FORM 81 142

MEMORANDUM

SUPREME COURT KINGS COUNTY (CRIMINAL TERM, PART 17)

PEOPLE OF THE STATE OF NEW YORK	By CORSO, J.
vs.	Dated APRIL 6, 1978
DAVID BERKOWITZ	INDICTMENT No. 2673/77

Pursuant to Article 730 of the Criminal Procedure Law, the court ordered that the defendant be psychiatrically examined to determine his fitness to proceed to immediate trial. The reports of the psychiatrists having been received, defense counsel moved and the court ordered that a hearing be conducted. Defense counsel further moved that the hearing be closed to the public and the press. Upon notice given, the court has heard defense counsel in support of a closed hearing and representatives of the press in opposition thereto.

The defendant is awaiting trial under an indictment accusing him of the crimes of murder in the second degree, attempted murder in the second degree, assault in the first degree and possession of a weapon in the second degree.

Over a considerable period of time, a number of shootings were extensively reported in the daily press, not only locally but nationally. Young women in particular were the targets. The citizenry of the City of New York was alarmed and frightened. On July 31, 1977, in the area of Bay 16th Street and Shore Parkway, in the Bensonhurst area of Brooklyn, while Robert Violante and Stacey Moskowitz were seated in a parked car, shots were fired through an open window of the car. Stacey Moskowitz was wounded. She subsequently died. Robert Violante was wounded and he suffered serious permanent physical injuries.

On August 11, 1977, the defendant was arrested and indicted for murder and a variety of other charges in Kings, Queens and Bronx Counties. His arrest, indictment and arraignment received extensive publicity nationwide and overseas.

On August 16, 1977, an order of Mr. Justice Leonard E. Yoswein directed that, under Article 730 of the Criminal Procedure Law, the defendant be psychiatrically examined to determine his fitness to stand trial. Thereafter, a hearing, open to the public, was conducted. The defendant was found fit to stand trial. This proceeding generated wide publicity in all the media. Details, developed during the hearing, were extensively disseminated.

This court has directed that the trial of the defendant be conducted in the early part of April, 1978. Months have elapsed since the defendant was found fit to proceed and he continues to be confined in Kings County Hospital. The court, therefore, found it advisable to direct a second examination to determine his present fitness to proceed to trial immediately.

The defendant has been examined by Dr. Daniel W. Schwartz and Dr. Richard L. Weidenbacher, each of them being duly certified qualified psychiatrists. They were designated by the Director of Kings County Hospital Center to examine him pursuant to the order of the court dated February 27, 1978. The defendant has also been examined by Dr. David Abrahamsen, a qualified psychiatrist designated by District Attorney Eugene Gold, and also by Dr. Martin Lubin, a

qualified psychiatrist designated by Ira Jultak and Leon Stern, attorneys for the defendant.

The court is in receipt of the written reports of Dr. Schwartz, Dr. Weidenbacher and Dr. Abrahamsen. The court received an oral report from Dr. Lubin.

On Monday, March 27, 1978, the reports of the psychiatrists being before the court, defense counsel requested, and the court granted, a hearing to determine the fitness of the defendant to proceed to trial. Defense counsel moved that the hearing be closed to the public and the media and that it be conducted in camera. The District Attorney interposed no objection to the request. The defendant joined in the request for an in camera hearing. In order to afford the media and any other interested party an opportunity to be heard, the court set March 30, 1978 for further argument.

The court has heard and considered the arguments of defense counsel in support of closure and the District Attorney not opposing, and attorneys representing the New York Daily News, the New York Post, Newsday, Inc., CBS, Inc., New York Press Club and the New York Fair Trial Free Press Conference in opposition thereto.

The question to be determined is, "Shall the hearing to be conducted on the eve of trial to determine the fitness of the defendant, David Berkowitz, to proceed to trial be held in camera or open to the public and to the media?"

