

# STANS RECEIVES DEAN-NIXON TAPE

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 Judge Ordered U.S. Move  
 —Illness Adjourns Trial

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By MARTIN ARNOLD

The judge in the Mitchell-Stans trial has ordered the Government to turn over to the defendants portions of a transcript of a tape of John W. Dean 3d talking to President Nixon.

The judge had previously said that he thought the material, which was turned over to the defense Wednesday, would be helpful to one of the defendants. This means that by definition it is exculpatory.

Exculpatory evidence is material in the hands of the prosecution that would tend to prove the innocence of one or both of the defendants on at least some of the charges in this case.

The disclosure of the turn-over of the tape transcript was made yesterday—a day that started out with the promise of being the most dramatic day of the trial thus far because Mr. Dean, formerly counsel to the President, was scheduled to take the witness stand.

Instead, a juror became ill early in the morning and had

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to be hospitalized and Judge Lee P. Gagliardi adjourned the trial until Monday morning.

The tape transcript that was turned over to the defendants was of a meeting Feb. 28, 1973, between the President and Mr. Dean, who was then his counsel. Mr. Dean has told the Senate Watergate committee that he discussed the case of Robert L. Vesco with the President on that date.

The defendants in this case, former Attorney General John N. Mitchell and former Secretary of Commerce Maurice H. Stans, are charged here with perjury, conspiracy and obstruction of justice for allegedly attempting to impede a Securities and Exchange Commission investigation of Mr. Vesco's financial dealings. They did this, the Government contends, in return for a secret, \$200,000 contribution that Mr. Vesco, now a fugitive, made to President Nixon's re-election campaign.

On Feb. 27, the day before the tape was made, it was disclosed that Harry L. Sears, a former Vesco associate, had told the S.E.C. that the \$200,000 cash contribution had been made. Presumably, the President read of the disclosure the following day in the newspapers and discussed it with Mr. Dean.

### Dean's Account

Among other things, according to Mr. Dean, the President wanted to know what involvement his brother, Edward Nixon, had with the Vesco affair and with Mr. Mitchell and Mr. Stans, who were full-time leaders of the re-election campaign.

"I told him what I knew of his brother's involvement, which was that he was an innocent agent in the contribution transaction," Mr. Dean told the Senate committee.

Edward Nixon, the President's youngest brother, was sent by Mr. Vesco at one point to ask Mr. Stans, if the contribution had to be in cash, according to testimony in this trial.

Judge Gagliardi said yesterday that he would not rule on two other tapes he is holding until after Mr. Dean testifies, for the Government. The defense believes those tapes might also contain exculpatory material, but the judge said:

"I will have to wait for the testimony of Mr. Dean on direct examination before I can see whether or not any additional may have to be turned over to you [the defense], but I can't make that determination until after he has testified on his direct."

Previously during pre-trial hearings, the judge said that he believed sections of the Feb. 28 tape contained exculpatory material. The Government contended the material was not exculpatory.

Judge Gagliardi said at that



Marilyn Church

Mrs. Violet Humbert, juror whose illness and hospitalization forced an adjournment in trial until Monday.

time that he thought it would be helpful to Mr. Stans, former chairman of the Finance Committee to Re-elect the President. The value of exculpatory evidence is that the defense can use it in court, before the jury, to impeach the testimony of the Government.

Mr. Dean, who will be the 25th Government witness, may be the key to this case. Thus far the Government has been unable to produce any testimony that either Mr. Mitchell or Mr. Stans actually attempted to quash the S.E.C. investigation of Mr. Vesco, who with 41 others is accused of looting \$224-million from mutual funds his company managed. Indeed, most of the Government witnesses thus far have been more hostile than favorable to the Government case.

The importance of Mr. Dean is the fact that at the start the Government was pushing for a speedy trial of Mr. Stans and Mr. Mitchell, but that once Judge Gagliardi ruled that the Government had to obtain White House tapes for the defense or he would not allow Mr. Dean to testify, the Government sought and obtained a delay in the trial until it could obtain the tapes from the White House.

### Jury Is Excused

The discussion about the tapes yesterday took place outside the presence of the jury, which was excused after Judge Gagliardi announced that the juror, Mrs. Violet Humbert, a Bronx apartment house superintendent, had been taken to the hospital early yesterday morning from the motel in which the jury is sequestered.

He said that both parties had asked that the trial be adjourned until Monday to see if Mrs. Humbert is able to continue. There are six alternate jurors, who have also heard all the testimony in this case. The first alternate, who would replace Mrs. Humbert, is An-

drew Choa, president on an overseas investment subsidiary of a New York bank.

Yesterday was to be the big day, with Mr. Dean testifying. Peter Fleming Jr., Mr. Mitchell's chief counsel, came into the crowded courtroom and said, "He ain't going to be easy"—meaning that thus far most of the Government witnesses had expressed their friendship for the two defendants. This would not be the case with Mr. Dean.

### Seats Are Jammed

Mr. Dean, who has not been indicted, is named as a co-conspirator in this case. He was already in the Federal courthouse building. There are 14 rows of seats for spectators and press in the courtroom, and they are always filled, but yesterday they were jammed, 11 persons to a row, many of them having shown up as early as 7:20 A.M. to stand and line up and wait for the courtroom to open two hours later.

Three rows were reserved almost entirely for so-called "VIP's," which included the judge's family, law clerks of various judges in the building, secretaries of prosecutors, an occasional other prosecutor, and relatives of at least one of the defense attorneys. All had come there in a driving early-morning rainstorm expected to hear Mr. Dean testify in court for the first time.

And to see Mr. Dean perhaps undergo cross-examination, for the first time, from defense attorneys.

Most of those waiting in line were young people, including a class of 30 students from the Friends Seminary, a coed school in the city. Most of them, spoke of Mr. Dean as some sort of a pop culture hero.

A Columbia College student, Scott F. Wetterhall, a 22-year-old junior, summed up the feeling this way, "I have a lot of respect for Dean. He carried himself well during the hearings. He's trustworthy."