

U.S. Judge Declines to Open Persico's Trial to Public Now

By LESLEY OELSNER

Despite a plea by newsmen that they were being "irreparably harmed" by the continued exclusion of the public from the trial of Carmine J. Persico, a Federal judge here refused yesterday to order the immediate re-opening of the proceedings.

He left open, however, the possibility of ultimately granting the newsmen's request that they be readmitted to the courtroom.

"My first impression," Federal District Judge Sylvester J. Ryan said yesterday in a brief court hearing, is that a judge, provided he has "reasonable basis for his action, could exclude members of the press if the defendant wished it."

Therefore, he said, he would not grant the request of five reporters here that he issue a temporary restraining order under which the State Supreme Court Justice George Postel — who closed the extortion trial to the public two weeks ago — would have to reopen the courtroom doors.

Justice Postel had acted at the request of the defense, which contended that press coverage of the case might include material that could prejudice the jurors against Persico. And, Judge Ryan said, "the judge has to see that the defendant gets a fair trial."

Constitutional Issue

The judge said he would still consider the reporters' other requests, as soon as he had time to consider the arguments both sides presented yesterday, in oral argument and in briefs.

The reporters — members of the Committee of 100 Reporters, formed to challenge Justice

Postel's action — had asked that the justice be enjoined from barring the press and public from the trial. They had also asked that any state law that might allow such exclusion be ruled unconstitutional under the First and 14th Amendments.

They had wanted the temporary restraining order, in fact, so that the trial could be reopened to the public pending Judge Ryan's decisions on the other matters.

They had brought their request to Federal court, as their lawyer, Jacob D. Fuchsberg, told Judge Ryan yesterday, because a similar suit brought a week earlier in the state's Appellate Division has yet to be decided.

Assistant State Attorney General Robert Hammer argued at the hearing as he had argued in his brief to the Appellate Division in behalf of Justice Postel — that the latter had acted only to ensure a fair trial for Persico.

Mr. Hammer's contention was disputed by both Mr. Fuchsberg and Raymond Falls, the lawyer for five news groups, including The New York Times, who have joined the case as friends of the court. They also disputed Judge Ryan's "first impression" of the case.

Because the First Amendment's free-press guarantee is involved, Mr. Falls said, the standard by which Justice Postel's action should be judged is not whether he had a "reasonable basis" but whether there was an "overriding need" for what he did.

And even if the test were "reasonableness," Mr. Falls said, the Postel action would still be unacceptable.