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pg. 51

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Like an ultimate law school or journalism school "hypothetical"—a scenario built of conflicting principles—the press's coverage of the "Son of Sam" case has raised some of the thorniest questions in American journalism. As the case itself began to recede from the public consciousness in recent days, the coverage grew as a subject of debate among journalists and the public at large.

Among the issues were:

¶The degree to which constitutional guarantees of press freedom imply unstated responsibilities.

¶The difference between reporting and exploiting the news.

¶The propriety of reporters' becoming part of the story they are covering.

¶The conflict between the public's right to know and the defendant's right to a fair trial.

¶The question of reporters' violating the law to obtain information.

¶The ethics of news organizations' paying for information, letters, diaries or interviews.

Like the case itself, which resulted in the largest manhunt in the city's history, the story built slowly.

It began July 29, 1976, when 18-year-old Donna Lauria was shot and killed as

she sat in an automobile double-parked in front of her Bronx home. A girlfriend was wounded in the attack.

Over the next eight months, the gunman struck four times, killing two and wounding three others. When the police announced—following the shooting of Virginia Voskerichian in Queens last March—that the crimes were the work of an individual, press attention and public interest rose sharply.

When the gunman struck again, killing two more young people on April 17, he left behind a note adopting the name

Continued on Page 38, Column 3

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Son of Sam' Case Raises Several Thorny Issues for the Press

Continued From Page 1

given to him by police investigators—"Son of Sam." The note and the name added to the interest.

Another note, sent to Jimmy Breslin, a columnist for The Daily News, stimulated attention and interest beyond anything that had preceded it when it was published in his column on June 5. According to Mr. Breslin, the column was written after consultation with the New York City police, who had thought it might encourage the killer to write again and leave a clearer set of fingerprints than those obtained from earlier notes.

In the letter, the killer had asked Mr. Breslin how he planned to commemorate the anniversary of the killing of Donna Lauria. "What will you have for July 29?" the killer wrote.

Killer Did Not Write Again

In his column, Mr. Breslin urged the killer "to give himself up to me, if he trusts me, or to the police, and receive both help and safety." He added that the "time to do it, however, is now. We are too close to the July 29 that the killer mentions in his letter."

But the killer neither wrote more letters nor turned himself in. On June 26, he struck again, wounding a young man and a young woman. Two weeks later, Mayor Beame stepped before television cameras to say that, in light of the approaching anniversary of Miss Lauria's death, he was adding detectives to the "Son of Sam" case.

The Mayor's statement tended to reinforce the growing—but highly speculative—perception that the killer was planning an anniversary attack.

On July 28, under a headline, "To the .44 Caliber Killer on His 1st Deathday," Mr. Breslin asked the question that many New Yorkers were also asking, "Is tomorrow night, July 29th, so significant to him that he must go out and find a victim? Or will he sit alone, and look out his attic window to be thrilled by his power, this power that will have him in the newspapers and on television and in the thoughts and conversations of most of the young people in this city?"

Barrage of Stories

The next day, both The Daily News and The New York Post marked the anniversary with a barrage of stories recapitulating the crimes, profiling fearful neighborhoods and detailing the progress, or lack of it, in the police investigation.

The anniversary issue headline in The Post—"GUNMAN SPARKS SON OF SAM CHASE"—appeared over a story detailing a police pursuit of a man with a gun walking along the Cross Island Parkway. The penultimate paragraph revealed "that police say the mystery gunman was definitely not Son of Sam."

The New York Times took no notice of the anniversary, but, in the July 31 issue, the newspaper carried an article describing the extra police on duty for it. The story noted that the anniversary "warning" to Mr. Breslin had gone "unfulfilled."

In the early morning hours of July 31, the killer shot Stacy Moskowitz and Robert Violante as they sat in an automobile in Brooklyn. She died later. The shooting, coming as it did in the wake of so much press attention and speculation, unleashed some of the most aggressive, competitive and, in the view of its critics, tasteless journalism to be seen in New York City in many years.

'No One Is Safe'

"NO ONE IS SAFE FROM THE SON OF SAM!" read the Post headline the day after the Moskowitz shooting, followed three days later with a highly speculative assertion that "MOBSTERS JOIN HUNT."

While many aspects of the story warranted front-page attention by any standards of news judgment, the two city tabloids—and Rupert Murdoch's Post, in particular—were widely criticized for sensationalizing and exploiting the story to boost circulation. The Post wrote a story recording the fact that on the day of the suspect's capture, Aug. 11, it had sold a million copies. Its normal circulation is 609,000. The News sold 2.2 million copies, 350,000 more than usual.

