the character of the speaker as perceived by the audience. Ethical proof can be divided, as it was by Aristotle, into the character, knowledge and goodwill of the speaker.

Perceived character of the defense attorneys

The character of the speaker can be defined as an attempt on the speaker's part to make himself appear virtuous. There are several ways in which the speaker can focus attention on his character. Those are as follows:

1. To associate himself or his message with what is virtuous.
2. To bestow praise upon himself, his client or his cause.
3. To link his opponent or his opponent's cause with what is not virtuous.
4. To remove or minimize unfavorable impressions of himself or his cause previously established by his opponent.
5. To rely upon authority derived from his previous experience.
6. To create the impression of being completely sincere.[112]

The critical question that should be asked in an effort to evaluate the effectiveness of the perceived character of the speaker is: How effectively were character resources utilized by the speaker?

Emil Zola Berman, speaking for the defense in the opening address, appeared to create the illusion of sincerity. He seemed to build his ethos by gaining the trust of the audience. He made three attempts to establish character in the opening address. The first attempt was at the beginning of the speech. He introduced his speech by saying:

> It is not the time nor is it our intention to persuade you but to give thy picture of the entire case so that the evidence which comes to you piecemeal from witness after witness, you will understand what relationship that bears to the total picture.[113]

In this opening statement, Berman attempted to build a trust in his purpose and in the goal of the defense. This is especially apparent in the words: "it is not our intention to persuade you."

Berman did not appear to build any personal ethos but rather to hint at the ethical proof of future testimony. Twice he referred to the ethos of the psychiatrist and psychologist who would testify as to Sirhan's diminished capacity. The first reference to future testimony came after the first point in the body. Berman said: "This is not Berman talking now. This is what you will hear from great doctors in psychiatry, psychology and other social sciences."[114]

The second reference to the testimony involved in the trial came as a summary to the body of the speech. The passage follows:

> I do not expect, nor is it my desire, that you accept my statements as evidence. I tell you these matters because we will prove them through great men in the fields of psychiatry and psychology--by tests that run the gamut of hypnosis, interviews, and known and accepted psychological tests and testing procedures.[115]

Berman, in asking the audience not to believe him, showed a certain amount of honesty and integrity. His cause appeared virtuous because he was supported in his knowledge by great doctors. He was sincere in saying that he was not a qualified authority.

Grant Cooper, in delivering both of the closing arguments, seemed much more concerned than Berman in building personal ethos. He opened his argument in the first phase of the trial by thanking the judge, the prosecution and the jury for the patience they exhibted during the trial. In the opening remarks concerning the prosecution, he stated:

> You had the opportunity of hearing one of the finest opening arguments for the prosecution that I have heard in my forty-one years at the bar--and I want to again thank you, Dave Fitts, my old friend, for the fine argument. It put a heavy burden on me, someone who is to conclude the argument, the last argument on behalf of Sirhan Bishara Sirhan.[116]

In this one statement, the defense seemed to establish its friendship with the prosecution and the defense's sense of fair play. Cooper also seemed to establish his experience on the bench as being forty-one years. He seemed to exhibit a sense of humility and optimism for the outcome of the trial. This optimism was especially apparent in the phrase, "the last argument on behalf of Sirhan Bishara Sirhan." Since the only condition under which the first closing address would be the last argument was if Sirhan received a reduced penalty, Cooper's last statement was optimistic.

Grant Cooper further seemed to develop his friendship with the prosecution throughout the argument. An example of this was as follows:

> But contrary to what my friend David Fitts said yesterday--I am sure that he didn't think it through or he wouldn't have said it--it's not the duty of a lawyer to free a guilty man. Do you remember, Dave--Mr. Fitts, pardon me--[117]

Grant Cooper made continual reference to his sense of obligation to the law and to the jurors. He defended the right to represent Sirhan by the use of a quotation from Section 6668 of the Business and Professions Code of the State of California. He drew from this the conclusion that it was a lawyer's responsibility to represent a guilty man, not to free him. He added that in the Sirhan Sirhan trial, the defense fulfilled this duty. He said:

> First a sense of obligation and duty to our client, Sirhan Sirhan; and secondly an obligation to society. And I hope and trust that when this case is finished both sides will have done it with the highest efficiency of the legal profession.[118]

Further into the quotation mentioned above, Cooper attempted to erase an unfavorable impression that the prosecution had leveled against the defense. He used the Business and Professions Code of the state of California to support that the defense had only obliged the obligation of their job by defending Sirhan. He reminded the audience, "that it is [our] duty to represent them, not to free a guilty man."[119]

Cooper exercised humility in presenting his argument. He flattered the audience and made himself appeal to their good consciences. He said: ". . . we know that you are going to do an honest and conscientious job, I don't say that for the purpose of flattering you . . . you can see through that very fast."[120] He continually identified with the standards that he saw in the audience. For example, he said, "I wouldn't want Sirhan turned loose on society."[121] Cooper identified his cause with what was perceived as virtuous. He reinforced, throughout the speech, his desire to see Sirhan punished

for his deed. He reminded the audience that he did not want an acquittal.

In this last closing argument, the defense, represented by Grant Cooper, tried to create the impression of being completely sincere. They asked the following questions of the audience: "Why am I here? Because I have defended Sirhan Sirhan as I--or have I advocated or condoned murder? I abhor it as much as you. Have we not been honest with you? Have we not been consistent in our point of view?"[122]

The defense also tried to associate itself with the audience and with what was virtuous. There were repeated references made to the Bible and to God. Passages were quoted from the Bible to support the defense cause.[123] They attempted to associate their cause with Christian morality.

Conclusions

The defense in the Sirhan Sirhan trial attempted, mainly, to show their sincerity to the audience. In all the speeches there was an attempt at reinforcing sincerity in the goal of the defense.

The defense did make an attempt at establishing character in the speeches. They associated themselves and their cause with what could be perceived as virtuous, especially in the second closing argument. Grant Cooper also used refutation in the first closing argument to defend the defense team against attacks made on their purpose. This was handled quite effectively since he supported the defense cause by the Business and Professions code.

Perceived knowledge of the defense

The knowledge exhibited by the speaker helps to build his ethos because it makes him appear to be a more believable source. The speaker helps to establish his knowledge in various ways. These methods are as follows:

1. if he exercises common sense,
2. if he acts with tact and moderation,
3. if he displays good taste,
4. if he reveals a broad familiarity with the interest of the day, and
5. if he shows through the way in which he handles speech materials that he is possessed of intellectual integrity and wisdom.[124]

To evaluate the effectiveness of the defense in establishing their knowledge, the following critical question will be asked: How effectively did the defense utilize perceived knowledge as ethical proof?

Emil Zola Berman, in the opening argument for the defense seemed to make little use of appealing to his own knowledge. In one instance, after quoting from Sirhan's notebooks, he said that according to his knowledge, what Sirhan had written was clear evidence of diminished capacity. At this point, the judge had interrupted the speech to remind Berman that he was getting into argument and that he was not to argue to the jury.[125] This did not have a positive effect of building Berman's ethos.

Although Berman never established his knowledge of Sirhan's biography, the speech was virtually undocumented. The jury was challenged to believe what Berman had to say about Sirhan's life

without knowing if he was knowledgable on the subject. He did not attempt to establish himself as an authority, yet he relied on his personal knowledge as evidence. This was a major weakness in the opening address.

Grant Cooper, in delivering both of the closing arguments, showed that he possessed a deep understanding of the law. In both speeches he cited the law extensively and interpreted the legal principles for the audience. His authority was established when he mentioned in opening the first closing argument that he had forty-one years of experience.[126] In the first closing address, he developed the body of the speech around an interpretation of the law. In the second closing address, he interpreted the judge's instructions for the jury.[127]

In concluding the second closing address, Cooper further revealed common sense when he related the story of Cain and Abel. He said:

> So far as my knowledge goes--probably the first recorded murder was when Cain slew Abel. How many thousands of years ago that was--I do not know, but I know that since that date--there have been thousands upon thousands of murders committed--in other lands and in ours. And in response to those murders--there has been retaliation--in the form of revenge--and in the form of lawful death penalties--but the murders have continued and still continue--and unfortunately will continue--regardless of what you do here. Violence begets violence--Violence breeds violence.[128]

He also relied on the ethos of Robert F. Kennedy, quoting from his Cleveland speech at the conclusion of the argument. The quotations

from the Senator advocated compassion and mercy. Most of Kennedy's remarks were delivered the day after the assassination of Martin Luther King. An example of the type of remark quoted was: "Whenever any American's life is taken by another . . .whether it is done in the name of law or in defiance of the law . . . the whole nation is degraded."[129]

Conclusions

How effectively did the defense utilize perceived knowledge as ethical proof?

In answer to the above question, considering the criteria established, Emil Zola Berman made poor use of perceived knowledge. First, he didn't seem to establish himself as a valid authority to speak on Sirhan's biography. He seldom authenticated his knowledge. The audience was given a weak basis from which to perceive Berman as being knowledgable. Second, he exercised little restraint or tact when the judge had to interrupt his speech to tell him that he was out of order. This may have been counterproductive to establishing ethical proof.