The question is not susceptible to easy answer. In

times when the spoken word and the occurrence of events are publicized over the news media as fast as the word is spoken and an event occurs, the problem presented has received soul searching study and comment by many distinguished writers. It has been the subject of extensive learned dissertation by the United States Supreme Court, the New York State Court of Appeals and many other courts in this and other jurisdictions in our nation.

The First Amendment of the United States Constitution provides, "Congress shall make no law *** abridging the freedom of speech or of the press ***." It has been held that it is "no longer open to doubt that the liberty of the press, and of speech, is within the liberty safeguarded by the due process clause of the Fourteenth Amendment from invasion by state action." (Near v. Minnesota, ex rel. Olson, 283 U.S. 697, 707, 75 L. Ed. 1357, 51 S. Ct. 625 [1931]). The Sixth Amendment of the United States Constitution provides, "In all prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury ***."

Tensions, particularly in sensational cases - and this case falls within that category - , have frequently arisen between the rights prescribed in the First and Sixth Amendments. Numerous decisions have not been dispositive of this perplexing problem. "So basic to our jurisprudence is the right to a fair trial that it has been called 'the most fundamental of all freedoms.' Estes v. Texas, 381 U.S. 532, 540, 14 L. Ed. 2d 543, 85 S. Ct. 1628 (1965)." (Nebraska Press Assoc. v. Stuart, 427 U.S. 539, 586, 49 L. Ed. 2d

683, 96 S. Ct. 2791). "The First Amendment to the United States Constitution, however, secures rights equally fundamental in our jurisprudence ***" (Nebraska Press Assoc. v. Stuart, supra, at p. 586).

A review of cases dealing with this subject fails to uncover any decision that undertakes to assign priorities as between the First Amendment and Sixth Amendment rights, ranking one as superior to the other. "I unreservedly agree with Mr. Justice Black that 'free speech and fair trials are two of the most cherished policies of our civilization, and it would be a trying task to choose between them.' (Bridges v. California, 314 U.S., at 260, 86 L. Ed. 192, 62 S. Ct. 190, 159 ALR 1346). But I would reject the notion that a choice is necessary; that there is an inherent conflict that cannot be resolved without essentially abrogating one right or the other. To hold that courts cannot impose any prior restraints on the reporting of or commentary upon information revealed in open court proceedings * * * with respect to the criminal justice system is not, I must emphasize, to countenance the sacrifice of precious Sixth Amendment rights on the altar of the First Amendment." (Concurring opinion of Mr. Justice Brennen, in Nebraska Press Assoc. v. Stuart, supra, at p. 611).

It is not open to question that the defendant has a constitutionally guaranteed right to a public trial (U.S. Const. 6th Amdt.; that "Public access is secured through a fundamental concept

said to be rooted in distrust for secret tribunals - the inquisition, star chamber and lettre de cachet (Matter of Oliver, 333 U.S. 257, 268-270)." (Gannet Co. v. De Pasquale, 43 N Y 2d 370, 376); that "Ordinarily, public trials 'serve to instill a sense of public trust in our judicial process' (People v. Hinton, supra, at p. 73). But this assumes that public access in a given case poses 'no threat or menace to the integrity of the trial' (Craig v. Harney, 331 U.S. 367, 377).' Because this assumption sometimes fails, neither the public nor the press has an absolute right to attend all stages of all criminal trials (e.g., Estes v. Texas, 381 U.S. 532, 538; Matter of United Press Assns. v. Valente, supra, at p. 81). Particularly, where a fair trial may hang suspended in the balances, * * * *" (Gannet Co. v. De Pasquale, supra, at p. 377). (Emphasis supplied)

This court has read the written reports of Dr. Schwartz, Dr. Weidenbacher and Dr. Abrahamsen and has considered the oral report of Dr. Lubin. Much of the reports of the psychiatrists which will constitute their testimony at the fitness to proceed hearing will reveal testimony which is clearly inadmissible at the trial. Facts developed during the interview of the defendant by the psychiatrists will unquestionably be widely disseminated. The extensive coverage given to the prior hearing is ample proof that the impending hearing will be subject to equal coverage. Since the trial of the defendant will be conducted within one week of the hearing, a most serious and imminent threat will be posed, endangering the selection of a fair and impartial jury.

