

STARKEY IS REPLACED AS 'SON OF SAM' JUDGE

Justice Corso Takes Over Trial for Colleague Who Commented on Defendant to Press

By MAX H. SEIGEL

Justice John R. Starkey of New York State Supreme Court withdrew yesterday as trial judge in the case of David R. Berkowitz, accused of being the "Son of Sam" killer.

Charles R. Rubin, the administrative judge in State Supreme Court in Brooklyn, who announced the withdrawal of Justice Starkey, said the justice was being replaced by Justice Joseph R. Corso.

Justice Starkey would not discuss the case yesterday. His only comment late in the afternoon, was:

"I asked to be relieved and they relieved me. Judge Rubin's statement speaks for itself."

The brief statement, issued without comment by the administrative judge, said:

"Justice Starkey, who has served with distinction in his many years on the bench, has carefully considered the possibility of any misunderstanding of his role as trial justice should he continue to preside in the case of People v. Berkowitz. He has decided that the best interests of all concerned would be served if he were to be relieved of his assignment in this case. Accordingly, his request has been granted and Mr. Justice Joseph Corso has been designated to succeed him."

Justice Corso who has been hearing murder cases exclusively for the last five years, described the Berkowitz trial as "just another case so far as I'm concerned."

Before announcing the change in trial justices, Justice Rubin conferred briefly yesterday afternoon with the presiding justice of the Appellate Division for the Second Judicial Department, Frank A. Gulotta. Justice Rubin emphasized that the decision was his own.

"It's my determination," he said. "But I always notify the Appellate Division of anything I do on assignments."

Lawyers were surprised last week when, in a wide-ranging interview with The New York Post, Justice Starkey declared that he would not accept a guilty plea from young Berkowitz if the defendant insisted he had been motivated by demons to kill. "I could not accept the plea," the 71-year-old justice said, "because he would, in effect, be raising an insanity defense whether he knew it or not."

Justice Starkey also said that the former Post Office employee was almost certain to spend most or all of his life in a maximum security mental institution if he were found innocent by reason of insanity.

Finally, Justice Starkey said that once the trial for the slaying of 19-year-old Stacy Moskowitz began, he would not be able to inform the jury that Mr. Berkowitz "won't walk" if it accepts his insanity defense. But the Justice told the reporter: "You're going to tell them."

A day later, in an interview with The New York Daily News, Justice Starkey said he was sorry he had released taped conversations between the defendant and a court-appointed psychiatrist for broadcast over radio and television.

Some legal observers said the airing of the tapes could provide grounds for a reversal on appeal in the event Mr. Berkowitz were convicted.

Justice Corso, 69, served for 18 years as an Assemblyman from the Bushwick section of Brooklyn before going on to the bench.

"I've had many cases before me involving pleas of not guilty by reason of insanity," he said, referring to the defense that the lawyers for Mr. Berkowitz are expected to offer. As for the Berkowitz case, he said, "I'll go right down the middle and then it's up to the jury."

The most publicized case over which Justice Corso presided was the murder trial on which DeVernon L. Grand, a self-styled Brooklyn bishop, was convicted of murdering two young sisters.