Even before the capture of David R. Berkowitz, the suspect in the case, The New Yorker magazine said in its "Talk of the Town" column that "just about everything done by the press here—especially by the Post and the News—has made a bad situation worse for the residents of New York. By transforming a killer into a celebrity, the press has not merely encouraged but perhaps driven him to strike again—and may have stirred others brooding madly over their grievances to act." The unsigned "comment," which was written by Richard Harris, also chided Mr. Breslin for his suggestion that the killer might "find a victim" on the anniversary.

Breslin Chides Magazine

In a column written in rebuttal, Mr. Breslin chided the magazine for not contacting him and said that if it had, he would have said "that police felt that the killer was in Brooklyn, stalking and staking, for at least a full week before the weekend he struck." Mr. Breslin said that the suggestion that his column had sent the killer out impetuously "could only come from someone who has not seen the complicated network of streets the killer had to learn in order to get away."

Later, Mr. Breslin said that the suggestion that he was in some way responsible for the post-anniversary attack was "like blaming the Johnstown flood on a leaky toilet in Altoona."

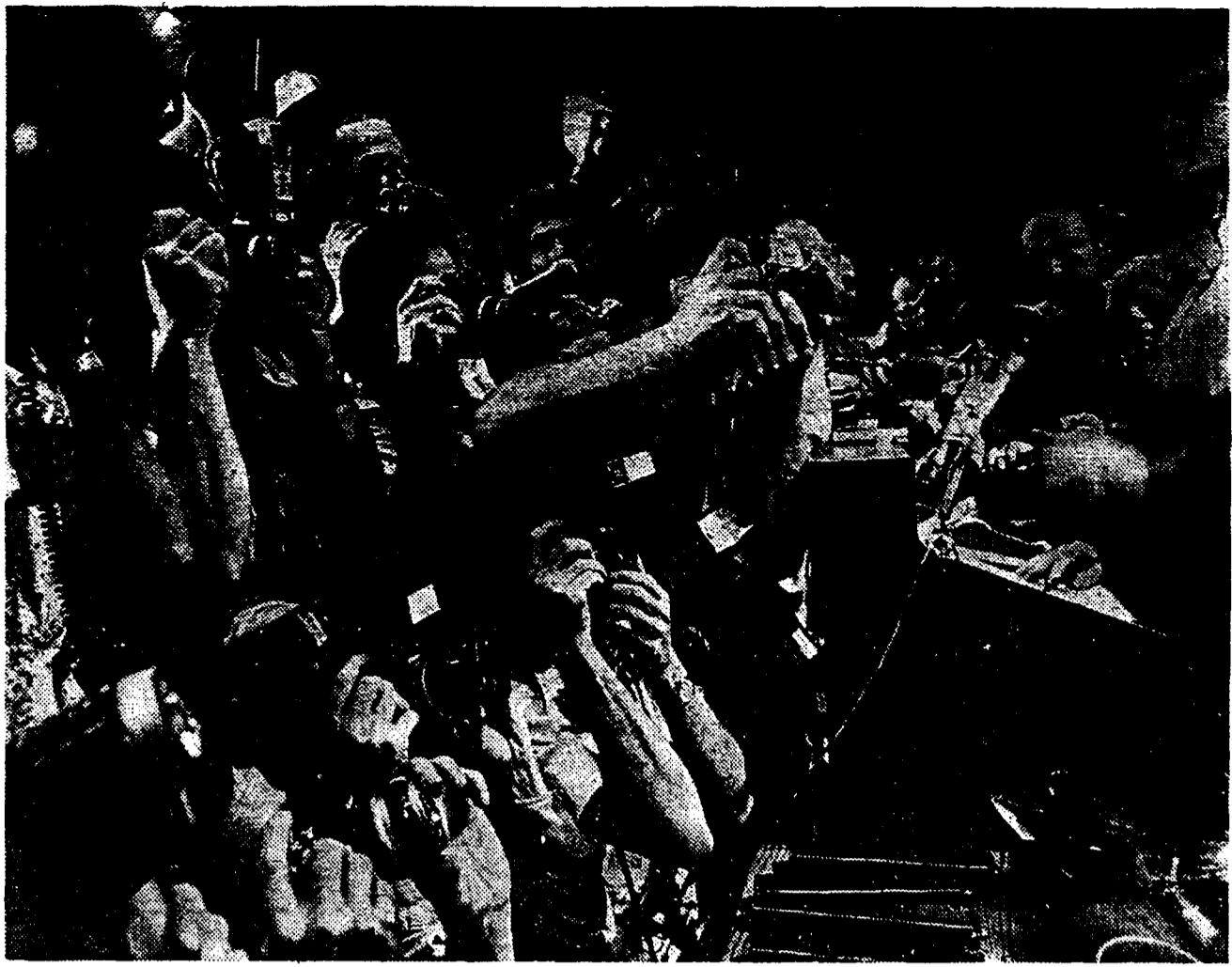
Editors at The Daily News and at The Post also responded to the questions raised in the New Yorker article.