Grant Cooper did effectively use his background and knowledge to strengthen his ethical proof. This was apparent in the first closing argument when he interpreted the law and related it to the Sirhan Sirhan trial. Again, in the second closing argument, Cooper interpreted the law and exercised common sense.

Perceived good will of the attorneys

The speaker's good will can be defined as his sincere belief in his goal. In essence, good will is the speaker's conviction to his cause. Good will also relates to how truthful a speaker is to his audience and to what extent the audience feels they can trust the speaker. The speaker's good will can be revealed in several ways. These methods are as follows:

1. To capture the proper balance between too much and too little praise of his audience.
2. To identify himself properly with the hearers and their problems.
3. To proceed with candor and straight forwardness.
4. To offer necessary rebukes with tact and consideration.
5. To offset any personal reasons he may have for giving the speech.
6. To reveal his personal qualities as a messenger of the truth.[130]

The critical question that should be asked in an effort to evaluate the speaker's good will is: How effectively did the attorney's communicate on attitude of trustworthiness?

In the Sirhan Sirhan trial, two incidents outside of the rhetoric have to be considered in a discussion of the perceived good will of the attorneys. These incidents were the Friar's Club case and the psychiatric testimony for the defense.

The Friar's Club case

Concurrent with the Sirhan trial, Grant Cooper was facing a Grand Jury investigation before a Federal Court.[131] Grant Cooper had represented the defendant in the Friar's Club case, a major card-cheating trial.[132] As the defense lawyer, Cooper had illegally

obtained a secret Federal Grand Jury transcript. He committed perjury in front of the court when he was questioned as to how he obtained the transcript.[133]

On January 5, 1969, Grant Cooper admitted to the Grand Jury investigation that he had in his possession during the defense of his client in the Friar's Club case unauthorized transcripts of four Federal Grand Jury witnesses. He also admitted that he had lied in court about the source of these transcripts.[134] On January 6, 1969, Cooper refused to testify on the issues involved in the investigation on the grounds that his testimony would injure the lawyer-client relationship.[135]

Because of the unfavorable publicity that the defense attorney was receiving, Cooper made a secret motion in closed chambers for a mistrial. He felt that the publicity had destroyed his ethos as the defense counsel. Therefore, on the grounds that recent publicity about the Federal Grand Jury investigation was prejudicial to Sirhan's right to a fair trial, Grant Cooper asked for a mistrial.[136] He wanted a "cooling off" period of thirty days or more before calling the case again. He called seventeen witnesses to testify before the judge in closed chambers.[137] His reasoning was as follows:

> . . . I was counsel in a case in Federal Court before Judge Grey, entitled People v. Maurice Friedman and others, commonly referred to as the Friar's Club Case, which was a case that took five and a half months to try. During the course of that trial, there became extant a transcript that apparently had been obtained illegally in some fashion. Four of the copies of that transcript came into my hands and there is now an inquiry before the Grand Jury as to my possession of those four Grand Jury transcripts.

> I can say here and now, as I stated before the Federal Grand Jury, that I myself had nothing to do directly or indirectly with the obtaining of those transcripts in the first instance. The matter has been widely publicized in the Press and the investigation with respect to those transcripts is now continuing on . . . . .
>
> I have been concerned about bringing this matter up because I felt that if I was tarnished some of the tarnish might rub off on my client . . .[138]

The judge denied the motion and this established a further ground for appeal.[139] The appeal could be based on the unfavorable publicity that the chief defense attorney, Grant Cooper, received during the Sirhan trial because of the Friar's Club case.

The psychiatric testimony for the defense

Emil Zola Berman, in discussing his opening address, said that he intended to argue, not in psychiatric terms, but in common English that Sirhan was of unsound mind and in a state of diminished capacity at the time of the fatal shooting of Robert F. Kennedy. Berman wanted to prove that Sirhan could not have given the act the rational and mature consideration necessary for first degree murder.[140] Berman stated that the main problem would be to build ethical proof for the field of psychiatry. In his own words: "The problem will be to persuade them that this is a real defense for Sirhan and that psychiatry is not witchcraft or alchemy."[141]

Chapter II contained a review of Dr. Martin Schorr's testimony. Dr. Schorr was the first of a series of psychologists and psychiatrists to testify in the Sirhan trial. During his testimony, the prosecution injured Schorr's ethos by proving plagerism on his part.[142]

During cross-examination, the prosecution asked Schorr to clarify statements that he had made in a letter to Grant Cooper on July 10, 1968. The wording of the letter hinted that Schorr was anxious to plan the testimony and to help "pack" the jury. The paragraph referred to by the prosecution read as follows:

> I would like to help you very much in the matter of pre-planning jury selection on the basis of personality dynamics of the client, since so many headaches can be avoided if proper jury selection turned to the emotional needs of Sirhan can be met prior to the trial.[143]

After Schorr had completed his entire testimony before the court, the prosecution attempted to prove that portions of Schorr's written report, submitted as evidence to the court, had been copied from another work. The prosecution in arguing an objection stated the following:

> This is the most dishonest thing a witness can do before this court or any court. What the defense witness did was to take out language . . . I believe, your honor, that it is vital that the jury see this at this point.[144]

The prosecution asked the defense witness, Schorr, to read a paragraph out of his text submitted to the court and then to read a paragraph from the book, A Casebook of a Crime Psychiatrist. The paragraphs cited read as follows:

> A Casebook of a Crime Psychiatrist
> She, whom he loved, never kept her pledge, and he began to feel that she really didn't love him. Pain had to be repaid with pain, and since the unconscious always demands the maximum, the pain had to be death.
>
> Now, his prime problem was the conflict between instinctional demand for her death and the realization, through his conscience,

> that killing one's mother is not socially acceptable. The only solution was to look for a compromise. He did. He found a symbolic replica of his mother, killed her, and took the valuables that stood for her most precious possessions--the thing she had denied him; her love.[145]
>
> Dr. Schorr's Report
>
> She, whom he loved, never kept her pledge and now his pain had to be repaid with pain. Since the unconscious always demands maximum penalties, the pain has to be death. Sirhan's prime problem becomes a conflict between instinctional demand for his father's death and the realization through his conscience that killing his father is not socially acceptable. The only real solution is to look for a compromise. He does. He finds a symbolic replica of his father in the form of Kennedy, kills him, and also removes the relationship that stands between him and his most precious possession--his mother's love.[146]

The prosecution was able to successfully injure the ethos of Martin Schorr and to jeopardize the integrity of all further psychiatric testimony. Grant Cooper stated the situation that the defense found itself in after Schorr's testimony as follows: "Dr. Schorr ruined the credibility of the psychiatric testimony. He destroyed our major building block."[147]

Perceived good will in the rhetoric of the defense attorneys

Emil Zola Berman, in introducing the opening address, attempted to establish the good will of the attorneys when he told the audience that the defense was not trying to persuade them, but, rather, to inform them.[148] He again tries to establish his good will when he asks the audience not to believe what he has to say but to rely on the testimony of great doctors in psychiatry and psychology.[149]

Cooper, in representing the defense in both closing arguments, appeared to be weak in establishing good will. In both speeches he did not seem to show good taste in flattering the audience. He seemed to praise the audience to such an extent that his attempt became clumsy. An example of this occurs in the first closing argument when Cooper said to the jury:

> Now I didn't mean to omit that I wanted to thank you ladies and gentlemen of the jury for the attention and the diligence you have shown. Mr. Berman remarked to me and so did someone on the other side of the table, that you have taken notes, and we know that you are going to do an honest and conscientious job. I don't say that for the purpose of flattering you, because flattery doesn't get you anywhere. You can see through that very fast.[150]

In the second closing address, the defense proceeded with candor and straight forwardness. In this speech, Cooper put all of the emphasis on the jury and he used their thinking to prove his point. An illustration of this is: "I shall reason with you from the premise you have established."[151] He also reminded the audience continually that he did not want to see Sirhan go unpunished. He admitted that the only difference between the defense and the prosecution was in degree of punishment. Cooper used this same approach in the first closing address as well.

Conclusions

Considering the obstacles that the defense had to overcome to establish their good will, it would have been very difficult for the defense to be effective.

With the lack of trust that the jury must have perceived in Grant Cooper because of the Friar's Club case, it was an unfortunate choice to over praise the audience. Cooper's over praise of the audience could have easily served to reenforce any distrust that the audience had towards the defense and Grant Cooper. This was probably the most unfortunate attack. Cooper could have chosen to prove his good will. Berman appeared to make the most successful attempt at establishing good will.

Emotional Proof

Emotional proof is designed to put the listeners in a frame of mind to react favorably and conformably to the speaker's purpose.[152] The basic consideration is the adaptability of the speaker to the human behavior found in the specific group of listeners that he is addressing. The speaker should be able to adapt what he has to say to the peculiar audience conditions facing him.[153]

Emotional proof is also the ability of the speaker to touch the feelings of the audience with what he has to say. It is an attempt to relate to the audience's moral convictions and emotions. Another word for emotional proof is pathos.

