Arab " (see Exh. 71-39 & 40);

"Kennedy must fall Kennedy must fall . . . Senator R. Kennedy must be disposed of We believe that Robert F. Kenedy [sic] must be sacrificed for the cause of the poor exploited people We believe that we can effect such action and produce such results -- the hand that is writing doing this writing is going to do the slaying of the above mentioned victim One wonders what it feels like to do any assassination that might be some illegal work -- . . . ." (Emphasis in the original.) (See Exh. 71-47 & 48.)

Also put in evidence (at Reporter's Transcript page 4373) were two pages (one sheet) of the diary found on the floor at the foot of appellant's bed, which pages Mr. Sloan identified as having been written by appellant. (Rep. Tr. pp. 4353-54, 4371-73.) These pages read in part as follows:

"Well, my solution to this type of government that is to do away with its leaders -- and declare anarchy, the best form of govt [sic] -- or no govt [sic]. ~~I contend that what is more democratic than to shoot a president~~ The President elect is your best

friend until he gets in power they [sic] he ~~is your-most-exploing [sic] fucker~~ suck every on drop of blood out of you -- ~~just~~ and if he doesn't like you -- you're dead --" (Words stricken out in the original.) (See Exh. 72-125 & 126.)

Documents obtained from the California Department of Motor Vehicles established that appellant was the registered owner of the DeSoto searched in the vicinity of the Ambassador Hotel. (Rep. Tr. p. 4406.)

De Wayne Wolfer, a criminalist and ballistics expert assigned to the crime laboratory of the Los Angeles Police Department's Scientific Investigation Division, examined various bullets and bullet fragments. He found some to be so distorted as to preclude comparison but was able to conclude that bullets removed from Senator Kennedy, Ira Goldstein, and William Weisel were all Mini-Mag ammunition fired from the .22 caliber revolver previously identified as belonging to appellant. (Rep. Tr. pp. 4128-29, 4160-65.) These Mini-Mag bullets were hollow-point ammunition, and the purpose of using such ammunition is to "make a bigger hole." (Rep. Tr. pp. 4182-83.) Ballistics tests established that

the revolver was fired one inch from Senator Kennedy's right ear and that the remaining shots which entered Senator Kennedy's body were fired at a distance of one inch to six inches. (Rep. Tr. pp. 4180, 4193-94.)

B. Evidence Received at the Hearing Under Penal Code Section 1538.5 on the Motion to Suppress Evidence Obtained During the Search of the Sirhan Residence

In addition to the foregoing evidence received in the jury's presence relative to the search of the Sirhan residence, other testimony on this matter was received prior to the commencement of the trial at the hearing on the motion to suppress evidence under Penal Code section 1538.5.

Sergeant William Brandt and Officer Dante Lodolo, both of the Los Angeles Police Department, testified that they arrived at the Pasadena Police Station at approximately 9:15 - 9:30 a.m. on June 5, 1968, "to interview a person [who] possibly could name the identity of the person who shot Senator Kennedy," who was still alive at the time. They had a conversation with Adel Sirhan. Also present was F.B.I. Agent Sullivan. (Rep. Tr. pp. 54-56, 59, 90-91.) The officers

identified themselves and asked for Adel's identification. Adel gave his name, was advised of his constitutional rights, and agreed to speak to the officers. (Rep. Tr. pp. 57-58, 91-92.)

Adel informed the officers that he was the eldest of the brothers living at the Sirhan residence at 696 East Howard in Pasadena, that his mother and two younger brothers, appellant and Munir, were part of the household, and that his father was in a foreign country. Adel "probably" told the officers his age. (Rep. Tr. pp. 59-60, 64, 92.)

Adel stated his belief that appellant was involved in the shooting of Senator Kennedy. Adel formed the conclusion on the basis of what his younger brother Munir had told him, but the officers did not recall whether Adel stated he had seen appellant's picture in the newspaper in connection with the incident. (Rep. Tr. pp. 59-60, 92.) Up to this time the identity of Senator Kennedy's assailant was unknown. (Rep. Tr. pp. 94-95.)

When asked whether the officers "could search the home," Adel replied that "as far as he was concerned [the officers] could, however it was his mother's house." The officers then asked Adel whether "he would call his

mother for permission and he indicated he would prefer that [they] did not talk to his mother at that time;" she was at work, and "he did not want [the officers] to alarm her with what had happened because she did not yet know about it." (Rep. Tr. pp. 61, 93.)

Sergeant Brandt was advised by telephone, by Lieutenant Hughes of Rampart Detectives, that the Sirhan residence should be searched in the event Adel had given his consent. (Rep. Tr. pp. 61-62.) Munir had also given his consent that morning at the police station to a search of the Sirhan residence after having been advised of his constitutional rights. (Rep. Tr. pp. 62, 98-100.)

Adel accompanied the officers to the Sirhan residence at their request and upon their arrival unlocked the door and let them in. (Rep. Tr. pp. 62-63.) No one was inside the house when they arrived. (Rep. Tr. p. 87.) At the officers' request, Adel directed them to appellant's bedroom located at the rear of the residence. Adel entered the bedroom and remained there during part of the time in which the officers conducted their search of appellant's bedroom, which took approximately half an hour. (Rep. Tr. pp. 64, 75.)

The three diaries and the envelope with the

Treasury Department return address were recovered in the bedroom in the various locations previously indicated by the trial testimony. (Rep. Tr. pp. 65-71.) Other objects recovered in the course of the search (Rep. Tr. pp. 71-75) were not offered in evidence at the trial.

Adel never asked for a list of the items which the officers planned to remove from appellant's bedroom. (Rep. Tr. pp. 78-79.) Nor did Adel ever tell Sergeant Brandt that he (Adel) had no right to give the police permission to enter the house. (Rep. Tr. p. 80.)

At the time he conducted the search, Sergeant Brandt believed that Adel was a person authorized to consent to a search of the Sirhan residence. Sergeant Brandt and the other officers "were interested in evidence of possible conspiracy in that there might be other people that were not yet in custody." Only several hours had passed since the shooting of Senator Kennedy, and the officers "were looking for leads or other possible suspects." (Rep. Tr. pp. 75-77.)

Adel Sirhan testified at the hearing that he had gone to the Pasadena Police Station shortly after he and Munir had seen appellant's picture in

the newspaper in conjunction with the shooting of Senator Kennedy. (Rep. Tr. pp. 103-04.) Adel was advised of his constitutional rights. (Rep. Tr. pp. 107-08.) When asked whether the officers could search the Sirhan residence, Adel replied, "'I have nothing to hide, but the house isn't mine, I do not own the house.'" Adel said that his mother owned the house, that she knew nothing about the matter, and that he did not "want her disturbed" at work. Adel told the officers "I had no objection" to the house being searched and that "'It is okay with me,'" and he said nothing further on the subject. (Rep. Tr. pp. 105-06, 108-09.) Sergeant Brandt never told Adel that he would be given a list of items removed from the house, nor did Adel ever request such a list. (Rep. Tr. p. 110.)

