

U.S. Case Stymied Over Tapes

Mitchell Trial Delay Asked

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NEW YORK, Oct. 19—Government prosecutors here today asked for an 11-week delay in the trial of former Nixon Cabinet members John N. Mitchell and Maurice H. Stans.

The trial, on charges of conspiracy and perjury, is scheduled to start Tuesday.

But the prosecutors today asked—and their motion was not opposed—to delay it until the issue of the White House tapes is resolved in Washington.

U.S. District Court Judge Lee P. Gagliardi ruled Thursday that he would have to examine any tapes involving witnesses at the trial, or those witnesses could not testify.

In particular, his decision was aimed at a tape recording supposedly made of President Nixon's conversation April 15 with then-White House counsel John W. Dean III, in which Dean has said he told the President he was seeking immunity from prosecution in return for his testimony in the Watergate scandals.

If such a tape exists, the judge ruled, Mitchell's and Stans' lawyers have a right to use it as part of material they could use to cross-examine Dean and with which to test the credibility of his testimony.

The government, which had been opposing Stans' and Mitchell's attempts to postpone the trial's start, asked for the postponement.

"I regret even to make the application which I am about to make this morning," said Assistant U.S. Attorney John R. Wing. "But the decision that you rendered yesterday creates a substantial problem for the government in the prosecution of this case.

"John Dean is a critical witness to the government's case, and we feel that in the interest of justice and in the public interest we cannot afford to risk trying this case without Mr. Dean's testimony."

Wing's statement to the judge made it clear that the

prosecutors here wanted to give the judge the tapes but that their hands were tied by the White House.

"This office," Wing said, "... would be more than willing, if able, to turn over any such tapes to your honor to review in camera to make that determination, as is customarily done."

1 He said a fellow prosecutor,
2 James W. Rayhill, had ap-
3 pealed to White House special
4 counsel J. Fred Buzhardt for
5 the tapes.

6 "Mr. Buzhardt called Mr.
7 Rayhill back at 9:30 this morn-
8 ing and advised him that after
9 speaking with the President
10 this morning that he could not
11 tell us whether there were any
12 such tapes, and if there were
13 any, they would not be pro-
14 duced before your honor in
15 camera at this stage.

16 "As a result of White House
17 policy," said Wing, "we are
18 compelled" to ask for the ad-
19 journalment.

Late today, the attorneys re-

turned to court, where attor-
neys for Mitchell and Stans
did not oppose an adjourn-
ment, although they asked
Judge Gagliardi to postpone it
later than Jan. 7 because of
other commitments.

Judge Gagliardi said he
would make his decision over
the weekend, but that the trial
would begin either Tuesday or
on Jan. 7.

Dean, who pleaded guilty in
Washington this morning to
conspiring to obstruct the
Watergate investigation, plays
a major role in the Mitchell-
Stans case.

Mitchell and Stans were in-
dicted here in May for con-
spiring to obstruct a Securi-
ties and Exchange Commis-
sion investigation of compa-
nies controlled by Robert L.
Vesco, in return for a secret
\$200,000 campaign contribu-
tion from Vesco.

Vesco was indicted along
with them, as was New Jersey
Republican leader Harry L.
Sears. Vesco is now a fugitive,
and Sears is to be tried later.

Dean was named as an unin-

dicted co-conspirator. The in-
dictment alleges that Mitchell
had Dean intervene with Wil-
liam J. Casey, then head of
the SEC, to delay certain sub-
poenas in the Vesco investiga-
tion so as to cover up the se-
cret payment from Vesco.