

100 Reporters Here Suing to Reopen Persico Trial to the Public

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100 Reporters Here Suing to Reopen Persico Trial

By LESLEY OELSNER

As the extortion-conspiracy trial of Carmine J. Persico continued in secrecy yesterday, with even the glass in the courtroom doors covered over with blotters, a committee of more than 100 local reporters announced it would file suit seeking to reopen the proceedings to the public.

Last night the details of the suit were still being worked out. But Jacob D. Fuchsberg, the group's lawyer, said he would probably bring the suit today, either in State Supreme Court in Manhattan, where the Persico trial is under way, or in Federal District Court here.

His argument, he said, will "include" the First Amendment's guarantee of freedom of the press.

State Supreme Court Justice George Postel, who is presiding at the trial, barred the press and the public last Monday at the request of the defense. A closed trial was needed, the defense contended, because otherwise the press might include in its accounts of the trial material that would prejudice the jurors against the defendant.

Justice Postel took his action after warning reporters several

days earlier that he would cite them for contempt and put them "in the can" if they included in their stories anything that had not "transpired" in the courtroom.

The reporters for newspapers including The New York Times nevertheless included in subsequent articles about the case things that the justice considered prejudicial to Persico.

Justice Postel's warning last week drew extensive criticism from much of the media and from constitutional experts, and when he ordered the trial closed, the criticism mounted. The thrust of the criticism was that his action violated the First Amendment.

But Martin McLoughlin, a Daily News reporter, said yesterday: "No one seemed to be doing anything meaningful." There was "a lot of talk," he said, and nothing more.

So, Mr. McLoughlin and another reporter on The News, Richard Oliver, started phoning colleagues on other papers. In a matter of hours, he said, he had well over 100 reporters willing to join in a fight.

Reporters from The News, The Times, The Post, The Long Island Press and United Press International are included in the Committee of 100 Report-

ers, and, had it not been for lack of time, he would have made contact with the broadcast media as well.

The reporters are "acting as citizens," he added, not as reporters or as representatives of news agencies.

In 1954 the State Court of Appeals turned down a similar request for a public trial made by a group of news agencies, ruling that the right to a public trial was one that should be claimed or not claimed by the defendant himself.

The 1954 decision, however—which stemmed from the trial of oleomargarine heir Min-

ot F. (Mickey) Jelke on charges of compulsory prostitution—did not completely clarify the law in this area. Nor was the issue resolved by the United States Supreme Court.

That decision, in fact, indicated that in some situations a case might not be "an appropriate one for exclusion of the public" despite the defendant's request for such exclusion.

The Appellate Division for the Second Department is expected to decide within the next two weeks whose basic issue is just what type of case would be "inappropriate" for a closed trial.

In the case now before it, the defendant in a highly publicized murder case asked that his proceeding be private, but the Rockland County judge Theodore A. Kelly, denied the request. He reasoned, as did the county district attorney, that public interest in the case was such that the trial should be reported.

The defense in that case concedes there is no absolute right to a private trial, but contends that the district attorney must show that a private trial would actually "prejudice" the prosecution before a defendant can be forced to be tried in public.