

Prosecutor Testifies He Could Not Prove Post Knew of Bribe

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By DAVID BIRD

A member of the office of the special state anticorruption prosecutor testified yesterday that officials of The New York Post had not been indicted in the bribing of a prison guard to get pictures and other information about David Berkowitz, the so-called 'Son of Sam' killer because there was no proof that the newspaper knew the money it paid for the material was to be used for a bribe.

Testifying at a pretrial hearing in State Supreme Court in Brooklyn, Carl Bornstein, executive assistant to the special prosecutor, said: "I had no proof that they knew a public servant was going to be paid."

Mr. Bornstein's testimony came at a hearing on a motion by James Mitteager,

a freelance writer who is seeking to have his bribery indictment dropped on the ground that he had been singled out unfairly for prosecution while Post officials, who participated in the scheme to get the Berkowitz material, had not been charged because of their political influence.

Mr. Bornstein said he knew that The Post had obtained a "spy" camera and had given Mr. Mitteager some \$16,000 to get the Berkowitz material, but he said he had nothing to refute The Post's statements that it had no idea the money was being used for a bribe.

Mr. Bornstein said that a Post editor had told him that the money was being paid to Mr. Mitteager because he had an inside source who had access to Mr. Berkowitz in the prison ward of the Kings County Hospital. The editor told him he did not know who the inside source was, Mr. Bornstein said, but he indicated that it could have been a doctor or a nurse or an attorney, and therefore the money paid would not have been a bribe of a public employee.

Mr. Mitteager was indicted for paying

\$5,800 to Herbert Clarke, a correction officer. Mr. Clarke has been given immunity from prosecution in the case in exchange for cooperating with the investigation.

At the hearing today Felix T. Gilroy, Mr. Mitteager's attorney, asked Mr. Bornstein: "Did Clarke tell you that Mitteager got the money from The Post?"

After a long pause with a searching look on his face, Mr. Bornstein replied: "I don't recall whether he made specific reference."

"Did you ask him?" Mr. Gilroy questioned.

"I don't remember asking him," Mr. Bornstein replied.

Mr. Clarke is being sought as a witness at the hearing, but he could not be found yesterday.

The hearing continues at 9:30 A.M. today.