

Mitchell Mistrial Motion Is Rejected

By Stephen Isaacs

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NEW YORK, March 4 — The judge in the criminal trial of John N. Mitchell and Maurice H. Stans today rejected their motion for a mistrial, and ordered the case to proceed.

U.S. District Court Judge Lee P. Gagliardi was asked on Friday to halt the trial because a prosecutor implied to the jury that the grand jury that indicted the two former Cabinet members had in effect found them guilty.

"It is clear," Judge Gagliardi said, "that an inference of guilt from the fact of the indictment was not planned by the prosecutor."

The judge said he had warned the jurors at least five times "on the nature of an indictment and the presumption of innocence" and said he was "certain that the jurors could not infer that the indictment gave rise to an inference of guilt."

After his ruling, the defense attorneys gave their opening statements to the jury.

Both painted their defendants as men who had come up from the bottom, men who had worked their way through school at night to become wealthy and then to devote their lives to their country.

The charges, of conspiracy, obstruction of justice and perjury, are related to financier Robert L. Vesco's secret \$200,000 payment to the Finance Committee to Re-Elect the President, supposedly in return for Mitchell's and Stans' "fixing" an investigation of Vesco and his companies by the Securities and Exchange Commission.

"We believe," said Mitchell's attorney Peter E. Fleming Jr., "that you will find on all the evidence that there is not a single speck, fragment, however you describe it, of evidence that you will hear or that you could hear that John Mitchell did anything to fix, to stop, to influence and terminate an investigation in favor of Robert Vesco."

"... Put that \$200,000 in the context of the evidence which you will hear," said Fleming, and you will find that "\$200,000 is less than one-third of 1 per cent of the \$60 million which was contributed to the re-election campaign of President Nixon in 1972 ...

"It is as if in an election costing \$10,000, Vesco had contributed \$33. It is as if in an election costing \$100,000, Vesco had contributed \$300. It is as if in an election costing \$100, Vesco had contributed I think 33 cents."

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"So we just ask you to think of \$200,000 which didn't go to him but went into a campaign fund, not to him ... (and) whether in essence John Mitchell would sell his life for 33 cents."

Fleming then went on to focus on the four men expected to be the chief witnesses against the former Attorney General: New Jersey politician Harry L. Sears, former SEC Chairman G. Bradford Cook, former Vesco associate Laurence B. Richardson Jr., and former White House counsel John W. Dean III.

Why, Fleming kept asking the jurors, were they not being prosecuted, too?

The answer, he said is that they are in effect being "paid" for their testimony, by not being prosecuted.

The opening of Stans' attorney, Walter J. Bonner, was more rhetorical, as he tried to portray Stans, former Secretary of Commerce and Mr. Nixon's chief fund raiser in two campaigns, as a servant of the people, as a devoted and loving husband.

"He holds no college degree at all," exclaimed Bonner, "but he worked during the day in his young years and he went to school at night and he earned himself a CPA, but so much has this man contributed to your United States that the evidence will show that 10 universities throughout this country have given to this man the degree he never had the time or the money to earn and they have given him 10 doctoral degrees, and for one reason: public service to the United States of America."

Bonner repeatedly referred to Stans as "this 66-year-old man." Stans is in fact, 65 and will not be 66 for several more weeks.

Bonner, who indicated his defense for Stans will be based on Stans' understanding that the old campaign law for reporting political contributions applied to Vesco's gift, said Stans will take the stand in his defense. Although Fleming would not say so, Mitchell also is expected to testify.

Stans' lawyer at the finance committee, Bonner said, had advised Stans that Vesco's promise to contribute the \$200,000 was a completed contribution under the



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John N. Mitchell arrives at courthouse in New York.

terms of the 1925 Federal Corrupt Practices Act and that the new law, effective April 7, 1972, did not apply to Vesco's money.

The government went through its first five witnesses today, getting into the record certain documents concerning telephone calls and meetings it hopes to use later.

Prosecutor James W. Rayhill's opening on Friday was read, in a monotone, from behind a lectern. It was long, detailed, legalistic.

Fleming was relatively brief, chatty and charming in opening Mitchell's defense. He wandered about, talking with the jury. Fleming had been considered the most skillful prosecutor here in nine years under former U.S. Attorney Robert Morgenthau.

Bonner of Washington, a one-time New Yorker, bounced theatrically about the courtroom in his brown plaid suit, at times almost yelling at the jurors in his indignation that such a man as his client, Stans, could be facing criminal charges.