Audience analysis

There were two indications given during the trial as to how the defense analyzed the audience. The first indication came from Emil Zola Berman when he said that the main problem would be to convince the jury that diminished capacity was a real defense. He also

stated that the jury would have to be convinced that psychiatry was not a form of alchemy or witchcraft.[154] Grant Cooper gave the second clue as to audience analysis. He stated that the jury was probably predisposed to send Sirhan to the gas chamber because of the peculiar circumstances surrounding the trial. As was previously stated, generally in a capital case the defense wants a liberal jury. In the Sirhan trial the liberal juryman was probably a Kennedy supporter. Therefore, an impartial jury was nearly impossible.[155]

In the Sirhan Sirhan trial there were many inputs that the defense could have recognized as affecting the audience. It is difficult to determine exactly how adequately the defense analyzed the audience except through a study of how they adapted to the audience. For this reason, emotional proof in the rhetoric of the defense in the Sirhan trial will primarily be a study in audience adaptation.

Audience adaptation

The speaker should analyze the audience to whom he will speak in an effort to adapt his material to the hearer. Adaptation can be defined as an adjustment to the variables of human behavior found in an audience. The speaker should always expound his views with forethought of the emotional makeup of the audience. He should have an awareness of the possible reactions of the audience to the speech.[156]

The critical question that should guide an investigation into the use of emotional proof is: How well did the attorneys adapt to the peculiar audience conditions?

The dominant appeal in Emil Zola Berman's opening address was emotional proof. Berman seemed to attempt to arouse a feeling of sympathy for the defendant throughout the speech by showing Sirhan as a product of his environment.

In the first section of the speech, Berman reconstructed Sirhan's childhood. The biography of Sirhan's early life as presented by Berman was laden with pitiful detail. He seemed to be trying to arouse sympathy for the defendant. He enumerated instances of war and death as they occurred in Sirhan's life. Examples of these incidents were as follows:

> . . . he saw a little girl's leg blown off by a bomb, and the blood spurting from below her knee as though from a faucet . . . On another occasion a bomb exploded outside the window of the Sirhan flat and tore apart the body of a man.[157]

The violent conditions of war that surrounded Sirhan's home were also described by Berman. He said: "The shooting took place on the very street where he lived in Jerusalem. In fact, the street became the dividing line between the Jews on one side and the Arabs on the other."[158] Berman went on to describe Sirhan's home in terms of war. "One night, the very building he lived in became a machine gun nest, and on another night his very home was bombed."[159]

Berman continued into the speech by describing Sirhan's social conditions in the United States. Berman described Sirhan as a failure in college, as a failure at betting the horses, and as a failure as a jockey. Even in discussing Sirhan's high school career, Berman said:

"--Because it was a fact--he was an outsider. He just didn't fit in. He was someone who didn't belong."[160]

Berman continued to show how Sirhan had longed for success. He presented Sirhan as a product of the "American dream." He said:

> In his fantasies he was often a hero and a saviour of his people. In the realities of life, however, he was small, helpless, isolated, confused, and bewildered by emotions over which he had no control. He was unable to plan or think clearly, unable to maintain any meaningful direction to his life."[161]

Berman, in this passage, appeared to be identifying with the feelings of inferiority and failures apparent in many people of commons status in the United States. He was attempting to establish an identity between the defendant and the members of the jury. He was giving the jury a basis from which to understand Sirhan.

In the closing portion of the speech, Berman again relied on emotional proof. He put the burden of Sirhan's life on the shoulders of the jurors and appealed to their sense of justice and righteousness. He closed by saying: "We ask you to let justice be done."[162] He gave to the jury the responsibility of justice in this closing statement.

Grant Cooper did not rely heavily on emotional proof in his first closing address heard at the completion of the trial to establish guilt or innocence. In several instances, however, he tried to identify with the feelings of the audience. It appeared as though he sensed that the audience was predisposed to find Sirhan guilty of first degree murder regardless of diminished capacity. Because of the lack of ethos

in the psychiatric testimony for the defense, this would be a reasonable assumption. Also, considering the popularity of Robert F. Kennedy, Cooper could assume that the jury was inherently biased against the defendant.

Grant Cooper did attempt to identify with the feelings of animosity that he must have sensed in the audience.[163] Four times during the duration of the speech, Cooper reiterated that Sirhan was guilty and should be punished. He repeated that the defense was only arguing how Sirhan Sirhan should be punished. At the outset of the speech, Cooper said: "We tell you as we always have that he is guilty of having killed Senator Kennedy."[164] He went on to say: "Again, not with any hope or any desire of letting Sirhan Sirhan loose, but to put it in proper and I hope in intelligent perspective."[165] Later, in a discussion of circumstantial evidence, Cooper reiterated Sirhan's guilt: "We are not asking for not guilty--as to the difference between the degrees of guilty; whether it should be murder in the first degree, second degree or whether it should be manslaughter."[166] In a concluding statement, Cooper made his final appeal in agreement with Sirhan's guilt. He said: "I wouldn't want Sirhan Sirhan turned loose on society . . . as he is dangerous, especially when the psychiatrist tells us that he is going to get worse and he is going to get worse."[167]

Throughout the argument, Cooper appeared to identify with an audience which he perceived as being hostile to the defendant. He attempted to analyze their sentiments and to incorporate them into his

speech and associate himself with the same ideas. In projecting himself into the sentiments of the audience, Cooper used emotional proof.

Grant Cooper relied predominantly on emotional proof in his second closing argument, presented at the closing of the trial to determine the penalty for first degree murder. His first approach was to identify with the Christian ethic in the audience. He often made reference to God, the Bible, and love. An example of this appeal can be found in the opening statement of the speech. Cooper said: "You are gathered here today to determine the ultimate issue--an issue that should be God's alone[168] . . . to the best of your God given ability."[169] In closing the speech, Berman reminded the jury of their duty as God-fearing people. He said:

> The Bible teaches us that "Love is reflected in love"--but how many of us heed this teaching--instead it is hate--hate--hate--violence--violence--violence--war--war--war--when will we ever learn that "love is reflected in love."[170]

He gave the jury the responsibility of Sirhan's life and argued that the only guideline by which the individual jurors could make their decisions was their individual consciences. He put the final burden on the individual members of the jury from the beginning of the speech. He said:

> Beyond prescribing the two alternative penalties, the law itself provides no standards for the guidelines of the jury in the selection of the penalty, but, rather, commits the whole matter of determining which of the two penalties shall be fixed to the judgment, conscience, and absolute discretion of the jury.[171]

Cooper seemed to be attempting to make the individual sitting on the jury conscious of his responsibility to himself. He seemed to be attacking the very premise of the power that each of the jurors exercised. Grant Cooper appeared to use the theory of cognitive dissonance,[172] hoping to support the dissonant element and to reenforce the individual in a decision for Sirhan. He said:

> . . . because the law says: It is your own judgment--each separate judgment that must speak--It means that your individual conscience must be satisfied, not the conscience of any one of the other eleven.[173]

Cooper attempted to reenforce any doubt in the juror's mind, thus supporting any dissonant cognitions. He continually emphasized that the only way a juror could fulfill his responsibility to society was by exercising his own free will. He encouraged disagreement from the group norm, thereby encouraging individual thinking. This reasoning, based on emotional proof, follows:

> It is because the law recognizes the enormity of the responsibility it has placed on your shoulders . . . it is because the law cherishes life--even the life of one found guilty of willful, deliberate and premeditated murder. It is because the law recognizes this that it says you, each alone, must say he must die--or be imprisoned for life. . . So long as your vote expresses your individual judgment--your individual conscience--your individual and absolute discretion--you and each of you will have fulfilled your obligation to the law--to your community--no one can ask more of you.[174]

Again, appealing to the audience, Grant Cooper attempted to touch each juror's sense of obligation to the democratic system of equality. He made the power of one person over another person's life seem noxious within a free system. He expressed this idea as follows:

> Do you realize that yours is the power and discretion of a king--a benevolent monarch--or a despotic dictator--this is your lawful power under the law--you may exercise it wisely or unwisely--[175]

Cooper reiterated throughout the speech the concept of absolute discretion and referring to the concept with an ugly connotation.

In a final emotional appeal, Cooper closed his speech with a series of quotations taken from Robert F. Kennedy. Cooper documents the quotations as coming from 85 Days: The Last Campaign of Robert Kennedy by Jules Witcover. An example of one of the quotations is as follows:

> What we need in the United States is not divison;
> What we need in the United States is not hatred;
> What we need in the United States is not violence or lawlessness, but love and wisdom, and compassion towards one another, and a feeling of justice towards those who still suffer within our country, whether they be white or they be black.[176]

Cooper closed the speech by again making reference to a Christian ethic. He introduced the pathos of the family involved and of the mother who suffered for her son. He said: "And to you Mary Sirhan, his mother, I can do no more--I now entrust the life of your son to the hands of an American jury--Mary Sirhan, may your prayers be answered."[177]

The chief defense attorney, Grant Cooper, put a dominant emphasis in his last closing address on emotional proof. He tried to make the individual members of the jury feel the responsibility of the

burden of another person's life on their conscience. He used the theory of cognitive dissonance, perhaps hoping for a "hung jury" as an end result.

