

2 Psychiatrists, in Turnabout, Call 'Son of Sam' Suspect Fit for Trial

By MARCIA CHAMBERS

Two court-appointed psychiatrists who nearly six months ago found David R. Berkowitz mentally unfit to stand trial have now changed their minds and decided that the suspect in the .44-caliber killings is fit to stand trial for murder in Brooklyn.

Last October, the original judge in the case, John R. Starkey, rejected the findings of incompetency made by the two psychiatrists—Dr. Daniel W. Schwartz, chief of forensic services at Kings County Hospital, where Mr. Berkowitz is a prisoner, and Dr. Richard L. Weidenbacher Jr., Dr. Schwartz's colleague. At the hearing last October, Justice Starkey ruled that the so-called "Son of Sam" was competent to stand trial for the murder of 20-year-old Stacy Moskowitz.

Several days later, Justice Starkey withdrew from the case amid controversy over public statements he made about the case. Since then, the defense has asked the judge now assigned to the case, Justice Joseph R. Corso, for a second competency hearing. As a prelude to that hearing, which would be held before a trial, a second set of psychiatric examinations would be conducted of the 24-year-old former mail clerk.

Ruling on Tests Expected

According to knowledgeable court sources, Justice Corso is expected to rule soon on motions seeking additional psychiatric tests, a new competency hearing and a variety of other defense requests, many of which are routine. The motions have not been made public because Justice Corso has ordered virtually all public documents sealed in the case, and has directed participants not to speak to the press.

The defense had been expected to seek a second competency hearing in part because it felt that Justice Starkey's public statements about the pending case placed Mr. Berkowitz in jeopardy and in part because competency to stand trial is based on a defendant's state of mind prior to trial. Mental fitness to stand trial is not a permanent condition, and often a defendant's mental condition can and does change.

In Mr. Berkowitz's case, Justice Starkey based his ruling holding the defendant competent to stand trial on the testimony given at the October hearing by a third psychiatrist, Dr. David Abrahamsen, a psychoanalyst and an authority on criminal behavior. Dr. Abrahamsen, retained by the Brooklyn District Attorney's office, testified that Mr. Berkowitz satisfied the two statutory requirements for being declared competent to stand trial: He understood the murder charge against him and could assist his lawyers in his defense.

Change Is Reported

However, Dr. Schwartz testified at the hearing that while Mr. Berkowitz understood the charges against him, he could not assist his lawyers because he was emotionally dead, suffered from delusions and did not show any interest in what happened to him at trial.

Since October, Mr. Berkowitz's emotional outlook has apparently changed, because Dr. Schwartz and Dr. Weidenbacher, who have treated Mr. Berkowitz, have now concluded that he can aid his lawyers in his defense and that he is

competent to stand trial—possibly by this spring.

This latest turn of events places the defense in the position of no longer being able to rely on the court-appointed psychiatrists for testimony to buttress its contention that Mr. Berkowitz is mentally unfit. The defense had not hired its own psychiatrist for the first competency hearing, but the law allows it to seek its own psychiatric evaluation, and presumably it will now do so. Neither the defense lawyers, the psychiatrists, nor members of the District Attorney's staff would discuss this aspect of the case yesterday.

In other developments in the Berkowitz case, a freelance writer accused of bribing a corrections officer to photograph Mr. Berkowitz at the prison ward of Kings County Hospital, has been indicted by grand juries in Brooklyn and on Staten Island, and the officer has been suspended.

The indictments of the writer, James Mitteager, were announced yesterday by John F. Keenan, the special state anticorruption prosecutor. They charge that Mr. Mitteager paid \$5,800 to the officer, Herbert Clarke, to obtain pictures of Mr. Berkowitz and information from him.

Picture-Taking Reported

According to Correction Commissioner William Ciuross Jr., Officer Clarke—who was assigned to the prison ward and had daily access to Mr. Berkowitz—allegedly took "the photographs himself and also diverted the inmate's personal mail for his own use."

The Commissioner pointed out that "many of the Berkowitz letters also appeared in the media." He said that the 31-year-old officer had been "granted immunity from criminal prosecution in exchange for his testimony," but would "be brought up on departmental disciplinary charges."

Mr. Keenan said the three-month investigation into the reported sale of the photographs to The New York Post and The Associated Press began after Officer Clarke allegedly tried to enlist another officer, Frank Jost, into the scheme. Officer Jost promptly reported an offer of money to his superiors, according to Mr. Keenan.

Mr. Mitteager, 31 years old, lives at 348 Van Name Avenue, Staten Island. He was indicted on charges of bribery and rewarding official misconduct by the Kings County grand jury, and indicted on Staten Island on charges of bribery and conspiracy. Bribery, the highest count of his indictments, carries a maximum penalty of seven years in prison upon conviction.

William J. Brink, managing editor of The Daily News said that The News had received the pictures from The Associated Press and that he did not know how they had been obtained.

Jack Schwadel, deputy photo editor of The Associated Press said:

"We don't know how the photographs were obtained. We saw the pictures when they were published in The Post that day. We found out the source and purchased the pictures from the source." Mr. Schwadel said the source had been Globe Photos.