It has been argued that whatever risks are involved, they are outweighed by the genuine and legitimate interest the public has in this particular pretrial proceeding, and that such risks can be significantly reduced, if not eliminated, by appropriate safeguards by the court at the time of trial.

This court has found that there has been and will be pervasive pretrial publicity, as in the past, relative to the impending hearing if it be an open one. Speculation has run rampant. Much testimony, inadmissible at trial, will be adduced at the hearing; testimony that will, beyond any peradventure of doubt, impinge upon the defendant's right to a fair trial and endanger the selection of a truly fair and impartial jury.

"Legal trials are not like elections, to be won through the use of the meeting-hall, the radio, and the newspaper." (Bridges v. California, 314 U.S. 252, 271). "And the court has insisted that no one be punished for a crime without 'a charge fairly made and fairly tried in a public tribunal free of prejudice, excitement, and tyrannical power.' (Chambers v. Florida, 309 U.S. 227, 236-237, 84 L. Ed. 716, 722, 60 S. Ct. 472 [1940]). 'Freedom of discussion should be given the widest range compatible with the essential requirement of the fair and orderly administration of justice.' (Pennekamp v. Florida, 328 U.S. 331, 347, 90 L. Ed. 1295, 1303, 66 S. Ct. 1029 [1946]). But it must not be allowed to divert the trial from the 'very purpose of a court system * * * to adjudicate contro-

versies, both criminal and civil, in the calmness and solemnity of the courtroom according to legal procedures.' (Cox v. Louisiana, 379 U.S. 559, 583, 13 L. Ed. 2d 487, 503, 85 S. Ct. 476 [1965]).' Among these 'legal procedures' is the requirement that the jury's verdict be based on evidence received in open court, not from outside sources." (Sheppard v. Maxwell, 384 U.S. 333, 350-351, 16 L. Ed. 600, 86 S. Ct. 1507).

It has been suggested that regardless of the publicity of inadmissible, sensational and prejudicial testimony which will be adduced at the fitness to proceed hearing, "the Sixth Amendment rights of the accused may still be adequately protected. In particular, the trial judge should employ the voir dire to probe fully into the effect of publicity" (Nebraska Press Assoc. v. Stuart, 427 U.S. 539, 602).

This device, however, has not always succeeded in obviating the palliative of reversal and the direction of a new trial. "Thus, in Marshall v. United States (360 U.S. 310, 3 L. Ed. 1250, 79 S. Ct. 1171 [1959]), we set aside a federal conviction where the jurors were exposed 'through news accounts' to information that was not admitted at trial. We held that the prejudice from such material 'may indeed be greater' than when it is part of the prosecution's evidence 'for it is then not tempered by protective procedures.' At 313, L. Ed. 2d at 1252. At the same time, we did not consider dispositive the statement of each juror 'that he would not be influenced by the news articles, that he could decide the case only

on the evidence of record, and that he felt no prejudice against petitioner as a result of the articles.' At 312, 3 L. Ed. 2d at 1252. Likewise, in Irvin v. Dowd, 366 U.S. 717, 6 L. Ed. 2d 751, 81 S. Ct. 1639 (1961), even though each juror indicated that he could render an impartial verdict despite exposure to prejudicial newspaper articles, we set aside the conviction holding: 'With his life at stake, it is not requiring too much that petitioner be tried in an atmosphere undisturbed by so huge a wave of public passion * * *.' At 728, 6 L. Ed. 2d at 759." (Sheppard v. Maxwell, 349 U.S., supra, at p. 351).

The alternative of a change of venue would not be efficacious because past publicity and future publicity has and will be widely disseminated in all corners of the State. Furthermore, a defense motion for a change of venue has been denied by the Appellate Division, Second Department. (___A D 2d ____ N.Y.L.J., December 12, 1977, p. 12 C 3).