Conclusions

The attorneys seemed to adapt well to the peculiarities which they perceived in the audience until the final concluding argument. On the final argument heard at the end of the trial for penalty, the defense, represented by Grant Cooper, attempted to make the audience feel the weight of their responsibility and obligation. Considering the inputs that the audience had experienced as they were outlined in Chapter II and considering that the mass media kept a continual check on the audience, it can be assumed that the jury was aware of their responsibility for revenge. It may have been wiser for the defense to relieve the pressure on the jury in this closing address. Instead of trying to eliminate the perceived pressures that the audience felt to convict Sirhan to death, the defense could have possibly argued against capital punishment. By trying to argue residues and showing the audience that the only guideline for their ultimate decision was their conscience, the defense could have reinforced their feeling of duty as representatives of the community. This may have been an example of poor audience analysis and adaptation.

Arrangement

Arrangement is the structure of oral discourse. It can be defined as the manner in which the speaker arranges his material and his arguments.[178] The objectives of a critic evaluating arrangement should be to examine the speech as an instance of rhetorical craftsmanship and to appraise the total organization with reference to the audience conditions.[179]

Thematic Emergence

Thematic emergence is the emergence of the central theme. The speech should contain a clearly defined and easily determined thesis or purpose. In order to evaluate the effectiveness of the thesis, the following critical question was asked: How clearly did the central theme emerge?

Emil Zola Berman opened his speech by trying to capture the attention of the audience. He tried to assure the audience that he was not tricking them. He was attempting to gain their trust. He stated that his purpose was simply to help the audience better understand the evidence yet to be presented in the trial. Berman said in opening the speech:

> It is not the time now nor is it our intention to persuade you but to give the picture of the entire case so that the evidence which comes to you piecemeal from witness after witness after witness, you will understand what relationship that bears to the total picture.[180]

There were only three paragraphs of introduction in Berman's speech. The third paragraph was the thesis sentence. The thesis statement was as follows:

> One thing I'd like to fasten down with you, and that is that the evidence in this case will disclose that this defendant, Sirhan, is an immature, emotionally disturbed, and mentally ill youth.[181]

Grant Cooper used indirect persuasion in both of his closing arguments. The thesis statements in both arguments are hidden and appear in the conclusions of the speeches. The thesis statement in the first argument was stated as follows:

> . . . under the evidence in this case and the law as his honor will give it to you, and the testimony of the expert witnesses who testified for the defense in this case, you very well could find a reasonable doubt as to whether or not there is malice aforethought . . . in which case, malice aforethought is an essential element of murder, be it first degree or second degree.[182]

The thesis statement in the second argument was similar to the first one, stated above. Cooper said: "I beseech you to spare Sirhan's life--for I truly believe that a decision of life imprisonment would be in complete harmony . . . with Senator Kennedy's plea for compassion . . ."[183]

Grant Cooper used a different line of argument in both of these speeches. His theses were basically the same but the organization patterns varied.

In the introduction, Grant Cooper used an anecdote.[184] Following the anecdote, Cooper reminded the jury of the pledges that they had made in front of the court during voir dire testimony. A summary

of what he said is expressed in the following two lines from the address: "We asked you if you would approach this case with an open mind and each of you said that you would . . . You were asked if you would follow the law with respect to diminished capacity and each one of you said that you would."[185]

Cooper proceeded in the introduction to the refute accusations made against the defense during David Fitts' closing argument. Cooper was trying to reestablish the ethos of the defense. He quoted from Section 6668 of the Business and Professions Code of the state of California. This quotation had been cited before in this chapter. The introduction of the speech ended with a transition that established the direction in which the speech was going to move throughout the body. The transition was given as follows:

> Ladies and gentlemen of the jury, I propose to discuss with you the law and to attempt to help you if I can, with what the law is in this case: and then to do my dead level best to apply the law to the facts.[186]

In the second closing address Cooper began by recalling the memory of Robert F. Kennedy to the jurors.[187] Cooper gave little indication in the introduction as to the organization of the speech. He supported the assumption arrived at in the introduction that the only guideline to the jurors' selection between life imprisonment and death was their individual consciences. He said, "By what guidelines? The law gives you none. The law makes no distinction between life imprisonment and death."[188] He reiterated this point throughout the

speech. Before introducing the body of the speech, he again reminded them of the duty they faced, he said, "If one or more of you can not satisfy your conscience--in a verdict one way or the other--you can not return a verdict."[189]

Conclusions

The thesis in the first speech emerged clearly and stated the purpose of the speech. Because both closing arguments used indirect persuasion, the thesis was hidden in the concluding remarks of the speeches. A corollary thesis was stated in the introduction. Except in the last closing address, the corollary thesis did not seem to be clear.

Method of Organization

Methods of organization implies the choice of a principle by means of which the materials of a speech are divided. It is the rational basis for the division of the speech. There are three common types of organization patterns: the historical, the distributive, and the logical.[190] A less common type of organization, often used in persuasion, is the elimination order.[191] In an effort to evaluate the method of organization, the following critical question was asked: How effective was the organization pattern used to develop the speech?

In the opening addresss delivered by Berman, the body of the speech was arranged in chronological order. This was the historical

method of organization. The body traced the biography of Sirhan Sirhan from the time in which he was a small boy in Palestine up to the moment of the assassination.

Cooper, in the first closing address, used the distributive method of organization.

In introducing the body of the speech, Cooper gave a summary of how the lawyers involved in the trial received instructions on the law. He organized the body of his speech topically, discussing one aspect of the law and then another. For example, he discussed reasonable doubt, then expert witnesses, then direct and circumstantial evidence. He showed the audience how each of these related to the Sirhan trial.

In the second closing address, Cooper used the elimination order or he argued residues. The body of the speech was organized around an elimination order or negation. He used negation to develop the thesis that the jurors had only their consciences to serve as a guide for their decision.

Conclusions

All of the speeches analyzed chose an organizational method that appeared to be appropriate to their purpose. All three of the methods appeared to effectively develop the main thesis.

Development of The Speech

The development of the speech is the order in which the parts are put together. The clarity of the transitions, the main parts of

the speech and the main points of the body are important.[192] The critical question that was asked concerning the development of the body was: How clear were the transitions and the main points in the speech?

In the opening address delivered by Emil Zola Berman the main points must have been apparent because the transitions were so obvious. The first point was stated and introduced as follows: "To start then at the beginning; Sirhan was three years old when war broke out between the Palestinian Arabs and Zionists in Palestine in 1947."[193] The second point of the body was equally as obvious as the first. It began with the phrase: "Now, let me tell you some of the things that occurred to him during the period which I have just referred to and which the evidence which comes to you will disclose."[194] The third point was an analysis of Sirhan's life in the United States. This point in the body reconstructed Sirhan's activities up the six-day Arab-Israeli conflict. It began: "Sirhan went to a Lutheran Church school run by Arab Christians, and when he was at the age of twelve, the family came to this country, the United States of America."[195] The fourth and final point in the body of the speech developed Sirhan's psychological self from the beginning of the six-day war to the moment of the assassination. The point was introduced as follows: "He became concerned with mystical thoughts and searched for supernatural powers of the mind over matter. He started mystical experiments in his room."[196]

Berman's transitions into the points of the body were clear and easy to follow.

Cooper developed the first closing address with great emphasis to clarity of organization. He began the first point of the body by introducing a definition of the presumption of innocence. He said: "First, I think you should know what the presumption of innocence is."[197] The second point in the body of the speech concerned the definition of reasonable doubt. This was stated as follows:

> Now, I believe his Honor will instruct you that a reasonable doubt is defined as follows: It's not a mere possible doubt, because everything relating to human affairs is open to some possible or imaginary doubt. It is that state of the case which you the jurors say that you cannot feel an abiding conviction to a moral certainty of the truth of the charge.[198]

A definition of expert testimony constituted the introduction to the third point in the body. The point was introduced with a clear transitional phrase, it was: "Now of course you know there has been expert testimony in this case. You have been bombarded on all sides with the testimony of experts for, lo, these many weeks."[199] The final point in the body was devoted to an analysis of direct and circumstantial evidence. The last point was introduced as follows: "Now one very important thing, ladies and gentlemen, as I hope later to discuss with you and I hope to be able to demonstrate, the difference between direct and circumstantial evidence."[200] Cooper went on to explain the importance of this last point to the comprehension of the law of diminished capacity and the defense in the Sirhan trial when he said:

> This will come into play, ladies and gentlemen of the jury, with respect to the difference--we are not asking for not guilty--as to the difference between the degrees of guilt; whether it should be murder in the first degree, murder in the second degree, or whether it should be manslaughter.[201]

In the conclusion of the first closing argument, Grant Cooper first stated the thesis statement given earlier in this section. After the thesis had been disclosed, Cooper emphasized the fact that Sirhan was mentally ill. He developed this idea in two short paragraphs. In a concluding statement, he tied in Sirhan's mental illness with the obligation of the jurors under the law.[202]

In the second closing argument the development of the main points appeared to be more obscure. The transitions were generally weak and the organization of the body was difficult to follow. He introduced the first point with a question and organized and developed the point with emotional proof. He asked the question: "How does one exercise absolute discretion?"[203] This question was answered by the use of testimony, and example and finally Cooper reached the conclusion which he stated as follows:

> You may--you have the discretion to ignore or lay aside the opinions of the nine professional men and women whose evidence is still before you--that Sirhan Sirhan is too mentally ill to die--for that is their opinion that his crime was either manslaughter or second degree.[204]

The second point dealt with the obligation of the jurors to the community and to the world. He said: "Some one of you may suggest that your verdict should express the conscience of the community, but this is not the law."[205] Cooper appeared to eliminate

the responsibility that the jurors might feel toward the community or the world by showing that the community and the world are divided in their opinion so they can offer no guidelines for the decision.

