

# APPEAL ON BERKOWITZ PLANNED BY LAWYERS

## After Sentencing on May 22, They Hope to Contest His Competency —Arson Investigation Begun

By ANNA QUINDLEN

Defense lawyers for David R. Berkowitz plan to appeal the competency ruling that allowed him to plead guilty to all six murder charges stemming from the "Son of Sam" case.

The decision last month by Justice Joseph R. Corso that Mr. Berkowitz was competent to stand trial paved the way for the proceedings held in State Supreme Court in Brooklyn on Monday in which the 24-year-old former postal clerk admitted all the murders and attempted murders committed in the yearlong rampage of the gunman known as the .44-caliber killer.

Transcripts of the closed competency hearing suggest that Mr. Berkowitz wished to so plead because he had become a born-again Christian in recent months and he believed he must atone for his sins, among them the six murders.

"If you can say that someone adjudged by competent psychiatrists as delusionary is able to aid in his own defense, perhaps we should look at the definition of competency," said Ira Jultak, one of the two lawyers retained by Mr. Berkowitz's father. "I think the thrust of our appeal might go toward the heart of the definition itself." He said if an appeal was filed, it would be after Mr. Berkowitz's sentencing, scheduled for May 22.

In legal terms, competency is defined as the defendant's ability to understand the charges against him and to aid in his own defense.

Dr. Daniel W. Schwartz, director of forensic psychiatry at Kings County Hospital, where Mr. Berkowitz has been imprisoned since his arrest on Aug. 10, 1977, testified at the competency hearing held last month that he believed Mr. Berkowitz had become competent. At an earlier hearing, Dr. Schwartz testified that he did not believe him to be competent.

Although at Monday's proceedings Leon Stern, Mr. Berkowitz's other lawyer, repeated his belief that his client was not competent, both Justice Willaim Kapelman of the Bronx and Justice Nicholas Tscoucalas of Queens declared the defendant competent in light of the testimony presented at the closed hearing held from April 12 to 17.

### Investigation of Arson

Mr. Jultak recalled yesterday that it was around the time of those hearings that Mr. Berkowitz at first mentioned to him that he had set 2,000 fires over a four-year period, most of them in the Bronx. That claim, and diaries detailing most of the blazes, stunned the spectators at Monday's proceedings when they were brought to Justice Kapelman's attention by Mario Merola, the Bronx District Attorney.

Mr. Merola met yesterday with fire and police officials to begin a full-scale investigation into Mr. Berkowitz's claims, and the possibility that some of the fires might have been fatal, or have been blamed on someone else.

Justice Kaplan told Mr. Merola on Monday that he would take the arson charges into consideration when Mr. Berkowitz is sentenced on May 22. But since he already faces the maximum sentence under state law, a total of 30 years to life, the arson question may be academic.

Transcripts of the closed competency hearings reveal that Mr. Berkowitz, who at one time served as a volunteer fireman at Coop City in the Bronx, told Dr. Martin Lubin, the defense psychiatrist, that as a youngster he was nicknamed "Pyro" because he set fires.

Dr. Lubin, who said he considered Mr. Berkowitz incompetent to stand trial, also testified that the defendant "hopes he'll be liked by everybody in the world if he says, 'Yes, I killed these people.'"

"He will stand on his head to be liked," he said.

### Change in His Competency

Dr. Schwartz found Mr. Berkowitz to be "paranoid," but concluded that he was nevertheless competent. He testified: "The most important changes in my opinion are that whereas in August 1977 . . . he believed in a certain group of demons . . . his belief now is in a very widely and very commonly shared belief, namely Jesus Christ. . . ."

"What he says," Dr. Schwartz added, "is that he wants to devote his life to goodness, to Jesus. . . ."

At the time of his arrest, Mr. Berkowitz reportedly told the police that he had been driven to kill by demons.

Meanwhile, a State Supreme Court justice in Brooklyn has ordered Mr. Berkowitz to show cause why a hearing should not be held to determine damages in a suit brought by Robert Violante. Mr. Violante was wounded in the last attack by the .44-caliber killer as he sat in a parked car in the Bensonhurst section of Brooklyn with Stacy Moskowitz, to whose murder Mr. Berkowitz pleaded guilty on Monday.

Mr. Violante lost one eye and retains only partial vision in the other, and he is seeking \$10 million in damages. Attorneys for Mr. Berkowitz are expected to try to overturn the show-cause order.