

LEGAL STEPS IN CASE FACING COMPLEXITY

But Arraignment Is Typically Pro Forma as Judge Sends Suspect for Psychiatric Examination

By MARCIA CHAMBERS

The arraignment yesterday of David Richard Berkowitz, the "Son of Sam" murder suspect, was pro forma, and—except for the security and standing-room only courtroom audience—as cut-and-dried as such procedures ordinarily are. But the legal steps that will follow are likely to become extraordinarily complex.

Those steps began soon after Mr. Berkowitz was arrested, when an acting State Supreme Court justice, Richard A. Brown, who presided at the 12-minute arraignment in Brooklyn Criminal Court, ruled that Mr. Berkowitz may be an "incapacitated person." Then he sent the 24-year-old mail clerk to Kings County Hospital for psychiatric examination.

By ordering two court-appointed psychiatrists to examine Mr. Berkowitz, Judge Brown was asking them to find out the answers to questions that will ultimately decide whether Mr. Berkowitz ever stands trial and where he spends the rest of his life.

Dr. Daniel W. Schwartz, director of forensic psychiatric services at Kings County Hospital and associate professor of psychiatry at Downstate Medical Center in Brooklyn, will be in charge of the examination. It will determine, he said yesterday, whether Mr. Berkowitz is suffering from any "mental disease or defect" that would preclude a trial.

Through a variety of tests to be administered in the next two weeks, the psychiatrists will find the answers to several questions and then report back to the court.

The questions: Did Mr. Berkowitz understand as he stood in court yesterday that he was being charged with the murder of Stacy Moskowitz? Was he able to assist his attorney in the half-hour conversation they held in the prison pens prior to the arraignment? More important, will he be able to advise his lawyers later as the complicated case proceeds through the courts?

Statements Called Lucid

Over the months and since his capture Wednesday, Mr. Berkowitz has purportedly made a series of bizarre statements in letters, in conversations with police and in court records.

But are these the statements of a man not fit to stand trial? Or, looking ahead to a possible trial, are these the statements of an insane man?

Legal experts observed yesterday that the fact that Mr. Berkowitz seemed demented to the public at large did not necessarily mean that he was legally insane at the time he purportedly killed six persons and injured seven more in the Bronx, Queens and Brooklyn over the last year. Nor does it mean that he is not competent to stand trial.

One official familiar with the police interrogation yesterday said that Mr. Berkowitz had given lucid, detailed statements concerning the alleged murders during questioning by three assistant district attorneys from the boroughs in which the murders took place. "He had total recall—names, dates, places, everything," said one official.

In that sense, Mr. Berkowitz's response was similar to that of a convicted murderer, Calvin Jackson, who gave lucid, detailed statements to the police last year in reconstructing the murders of nine women on Manhattan's West Side.

In Mr. Jackson's case, after weeks of conflicting psychiatric testimony, a Supreme Court justice decided that Mr. Jackson was competent to stand trial; that is, he could understand the proceedings against him and could assist in his defense. Mr. Jackson went to trial, was found guilty by a jury and was sentenced to life in prison.

By law, Mr. Berkowitz's case will follow the exact same procedures as Mr. Jackson's, although the outcome may be different.

First, the psychiatrists at Kings County Hospital will decide whether Mr. Berkowitz is an incapacitated person and the standard to ascertain incapacity is far less than is the legal standard for insanity at trial.

Under New York State law, a person is not criminally responsible for his conduct if at the time of the crime, as a result of mental disease or defect, he lacked "substantial capacity" either to know or appreciate the nature and consequences of his conduct or that his conduct was wrong.

Accused of Murder in 2d Degree

Regardless of the psychiatrist's finding, a hearing on Mr. Berkowitz's mental competence is likely to take place, but not in Criminal Court, where he was arraigned yesterday. This hearing, which can be brought on a request from the defense, the District Attorney's office or the court, will probably take place in Supreme Court because by the time the psychiatric report is ready in two weeks or so Mr. Berkowitz will probably have been indicted.

Grand juries in the three counties have or soon will begin to hear evidence that could lead to murder indictments against Mr. Berkowitz. He was accused in court yesterday of murder in the second degree, since murder in the first degree is reserved for the killing of a police or correction officer.

Should a judge rule that Mr. Berkowitz is incapacitated, then he will not stand trial. Instead he will be sent to a hospital for the criminally insane, where he will stay until he is fit to stand trial. Should this happen, the issue of whether Mr. Berkowitz can get a fair trial considering the massive publicity of the "Son of Sam" case will not have to be answered now.

If, however, Mr. Berkowitz is found competent to stand trial, then he can take one of two actions. He can plead guilty to an indictment in Brooklyn and possibly in other counties, thereby consolidating his cases and avoiding trial. Under the law he can be sentenced to prison for only one murder.

Or he can stand trial, where it is expected he will raise an insanity defense. Calvin Jackson raised the same defense and lost. Such a defense makes a particularly difficult case because the burden of proof is on the District Attorney to show that the suspect was not insane at the time he committed the murders. Under the law, the statements Mr. Berkowitz will soon give to psychiatrists would be inadmissible in evidence at a trial based on an insanity defense.