Appellant's mother, Mrs. Mary Sirhan, testified that the Sirhan residence consisted of three bedrooms, a living room, a den, and a dining room. Mrs. Sirhan owned the house and had a deed to it. (Rep. Tr. p. 112.) Adel was a part owner of the property until August of 1963, when he and his mother joined in deeding the property to Mrs. Sirhan as sole owner. (Rep. Tr. p. 127.) Mrs. Sirhan had never given Adel or anyone

else permission to permit police officers to search any room of the house. At the time of the search Mrs. Sirhan was working at the Westminster Nursery School. Between 12:00 and 1:00 p.m. on June 5th, after Mrs. Sirhan apparently had learned of appellant's involvement in the shooting of Senator Kennedy, she was taken elsewhere by friends and remained with them eight to ten days. (Rep. Tr. p. 113.) Mrs. Sirhan testified that Adel was born in [redacted] (i.e., was 29 years of age at the time of the search). (Rep. Tr. p. 114.)

Munir testified that he was 21 years of age, that he never gave the officers permission to enter his (Munir's) room, and that his mother had never given him "permission to extend permission to anybody to search any room in that house." (Rep. Tr. pp. 119-20.) Munir testified that he was advised of his constitutional rights at the Pasadena Police Station but denied having been asked for permission to search the house or having been asked whether he had any objection to such a search. (Rep. Tr. pp. 121-25.)

It was stipulated that at the time the search of the Sirhan residence was conducted, appellant "had

not identified himself to the officers or given his address or any identifying information and therefore had not consented to the search of the house." (Rep. Tr. pp. 115-16.)

Sergeant Gordon Harrison of the Los Angeles Police Department testified in rebuttal at the hearing that when Munir was asked whether he would object to a search of the Sirhan residence, Munir replied that no one was at the house and said, "'I don't have anything to hide, go right ahead and search.'" (Rep. Tr. pp. 130-31.)

DEFENSE

A. Appellant's Background, and the Events of June 1968

Baron Serkees Nahas, a writer and student of international law who had experience with the United States Information Service and the United Nations in the Middle East, testified regarding the adverse living conditions in Jerusalem during the hostilities that took place in Palestine between 1946 and 1957. (Rep. Tr. pp. 4576-87.) So did Ziad Hashimeh, an old friend of the Sirhan family. (Rep. Tr. pp. 4591-97.) Mr. Hashimeh also described the crowded living

quarters and impoverished way of life of the Sirhans. (Rep. Tr. pp. 4597-4611.) On one occasion during the bombing, appellant was terrified by the sight of a human arm in a well where the family obtained its water supply. (Rep. Tr. pp. 4612-15.) Appellant's father would often strike Mrs. Sirhan and appellant with sticks and his hands. (Rep. Tr. pp. 4616-17.) Appellant was "a very sensitive human being" and once advised Mr. Hashimeh that it "'is not nice'" to steal from an ice cream vendor. (Rep. Tr. pp. 4618-20.) Appellant also encouraged Mr. Hashimeh to take religious instruction and not to lie. (Rep. Tr. pp. 4620-21.) Mr. Hashimeh had not seen appellant from the day he left the Middle East in 1956 to the day of Hashimeh's testimony in the present proceedings. (Rep. Tr. pp. 4621-22.)

Appellant's mother testified that he was born in [redacted] in Jerusalem and that her family had lived in that city for generations. (Rep. Tr. pp. 4664-65.) She testified that prior to appellant's birth, her family was prosperous and her husband was gainfully employed with the municipal water supply system. (Rep. Tr. pp. 4722-25.) However, with the outbreak of Arab-Israeli hostilities in Jerusalem

during the period of appellant's childhood, the family lived as refugees with little food and poor housing. (Rep. Tr. pp. 4677, 4680-89, 4718-19.) Appellant witnessed, and was visibly shaken by, various incidents of bombing and shooting because for a time the Sirhan family lived right at the dividing line between the Arab and Zionist sectors. (Rep. Tr. pp. 4694-96, 4701-09, 4713-14, 4717-18, 4728-29.) During this period appellant was very much affected by the death of an older brother who was run over by a truck. (Rep. Tr. pp. 4697-4700.) As the result of these various incidents, appellant became "fearful of the Zionists." (Rep. Tr. p. 4718.) In 1956, when President Eisenhower granted permission to 2000 refugee families to emigrate to the United States, Mr. and Mrs. Sirhan and their children came to New York, thereafter settling in Pasadena. (Rep. Tr. pp. 4712-13.)

Adel Sirhan, appellant's older brother, testified in basically similar fashion regarding the Sirhan family's life in Jerusalem. (Rep. Tr. pp. 4750-55.) Adel noted on cross-examination, however, that a demilitarized zone was established at the dividing line between the Arab and Zionist quarters (Rep. Tr. pp. 4768-70) and that appellant was able to attend school daily,

obtaining a good education which enabled him to enter junior high school in the foreign environment of Pasadena and do "at least average work" there. (Rep. Tr. pp. 4775-76.) When it had come time for the Sirhan family to leave Jerusalem, appellant had not wanted to do so. (Rep. Tr. pp. 4780-82.)

Adel also testified that he observed "[a] little nervousness" on the part of appellant after appellant's fall from a horse in 1966. After the fall appellant did not attend school, spent a great deal of time in his room talking to himself, sometimes with candles lit, and read books on American and Arab literature, Gandhi, and "the occult." (Rep. Tr. pp. 4755-58.) Appellant was scholarly and followed through with subjects that interested him. During the period appellant talked to himself, he was studying Russian, German, and Chinese.[2/] (Rep. Tr. pp. 4782-83.)

When watching television coverage of the current Arab-Israeli conflict, appellant became angry "[s]ince it was favorable to the Israeli side most of

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2/ Appellant's study of these three foreign languages is also evidenced by the portions of the diaries put in evidence by the defense. See Exhs. 71 & 72 (remaining portions received in evidence at Rep. Tr. pp. 4955, 5191).

the time." (Rep. Tr. pp. 4761-62.) On one occasion Adel observed a fight between appellant and his brother Munir. (Rep. Tr. pp. 4785-86.)

The defense put into evidence appellant's report cards from his years in junior high school and high school in Pasadena. (Rep. Tr. pp. 4625-39.) Appellant received his high school diploma in June of 1963. He was a "slightly better" than average student. (Rep. Tr. p. 4639.) Although he scored somewhat subnormally on most of the tests that were administered to him while he was in school, the fact that he was a foreigner recently arrived in this country could account for his being below par. (Rep. Tr. pp. 4639-44, 4655-57.) So could appellant's lack of facility with the English language. Appellant was in no way a "special problem" student. (Rep. Tr. pp. 4660-62.)