An adjournment of the trial date to allow public passion and prejudice to subside would be futile. This court would then require another fitness to proceed examination and hearing immediately prior to trial to insure that the defendant was aware of the charges and was able to assist in his defense at such time. The trial would again have to be adjourned. A vicious circle would result and continue ad infinitum.

In order to clear the atmosphere from the effects of the extensive publicity that this case has generated and in order to

insure the defendant a fair and impartial trial, free of emotion, passion, and prejudice, this court took appropriate action. Defense counsel, the District Attorney, personnel of the Department of Corrections and of the court were directed to refrain from giving any press interviews, and from making any public statements. In the past six months, there has been no publicity of a prejudicial nature disseminated in the media of which the court is aware. A trial is now imminent under conditions which will protect the Sixth Amendment rights of the defendant. Shall such rights be sacrificed on the altar of the First Amendment? The court thinks not.

It is not necessary to opt the Sixth Amendment rights of the defendant as against the interest of the public and the First Amendment rights of freedom of the press. " * * * a sensitive and wise balancing of the rights of the individual defendant and the interests of the public" (People v. Darden, 34 N Y 2d 177, 181-182) is available.

The fitness to proceed hearing about to be conducted is not a trial on the merits. It is a proceeding, rather, to adjudicate a limited and narrow issue and is "not within the specific meaning of 'trial'" (People v. Anderson, 16 N Y 2d 282, 288). This court cannot insulate a jury which has not yet been empanelled from extrinsic and inadmissible evidence. The task presented is "to ensure that further pretrial publicity [will not] impermissibly alter * * *" the present status of an atmosphere conducive to the defendant's Sixth Amendment rights. (Gannett Co. v. De Pasquale, 43 N Y 2d 370).

It is the decision of this court that the hearing to determine the defendant's fitness to proceed to immediate trial be conducted in camera. The adjudication of the court, immediately upon being made, will be announced to the public and the press. If the defendant is found unfit to stand trial, a full and complete transcript of the hearing will be released to the public and the press. Of necessity, his trial would be postponed to a future date.

If the decision of the court is that the defendant is fit to stand trial, it is the intention of the court that the trial will commence within days and certainly not more than one week after such adjudication. As soon as a jury has been selected, it will be sequestered. Once the jury is insulated from prejudicial publicity, a full and complete transcript of the hearing will be released to the public. Thus, no testimony inadmissible at the trial will come to the attention of the jury. The danger that the jury will be influenced by consideration of inadmissible testimony will have been obviated. There will be no impingement on the defendant's right to a fair trial.

The procedure to be followed finds sanction in Nebraska Press Assoc. v. Stuart (supra, at p. 568). "The County Court could not know that closure of the preliminary hearing was an alternative open to it until the Nebraska Supreme Court so construed state law * * *." The decision of the New York State Court of Appeals in Gannett Co. v. De Pasquale (supra) sanctions closure of preliminary hearings where necessity for such action exists. Such necessity has been found to exist here.

It is the considered opinion of this court that a "sensitive and wise balancing of the rights of the individual defendant and the interests of the public" (People v. Darden, supra), has been achieved and none of the rights under the First and Sixth Amendments have been abrogated. The news media has not sustained the burden of showing a countervailing public interest requiring an open hearing.

This decision shall constitute the order of the court.

J.S.C.

FORM 91 142

MEMORANDUM

SUPREME COURT KINGS COUNTY (CRIMINAL TERM, PART 17)

PEOPLE OF THE STATE OF NEW YORK

vs.

DAVID BERKOWITZ

By CORSO, J.