Finally, in the third point, Cooper asked the jurors, "Which is the proper verdict?"[206] He explained the consequences of both verdicts the jury and negated the death penalty because it would be counterproductive. He said:

> Is it not more probable that by sending him to a mental facility at Vacaville--a maximum security penitentiary in every sense of the word--but a place where he can be studied scientifically and psychiatrically--that from this study of Sirhan--something more can be learned about the human mind and what causes people to want to kill and to kill.
>
> Don't you suppose that through this study some other mentally disturbed individual may be cured--or the reasons discovered that might prevent--even one future killing--at least one political assassination may be averted.[207]

In the conclusion of the speech, Grant Cooper appeals to the memory of Robert F. Kennedy and to compassion. He quoted Kennedy when the Senator asked for compassion and understanding after Martin Luther King's assassination. Finally, Cooper builds to the thesis that was analyzed earlier and in a concluding statement, he appealed to the mercy of the jurors. He closed by saying:

> And now Sirhan Sirhan, I have done all I can do to the very best of my ability--for you and the American system of law and justice which I serve and revere.
>
> And to you, Mary Sirhan, his mother--I can do no more--I now entrust the life of your son to the hands of this American jury--Mary Sirhan, may your prayers be answered.[208]

Conclusions on Arrangement

According to Thonssen and Baird, "A speech conforming to the principles of good organization may be ill-adapted to the specific audience for which it is intended."[209] Certain speeches can deviate from the standard organizational patterns to better adapt the speech to the speaker's purpose. Depending on the adaptation of the arrangement to suit the audience and the purpose, the effectiveness of the rhetoric can be judged. The critical question used to evaluate the effectiveness of the arrangement was: How effectively did the attorneys accommodate the needs of the audience through arrangement?

In both closing addresses, the defense altered the standard organization of a speech by using indirect persuasion. In the first closing argument, the use of indirect persuasion appeared to be effective because Cooper further defined the laws for the jury and showed the audience how the laws applied in the Sirhan trial. In the second closing address, Cooper tried to make the audience feel an obligation to save Sirhan from the death sentence. Because he approached the speech by using the negation method his object of persuasion was not clear. The speech, by offering no guidelines to the jurors' decision except their individual consciences, could have easily reenforced predisposed concepts in the jury that were unfavorable to the defense. Cooper, in the second closing address, did not display a perception into the needs of the audience. His persuasive line of argument was weak and ineffective.

Both Berman and Cooper tried to adjust to the audience in the introduction of their speeches. The introductions were used to build ethical proof and to identify with the needs of the audience. Grant Cooper, in the first closing argument, was especially effective in the introduction by using an antedote. He identified with the needs of the audience by offering humor with a moral.[210]

The first closing address was the most effective organizational method because Cooper helped clarify and summarize the entire trial to

> . . . but I have waited an awfully long time, ladies and gentlemen, to discuss the facts and the law with you . . .[234] then to do my dead level best to apply the law to the facts . . .[235] . . . I think that is just about as good a definition of reasonable doubt as there is around; you know it when you've got it.[236] . . . the bad Sirhan is a very nasty Sirhan . . .[237]

Cooper also used a rhetorical question. In discussing the different aspects of the law, Cooper would mimic the conscience of the jurors. An example of this stylistic technique follows:

> . . . you might say, "Well, why does the presumption of innocence have anything to do with the case? Because you're not asking that the defendant be given a verdict of not guilty.[238]

Cooper maintained the use of rhetorical question throughout the closing argument for the first phase of the trial.

In the first closing argument, Cooper's word choice was clear and accurate, although it could be criticized for not being consistent. An example of Cooper's fickle style is easily shown. Throughout the speech, Cooper used common language, almost trite language, to express his thoughts. His anecdotes were common, dealing with farmers and genuine people. There were instances in the speech, however, when Cooper would become stoic in his word choice. The following passage will illustrate this change in character: "We are here, ladies and gentlemen, to exact that pledge from you and we are not at all concerned but that you will do your duty with an open mind and an unbiased mind."[239] Another example of this change in mood of style was: "I hasten to add to that, that only applies as his Honor will

explain to you, where there are two reasonable interpretations of the evidence."[240]

Cooper used common language, perhaps in an effort to adjust the speech to a layman audience. As was mentioned in discussing clearness above, Cooper seemed to have difficulties in being consistent in his style. The common expressions that seemed to be purposely in the speech could almost be called trite. For example, "to do my dead level best . . ."[241] and "Sirhan is a very nasty Sirhan . . ."[242] Another example was, " . . . that I want this to sink in if anything sinks in . . ."[243] In another instance, he said, " . . . the guts of the whole case."[244]

There were evidences of trite expressions in the second closing address as well. An example of a rather trite expression follows: " . . . life imprisonment or death in the gruesome little green room at San Quentin."[245] Cooper's triteness was not as obvious as in the closing argument at the conclusion of the first trial, but it still existed as an element in his style.

In the second closing argument, Cooper made an even more extensive use of the rhetorical question as a stylistic tool to adapt to the audience. Throughout the entire speech, he questioned the audience. Many examples can be cited, but a few of these are as follows:

> Which is the proper verdict?[246] . . . Why am I here? Because I have defended Sirhan Sirhan do I--or have I advocated or condoned murder? . . . Have we not been honest with you? Have we not been consistent in our

> point of view?[247] . . . Did I not ask you to send him to the penitentiary for the rest of his natural life[248] . . . Will you listen to his words? Will you need his advice?[249]

Rhetorical qeustions were used by Cooper to make transitions into new ideas, to summarize a major point and to introduce a major point. The style of the written speech seems to revolve around the rhetorical question.

Conclusions concerning appropriateness

In all three speeches the defense seemed to be adapting their style to the audience. They used two methods:

1. the rhetorical question
2. common language

The effectiveness of the audience adaptation of style could have been lessened in Grant Cooper's speeches because at times his expressions became trite and he seemed to have difficulties in being consistent in his style.

The rhetorical question seemed to be used most effectively in the second closing argument.

Vividness

Vividness refers "principally to a certain elevation or grandeur in discourse."[250] In essence it depends on the artistic handling of words, sentences and figurative elements. "Essentially, it is a manifestation of sublimity in discourse, a heightened effect giving an individual stamp to oratory."[251]

The critical question asked of the rhetoric of the defense concerning vividness was: How effectively did the attorneys utilize vividness and imagery?

Emil Zola Berman, in delivering his opening address in the Sirhan Sirhan trial, used vivid language to express his thoughts. He attempted to draw mental pictures for his audience in order to recreate Sirhan's past. One of the first examples of Berman's vivid style was in his use of imagery. An example of this imagery follows: "For example, he saw a little girl's leg blown off by a bomb, and the blood spurting from below her knee as though from a faucet."[252] Berman also used vivid language in his descriptions. He made use of alliteration by repeating the same words within a single sentence. This created a sense of monotony and reinforcement of the concept expressed. Berman used this technique of repetition throughout the speech. In one instance he said: " . . . he concentrated in front of a mirror in his own room and thought and thought about Senator Kennedy until at last, he saw his own face no longer, but that of Senator Kennedy himself in the mirror."[253] By using repetitive words within a sentence, Berman created a mood of mysticism and failure so often characterized by monotony.

In describing Sirhan's spells, Berman used descriptive language that was clear and vivid. This stylistic technique can easily be seen in the following passage: " . . . and again the spell--the boy stiffened, his body stiffened, his fists clenched, his

mouth contorted. He lost all sense of what was happening around him."[254]

In the argument heard at the conclusion of the trial to exact a penalty for Sirhan, Cooper used more vivid language to develop his ideas. Vividness in the form of imagery permeated the speech. The opening paragraphs of the speech are an example of the vividness used in Cooper's style:

> Shortly after midnight on the morning of June 5, 1968--a young, vigorous, Senator, fresh from his victories in the California primaries--for the office of the Presidency of the United States--met his untimely death at the hands of a mentally ill young Palestinian Arab.
>
> On the floor of the drab, dreary, dirty pantry at the Ambassador Hotel lying in a pool of his own blood--clutching a crucifix--he whispered his last words to his brave and loyal wife kneeling beside him.
>
> He died the next day--the victim of Hate--hate generated in the bowels of war in a far-off land. Hate generated at an early age in the child of Sirhan. Hate that consumed what was once a healthy mind. Hate that had reduced that mind to one described by the evidence as a "substantial mental illness.[255]

Proceeding into the speech, Cooper developed his use of imagery further. He said:

> Do you realize that your's is the power and discretion of a king--a benevolent monarch--or a despotic dictator--this is your awful power under the law--you may exercise it wisely or unwisely.[256]

Cooper reached a height of vividness developed in his style at the end of the speech. His language become descriptive almost to the point of being poetic. On the third page before the conclusion of the speech, he said:

> Must we say, "an eye for an eye--a tooth for a tooth--a life for a life?" . . . If the death of Sirhan Sirhan could restore Senator Kennedy to his country and to his family--I would be the first to demand his life.