Also received in evidence was appellant's scholastic record during the two years he spent at Pasadena City College. Appellant's grades were poor, and he was ultimately dismissed in May of 1965. (Rep. Tr. pp. 4787-95.) This dismissal was occasioned mainly by appellant's poor attendance record. (Rep. Tr. pp. 4799-4802.) Appellant's scores on various aptitude tests administered when he entered college ranged from

poor to normal. (Rep. Tr. pp. 4796-98.)

On September 25, 1966, Mr. Millard Sheets observed an accident which appellant had while riding a race horse as an exercise boy. Appellant was "very well messed up"; his face was bloody, and initially he was unconscious. (Rep. Tr. pp. 5416-22.) However, Mr. Sheets observed appellant walking a horse two days later. Appellant "appeared to be in very good condition except for the scratches on his face." Appellant was not allowed to ride again for several days. (Rep. Tr. pp. 5424-25.) In Mr. Sheets' opinion, appellant was inexperienced with horses and appeared to be "extremely timid" around them. (Rep. Tr. p. 5423.)

Robert Prestwood, a race horse owner, knew appellant in 1966. Appellant was an exercise boy who rode Prestwood's horse for breaking and training. Appellant had desired to become a jockey but told Mr. Prestwood in January of 1967 that he had to quit racing because of an accident. (Rep. Tr. pp. 5374-80.)

Mr. and Mrs. John Strathman, who knew appellant from Pasadena City College, testified that he appeared to become depressed and nervous after the

accident and had trouble with one of his eyes. However, he did not become more violent or more emotional. Appellant did develop an interest in mysticism after the accident. (Rep. Tr. pp. 5385-89, 5409-13.) Appellant also told Mr. Strathman that "school wasn't quick enough" and that "success should be achieved more quickly than by going through the laborious process of getting it out of books." (Rep. Tr. p. 5396.)

Mr. and Mrs. John Weidner, the owners of a health food store in Pasadena, knew Mrs. Sirhan as a customer and friend and at her request hired appellant as a box boy and delivery boy. Appellant worked there from September of 1967 to March of 1968. (Rep. Tr. pp. 5427-30, 5447-48.) When paid every Sunday, appellant would place his wages in his wallet. (Rep. Tr. p. 5443.) The Weidners had discussions with appellant on the subject of politics in which appellant asserted that violence was the only means by which American Negroes would achieve their goals, that the rich dominated the poor in the United States, that the state of Israel had taken his home, and that "the Jewish people were on the top and directing the events in America." Appellant mentioned that he was angry with the United States because of "the support the Americans were giving to

Israel and the support of the Jewish people from this country." When appellant stated that there was more freedom in Russia and China than in America, Mr. Weidner inquired, "'Why don't you go there yourself.'" Appellant replied, "'Maybe one day I will go.'" (Rep. Tr. pp. 5431-33, 5443-44, 5446.)

When the Arabs lost the "Six-Day War" with Israel, appellant was excited and upset. He asked Mrs. Weidner, "'Don't you think the Jews can be cruel?'" He continued, "'I am going to tell you something that I have never told anyone else, not even my parents,'" and told Mrs. Weidner "about seeing an Israeli soldier cut off the breast of an Arab woman." (Rep. Tr. pp. 5449-50.)

Appellant quit work after several angry refusals to accept Mr. Weidner's suggestions concerning his work. Mr. Weidner had to summon the police when appellant refused to leave unless he were paid additional severance pay. Appellant unsuccessfully sued him for this pay. (Rep. Tr. pp. 5435-42.)

Grace Bryan, a member of the Ancient Mystical Order of Rosae Crucis, testified that appellant attended a meeting of the organization in Pasadena on May 28, 1968. He had not attended previously. Appellant

participated in an unspecified "experiment" and, when invited to partake in the refreshments, turned around and left. (Rep. Tr. pp. 5460-64.)

Enrique Rabago and Humphrey Cordero testified that they went to the Ambassador Hotel on primary election night, June 4, 1968, and observed appellant at approximately 9:30 or 9:45 p.m. at the election night headquarters for Max Rafferty, California Superintendent of Public Instruction. (Rep. Tr. pp. 5486-88, 5499-5500.) The two men spoke with appellant, who had a mixed drink in his hand and drank once from the glass. Appellant remarked, "'Don't worry if Senator Kennedy doesn't win. That son-of-a-bitch is a millionaire. Even if he wins he's not going to win it for you or for me or for the poor people.'" (Rep. Tr. pp. 5489-91, 5493, 5500-01.) Appellant also remarked that he had been looked down upon that evening because of his attire, and that therefore when he had paid the waitress he had given her $20 in payment for the drink and told her to keep the change in order to "show them." Appellant also stated, "'It's the money you've got that counts, not the way you look.'" (Rep. Tr. pp. 5494-95, 5502.) Appellant appeared "educated and arrogant" but not "drunk . . . or belligerent."

Had appellant not had a drink in his hand, the two men would have had no reason to believe that he was drinking. (Rep. Tr. pp. 5496-97, 5504, 5507.)

Hans Bidstrup, an electrician employed by the Ambassador Hotel, observed appellant at approximately 10:00 that night at the Venetian Room of the Ambassador, which was the Rafferty headquarters. (Rep. Tr. pp. 5465-68.) Appellant "had a glass in his hand so [Mr. Bidstrup] assumed he had been drinking." (Rep. Tr. p. 5469.) However, Mr. Bidstrup did not notice whether appellant was drinking from the glass. It appeared to Mr. Bidstrup, who does not drink intoxicating liquor, that appellant was intoxicated. Appellant conversed with Mr. Bidstrup for 10-15 minutes and was quite talkative. Appellant did not stagger; his speech was not slurred, and his eyes were not bloodshot. (Rep. Tr. pp. 5466-67, 5471-73.) Mr. Bidstrup based his opinion that appellant was intoxicated on the fact that his glass was half-empty, but Bidstrup "wouldn't know" whether "one-half a drink would make that man intoxicated or any man." (Rep. Tr. p. 5474.) Had appellant not had the glass in his hand, Bidstrup would "[n]ot necessarily" "have thought he was intoxicated." (Rep. Tr. p. 5475.)

Appellant asked Bidstrup whether he had seen Senator Kennedy and how long Senator Kennedy had stayed at the Ambassador, and appellant mentioned "the security of the hotel" and asked about the Senator's security. (Rep. Tr. pp. 5477-78.) It was stipulated between counsel at the trial that on June 12, 1968, Bidstrup had told an F.B.I. agent that appellant had inquired in what room or on what floor Senator Kennedy was staying, when Senator Kennedy was coming in or if Kennedy was in the hotel, and possibly whether the Senator had bodyguards. (Rep. Tr. p. 5484.) Bidstrup testified further that firemen were on duty because of the crowds, and when one entered in uniform appellant acted "startled." (Rep. Tr. p. 5479.)