Dated APRIL 21, 1978

INDICTMENT No. 2673/77

Pursuant to CPL 730.30, an order of examination was issued to determine whether defendant was an "incapacitated person;" that is whether defendant as a result of mental disease or defect lacks capacity to understand the proceedings against him or to assist in his own defense (CPL 730.10 subd.1). A prior Article 730 hearing on that issue was conducted before Mr. Justice Starkey in October, 1977 and the court concluded at that time that the defendant was not, as a result of mental disease or defect, incapable of understanding the charge against him, or the proceedings or to assist in his defense. By reason of the lapse of time which has intervened, this court deemed it appropriate that a second order and proceeding be conducted prior to trial.

A hearing was conducted by this court in camera on April 12, 13, 14 and 17, 1978. The court has considered the testimony of Dr. Schwartz, Dr. Weidenbacher, Dr. Lubin and Dr. Abrahamsen, the reports to the court, the exhibits received in evidence and other evidence adduced by both sides at the hearing. The court has evaluated the evidence and judged the credibility of the witnesses.

At a pre-trial hearing pursuant to CPL 730.30 the burden of proving competency must be sustained by the People by a preponderance of the evidence. (People v. Santos, 43 A D 2d 73). It is well established that a medical diagnosis of mental illness does not in and of itself, immunize a defendant from criminal responsibility. The evidence

must show that the condition from which a defendant suffers is of such a nature that his reasoning power is impaired to the extent that he can not understand the nature of the charges against him and to participate in the defense thereto.

In People v. Valentino (78 Misc 2d 678, 680-681) cited in People v. Reason (37 N Y 2d 351) the court stated:

> "Competency to stand trial is a question of law and fact and should not be the subject of a contest between psychiatric experts. (See Wieter v. Settle, 193 F Supp. 318, 322.) "The real issue here is the injection by the psychiatrist of his own ethical standards into this value-judgment so as to usurp a function which is not a medical but a legal one." (Cooper, Fitness to Proceed: A Brief Look at Some Aspects of the Medico-Legal Problem Under the New York Criminal Procedure Law, 52 Nebraska L. Rev. 44,58 and see 54, 61 [1972]). Consequently, from the time of Freeman v. People to the present, New York courts have weighed psychiatric testimony applying legal tests to determine whether defendants were competent to stand trial. (E.g., People v. De Francesco, 20 Misc 2d 854; People v. Greene, 203 Misc. 191; see also, People v. Wolfe, 198 Misc. 695, vacated 199 Misc 413, revd. 278 App. Div. 967, affd. 303 N Y 752.) "Competency, in the final analysis, is a legal issue which must be determined by the court with the assistance of the medical expert. It is an abdication by the courts of their prerogatives to blindly follow psychiatric pronouncements which may be based on a partial or total lack of understanding of the issues involved in a determination of legal, not medical, competence for trial." (Rosenberg, Competency for Trial: A Problem in interdisciplinary Communication, 53 Judicature 316, 321).
>
> "Unquestionably, psychiatric testimony is essential to any intelligent evaluation of a defendant's capacity to stand trial. The problems posed by its use are traceable more to the imprecision of the legal standard than to any doubts about the validity of the psychiatric discipline. While variously phrased, the standard for competency at trial has always been a composite of legal and medical concepts. (See CPL 730.10, subd.1; Dusky v. United States, 362 U.S. 402; People v. Francabandera, 33 N Y 2d 429,435-436; People ex rel Malone v.Johnston, 37 A D 2d 585; People ex rel Fazio v. McNeill, 4 A D 2d 686; People v. Posey, 74 Misc 2d 149; People v. Swallow, 60 Misc 2d 171, 175-177;

People ex rel Bernstein v. McNeill, 48 N.Y.S. 2d 764.) The psychiatrist's expertise is medical, not legal, despite the invention of "forensic psychiatry.""

In the Valentino case, supra, the court set forth the criteria to be employed in this type of proceeding:

(1) Is the defendant oriented as to time and place?

(2) Can the defendant perceive, recall and relate?

(3) Does the defendant have at least a rudimentary understanding of the process of trial and the roles of the Judge, jury, prosecutor and defense attorney?