Conclusions concerning vividness

Emil Zola Berman displayed what appeared to be effective use of imagery and vividness. He created visual imagery and clearly painted pictures for his audience. Grant Cooper used imagery in his second closing argument. However, there was no apparent use of this stylistic tool in the first closing address.

Cooper's second closing address seemed to make the most effective use of imagery. The speech was full of stylistically vivid expressions.

Effect of the Rhetoric

The effect of the rhetoric of the defense in the Sirhan trial attempts to measure the success of obtaining the defined goals. One method of judging the effect of a speech is by examining the immediate response.[257] Because the Sirhan trial is scarcely more than a year old, one of the only measures of effect available is the result of the trial. As has been previously established, because there were more inputs into the trial than merely the selected rhetoric analyzed, it would be foolhearted to place the entire responsibility for the out come of the trial on the speeches that were studied. Nonetheless, limited conclusions can be drawn as to the effect of the rhetoric.

The critical questions asked in an effort to determine the limited effect of the rhetoric on the Sirhan trial was: What did the rhetoric of the defense attorneys in the Sirhan trial accomplish?

As was established in the previous discussion of defense strategies in this Chapter, there were three perceived goals of the defense. These goals were: (1) a reduction of sentence, (2) grounds for appeal, and (3) a delay of the trial. The latter two goals met with limited success. The case was appealed and accepted into the appellate courts directly after the pronouncement of punishment.[258] The case is expected to go back into the court at the end of August.[259] Further, that defense was able to postpone the trial until seven months after the assassination.[260]

The primary goal as stated by Grant Cooper was to reduce Sirhan's guilt from first degree murder to second degree murder or manslaughter. He saw the obstacles as being overwhelming and he saw the attempts of the defense as being a total failure.[261]

The results of the trial were unfavorable to the defense. On April 17, 1969, a twelve-man jury found Sirhan Bishara Sirhan guilty of all counts as charged.[262] A week later, on April 23, 1969, the same jury condemned Sirhan to die in the gas chamber. The jury deliberated for eleven hours and forty-five minutes. The formal sentencing was scheduled for May 14, 1969.[263] Only once during the deliberations of the jury in both trials did the foreman ask for clarification. On April 16, 1969, the jury wanted the law of

diminished capacity clarified as well as the guilt for second degree murder.[264]

The defense was able to establish grounds for an appeal and to postpone the trial to a limited degree. They were not able in this trial, to reduce the degree of Sirhan's guilt. The defense's primary goal was not accomplished.

SUMMARY

From the massive transcript of the Sirhan Sirhan trial, three speeches were chosen to be analyzed: the opening address, delivered by Emil Zola Berman; the closing argument heard at the conclusion of the trial for sentence, delivered by Grant Cooper; and the closing argument heard at the conclusion of the trial for penalty, presented by Grant Cooper. These speeches were chosen because they were the only planned addresses within the transcript and because they were major strategy arguments.

Invention was the first cannon to be analyzed. The defense had four research resources which they used throughout the entire trial. These were: (1) the law of diminished capacity, which they attempted to prove through psychiatric testimony, (2) Brandeis Brief, (3) the law of the land, and (4) statistical evidence specifically in support of the motion to quash the indictment. The ethos of the defense was considerably weakened because of Grant Cooper's involvement in the Friar's Club case and because of Dr.

Martin Schorr's plagiarized testimony. Berman attempted in his opening address to build ethos for the defense goal. Cooper attempted to build ethos for himself and for the defense's purpose. In his second closing argument, Cooper appeared to rely on the ethos of Robert F. Kennedy. The use of emotional proof was extensive in Berman's opening address and in Cooper's second closing argument. Cooper relied dominantly on logical proof in his first argument.

Berman's speech was organized chronologically. His transitions into and from his main points and his thesis were clear and easy to follow. He had a predominantly vivid style of language, relying heavily on imagery. Cooper, in his first speech, used indirect persuasion with a topical organization pattern. His style was appropriate but at times inconsistent and trite. In Cooper's second speech, persuasion was used by means of the elimination method or the negation order. His style was dominantly vivid but he relied heavily on the rhetorical question as a stylistic tool.

The effect of the rhetoric can be measured in a limited sense. The defense obtained a seven-month postponement and during the trial they established enough grounds for an appeal. The primary goal of a reduced sentence was not accomplished.

FOOTNOTES

[1]George Shibley, personal telephone conversation on December 15, 1969, between Brookings, South Dakota and San Diego, California (list of telephone conversations, (See Appendix B.).

[2]Grant Cooper, personal telephone conversation on December 15, 1969, between Brookings, South Dakota and Los Angeles, California.

[3]P. J. Talmachoff, Chief Criminal Division, County Clerk's Office, County of Los Angeles, personal letter, September 25, 1969, (See Appendix C.).

[4]Ibid.

[5]Ibid.

[6]Vesta Minnick, Court Reporter, personal letter, November 26, 1969, (See Appendix C.).

[7]Herbert E. Ellingwood, Legal Affairs Secretary, State of California, Governor's Office, personal letter, March 10, 1970, (See Appendix C.).

[8]John Howard, personal telephone conversation on December 15, 1969, between Brookings, South Dakota and Los Angeles, California.

[9]George Shibley, personal telephone conversation on February 11, 1970, between Brookings, South Dakota and San Diego, California.

[10]Grant Cooper, personal interview on March 20, 1970, in Los Angeles.

[11]Vesta Minnick, (See Appendix C.).

[12]Lester Thonssen, A. Craig Baird, Speech Criticism: The Development of Standards for Rhetorical Appraisal (New York: The Ronald Press Company, 1948).

[13]These five cannons were first established by Cicero and have since been used as classical divisions of rhetoric.

[14]Suzanne Kiesby, personal letters addressed to the Columbia Broadcasting Service, the American Broadcasting Company, and the National Broadcasting Company, (See Appendix C.).

[15]Thonssen and Baird, p. 80.

[16]Ibid., p. 79.

[17]Ibid., p. 334.

[18]Ibid., p. 335.

[19]"Sirhan Trial Opens," Time, January 17, 1969, p. 20.

[20]The New York Times, December 19, 1968, p. 43.

[21]Grant Cooper, March 20, 1970.

[22]Grant Cooper, March 20, 1970.

[23]John Howard, personal interview on March 24, 1970, in Los Angeles.

[24]Grant Cooper, March 20, 1970.

[25]"Sirhan Trial Opens," p. 21.

[26]The New York Times, March 19, 1969, p. 26.

[27]Harry Wood, "Diminished Responsibility and Mens Rea," (unpublished article, 1970).

[28]Grant Cooper, March 20, 1970.

[29]Grant Cooper, March 20, 1970.

[30]Harry Wood.

[31]John Howard.

[32]The New York Times, March 14, 1969, p. 1.

[33]The New York Times, March 28, 1969, p. 19.

[34]"The Sirhan Trial Begins," Newsweek, January 13, 1969, p. 28.

[35]People v. Sirhan Bishara Sirhan, Vol. 11, February 14, 1969.

[36]The New York Times, March 29, 1969, p. 13.

[37]The New York Times, January 6, 1969, p. 1.

[38]The New York Times, July 20, 1968, p. 11.

[39]The New York Times, August 2, 1968, p. 1.

[40]The New York Times, December 6, 1968, p. 25.

[41]Grant Cooper, March 20, 1970.

[42]The New York Times, February 12, 1968, p. 21.

[43]People v. Sirhan Bishara Sirhan, Vol 29.

[44]Harry Wood.

[45]M'Naughton, c. 10 Cl. & F. 200 8 Eng. Rep. R. 718.

[46]Thonssen and Baird, p. 348.

[47]Ibid., pp. 335-336.

[48]Ibid., p. 336.

[49]"Sirhan Trial Opens," Time, January 17, 1969, p. 20.

[50]Biographical Sketch of Grant Cooper, furnished by the Office of Grant Cooper (unpublished biographical sketch of Grant Cooper available on request to the Office of Grant Cooper).

[51]The New York Times, December 30, 1968, p. 10.

[52]Biographical Sketch of Grant Cooper.

[53]The New York Times, December 30, 1968, p. 10.

[54]"Sirhan Trial Opens," Time, January 17, 1969, p. 20.