Gonzales Cetina, a waiter at the Ambassador Hotel, observed appellant in the Venetian Room about 10:00 p.m. on election night, holding a drink and with a rolled newspaper under his arm. Appellant asked for Cetina's assistance in moving a chair. Later, at approximately 11:45, Cetina observed appellant in the pantry area next to the serving table where Senator Kennedy was thereafter shot. (Rep. Tr. pp. 5508-12.) Senator Kennedy was giving his speech inside the Embassy Ballroom at the time. (Rep. Tr. pp.

5513-14, 5516, 5518-19.)

Richard Lubic, apparently a member of the news media, was in the pantry when Senator Kennedy was shot. Immediately prior to the first shot, Mr. Lubic heard someone say, "'Kennedy, you son-of-a-bitch.'" (Rep. Tr. pp. 5523-25.)

Officer Robert Austin of the Los Angeles Police Department, another witness called by the defense, testified that shortly after appellant was brought to the Rampart station following his arrest, appellant asked an Officer Willoughby, who was drinking a cup of hot chocolate, whether he could have some too. When the officer refused, appellant inquired, "'Is it hot?'", and kicked the beverage out of the officer's hand, spilling it on the officer. Half an hour later appellant apologized. (Rep. Tr. pp. 5451-56.)

Appellant testified in his own behalf, describing his childhood years in Jerusalem and in particular the various incidents of bombing and shooting. He related his discovery of a human arm in the well, which incident had been described by preceding witnesses. (Rep. Tr. pp. 4509-10, 4815-18, 4834, 4837-38, 4842-43.) Appellant stated that he was a Christian Arab, had studied English since kindergarten, and could read

and write basic English by the time he emigrated to the United States. (Rep. Tr. pp. 4813-14.)

When he was a child, appellant was told that "[t]he Jews kicked us out of our home" and was told of the Deir Yassin massacre in which "two hundred and fifty some people, women and children . . . were slaughtered in cold blood by the Jews . . . and they were dumped into wells and some of the women . . . were taken on a truck and paraded through the city." (Rep. Tr. p. 4832.) Appellant described his awareness of the 1956 Suez Crisis in the Middle East, his family's emigration to the United States shortly thereafter, and his father's return to Jordan six or seven months later. (Rep. Tr. pp. 4852-53, 4859-66.)

Subsequently appellant's sister Ayda contracted leukemia, from which she ultimately died, and the time appellant took to care for her was responsible for some of his absence from classes at Pasadena City College; however, appellant also skipped classes to attend the horse races at Santa Anita and Hollywood Park. (Rep. Tr. pp. 4873-78.)

Appellant had wanted to become a United States diplomat and had therefore studied Russian and German. He had purchased an automobile with money he had earned

working at a gas station during the time he attended college. However, after his dismissal from college, he decided to become a jockey, working first as a stablehand at Santa Anita and subsequently as an exercise boy at the Altafillisch Ranch in Corona. (Rep. Tr. pp. 4879-85.) On September 24, 1966, appellant was injured in a fall from a horse at the ranch. He continued working for a while but quit in late November of that year. Appellant's eye bothered him for several months after the accident, and he received a $2000 award from Workmen's Compensation as the result of his injuries. (Rep. Tr. pp. 4886-93.)

During the following twelve months, appellant was unemployed and read a great deal at libraries and at home. (Rep. Tr. pp. 4894-96.) He "read everything about the Arab-Israeli situation that [he] could lay [his] hands on," including publications from the Arab Information Center in the United States and a book on Zionist influence on United States policy in the Middle East. (Rep. Tr. pp. 4924, 4928.) Appellant testified in great detail concerning the historical development of the world Zionist movement from its inception in 1897 to the outbreak of hostilities in Palestine after World War II. (Rep. Tr. pp. 4931-35.)

During this period of unemployment appellant also became increasingly interested in "the occult and metaphysical," although his interest antedated the fall from the horse. Because of his desire to learn more about himself, he joined the Rosicrucian Society, eventually attending the meeting previously described. (Rep. Tr. pp. 4898-4902, 5126-30.) One book read by appellant, entitled Cyclomancy, was described by him as follows: "the basis of what he says is you can do anything with your mind if you know how; . . . how you can install a thought in your mind and how you can have it work and become a reality if you want it to." (Rep. Tr. p. 4905.)

Appellant performed various exercises recommended in the book to make the reader "a better developed person." One of these exercises was putting his hand in a very hot pail of water and "thinking cool"--and vice versa. Part of his Rosicrucian teaching involved sitting at home with a mirror and candles and through concentration changing in his mind the color of the flame. These exercises "worked." (Rep. Tr. pp. 4906, 4911-13, 4916-18.) Appellant read a large number of other books in this area, some involving "thought transference." (Rep. Tr. pp.

4913-15, 4921-22, 4938-48.) One Rosicrucian article read by appellant taught him that if he wrote something down, he would accomplish his goal. (Rep. Tr. pp. 5103-07.)

During his direct examination appellant was examined page by page concerning the entire contents of the diaries found by the police on the corner of his dressing table and on the floor at the foot of his bed, five sheets of these diaries having been previously put in evidence by the prosecution. The defense then put in evidence all those portions of the two diaries not previously offered by the prosecution. (Rep. Tr. pp. 4955, 5095, 5191.)

Appellant testified that he had recorded various things in his notebooks "with the objective in mind of accomplishing [his] goal . . . [a]nd in reference to that, the assassination of Robert Kennedy." (Rep. Tr. p. 5108.) In contrast appellant had liked President John F. Kennedy because the latter had worked with Arab leaders for a solution to the Palestine refugee problem. (Rep. Tr. p. 4931.)

Appellant's notebooks included notes from his college classes, including biology and Russian, in addition to Arabic and Chinese script, the names

and addresses of various girls, notations on race horses, and general "doodling." (Rep. Tr. pp. 4950-52, 4956, 4958-61, 4964, 4979.)

Appellant admitted writing on May 18, 1968, that his "determination to eliminate R.F.K. is becoming more the more of an unshakable obsession . . . [and that he] must be assassinated before 5 June 68" (see Exh. 71-15 & 16) but did not remember doing so. However, appellant testified that he could have written this at the time Senator Kennedy "said he would send fifty planes to Israel." (Rep. Tr. pp. 4807, 4969.) Appellant had become very upset at the Arabs' loss in the 1967 war and at the aid which American Jews had given to Israel. (Rep. Tr. pp. 4929-30.) He had liked Senator Kennedy and until May 18, 1968, had hoped that he would win the Presidency. However, when appellant saw Senator Kennedy on television on or about that date, he realized that the Senator supported Israel. He became "burned up" about this. (Rep. Tr. pp. 4970-71.) Appellant would have killed Senator Kennedy at that moment had he then had the opportunity. He thought the Senator might have been in Oregon at the time. The June 5, 1968, deadline imposed by appellant for the death of Senator Kennedy was the one-year

anniversary of the six-day Arab-Israeli war of 1967. (Rep. Tr. pp. 4970, 4972-73.)

