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Berkowitz Lawyer Seeking to Pull Out of the Case After Reported Attempt to Sell Tapes of His Client

By MARCIA CHAMBERS

A Brooklyn lawyer who is said to have tried to sell the taped memoirs of David R. Berkowitz, the accused .44-caliber killer, to two newspapers asked a Criminal Court judge yesterday to relieve him as Mr. Berkowitz's attorney. But the judge told him to take his request to State Supreme Court, where the murder case is now being heard.

The lawyer, Philip Peltz, who has offices at 32 Court Street, Brooklyn, has been the focus of controversy since The Daily News and The New York Post said last week that he had tried to sell them tapes of conversations made with Mr. Berkowitz at Kings County Hospital for up to \$100,000. The 24-year-old suspect is undergoing psychiatric tests to determine his fitness to stand trial.

The 43-year-old Mr. Peltz, convicted and sentenced to prison seven years ago in a Federal securities case, is now the subject of a disciplinary investigation by the Appellate Division of State Supreme Court in Brooklyn. The court inquiry, which also is looking into Ira Leitel, Mr. Peltz's associate, centers on the tapes as well as the way in which Mr. Peltz managed to enter the case.

"If I am guilty of anything," Mr. Peltz contended in court papers yesterday, "it is my failure to foresee that anyone who became involved with this case would be the subject of media notoriety."

Judge Claudius S. Matthews of Criminal Court, who was asked to rule on Mr. Peltz's removal from the case, told the lawyer that he could not do so because Mr. Berkowitz's indictment on murder charges, which was filed yesterday, had now placed the case in State Supreme Court in Brooklyn.

Late yesterday afternoon Supreme Court Justice Leonard E. Yoswein signed an order calling on the lawyer's client, Mr. Berkowitz, to show why Mr. Peltz should not be permitted to withdraw from the case. Mr. Berkowitz, who will be in Supreme Court today for ar-

raignment on the murder charge, is entitled to a lawyer of his own choice. In an interview yesterday, Mr. Peltz would not say whether it was his decision or Mr. Berkowitz's to withdraw from the case.

In any event, asking Mr. Berkowitz to make a decision concerning Mr. Peltz could raise the question of whether Mr. Berkowitz has the mental capacity to do so, since he is still undergoing psychiatric tests. This issue may be raised in court today.

Mr. Peltz, who had obtained a document signed by Mr. Berkowitz giving him power of attorney and full title to literary and media memoir rights, said in his court affidavit that he "unequivocally and unconditionally relinquished all fees, earnings or agent commissions which have accrued or may inure from this case."

"I want no part of it," he said, "for to do otherwise would contribute to what I think is an unwarranted view of the profession and myself."

Mr. Peltz said that six hours of tape-recorded conversations with Mr. Berkowitz, which he said had been made with the suspect's consent, had been turned over to a "respected" lawyer who was holding them "pending further determination of the court or other interested parties." He would not identify the lawyer.

Leon Stern of Mineola, L. I., a lawyer hired by Mr. Berkowitz's father to represent his son, did not participate in the taped interviews. Mr. Peltz said later in the day that had no copies of the tape recordings.

Although he swore that he relinquished all fees, it could not be determined yesterday whether Mr. Peltz and Mr. Leitel had sold the tape memoirs to any other literary outlet prior to a ruling by another Criminal Court judge that barred them from doing so.

Since last week when The New York Post and The Daily News reported that

Mr. Peltz and Mr. Leitel had offered to sell them the tapes for \$100,000 and \$50,000, respectively, Mr. Peltz has been under increasing pressure from colleagues to withdraw from the case. He said yesterday that Mr. Berkowitz's interests could not be served while he was under attack.

"While representing David R. Berkowitz," he said, "I will not be able to respond freely to the unjust charges which have been leveled against me in the press. If I am defending David R. Berkowitz, I cannot defend myself."

Mr. Peltz, who is facing disbarment proceedings in Brooklyn arising from his conviction seven years ago, appeared to be making a conciliatory gesture to the bar when he said in his court papers that his continued presence in the case would only "compound and confuse the issues . . . and through attacks on me, impugn the legal profession."

The United States Attorney's Office for the Southern District said yesterday that Mr. Peltz's felony conviction was referred to the Association of the Bar of the City of New York for disciplinary action in 1972, but authorities at the bar association said yesterday that a preliminary check of their records disclosed no receipt of the case.

Disbarment in New York State is automatic if a defendant's Federal felony conviction is also a felony under state law. Mr. Peltz's conspiracy felony, the only crime with a state counterpart, is a misdemeanor under state law, and, as such, his disbarment was discretionary.

Mr. Peltz has given a number of explanations as to how he came into the "Son of Sam" case: an unidentified person telephoned him, a member of the family hired him, a message was left on his answering service, and, finally, that after meeting Mr. Berkowitz for the first time last Thursday, he was retained by the defendant himself.