

Where to Try the 'Son of Sam'

New York Times (1923-Current file); Dec 13, 1977;

ProQuest Historical Newspapers The New York Times (1851 - 2007)

pg. 42

Where to Try the 'Son of Sam'

Events overtook us the other day in the "Son of Sam" murder case. Just as we went to press with an editorial recommending that David Berkowitz be tried somewhere other than Brooklyn came the news that the Appellate Division of the Supreme Court in that borough had ruled the other way. The court's arguments deserved careful attention so we pulled the editorial out of later editions. Now that we have examined the opinion, we continue to believe that the interests of justice require a transfer. At the risk of repetition for some readers, we would like to say why.

The court agreed with District Attorney Eugene Gold that the publicity about the case has been so widespread that a transfer to any other county in the state would not significantly affect the chances for empanelling an impartial jury. It said that given the size and diversity of the Kings County populace, a fair trial might yet be had there. And it concluded, "such prejudice and/or predisposition as exists, if any, may be ascertained by defendant's attorneys upon questioning the prospective jurors and dealt with accordingly."

Defense lawyers contend that media coverage has "poisoned" the entire metropolitan area, intensifying the predictable hostility against anyone accused of such horrible crimes. We do not accept all the rhetoric of the defense attorneys; still less do we accept their latest argument, lodged with a Federal court, that there should be no prosecution at all because a fair trial is utterly impossible anywhere in the state. But if ever a case cried out for a change of venue, it is this one. Thousands of city residents were badly frightened by the series of ".44-caliber killings." Elsewhere in the state there admittedly was horror and concern for law and order, but surely not such a feeling of involvement. The United States Supreme Court has stipulated that jurors need not be totally uninformed of a case or without opinion to be fit for service but it has

never endorsed holding a murder trial in a district permeated with fear. The fact that the defendant became notorious throughout the state and even the country is no argument for trying him before those who were the most frightened by him.

Last year, in a case involving a gruesome murder in Nebraska, the Supreme Court spelled out some of the safeguards for defendants available to courts in highly publicized cases. Delay can permit passions to cool. Careful screening and sequestering of jurors are valuable trial techniques. Relocating trials may improve the chances for picking jurors able to set aside any preconceptions about guilt. All these methods are vastly preferable to "gag" orders against the dissemination of news, and here is a good case in which to implement them.

That said, a further observation is in order about pretrial prejudice in this particular case, though the point is not addressed by either side. In view of the announced insanity plea, it seems clear enough that the question will be not *whether* the defendant killed Stacy Moskowitz but *why*. What was his mental condition at the time? Should he be labeled culpable? What should society do with this man? Could only a madman have perpetrated the crimes attributed to Son of Sam? It might be possible, with luck, to find a jury in Brooklyn that is not incurably prejudiced on these issues. But we should not trust to luck. A change of venue would maximize the chance of fairness.

The appellate court has chosen a different course. Having done so, it has placed a difficult challenge before the trial court: to conduct a searching interrogation of prospective jurors to ascertain that there is no indelible prejudice—and to face candidly the possibility of transferring the trial if such prejudice is found. The handling of this case will be closely scrutinized. The courts must insure not only that justice is done, but also that it appears to be done.

Reproduced with permission of the copyright owner. Further reproduction prohibited without permission.