Mitchell, Stans Cite Publicity, Ask Dismissal of Indictments

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NEW YORK, July 16 — Attorneys for former Cabinet members John N. Mitchell and Maurice H. Stans moved today to dismiss indictments against them here on grounds of massive prejudicial pretrial publicity.

The lawyers contended that the two men never will be able to get a fair trial.

Said Stans' attorneys:

"Massive, pervasive and prejudicial publicity, much of which has been stimulated by the government itself, has, in a manner unprecedented in history, so prejudiced virtually every member of the populace concerning the facts of this case and the events surrounding it that a fair trial cannot now, and almost assuredly can never be conducted."

In support of the contention, New York attorney Simon Greenhill filed, with his motion for dismissal, 2,615 pages of exhibits purporting to indicate some of the proof of that publicity.

Greenhill even cited recent Harris and Gallup polls on the public's awareness of Watergate. The brief points out that "the Harris Poll reflects that only 7 per cent of the people in this country believe defendant Stans to be 'very truthful.' "

Mitchell's New York attorney, Peter Fleming Jr., argued that, "given the choice of no trial or an unfair trial, our system of justice must mean there will be no trial."

Mitchell and Stans were indicted here May 10 on charges of obstruction of justice and perjury. Indicted along with them were former New Jersey Republican leader Harry L. Sears and Robert L. Vesco, the financier who is now a fugitive outside the United States.

The indictment alleges that Vesco secretly paid $200,000 to the re-election campaign of the President in return for help in trying to quash an investigation by the Securities and Exchange Commission of four companies he controlled.

Fleming said that Mitchell "has been accused, although not yet indicted, of burglary, illegal electronic surveillance, obstruction of justice, and other crimes in the Watergate matter."

"His guilt or innocence in the Vesco case," said Fleming, "cannot legally be determined by a jury which has been exposed to the Watergate allegations."

"Certain overriding facts are apparent," wrote Fleming. "No incident in memory, and perhaps in national history, has received such pervasive, continuous, and prejudicial publicity as Watergate.

"That publicity has been generated almost entirely by agents of the government. Grand jury testimony has been leaked in unprecedented volume. Proceedings before the Ervin committee have been televised in full, and supposed testimony has been leaked beforehand and without oath . . ."

The government, argues Fleming, was fully warned what the publicity given to the Ervin committee hearings would produce, in that special Watergate prosecutor Archibald Cox tried to stop them, or at least to curtail television coverage.

"The government," he said, "thereby fixed its priorities. Sen. Ervin's statement, speaking for the Senate in direct response to Mr. Cox's request, said quite clearly that in the Senate judgment the need for immediate public hearings exceeded the importance of Mr. Cox's various contrary considerations, including Mr. Cox's fear that continuation of the hearings would 'prevent fair trials from *ever* being held.'

"The result of the Senate's decision is clear. An unprecedented opportunity has been provided for potential jurors to read and hear, and even to decide, that the various potential Watergate defendants are guilty of crimes . . . And one of those identified as a potential Watergate defendant is Mr. Mitchell. Indeed, the committee itself has virtually vouched for Mr. Mitchell's ultimate indictment in Watergate, and perhaps even for his guilt . . ."

Fleming accused Samuel Dash, the Erwin committee's majority counsel of "impropriety" and of "extraordinary and inherent prejudice" against Mitchell, and said, "The Senate hearings have not been objective. They have sought to prove guilt and not to find truth. And they have literally overwhelmed the country."

Mitchell's attorney compared the pretrial publicity with that in the celebrated case of Dr. Sam Sheppard in which the Supreme Court, in 1965, declared that the carnival atmosphere of the trial and the newspaper articles describing the murder charges against Dr. Sheppard made any fair trial impossible.

"The Senate was warned," said Fleming. "And given the choice of no trial or an unfair trial, our system of justice must mean there will be no trial. Indeed this must be the result if government is to keep its proper place. Surely it is untenable to believe that our government can deliberately destroy a treasured right and then profit from an unfair conviction . . .

"We submit . . . that a compelled trial . . . would offend basic concepts of due process, would violate every known standard of right to a jury trial, and would be constitutionally defective."

"The government," said the motion, "is a single government (and) must abide by the results of its choice of priorities."

Any defendant, the motion said further, is entitled "to a fair jury drawn from a representative cross-section of the community."

"The 'carnival atmosphere' of Watergate," it says, "precipitated as it has been by the Senate hearings and the grand jury leaks, as a matter of law requires the disqualification of any juror who has read or heard of Watergate."

The only jurors thus available, the motion states, would be those "presumed to be unconcerned with the rights and obligations of citizenship." The publicity, said Fleming, "has in fact eliminated those citizens who would be the most appropriate jurors."

Fleming and Greenhill said that if the court is unwilling to dismiss, a change of venue, if not an indefinite continuance, would be in order.

The government is due to reply to the motions in two weeks. Trial has been set for Sept. 11.