However, appellant termed "utterly false" the testimony of Alvin Clark to the effect that shortly after the assassination of Reverend King in April of 1968, appellant had stated his own intention to kill Senator Kennedy. (Rep. Tr. pp. 5195-97.)

When appellant heard the sound of the radio coming from his mother's room, announcing Senator Kennedy's commitment to support the delivery of fifty jet planes to Israel, appellant was looking into his mirror, engaged in his Rosicrucian studies. Concentrating, he observed the face of Senator Kennedy in the mirror. (Rep. Tr. pp. 4977-78.)

On June 2, 1967, appellant had recorded in his diary a "declaration of war against America" in which he noted that it had become necessary for him to "'equalize and seek revenge for all the inhuman treatments committed against me by the American people.'" The entry in appellant's diary went on to say that he would execute his plan

> "'. . . as soon as he is able to command a sum of money ($2,000) and to acquire some firearms -- the specifications of which

have not been established yet.

"'The victims of the party in favor of this declaration will be or are now -- the President, vice, etc -- down the ladder.

"'The time will be chosen by the author at the convenience of the accused.

". . . .

"'[T]he conflict and violence in the world subsequent to the enforcement of this decree, shall not be considered lightly by the author of this memoranda, rather he hopes that they be the initiatory military steps to WW III.

"'The author expresses his wishes very bluntly that he wants to be recorded by history as the man who triggered off the last war.'" (Rep. Tr. pp. 4987-4990.)

Appellant testified that when he wrote the foregoing, "I must have been a maniac at the time. I don't remember what was on my mind." (Rep. Tr. p. 4990.)

Other entries in the diary included "Long Live Nasser" and "Long Live Communism." (Rep. Tr. pp. 4994-95.) Appellant declared, "'I firmly support

the communists cause and its people, whether Russian, Chinese, Albanian, Hungarian or whoever. Workers of the world unite, you have nothing to loose [sic] but your chains, and a world to win.'" (Rep. Tr. p. 5096; see Exh. 72-123 & 124.) However, he denied ever having been a member of the Communist Party. (Rep. Tr. p. 5097.)

Appellant wrote that Ambassador Goldberg must die because "I didn't like what he said at the United Nations." (Rep. Tr. pp. 5018-20.) He wrote about assassinating the 36th President of the United States (President Johnson) because he "hated his guts" as a result of the President's Middle East policy. (Rep. Tr. pp. 5010-12.) He noted with respect to the last entry, "It looks like a crazy man's writing" but "I don't feel I am crazy." (Rep. Tr. p. 5013.) The notebooks continued, "'I advocate the overthrow of the current President of the fucken United States.'" (Rep. Tr. p. 5095; see Exh. 72-123.) On the witness stand appellant characterized the United States as "very good to me" but "n[o]t good to the rest of my people." (Rep. Tr. p. 5098.)

Appellant testified that he purchased the .22 caliber revolver in early 1968 with his own money

and for his own use, firing it at shooting ranges approximately six times between March and May of 1968. (Rep. Tr. pp. 5120-25.) Appellant then gave an account of his actions during the first five days of June, 1968.

On June 1, 1968, appellant bought some Mini-Mag ammunition at the Lock Stock & Barrel gun shop and engaged in target practice at the Corona Police Pistol Range. In purchasing the ammunition he had not requested this particular type; he had merely said, "Well, give me your best," and was then given the Mini-Mag. He had never before used Mini-Mag. Appellant attempted to use the range again on June 2d but was unable to do so because it was not open to pistol shooting on Sundays. (Rep. Tr. pp. 5126, 5131, 5153-54.)

After seeing an ad in the Los Angeles Times inviting attendance at a speech by Senator Kennedy at the Ambassador Hotel, appellant attended the June 2d speech. He did not bring a gun and did not contemplate assassination at that time. He had "completely forgotten" his diary entry of two weeks earlier in which he had recorded his mandate that Senator Kennedy die by June 5th. (Rep. Tr. pp. 5132-34, 5139.) When appellant

observed Senator Kennedy on June 2d, his "whole attitude towards him changed;" "that night, he looked like a saint" to him; appellant "liked him." (Rep. Tr. p. 5143.) The witness (Mrs. Miriam Davis) who testified to observing appellant in the kitchen area that night was a "complete liar." (Rep. Tr. p. 5144.)

During the preceding two weeks appellant had been going to the horse races and betting almost daily. Thus on June 3d appellant asked his mother for the remainder ($400) of his Workmen's Compensation award, which he had turned over to her, since he planned to attend the races on June 4th (election day) at Hollywood Park. (Rep. Tr. pp. 5147-48.) That evening he planned either to attend a Rosicrucian meeting or purchase new tires for his automobile. (Rep. Tr. pp. 5148-49.) However, when he saw the race entries in the newspaper he concluded that he did not like the horses that were running. He changed his mind and decided instead to go target shooting at the San Gabriel Valley Gun Club. (Rep. Tr. pp. 5148, 5150-51.) Although appellant already had three boxes of ammunition with him, on the way to the range he stopped to purchase five to seven additional boxes of ammunition at East Pasadena Firearms. (Rep. Tr. pp.

5152-55.)

Appellant remained at the range from about noon to 5:00 p.m., where he conversed with the rangemaster (Mr. Buckner) and purchased three or four additional boxes of ammunition from him. (Rep. Tr. pp. 5155-56, 5159.) Appellant considered himself "a pretty good shot" with a "good gun" and considered his revolver a good gun. He denied engaging in rapid fire at the range; he fired in a normal manner, and it was an elderly man who did rapid firing with a .38 caliber weapon. (Rep. Tr. pp. 5156-58.) He did not remember saying anything about killing a dog, although he "could have talked about it." At the time he did not have in mind shooting Senator Kennedy. (Rep. Tr. p. 5161.) He had just reloaded his weapon when the range closed and therefore left the range with his weapon loaded, placing it on the rear seat of his automobile. He did not remove the live bullets from the revolver even though he had brought along a screwdriver to facilitate ejection of the cartridges. (Rep. Tr. pp. 5165-68.)

After having dinner at a restaurant appellant observed a newspaper ad which read, "'Join in the

Miracle March, for Israel.'" (Rep. Tr. pp. 5172, 5174.) "That brought [him] back to the six days in June of the previous year . . . [T]he fire started burning inside of [him]" as the result of this ad. (Rep. Tr. p. 5175.)

