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A Mitchell mistrial 'unlikely'

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Prosecutor Rayhill

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NEW YORK — A Federal judge said yesterday that he will announce his decision tomorrow morning on the request for a mistrial in the criminal conspiracy case against former cabinet officers John Mitchell and Maurice Stans.

U.S. District Court Judge Lee P. Gagliardi suspended the trial Friday for what he called "apparent excesses" in the opening statement of Assistant U.S. Attorney James W. Rayhill.

However, chances that the judge will declare a mistrial appear slim, according to

District Court sources. It was learned from these sources yesterday that Judge Gagliardi is expected to order the trial to continue.

Courtroom observers speculate that the judge would be hesitant to discharge the jury which has been carefully selected from several hundred prospective jurors and isolated from news media and from the announcement Friday that the Watergate Grand Jury has indicted seven former top Nixon aides, including Mitchell.

In the event a mistrial is declared, the jury would be excused and a date for a new trial might be set.

Defense attorneys demanded the mistrial after Rayhill instructed the trial jurors to put themselves in the place of the grand jurors who indicted the two ex-Cabinet members for conspiracy, obstruction of justice and perjury.

The defense objected, con-

tending the remark was prejudicial and implied the jury should infer Mitchell and Stans were guilty because they were indicted. Actually, an indictment only is considered an accusation.

The 55 year old judge directed the prosecution to submit an written explanation and told the defense to submit a brief supporting its motion for a mistrial.

Mitchell, 60, former attorney general, and Stans, 65, former commerce secretary, ran the President's re-election campaign in 1972.

They are accused of obstructing a major fraud investigation of international financier Robert L. Vesco, according to the indictment, in exchange for Vesco's secret \$200,000 cash contribution to the Nixon re-election campaign.

The Mitchell-Stans jury spent the weekend isolated in an unnamed hotel.