Robert Spitzler, managing editor of The Post, said at the time that he had no reason to be apologetic. "Major stories are meant to be covered with all of the resources and energies at your disposal. If it offends the delicate sensibilities of the Algonquin crowd, so be it." (The Algonquin Hotel is known as a gathering spot for New Yorker staffers.)

Michael J. O'Neill, the editor of The Daily News, said he was outraged by the New Yorker article. "I would not argue that everything we did was exactly the way I would have liked it," he said. "Nevertheless, the fact is that we very carefully consulted with the authorities almost at every step along the way on whether reporting certain facts and certain parts of the investigation would help or hurt the work of the police."

Warren Hoge, the deputy metropolitan editor of The New York Times, said that the paper's story of July 31, which noted that the killer's anniversary "warning" to Mr. Breslin had gone "unfulfilled," qualified as news under informal guidelines set up early in the case.

"We decided at the outset," Mr. Hoge said, "that we were not going to generate news that wasn't there, and we were not



The New York Times/Paul Heseffros

A crush of photographers fighting for position to photograph weapons taken from home of David R. Berkowitz during early morning news conference at police headquarters just hours after Mr. Berkowitz was apprehended.

going to capitalize on news that was there. At the same time we were aggressively in competition and wanted to be first with real news." He said that the July 31 story, which dealt mainly with the added police patrols, constituted a "news event." He also pointed out that most psychologists discounted any effect that press coverage might have had on the killer.

Another matter touched upon by the New Yorker article concerned the various appeals made by Pete Hamill and Mr. Breslin, Daily News columnists, and a reporter, Steve Dunleavy of The Post, for the killer to turn himself in to them or their newspaper.

A. M. Rosenthal, executive editor of The New York Times, said he did not "want to sit in judgment on anybody else" but was concerned about "the dangers and responsibilities of a newspaper or television station which tries to get into a relationship with a murderer by appealing to him directly."

"The consequence of that," he said, "puts the newspaper or television station into the story as an actor."

Psychiatrists' Advice Sought

Mr. Breslin said that "the journalist's role in this situation was determined by the man with his finger on the trigger. [State Supreme Court Justice] Burt Roberts told me to tell him to turn himself in. I didn't care how he got caught—a sanitation truck could have run over him for all I cared."

Mr. Hamill said that he had spoken to several psychiatrists who urged him to appeal to the suspect's Dr. Jekyll side. "We knew he read newspapers and, under the circumstances, we tried to do the best we could. I have no regrets," he said.

Mr. Dunleavy said that "there are no rules when it comes to appealing to a killer." He compared his "Open Letter to the 'Son of Sam'" to an editorial that makes an appeal to a head of state. He said that the police were "willing to try anything to draw him out" at that time.

In another example of press participation, The News offered a \$10,000 reward for information leading to the killer's capture. And both The News and The Times cooperated with the police by not publishing the fact that the police had successfully lifted fingerprints and palm prints from the killer's notes.

New Issues Raised

While the criticism of the precapture coverage was directed mainly at the effect it might have had either on the killer or his imitators, the coverage following the suspect's capture raised a host of new issues.

As the tabloids competed daily for new information about the suspect, readers were informed of every aspect of his past.

Mr. Rosenthal, referring to the tabloid coverage, said that "while it's not our job to conceal terrible things from the public, we have to face in our conscience the question of whether we are reporting these things on capitalizing on them."

Sylvan Fox, the Newsday senior editor who directed his paper's coverage of the case, singled out The New York Post for its "extreme coverage." After the suspect's arrest he said, "it went over the edge. It became an orgy of dubious detail."

Post readers were given handwriting analyses, high school yearbook pictures, facsimiles of adoption papers, and an interview with a classmate who knew the suspect in the fifth grade.

Some Reporters Critical

While some reporters at The Post were exultant over the paper's coverage, many others, according to one source on the paper, were "actively disturbed and constantly depressed and demoralized" by it. "They're playing at this," the source said of the editors in charge of the coverage, "as if it was war."

But the more fundamental question raised about the coverage of David R. Berkowitz's capture concerned the degree to which his rights to a fair trial, based on a presumption of innocence, had been abused.

"CAUGHT!" read a New York Post headline in red letters. The News, without qualification or attribution, told its early edition readers that the ".44 caliber killer who terrorized New York City for more than a year, was captured last night."

In the days that followed, the two tabloids sometimes failed to attribute the suspect's incriminating statements to the police or to other law-enforcement sources. And both papers continued to refer to the suspect as "Sam" particularly in bold headlines, reinforcing the widespread presumption of guilt. A Post page 1 headline referring to a picture display of Mr. Berkowitz's apartment on two inside pages read, "Inside the Killer's Lair."