Appellant mistakenly thought the parade was scheduled for that evening and set out to observe it. He "was driving like a maniac," got lost, but eventually arrived at Wilshire Boulevard where he looked for the parade. The gun was still on the back seat. (Rep. Tr. pp. 5177-80.) His wallet was in the glove compartment; appellant always carried his money loose in his pocket and never kept a wallet on his person. (Rep. Tr. pp. 5182-83.)

When appellant saw a sign for United States Senator Kuchel's headquarters, he dropped by and was told that a large party for Senator Kuchel was going on at the Ambassador Hotel. As appellant walked toward the hotel (his gun still in the automobile), he observed a large sign concerning some Jewish organization. This "boiled [him] up again." (Rep. Tr. pp. 5181, 5185-88, 5209.)

Upon entering the lobby of the hotel appellant observed a sign at the entrance to the Rafferty

headquarters, which were located in the Venetian Room. Appellant joined the Rafferty celebration, where he stayed an hour. Appellant's main purpose was to see Rafferty's daughter, whom he knew from school, but he never saw her that evening. While at the celebration he ordered two Tom Collins drinks. (Rep. Tr. pp. 5198-5202.)

From there appellant went on to the headquarters of Alan Cranston, candidate for United States Senator, which were located in another area of the hotel. (Rep. Tr. p. 5203.) Appellant did not remember asking anyone that evening where Senator Kennedy was "going to come through." Appellant had no specific recollection how many drinks he had that evening and did not know whether he had more than two. He did feel "quite high" and therefore decided to go home. (Rep. Tr. pp. 5207-09.)

Appellant testified that he returned to his automobile and "couldn't picture myself driving my car at the time in the condition that I was in." He feared receiving a traffic citation or having an accident without being covered by insurance, and decided to return to the party so as to sober up with some coffee. It had never "dawned" on him to drink some coffee when

he first left the party. He did not remember picking up the gun from the car seat before returning to the hotel for coffee, but he "must have." (Rep. Tr. pp. 5210-12.)

While drinking his coffee, he engaged a beautiful young girl in conversation. He did not remember "[w]hat happened next" until he "was being choked"; he recalled nothing in between. (Rep. Tr. pp. 5214-15.) His next recollection was his being brought to a police car and one of the officers pulling his hair, jerking appellant's head back, and shining a light in his eyes. Other than this alleged incident he suffered no mistreatment; everyone was "so friendly" and treated him "very nicely." He was soon advised of his constitutional rights. (Rep. Tr. pp. 5216-19.) But when an officer refused appellant a sip of hot chocolate at the Rampart station, appellant kicked the cup out of the officer's hands. (Rep. Tr. pp. 5219-20.) Appellant refused to give the officers his name that night and did not discuss anything about the case because "[t]hey never brought it up." (Rep. Tr. pp. 5221-22.)

Appellant testified that he shot Senator Kennedy but was unaware of shooting the other victims named in the indictment, although he "must have" and

"had no doubt" that he did. However, he bore them no "ill will." (Rep. Tr. pp. 4804-07.) Appellant did not at first know that he had shot Senator Kennedy; he learned this initially when so advised at the arraignment on the following day. (Rep. Tr. pp. 5221, 5224, 5228.) At that time he asked the public defender to contact the American Civil Liberties Union so that one of its members could inform appellant as to "all the legal phases." Appellant was thereafter contacted by attorney A. L. Wirin. (Rep. Tr. p. 5229.)

No one hired appellant to kill Senator Kennedy; appellant had no accomplices, and he did not discuss assassination with anyone prior to recording his entries in the diary or before going to the Ambassador Hotel. (Rep. Tr. p. 5054.) Appellant did not go to the Ambassador Hotel with the intention of shooting Senator Kennedy. Appellant admits killing him but testified that he does not remember the shooting. Yet appellant does not deny making the various entries in his notebooks, engaging in target practice, or leaving his identification in the automobile on the evening of June 4, 1968. Asked by his counsel, "How do you account for all the circumstances," appellant responded, "Sir, I don't know." (Rep. Tr. pp. 5231-32.)

On cross-examination appellant testified that he could not recollect ever having "blacked out" except when he had the fall from the horse and at the time the present offenses occurred. (Rep. Tr. pp. 5233-34.)

The various entries in the diaries were made in black ink, blue ink, and pencil and entries on the same page could have been made at different times. (Rep. Tr. pp. 5295-96.)

Appellant had an intense hatred of Zionists and believed in the old Arab proverb, "'The friend of my enemy is my enemy.'" (Rep. Tr. p. 5236.) His hatred of Zionists was always with him; it did not require repeated provocation, and "anything . . . that is involving them turns [him] on." (Rep. Tr. pp. 5253-54.)

Appellant first developed an interest in guns as a member of the California Cadet Corps in high school, where he learned to fire rifles and handguns, clean them, and take them apart. (Rep. Tr. pp. 5241-42.) He knew from the safety rules he had learned that it was dangerous to carry a loaded weapon inside an automobile. (Rep. Tr. pp. 5284-85.) However, he denied knowing that as an alien he could not lawfully possess a pistol or be sold one by a gun store. (Rep.

Tr. pp. 5287, 5291.) He never went hunting for animals with a gun even after the purchase of the .22 caliber revolver. (Rep. Tr. pp. 5278-79.)

Appellant was aware of when Senator Kennedy was campaigning in Oregon and Washington. (Rep. Tr. pp. 5247-48.)

On June 1, 1968, appellant fired 300-350 rounds at the Corona shooting range and on June 4, 1968, about 850 rounds at the San Gabriel range, carefully aiming each shot at the bull's-eye. (Rep. Tr. pp. 5296-97, 5301-03.) Of the six occasions on which he fired at a shooting range, it was only on June 2d and June 4th that he signed a register. (Rep. Tr. pp. 5292-93.)

At the time appellant entered the Ambassador Hotel on the evening of June 4th, he was very angry at the Zionists and their friends. (Rep. Tr. pp. 5311-12.) When he returned to the hotel the second time that evening, for coffee, he locked his automobile. (Rep. Tr. p. 5315.) It never entered his mind to go from his automobile to the nearby Kuchel headquarters to obtain the coffee. (Rep. Tr. p. 5317.)

After his arrest, appellant discussed with Mr. Howard the case of Deputy District Attorney

Jack Kirschke, who had been convicted of murder. (Rep. Tr. pp. 5324, 5329-30.) However, appellant did not remember discussing the shooting at the Ambassador Hotel with anyone between the time of his arrest and his arraignment. Despite his unawareness of what had transpired, he was never curious as to why he had been brought to a police station or why he had been handcuffed. (Rep. Tr. pp. 5326-27.) He did not recall telling everyone who asked him his name at the police station that he was John Doe, nor did he recall refusing to give his name to the judge at the arraignment. (Rep. Tr. pp. 5334-35.)