[55]Ibid.

[56]Ibid.

[57]"Sirhan Trial Opens," Time, January 17, 1969, p. 20.

[58]John Howard.

[59]The New York Times, January 20, 1969, p. 19.

[60]"Sirhan Trial Opens," p. 20.

[61]Ibid.

[62]Ibid.

[63]John Howard.

[64]Grant Cooper.

[65]"Sirhan Trial Opens," p. 21.

[66]Ibid.

[67]People v. Sirhan Bishara Sirhan, Vol. 108, p. 8916.

[68]People v. Sirhan Bishara Sirhan, Vol. 29.

[69]People v. Sirhan Bishara Sirhan, Vol. 11, p. 3055.

[70]Ibid.

[71]Thonssen and Baird, p. 341.

[72]Ibid., p. 342.

[73]"The Sirhan Trial Begins," Newsweek, January 13, 1969, p. 28.

[74]People v. Sirhan Bishara Sirhan, No. A233421, Vol. II, p. 225-226, (unpublished transcript of the Sirhan trial on file in the office of the District Attorney in the County of Los Angeles).

[75]E. E. Witkin, California Crimes, Vol. I (San Francisco: Bender-Moss Company, 1963), p. 140-141.

[76]The New York Times, January 18, 1969, p. 35.

[77]The New York Times, February 14, 1969, p. 20.

[78]Ibid.

[79]A method of organizing a legal brief introduced by Justice Brandeis. It organizes a case around the socio-economic conditions of the defendant.

[80]"The Sirhan Trial Begins," Newsweek, January 13, 1969, p. 28.

[81]People v. Sirhan Bishara Sirhan, Vol. 7, p. 1946.

[82]People v. Sirhan Bishara Sirhan, Vol. 11, February 14, 1969.

[83]Ibid.

[84]Ibid., p. 3058.

[85]Ibid., p. 3055.

[86]People v. Sirhan Bishara Sirhan, Vol. 29, p. 8557.

[87]Ibid., p. 8555.

[88]Ibid., p. 8559.

[89]Ibid., p. 8560.

[90]Ibid., p. 8567.

[91]Ibid., p. 8555.

[92]Ibid., p. 8560.

[93]Ibid., p. 8568.

[94]Ibid., p. 8558.

[95]People v. Sirhan Bishara Sirhan, Vol. 108, p. 8899-8900.

[96]Ibid., p. 8901.

[97]Ibid., p. 8927.

[98]Ibid., p. 8924.

[99]Ibid., p. 8926.

[100]Thonssen and Baird, p. 346.

[101]People v. Sirhan Bishara Sirhan, Vol. 11, February 14, 1969, p. 3058.

[102]People v. Sirhan Bishara Sirhan, Vol. 29, p. 8554.

[103]People v. Sirhan Bishara Sirhan, Vol. 11, February 14, 1969, p. 3566.

[104]Ibid., p. 3567.

[105]Ibid., p. 8898.

[106]Ibid., p. 8901.

[107]Ibid., p. 8915.

[108]Ibid., p. 8926.

[109]Ibid., p. 8927.

[110]Thonssen and Baird, p. 347.

[111]Ibid., p. 384.

[112]Ibid., p. 387.

[113]People v. Sirhan Bishara Sirhan, Vol. 11, Friday, February 14, 1969, p. 3050.

[114]Ibid., p. 3051.

[115]Ibid., p. 3058.

[116]People v. Sirhan Bishara Sirhan, Vol. 29, p. 8550.

[117]Ibid., p. 8554.

[118]Ibid., p. 8555.

[119]People v. Sirhan Bishara Sirhan, Vol. 29, p. 8555.

[120]Ibid., p. 8552.

[121]Ibid., p. 8566.

[122]People v. Sirhan Bishara Sirhan, Vol. 108, p. 8916.

[123]Ibid., p. 8920.

[124]Thonssen and Baird, p. 387.

[125]People v. Sirhan Bishara Sirhan, Vol. 11, February 14, 1969, p. 3055.

[126]People v. Sirhan Bishara Sirhan, Vol. 29, p. 8550.

[127]People v. Sirhan Bishara Sirhan, Vol. 108, p. 8900.

[128]Ibid., p. 8911.

[129]Ibid., p. 8928.

[130]Thonssen and Baird, p. 387.

[131]"Sirhan Trial Opens," p. 21.

[132]The New York Times, January 6, 1969, p. 18.

[133]Ibid.

[134]Ibid.

[135]The New York Times, January 7, 1969, p. 11.

[136]The New York Times, January 10, 1969, p. 34.

[137]Ibid.

[138]People v. Sirhan Bishara Sirhan, Vol. II, p. 214.

[139]The New York Times, January 14, 1969, p. 15.

[140]The New York Times, February 9, 1969, p. 33.

[141]Ibid.

[142]People v. Sirhan Bishara Sirhan, Vol. 76, p. 6175.

[143]Ibid., p. 6176.

[144]Ibid., p. 6289.

[145]Ibid., p. 6293.

[146]Ibid., p. 6294.

[147]Grant Cooper, March 20, 1970.

[148]People v. Sirhan Bishara Sirhan, Vol. 11, February 14, 1969, p. 3049.

[149]Ibid., p. 3058.

[150]People v. Sirhan Bishara Sirhan, Vol. 29, p. 3551.

[151]People v. Sirhan Bishara Sirhan, Vol. 108, p. 8898.

[152]Thonssen and Baird, p. 359.

[153]Ibid., p. 360.

[154]The New York Times, February 9, 1969, p. 33.

[155]Grant Cooper, March 20, 1970.

[156]Thonssen and Baird, p. 360.

[157]People v. Sirhan Bishara Sirhan, Vol. 11, February 14, 1969, p. 3051.

[158]Ibid., p. 3050.

[159]Ibid., p. 3050.

[160]Ibid., p. 3053.

[161]Ibid., p. 3056.

[162]Ibid., p. 3059.

[163]Grant Cooper, March 20, 1970.

[164]People v. Sirhan Bishara Sirhan, Vol. 29, p. 8554.

[165]Ibid., p. 8556.

[166]Ibid., p. 8565.

[167]Ibid., p. 8567.

[168]People v. Sirhan Bishara Sirhan, Vol. 108, p. 8925.

[169]Ibid., p. 8900.

[170]Ibid., p. 8926.

[171]Ibid., p. 8901.

[172]Cognitive dissonance is a communication theory that hypothesizes that a person tries to reduce any perceived dissonance within himself.

[173]Ibid., p. 8903.

[174]Ibid., p. 8904.

[175]Ibid., p. 8908.

[176]Ibid., p. 8925.

[177]Ibid., p. 8927.

[178]Thonssen and Baird, p. 392.

[179]Ibid., p. 393.

[180]People v. Sirhan Bishara Sirhan, Vol. 29, p. 3566.

[181]Ibid.

[182]People v. Sirhan Bishara Sirhan, Vol. 29, p. 3566.

[183]People v. Sirhan Bishara Sirhan, Vol. 108, p. 8927.

[184]People v. Sirhan Bishara Sirhan, Vol. 29, p. 3550.

[185]Ibid., p. 3552.

[186]Ibid., p. 8555.

[187]People v. Sirhan Bishara Sirhan, Vol. 108, p. 8898.

[188]Ibid., p. 8899.

[189]Ibid., p. 8901.

[190]Thonssen and Baird, p. 394.

[191]Wallace C. Fotheringham, Perspectives on Persuasion (Boston: Allyn and Bacon, Inc., 1966), p. 85.

[192]Thonssen and Baird, p. 397.

[193]People v. Sirhan Bishara Sirhan, Vol. 11, p. 3050.

[194]Ibid., p. 3051.

[195]Ibid., p. 3053.

[196]Ibid., p. 3056.

[197]People v. Sirhan Bishara Sirhan, Vol. 108, p. 8557.

[198]Ibid., p. 8558.

[199]Ibid., p. 8860.

[200]Ibid., p. 8562.

[201]Ibid., p. 8565.

[202]Ibid., p. 8567.

[203]Ibid., p. 8904.

[204]Ibid., p. 8905.

[205]Ibid., p. 8906.

[206]Ibid., p. 8916.

[207]Ibid., p. 8920.

[208]Ibid., p. 8927.

[209]Thonssen and Baird, p. 401.

[210]People v. Sirhan Bishara Sirhan, Vol. 29, p. 3551.

[211]Ibid., p. 3562.

[212]Thonssen and Baird, p. 406.

[213]Ibid., p. 410.

[214]Ibid.

[215]Ibid., p. 412.

[216]Ibid., p. 410.

[217]People v. Sirhan Bishara Sirhan, Vol. 11, p. 3054.

[218]Ibid., p. 3057.

[219]Ibid., p. 3059.

[220]People v. Sirhan Bishara Sirhan, Vol. 29, p. 8554.

[221]Ibid., p. 8560.

[222]People v. Sirhan Bishara Sirhan, Vol. 108, pp. 8900-8903.

[223]Thonssen and Baird, pp. 412-413.