(4) Can the defendant, if he wishes, establish a working relationship with his attorney?

(5) Does the defendant possess sufficient intelligence and judgment to listen to the advice of counsel and, based on their advice, appreciate (without necessarily choosing to adopt it) that one course of conduct may be more beneficial to him than another?

(6) Is the defendant's mental state sufficiently stable to enable him to withstand the stresses of the trial without suffering a serious, prolonged or permanent breakdown? Will the trial be long, complex, short or simple? Are adjustments required in the manner of trial, rather than a finding of incapacity?

There should not be "a fuzzing and merger of the two separate and distinct concepts of mental incapacity, one being the capacity of the defendant to know and appreciate the nature and consequence of his conduct or its wrongfulness and the other being the competency of the defendant to understand the proceedings against him and his ability to assist in his own defense" (People v. Sullivan, 43 A D 2d 398, 400 affd. 39 N Y 2d 903). As to these two distinct questions, there is a difference in the mental capacity required and the times at which it is required. (Floyd v. U.S. 365 F 2d 368, 374 n.9).

A high level of competency is not required. "However, we are not prepared to hold that the Legislature had anything in mind in enacting this provision [CPL 730.10 subd.1] other than the situation where the defendant, because of a current inability to comprehend, or at least a severe impairment to that existing mental state, cannot with a modicum of intelligence assist counsel. This interpretation is borne out in the Practice Commentary attending CPL 730.10 where the seminal case Dusky v. United States (362 U.S. 402) is quoted, thus: " the 'test must be whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding - and whether he has a rational as well as factual understanding of the proceedings against him.'" (Denzer, Practice Commentary, McKinney's Cons. Laws of N.Y. Book 11A, CPL 730.10, p. 332)." (People v. Francabandera, 33 N Y 2d 429, 435, 436.)

The court reiterates that the determination of the issue of a defendant's capacity to stand trial resides with the court and not with the psychiatrists. (People v. Acevedo, 84 Misc 2d 563).

From the credible evidence, the court further finds the following:

The defendant's refusal at present to discuss with the medical experts the underlying facts of the case (although he did so previously) does not render him unfit to stand trial. This is deliberate on his part. The psychiatrists saw no need for him to restate the facts.

Defendant is able to discuss the case with his counsel and has never refused to do so. No claim is made that he has not done so.

Indecision or vacillation as to the best legal course for him to pursue does not render him incompetent to stand trial. Rather, it is indicative of understanding of his predicament. Nor does failure to adopt any proposed course of action advocated by counsel indicate unfitness. The law does not require him to adopt the advice of his counsel or others. (People v. Sullivan, supra.)

The testimony indicates that defendant has given full consideration, pro and con, as to the legal alternatives available to him and understands them. It further indicates that he is appropriately addressing himself to the immediate problem confronting him.

The conduct of the defendant during the hearing has been orderly and there has been no emotional outbursts, disruptive behavior or bizarre conduct.

The defendant is most certainly oriented as to time and place and has contact with reality. He can perceive, recall (if he wishes to) and relate. He has a complete understanding of the process of trial and the roles of the Judge, jury, prosecutor and defense attorneys. He has had a working relationship with his attorneys up to the present time.

As to the defendant's level of intelligence, it was virtually undisputed that it was from bright to superior. This far exceeds a mere modicum of intelligence.

The testimony further shows that the defendant's mental state is sufficiently stable to enable him to withstand the stresses

of the trial and should there be any emotional episode he will recover quickly.

Accordingly, the court finds that the People have established by a fair preponderance of the evidence that the defendant does not as a result of mental disease or defect lack capacity to understand the proceedings against him or to assist in his defense.

This decision shall constitute the order of the court.

J.S.C.

April 25, 1978

Dr. David Abrahamsen
1035 - 5th Avenue
New York, New York

Dear Dr. Abrahamsen:

Enclosed herewith please find a copy of Justice Corso's decision pertaining to the defendant's capacity to proceed.