Asked if he was sorry that Senator Kennedy was dead, appellant testified, "I'm not sorry, but I'm not proud of it, either." Appellant admitted having stated during the course of the trial (outside the presence of the jury), "'I killed Robert Kennedy wilfully, premeditatively, and with twenty years of malice aforethought.'" (Rep. Tr. pp. 5336-37.) Appellant testified, "I'm willing to fight for [the Arab cause] . . . I'm willing to die for it." (Rep. Tr. p. 5338.)

On redirect examination appellant explained the circumstances under which he had declared that he had killed Senator Kennedy with malice aforethought.

When he made the statement he was "very angry" at his attorneys because of their intention "with respect to calling certain girls to the witness stand," in particular Gwendolyn Gum and Peggy Osterkamp (whose names appear repeatedly in appellant's notebooks). (Rep. Tr. pp. 5339-40.) Appellant had placed X marks beside the listed names of those witnesses whom he did not want his attorneys to call. (Rep. Tr. p. 5341.) He had informed the court, "'I at this time, sir, withdraw my original plea of not guilty and submit the plea of guilty as charged on all counts. I also request that my counsel disassociate themselves from this case completely.'" Appellant was "boiling" at the time. When the court asked him, "'All right, and what do you want to do about the penalty,'" appellant responded, "'I will offer no defense whatsoever . . . I will ask to be executed, sir.'" (Rep. Tr. pp. 5345-46.) It was when the court then asked appellant for his reason for wanting to so plead that appellant made the statement in question. (Rep. Tr. p. 5347.) The court refused to accept the plea and ordered that the trial proceed, finding appellant incapable of representing himself. (Rep. Tr. pp. 5348-51.) Thereafter appellant's mother and Mr. Nakhleh, a Palestinian

Arab attorney serving as a defense advisor, had spoken with appellant and given him advice. Appellant agreed to proceed with the trial, represented by his counsel, once they agreed not to call the two girls as witnesses. (Rep. Tr. pp. 5353, 5357.) At the time he concluded his testimony, appellant was no longer angry with his attorneys; he was "very much satisfied" with them. (Rep. Tr. pp. 5353-54.)

B. Psychological and Psychiatric Evidence

Martin Schorr, a clinical psychologist, examined appellant at the county jail for several hours on November 25, 1968, and for most of the following day. (Rep. Tr. pp. 5540, 5547.) Mr. Schorr administered various tests to appellant, including the Wechsler Adult Intelligence Scale which measures eleven areas of the subject's "intellectual, emotional functioning." (Rep. Tr. pp. 5548, 5569.) Appellant's verbal I.Q. measured 109, which meant that he was "functioning" verbally at a level superior to 75% of the general population. However, his performance I.Q., measuring "non-verbal communicating kinds of problem-solving tests," was 82, which placed him in the bottom 10% of the population. (Rep. Tr. pp. 5570-71.) The

"full-scale IQ" was 98, approximately average. (Rep. Tr. pp. 5570-71.) The discrepancy between the two I.Q. scores "reinforces the impression that this low IQ . . ..is spuriously low." (Rep. Tr. p. 5624.) The "superior verbal to non-verbal, is a typical American picture of an American taking the test"; however, "the farther the departures become, the more pathological does the record appear to be." (Rep. Tr. p. 5572.) This test indicated to Mr. Schorr that under stress appellant became confused and disorganized and lost contact with his environment. (Rep. Tr. pp. 5589, 5591, 5594-95.)

On the Minnesota Multiphasic Personality Inventory (MMPI), a 566-item psychiatric questionnaire characterized by Mr. Schorr as "the least revealing kind of test," appellant received high scores for paranoia and hypomania (defined as a condition in which the individual is very aggressive and restless, "in a state of constant turmoil, sort of like a road-runner"). (Rep. Tr. pp. 5554, 5561-63, 5567.) During the administration of this test, appellant refused to answer certain questions, gave indications of being anxious to convince Mr. Schorr "how normal and sane he is," told him of his college studies and interest

in political science and diplomacy, and noted his discomfort at the Arabic definition of his (appellant's) name--predatory animal. (Rep. Tr. pp. 5563-64, 5570.)

Mr. Schorr then administered the more "revealing" Rorschach Test, which consisted of an evaluation of appellant's various responses to ten ink-blot cards. (Rep. Tr. pp. 5567, 5610-15.) For example, appellant's characterization of particular patterns as a dove, a crushed frog, and cliffs had certain significance to Mr. Schorr. (Rep. Tr. pp. 5617-20, 5634.) Appellant's responses led Schorr to conclude: "the profile of this individual essentially then is that of a paranoid psychosis, paranoid state." (Rep. Tr. p. 5676; see also Rep. Tr. pp. 5677-78, 5681-83.)

The Thematic Apperception Test (TAT), in which appellant was asked to interpret ten cards, was administered to provide "some clues as to . . . what are the conditions which may be contributing toward this paranoid state." (Rep. Tr. pp. 5684-87, 5692-5700.) Appellant was also given a test called the Bender Visual Motor Gestalt in which he was asked to copy nine drawings. (Rep. Tr. pp. 5705-06, 5851.) Mr. Schorr concluded from the results of this test and

the other tests that "There is a high degree of consistency of the profile of an individual who is psychotically disturbed." (Rep. Tr. p. 5717.)

Mr. Schorr had not observed the proceedings in which appellant had attempted to enter a plea of guilty but, from a reading of the transcript of these proceedings, concluded that the incident was consistent with paranoia and psychotic disturbance. (Rep. Tr. pp. 5723-24.) Mr. Schorr also concluded that the "diary is sort of like an escape valve. Every time he writes something down that is aggressive, hostile and say homicidal in apparent intent, it discharges the hostility, and it lessens, tends to lessen the probability that he will act out in this manner." (Rep. Tr. p. 5734.)

The ultimate conclusion reached by Mr. Schorr was that under certain conditions appellant had a "split" or schizophrenic personality, "a kind of a Jekyll-Hyde personality--one personality doesn't know that the other exists, and vice versa." Appellant had "two personalities in one, so to speak. One is not aware of the other, because the conscious Sirhan conceives of himself as a nice guy." Appellant "dis-associates" like Eve in the "movie . . . called 'The

Three Faces of Eve.'" (Rep. Tr. pp. 5730-34, 5800.) Appellant's personality was like "Silly Putty. It has no shape. It changes shape from moment to moment." (Rep. Tr. p. 5735.) Appellant, like "any such individual," could not "meaningfully and maturely premeditate" or harbor malice aforethought. (Rep. Tr. pp. 5735-36, 5738.)