Perhaps the most egregious journalistic liberty was taken by The Post on Aug. 15, when, under a black headline—"HOW

I BECAME A MASS KILLER"—it carried, in bold letters, the byline: "By David Berkowitz." The "story" was in fact a series of letters the suspect had written some years before.

Mr. Spitzler of the Post declined to comment. Calls placed to Mr. Murdoch were not returned.

At The News, Mr. O'Neill said that, in general, he was "uncomfortable with the publication of either confessions or even the fact that there was a confession." He said he tried not to print statements implying guilt without attribution to the police or to law-enforcement agencies, "but I wasn't completely successful." He added that the assumption of guilt "slipped into some sidebars and I wasn't happy about that either. I have no defense for it." But he called an extenuating circumstance the belief that the suspect was making self-incriminating statements.

The New York Times referred to Mr. Berkowitz as either the "suspect" or the "alleged killer" and attributed statements linking him to the crime to law-enforcement officials. But Mr. Hoge, the deputy metropolitan editor, said he had "qualms about publishing statements that almost amounted to a confession."

Transcript Not Published

Asked about a Times article that alleged a crime that Mr. Berkowitz had not been charged with, Mr. Hoge said that the decision to publish was made because the suspect "had said so much on the record already, I felt we were past the point where we could protect him against the information he was providing himself." Mr. Hoge added that the paper had chosen not to publish a transcript—the source for the story—of a statement Mr. Berkowitz made to the police. "It did not add substantially to our knowledge of his actions or attitudes," he said.

Historically the burden of protecting the defendant's rights has rested with the courts, a position upheld by the United States Supreme Court in 1976 in a case involving massive local press coverage of a Nebraska murder case. Judges can postpone trials to a time when memories have faded, or move them to an area where publicity was minimal. And, of course, jurors can be carefully screened. The law does not require a jury to be totally unfamiliar with a case; only to be capable of rendering an impartial verdict based on the evidence presented at the trial.

"In Berkowitz's case," said Floyd Abrams, who represented a number of news organizations as friends of the court in the Nebraska case, "if he asks for a change of venue from this city and doesn't get it, that's reversible error in my view. This city is in the classic mood of places that criminal defendants are allowed to get out of."

Fair Trial Questioned

Norman Dersner, a professor of law at New York University and chairman of the board of the American Civil Liberties Union, said that, while he understood that the police were eager to reassure a frightened public, "they could have done it without disclosing as much evidentiary material." He said he thought it would be "extremely difficult, but not absolutely out of the question," for Mr. Berkowitz

to get a fair trial months from now when the effect of the coverage has dissipated.

Another question of journalistic ethics came up the day after the suspect's capture, when three photographers and a reporter were arrested and charged with criminal trespass for allegedly breaking into Mr. Berkowitz's apartment. The photographers represented The New York Post, The Daily News, and Time magazine. The reporter was on assignment for The Washington Post.

Mr. O'Neill of The News said that since the case was in the hands of the paper's lawyers, he did not think it appropriate to comment. Mr. Spitzler of The Post declined to comment.

A spokesman for Time magazine said that "of course we don't advocate anyone working for us breaking the law" but that since no determination of guilt had yet been made in this specific case, he did not wish to comment about it.

'Still Trying to Sort Out'

"We're still trying to sort the situation out," said Howard Simons, managing editor of The Washington Post. "We do not break the law to get to a story, and that applies to reporters as well as to all our stringers."

Criticism of "checkbook journalism" greeted the publication in the Aug. 15 issues of The News and The Post of letters that the suspect had written to a woman acquaintance some years before. Editors at both newspapers confirmed reports that they had paid for the letters, \$500 in the case of The Post, \$200 at The News.

At The Post, Mr. Spitzler declined to comment.

Mr. O'Neill at The News said that he was opposed to buying "material that is part of the evidence in the case or to buy material from Government officials or officers of the court." Beyond that, he said, he "didn't see anything fundamentally wrong with buying material." Newspapers buy exclusive photographs from citizens, and Mr. O'Neill compared purchasing the Berkowitz letters to "buying freelance material of a wide variety."

"Like anything else, you can abuse checkbook journalism," he said, adding that he did not feel that this instance constituted an abuse.

William F. Thomas, editor of The Los Angeles Times, which reportedly paid several thousand dollars to publish a statement by a member of the Charles Manson "family," detailing crimes committed by a group, said he felt it was the obligation of a newspaper to bring important documents forth. Referring to the Manson "family" member's statement, he said, "A document such as that was so compelling and the authenticity was unchallenged, so we ran it." But he added that its importance to the community made it an exceptional case, and insisted that he would not have bought any of the "Son of Sam" materials.

The price of some "Son of Sam" materials allegedly came high. According to editors at The Post and The News, an attorney for the suspect offered to sell tape recordings he had made with his client. The asking price at The Post was reported to be \$100,000. At The News, the price was said to be \$50,000. Both newspapers turned down the offer.