Wishing you and Mrs. Abrahamsen a happy holiday season.

Sincerely,

SHELDON GREENBERG
First Assistant District Attorney

SG:DMM
ENC.

March 8, 1978

Leon Stern, Esq.
82 Main Street
Minneola, New York

Dear Mr. Stern:

As agreed in our telephone conversation of March 8, 1978, I am enclosing a copy of the order permitting the examination of David R. Berkowitz by Dr. David Abrahamsen.

Sincerely,

EUGENE GOLD
DISTRICT ATTORNEY

By STEVEN WAX
Assistant District Attorney

SW:yf
Encl

DISTRICT ATTORNEY
KINGS COUNTY, N.Y.
RECEIVED
1978 MAY 18 AM 9:59
—D. A.—

At a Criminal Term, Part 17 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at Civic Center and Montague Street, Brooklyn, New York, on the 17th day of May, 1978.

PRESENT:
HON. JOSEPH R. CORSO
JUSTICE

THE PEOPLE OF THE STATE OF NEW YORK
Plaintiff,

-against-

DAVID BERKOWITZ
Defendant.

EXAMINATION IN AID OF SENTENCE PURSUANT TO SECTION 390.30 CRIMINAL PROCEDURE LAW

INDICTMENT No. 2673/77

COUNTY OF KINGS

The above-named defendant, David Berkowitz, having been convicted of the felony of Murder in the Second Degree, and it appearing to the satisfaction of the Court that a mental examination of the said defendant, prior to sentence, is necessary to aid the Court in sentencing the defendant, it is

ORDERED, that the defendant be examined for this purpose, and the Court directs that the examination be conducted at the place where the defendant is being held in custody, namely the Prison Ward at Kings County Hospital, until the examination is completed, for a period not to exceed (30) days; and at the request of the attorneys for the defendant, it is

ORDERED, that the Department of Correction, City of New York, take the defendant, under proper security, to the appropriate facilities at DOWNSTATE MEDICAL CENTER for the performance of a C.A.T.-scan, at a date and time to be mutually agreed upon by the Department of Radiology and the Department of Correction, City of New York, and it is further

ORDERED, that the mental evaluation and C.A.T.-scan be conducted and completed on or before May 22, 1978, and that a report containing findings and conclusions be made available to this Court forthwith.

ENTERED
MAY 17 1978
Anthony N. Durso
CLERK

E N T E R

/s/ HON. JOSEPH R. CORSO

J. S. C.

April 25, 1978

Ira Jultak, Esq.,
82 Main Street
Mineola, New York

Re: David Berkowitz
Indictment # 2673/1977

Dear Mr. Jultak:

Enclosed herewith please find the minutes of April 17, 1978, representing the last instalment of the testimony taken before Judge Corso in the competency hearing held at Kings County Hospital.

I am also enclosing the minutes of the conversation between the defendant and the Court taken on April 13, 1978, with respect to Stanley Fisher.

Very truly yours,

SHELDON GREENBERG
First Assistant District Attorney

SG:yf
Encls:

M. Greenberg

(5)

LEON STERN
ATTORNEY AT LAW
82 MAIN STREET
MINEOLA, NEW YORK 11501

RECEIVED
1977 SEP 19 AM 9:25
—D. A.—

ANDREW D. POLIN

(516) 741-7765
(516) 741-7766

September 16, 1977

Honorable Charles R. Rubin
Administrative Judge
Supreme Court, Kings County
Civic Center
Montague Street
Brooklyn, New York 11201

Re: People v. David Berkowitz
Indictment No. 2673/77

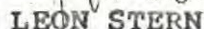
Honorable Sir:

It has come to the attention of this office that the competency hearing granted by the Court in this case, pursuant to the motion of the District Attorney to contravert the findings of the Court appointed psychiatrist, now scheduled for October 6, 1977, has to be adjourned for the reason that Dr. Schwartz, one of the examining psychiatrists, will be out of the Country at that time. He is a necessary and essential witness to this proceeding.

