

The Berkowitz Legal Puzzle

Questions of How Law Applies to the Mentally Ill Are Raised Again in Tortuous 'Son of Sam' Case

By TOM GOLDSTEIN

Almost from the moment he was captured, there was little doubt in the city's criminal-justice community that David R. Berkowitz had committed the six "Son of Sam" murders, was mentally ill and, as a practical matter, would spend most of the rest of his life—if not all of it—in the custody of the state.

News

Analysis

Aside from tricky questions of logistics, the most important open question was

whether he would spend his time in a prison or a mental hospital.

Nine months after his capture, that question still has not been resolved, and with Mr. Berkowitz's latest outburst in court leading to the postponement of his sentencing, vexing questions have again been raised about the wisdom and propriety of the rules and procedures that the criminal-justice system applies to mentally ill offenders.

Careful Legal Distinctions

There are many gradations of mental illness, and state law attempts to make careful distinctions when it comes to mental states. Under law, it is not at all anomalous for a killer to be seriously ill mentally while still being criminally responsible for his acts and competent to stand trial and be sentenced.

Several legal and medical commentators have pointed to the nearly unbridgeable gulf that sometimes separates the two disciplines, and the Berkowitz case has highlighted some of those differences. The criminal-justice system, they point out, is designed to ferret out truth in "yes or no" terms, while human behavior constantly shifts and cannot be frozen in a point of time.

"We may have to rethink whether the procedures we use are legitimate," says Dr. Alan Stone, a professor of law and psychiatry at the Harvard University Law School.

"Is there any doubt he did it?" asks Norval Morris, dean of the University of Chicago Law School.

'We Punish Ourselves'

"We have set up techniques by which we punish ourselves when there are no outstanding issues of fact to be determined," said Mr. Morris, who has long called for the abolition of the insanity defense and the minimization of the role of psychiatrists in the courtroom.

"It's ludicrous. Once you stand back as a visitor from Mars would, it's an unseemly process you are going through in New York."

So far, Mr. Berkowitz has undergone dozens of psychiatric tests—some with conflicting findings—and is destined to undergo dozens more.

Twice he has been found competent to stand trial, which means he was judged capable of understanding the proceedings against him and of assisting in his own defense.

New Mental Tests Ordered

Earlier this month, when he pleaded guilty to the murder charges, he was deemed "competent," but that condition can shift from day to day. On Monday, at his sentencing—where by law he also had to be competent—he battled court officers before entering State Supreme Court in Brooklyn, then walked in chanting epithets about Stacy Moskowitz, his last victim. He shouted threats at her family, as well and finally was dragged out of the room by guards.

This behavior prompted the judges who were to have sentenced him to postpone the date.

In the meantime new psychiatric tests have been ordered, under a provision of state law that allows a judge to do this to help him in sentencing. But if those tests show Mr. Berkowitz is no longer competent, then the sentencing would be postponed indefinitely, and Mr. Berkowitz would be placed in a mental institution until he once again was competent.

If he is sentenced, he would then be ordered to prison, where he would almost immediately be examined by a prison psychiatrist. If he was found mentally unfit at that time, the Department of Correctional Services would have to approach a judge to appoint two independent psychiatrists to make yet another assessment. If they found him mentally unfit, he would be sent to a prison for the criminally insane in Utica.

With all this testing, it has never been determined whether Mr. Berkowitz was sane when he committed the half dozen murders.

Under state law, an individual is not criminally responsible for his conduct "if at the time of such conduct, as a result of mental disease or defect, he lacks substantial capacity to know or appreciate the nature and consequence of such conduct, or that such conduct was wrong."

Initially Mr. Berkowitz's lawyers entered a plea of not guilty by reason of insanity. But earlier this month, over the objections of his lawyer, Mr. Berkowitz withdrew that plea and pleaded guilty.

That does not necessarily mean Mr. Berkowitz was sane at the time he committed the murders. All it means is that he was competent to plead guilty at that time.

A Nice, Clean Plea

During the hearing at which he pleaded guilty, in ritualistic fashion, the questions of the three judges hearing the case fulfilled the legal requirements and were calculated not to explore the recesses of Mr. Berkowitz's mind or to give him an opportunity in court to speak of the demons he once said had ruled him.

"They wanted a nice, clean plea," says Kenneth Warner, a Manhattan lawyer who lectures on the subject of law and psychiatry. "It was a big mistake to accept a guilty plea without the full exploration of his sanity."

Mr. Berkowitz's lawyers, who feel he was neither sane at the time of the murder nor competent to aid in his defense, plan further legal proceedings. If they prevail, months or years from now the issue of Mr. Berkowitz's sanity could again be brought up.

Then, if he were to be found not guilty by reason of insanity, he would be detained in a mental hospital until it was determined that he could be released "without danger to himself or others."

But, as one lawyer said, given this hypothetical series of events, there is doubt that Mr. Berkowitz would ever be released because, as a pragmatic matter, no judge or doctor would want to be known as the person who freed the dangerous "Son of Sam."