On cross-examination Mr. Schorr testified that the M.M.P.I. has only 60-70% accuracy. (Rep. Tr. pp. 5777-79.) Mr. Schorr "normally" "rule[s] out the possibility of actual brain damage" by means of "psychodiagnostic tests." (Rep. Tr. p. 5766.) He found "no proof of actual brain damage." (Rep. Tr. p. 5845.) Schorr places "the most reliance on the Rorschach" test. (Rep. Tr. p. 5929.) He disagreed with the following published statement of one authority on this test: "Specific behavior, including psychopathological symptoms, can be inferred from the test findings alone only with difficulty, if at all." (Rep. Tr. pp. 5936-39.)

Appellant's testimony, as to sobering up with coffee in order to avoid receiving a traffic citation or having a collision without automobile insurance coverage, was indicative of a logical and

"reasonable" "thinking capacity." (Rep. Tr. pp. 5739-40.) Appellant's purchase of hollow point ammunition and practice of rapid firing on the shooting range the day of the political assassination also reflected a "thinking process." (Rep. Tr. p. 5749.) So did appellant's inquiring whether Senator Kennedy would pass through a particular area at the hotel, and appellant's remarks after the shooting, "I can explain," "I did it for my country." (Rep. Tr. pp. 5750-51.) Assuming appellant's testimony that he was intoxicated was a lie, the telling of such a lie "would suggest a sociopathic personality." Every criminal defendant who commits perjury is a "potential sociopathic personality." (Rep. Tr. pp. 5741-43.)

Mr. Schorr in part based his final report on facts supplied by appellant "as a matter of truth." As for Mr. Schorr's use of the word "drunk" in describing appellant, Schorr "never established it as a matter of fact. That was an idea that came to [him] from what was reported in the newspapers." (Rep. Tr. p. 5848.)

Appellant had the "capacity for dissociate reaction under stress." (Rep. Tr. p. 5796.) Mr. Schorr believed that on the night of the shooting,

finding the gun on the back seat of the automobile "might have been the stress." (Rep. Tr. pp. 5815, 5817.) The "gun symbolized . . . giving to himself an aggressive personality that he basically did not possess. . . . and further symbolized, well, his need to be in charge of his own destiny, not to be castrated as he allegedly was by his father." (Rep. Tr. p. 5819.) The dissociate state is normally characterized by amnesia as to events, and appellant's amnesia began with the picking up of the gun. (Rep. Tr. pp. 5827-29.) However, Mr. Schorr did not know when the dissociate state began, only that it began sometime prior to the shooting. Nor did he know when the dissociate state ended, or even whether it had come to an end by the date of the trial. (Rep. Tr. p. 5847.)

During the course of his cross-examination, Mr. Schorr listened to tape recordings of lengthy conversations which took place between appellant and members of the district attorney's office and Los Angeles Police Department during the hours following appellant's arrest. (Rep. Tr. pp. 5947-57, 5970-6170.) As reflected by some of the above-summarized testimony (see Respondent's Brief, pp. 15-18), during these conversations appellant refused to give his

name, made no statements (incriminatory or exculpatory) relating to the shooting, and engaged in banter unrelated to the case. Mr. Schorr testified that during these conversations appellant was not under any delusion that he was being pursued by real or imaginary persons and was not responding to "voices or other influencing entities." However, Schorr did not know whether appellant was under a "delusional or false belief" at the time. (Rep. Tr. pp. 6171-72.)

Mr. Schorr admitted that on July 10, 1968, prior to examining appellant, he had written a letter to defense counsel Russell Parsons in which Schorr related, "'I would like to help you very much in the matter of preplanning jury selection on the basis of the personality dynamics of the client, since so many headaches can be avoided if proper jury selection tuned to the emotional needs of Sirhan can be met, prior to the trial.'" (Rep. Tr. pp. 5928, 6175-76.) However, Schorr denied having made up his mind to be a defense witness at the time he wrote this letter, nor at that time had Schorr formed an opinion as to appellant's mental condition although Schorr "had all kinds of vague ideas," "undifferentiated ideas based upon the reports from the Life Magazine article

and the Press and the TV." (Rep. Tr. pp. 6176, 6180.) Among these "ideas" was Schorr's statement in his letter, "'There can be no real [basis] for premeditation where all facts are known.'" (Rep. Tr. p. 6185.) Schorr closed his letter with the words, "With kindest wishes toward a hopeful outcome,'" but the hopeful outcome was only "that justice would be served" and that Schorr would "be asked to be a part of the defense team." (Rep. Tr. p. 6176.)

In a December 10, 1968, letter to Mr. Parsons, Mr. Schorr wrote that the "'conclusions of this study by the undersigned . . . are based completely on materials reported upon in this paper, independent of any other studies that have been made prior to this date, or which may be made at a later date, by persons other than the undersigned.'" (Rep. Tr. pp. 5874-75.) Yet substantial portions of Schorr's final report were taken verbatim or almost verbatim from a book entitled Casebook of a Crime Psychiatrist, by James A. Brussel, M.D. (Rep. Tr. pp. 6188, 6255-56, 6259-62, 6268, 6271-74, 6292-95.) Schorr testified that he had read the book, having purchased it shortly after it came out in November or December of 1968. He had it before

him as he prepared substantial portions of his final report dated December 18, 1968. Although he "used considerable material from this book," he did not employ quotation marks or footnotes to indicate that the material had been taken from another source. (Rep. Tr. pp. 6196, 6254-55, 6265-66, 6282-83.) Although the book had no raw data and was based on what defense counsel characterized as "imaginary cases," Schorr considered the book "an authority in the field of psychiatry." (Rep. Tr. pp. 6246, 6256-57, 6260-61.) He "went through this entire book . . . looking for exciting language." (Rep. Tr. p. 6305.) Six passages from a chapter entitled "The Mad Bomber" appeared in Mr. Schorr's report. (Rep. Tr. pp. 6189, 6281.) Schorr had never made tests on that "Mad Bomber." (Rep. Tr. p. 6260.)

A lengthy portion of his final report was copied by him from the chapter entitled "The Christmas Eve Killer," a description of a boy who desired to kill his mother. (Rep. Tr. pp. 6193, 6295, 6297-98.) Schorr was not "interested in the factual similarity or dissimilarity"; he just wanted to use the "language that applies to the paranoid mechanism." (Rep. Tr. p. 6278.) This passage from Schorr's report reads as

follows, with only minor discrepancies between Schorr's report and the book:

> "'By killing Kennedy, Sirhan kills his father, takes his father's place as the heir to his mother. The process of acting out this problem can only be achieved in a psychotic, insane state of mind. Essentially the more he railed and stormed, the more the mother protected Sirhan from his father and the more he withdrew into her protection. He hated his father and feared him. He would never consciously entertain the idea of doing away with him, but somewhere along the line the protecting mother fails her son. The mother finally lets down the son. She whom he loved never kept her pledge, and now his pain has 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 instinctual demand for his father's death and the realization through his conscience that killing his father is not socially acceptable.