Under the circumstances, request is hereby made for an adjournment of said hearing to October 20, 1977. This date has been fixed after consultation with Mr. Greenberg of the District Attorney's Office and is satisfactory to both sides, subject to the approval of the Court.

Many thanks for your courtesies and cooperation in this request.

Respectfully yours,



LEON STERN

LS:nf

(6)

September 16, 1977

Hon. Charles R. Rubin
Administrative Judge
Supreme Court
Civic Center
Brooklyn, New York

People -v- David Berkowitz
Indictment # 2673/1977

Dear Judge Rubin:

The above captioned matter had been scheduled for hearing in Part 1 of the Supreme Court on October 6, 1977.

We have learned that Dr. Daniel Schwartz, who submitted his report in the case to Justice Held, will be out of the country and thus unavailable for court appearance from September 30 through October 17, 1977.

Accordingly, we communicated with Mark Heller, Esq., who informed us that he was no longer associated with the defence of David Berkowitz and was in the process of drafting a motion to be relieved. Mr. Heller indicated that he was being replaced by Leon Stern, Esq., who had previously appeared as associate counsel.

In a telephone conversation with Mr. Stern, it was agreed that October 20, 1977, would be a sensible date to re-schedule the hearing, subject to the convenience and approval of the court.

We consent to the hearing being re-scheduled to October 20, 1977, at 10.00 A.M.

Very truly yours,

EUGENE GOLD
DISTRICT ATTORNEY

EG:yf

cc: Leon Stern, Esq.
Mark Heller, Esq.

(7)

September 16, 1977

Leon Stern, Esq.
82 Main Street
Mineola, Long Island

Re: David Berkowitz
Indictment No. 2673/1977

Dear Mr. Stern:

Pursuant to our telephone conversation this morning, the enclosed letter was sent to Administrative Judge Rubin of the Kings County Supreme Court regarding the re-scheduling of the Berkowitz matter to October 20, 1977.

As we also discussed this morning, Dr. Abrahamsen has scheduled his next interview with the defendant for September 23, 1977. The Doctor had no objection to changing the time of that meeting from 9:00 A.M. to 10:00 A.M. to accommodate your convenience.

Very truly yours,

SHELDON GREENBERG
First Assistant District Attorney

SG:DMM
ENC.

c.c. Mark Heller

(8)

September 16, 1977

Hon. Gerald Held,
Justice of the Supreme Court
Civic Center
Brooklyn, New York 11201

Re: David Berkowitz
Indictment No. 2673/1977

Dear Judge Held:

This is to confirm our conversation of September 16, 1977, in which you agreed that the making of written transcripts from the fourteen tapes submitted to the Court by Dr. David Schwartz on September 2, 1977, would not be violative of your Order limiting disclosure and reproduction of the material therein, provided that the transcripts of the tapes would similarly be used only by staff members actually working on the case and that the material therein not be disclosed to any other person.

Very truly yours,

SHELDON GREENBERG
First Assistant District Attorney

SG:DMM

cc: Leon Stern, Esq.
Mark Heller, Esq.

(9)

August 31, 1977

Mark Heller, Esq.,
170 Old Country Road,
Mineola, New York 11501

Dear Mark:

As you know, the competency hearing in the Berkowitz case is set for October 6th. At that hearing our psychiatrists will limit their testimony to the issue of the defendant's capacity to stand trial.

While I'm sure it's not necessary to confirm in writing our conversation this morning, I want to assure you that, beginning next week and on a regular, periodic basis thereafter, my office will give you copies of all of Dr. Abrahamsen's notes of his examination of your client.

I told Shelly Greenberg to call you next week and arrange for the delivery of the notes made up to that point. Since you will not be present at the examinations, I have also instructed Shelly to give you a list of the dates and times of Dr. Abrahamsen's visits to Kings County Hospital.

Very truly yours,

EUGENE GOLD
District Attorney
Kings County