[224]People v. Sirhan Bishara Sirhan, Vol. 11, p. 8049.

[225]People v. Sirhan Bishara Sirhan, Vol. 29, p. 8553.

[226]Ibid., p. 8565.

[227]People v. Sirhan Bishara Sirhan, Vol. 11.

[228]Ibid.

[229]People v. Sirhan Bishara Sirhan, Vol. 108, p. 8903.

[230]People v. Sirhan Bishara Sirhan, Vol. 29, p. 8567.

[231]Thonnsen and Baird, pp. 415-416.

[232]The New York Times, February 9, 1969, p. 33.

[233]People v. Sirhan Bishara Sirhan, Vol. 11, p. 3051.

[234]People v. Sirhan Bishara Sirhan, Vol. 29, p. 8552.

[235]Ibid., p. 8555.

[236]Ibid., p. 8560.

[237]Ibid., p. 8567.

[238]Ibid., p. 8558.

[239]Ibid., p. 3554.

[240]Ibid., p. 8565.

[241]Ibid., p. 8555.

[242]Ibid., p. 8567.

[243]Ibid., p. 8554.

[244]Ibid., p. 8564.

[245]People v. Sirhan Bishara Sirhan, Vol. 108, p. 8898.

[246]Ibid., p. 8917.

[247]Ibid., p. 8923.

[248]Ibid., p. 8924.

[249]Ibid., p. 8924.

[250]Thonssen and Baird, p. 416.

[251]Ibid.

[252]People v. Sirhan Bishara Sirhan, Vol. 11, p. 3051.

[253]Ibid., p. 3057.

[254]Ibid., p. 3052.

[255]People v. Sirhan Bishara Sirhan, Vol. 108, p. 8898.

[256]Ibid., p. 8910.

[257]Thonssen and Baird, p. 455.

[258]George Shibley.

[259]John Howard.

[260]The New York Times, January 4, 1969, p. 1.

[261]Grant Cooper.

[262]The New York Times, April 18, 1969, p. 1.

[263]The New York Times, April 24, 1969, p. 1.

[264]The New York Times, April 17, 1969, p. 21.

CHAPTER IV

SUMMARY AND CONCLUSIONS

Summary

The purpose of this investigation has been to determine the effect and effectiveness of the rhetoric of the defense in the Sirhan Bishara Sirhan trial.

Sirhan Bishara Sirhan assassinated Senator Kennedy on June 5, 1968, minutes after Kennedy delivered his victory speech at the conclusion of the California presidential primary. Sirhan's trial was considered a classic in the annals of law because of the precautions taken to insure justice for the defendant.

The trial opened on January 5, 1969, seven months after the assassination. There had been controversy before the trial began over the anti-publicity order issued by the court in the early part of June. The trial lasted three months and during that time argument was heard on the constitutionality of California jury selection, on the Witherspoon case and on the validity of the psychiatric testimony of both the defense and the prosecution.

The defense used the law of diminished capacity in an attempt to accomplish the primary goal, a reduction in sentence. There were two other stated goals: (1) a postponement, and (2) grounds for appeal. Outside of the peculiar circumstances of the trial, there were three main obstacles.

These were: (1) the law of diminished capacity was under attack in California as unjust, (2) Dr. Schorr and Dr. Diamond were weak witnesses as to Sirhan's diminished capacity, and (3) Grant Cooper, chief defense attorney, was facing charges before a Grand Jury investigation for perjury.

On May 14, 1969, Sirhan Bishara Sirhan was formally sentenced to die in the gas chamber by a Los Angeles jury. The same jury had found Sirhan guilty of first degree murder less then a month eariler. The decision was immediately appealed.

Three speeches were chosen as the strategy addresses from the over 9,000 page transcript. These speeches were: (1) the opening addresss delivered by Emil Zola Berman, (2) the closing argument delivered by Grant Cooper at the conclusion of the first trial, and (3) the closing argument delivered by Grant Cooper at the conclusion of the second trial. Lester Thonssen and A. Craig Baird's Speech Criticism was used as the basis for criticism of the above mentioned speeches. The speeches were analyzed in an attempt to judge effectiveness of invention, arrangment, and style.

The logical proof in all three speeches seemed to be weak because of insufficient research resources. Since the generalization that Sirhan Sirhan was of diminished capacity was not sufficiently proved in the opening address or throughout the trial, whenever this generalization was used as a premise in the deductive process, the reasoning was invalid. The research resources of the defense were: (1) a biography of Sirhan, (2) psychiatric testimony, (3) statistical evidence, and (4) a Brandeis Brief.

In the opening address, Emil Zola Berman reasoned inductively to arrive at the generalization that Sirhan was of diminished capacity. Grant Cooper, in the first closing address, relied dominantly on logical proof. He appeared to use deductive reasoning to arrive at the general conclusion that the jurors should find Sirhan guilty of second degree murder. In the second closing argument, Cooper used chain reasoning, moving from proposition to proposition and concluding that Sirhan should be granted life imprisonment by the jurors.

Emotional proof was dominant in the opening address and in the second closing address. The defense appeared to see the audience as being hostile to Sirhan, skeptical of psychiatric testimony, and predisposed to hand down the death sentence.

Ethical proof of the defense appeared to be weakened because of the Friar's Club case and Dr. Schorr's testimony. Grant Cooper attempted to rebuild the ethos of the defense and of himself but the Friar's Club case publicity may have been an impossible obstacle to establishing a positive ethos.

All three speeches were arranged according to different methods. The thesis statements were clear in the opening address and the first closing argument but less obvious in the last closing argument. Cooper, in both of his speeches, used indirect persuasion, therefore, the thesis statements were hidden. Emil Zola Berman used the historical, or chronological, method to arrange the opening

address. The first closing argument appeared to be topically organized according to the distributive method. The second closing address seemed to make use of the negation or elimination order. In the first two speeches analyzed the transitions and main points appeared to be clear and identifiable. In the second closing argument, there appeared to be problems with the development of the body of the speech. The main points and transitions were not developed and were difficult to recognize.

Correctness and clearness seemed to be the poorest qualities of style in the speeches. The opening address and the second closing argument seemed to exhibit vividness as a dominant quality of style. The first closing argument appeared to be dominantly appropriate to the audience, occasion, and speaker.

There were many limitations in this study enumerated throughout the text, but the major limitation that should be considered in judging the effect of the rhetoric of the defense and in drawing conclusions was that the defense did not argue guilt or innocence but, rather, the degree of guilt.

Some judgment can be made as to effect. The defense did not accomplish the primary goal of a reduction in sentence. To a limited degree, they were able to postpone the trial for seven months and they were able to establish grounds for appeal.

Conclusions

Several conclusions can be drawn from this evaluation of the effect and effectiveness of the rhetoric of the defense in the

Sirhan trial. These conclusions are limited because of the many communication inputs into the trial. Since the total relationship of the rhetoric to the outcome of the trial could not be established, the conclusions are limited to an evaluation of the effectiveness of the rhetoric with a limited consideration to effect. Nevertheless, within the established limitations, it can be concluded that:

1. Of the three goals enumerated by the defense, only one was realized completely, an appeal, and one partially, a postponement.
2. The defense in many instances had inadequate research resources and, as a result, the generalizations resulting from the induction were not sufficiently supported, and subsequent deductive conclusions were, therefore, invalid.
3. The ethical proof of the defense was substantially lessened because of the Friar's Club case and Dr. Schorr's testimony.
4. The defense made effective use of emotional proof but it did not seem to be strong enough to overcome the emotional proof that the prosecution could utilize because of Senator Kennedy's assassination.
5. Vividness and appropriateness were the defense's strongest stylistic qualities.
6. The second closing address was weak organizationally in method, thematic emergence, and development of the body and this could have effected its impact. The other two speeches were judged to have been structurally sound.
7. The total effect of the rhetoric could not be determined because the relative importance of the rhetoric to the outcome of the trial could not be measured, however since the main goal of the defense was not realized, the rhetoric can not be judged to have been singularly successful.

Recommendations for Future Study

This study, as all initial studies, must be interpreted in terms of severe limitations. This is due primarily to its incompleteness in terms of the total picture of the Sirhan Sirhan trial. Additional studies might well complete this picture.

If the rhetoric of the prosecution were to be critically evaluated, the prosecution and defense could be measured against each other for effectiveness. This would be a step closer to the determination of how important rhetoric was to the outcome of the trial.

Another suggestion for future study is an analysis of the delivery of the defense. This could be accomplished through personal contact with the jurors who passed judgment on the trial, the court reporters who transcribed the trial, and the correspondents who reported the trial. A study of the delivery would contribute to a more complete criticism of the rhetoric of the defense.

Further, Sirhan Sirhan might be studied as an input into the results of the trial. This study could attempt to determine if Sirhan himself was an obstacle to the success of the defense.

Finally, a study could be undertaken to compare the rhetoric of the defense and the prosecution of the Sirhan Sirhan trial with the same in the Charles Manson trial. This suggestion is offered because one of the primary research resources of both sides in the Manson trial was the Sirhan Sirhan transcript.

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