

MITCHELL LAWYER SEEKS DISMISSAL

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Judge Reserves Decision— Hears Pleas by Defense and the Prosecution NYTimes

By MARTIN ARNOLD

Arguing that all the Government has produced in court "is evidence to prove a series of isolated, really disconnected events," the defense asked yesterday that the criminal conspiracy case against John N. Mitchell and Maurice H. Stans be dismissed.

Judge Lee P. Gagliardi reserved decision after lawyers for the two former cabinet officials argued in open court, with the jury not present, that the Government had failed to prove that the two men used their influence to try to quash a Securities and Exchange Commission investigation of Robert L. Vesco in return for Mr. Vesco's \$200,000 cash contribution to President Nixon's re-election campaign.

The judge is not expected to dismiss the case, and the defense is scheduled to start its presentation of witnesses this morning.

It was an afternoon of some emotion, in court yesterday, and, on the part of the chief prosecutor, William R. Wing, who argued against the dismissal motions, some eloquence also.

Mr. Mitchell, former Attor-

ney General, and Mr. Stans, former Secretary of Commerce, are accused of perjury, conspiracy and obstruction of justice in the case.

Demeanor of Defense

The first to argue yesterday was Peter Fleming Jr., Mr. Mitchell's attorney, whose demeanor in court is often somewhat emotional. "The very best that can be said of the Government's evidence, if even that can be said of it, is that Vesco individually, might have been trying to stop the indictment [the S.E.C. charges], because there was evidence of Vesco's declarations about telling the S.E.C. to get off my [his] back, and messages of that sort," Mr. Fleming said.

"But what is proved indisputably and proved by the Government's own witnesses is that no one agreed with Vesco, no one joined with Vesco in that purpose," he said.

Mr. Fleming went on that the Government had "attempted to turn the obstruction of justice statutes on their heads" because "they (the Government) seem to be arguing that if Mr. Mitchell did anything in return for the contribution, then that is an obstruction of justice, even though what he did would otherwise be perfectly legal."

Mr. Vesco, who is a fugitive financier, and 41 others have been accused of defrauding investors of \$224-million.

It is a basic tenet of the defense that all Mr. Mitchell did was request that the then chairman of the S.E.C. William J. Casey, meet with a representative of Mr. Vesco to discuss the case, and to expediate it. This, they say, is perfectly legal.

Mr. Stans, in turn, according to his lawyer, Walter Bonner, was in fact merely using his First Amendment right of free speech when he made various telephone calls to discuss the S.E.C.'s Vesco case with an official of that agency.

Mr. Bonner, who also uses

S.E.C.

acting at one moment outraged, the next incredulous, in his emotion as a courtroom tactic, arguments, pointed at one moment to Mr. Stans and said:

"There's not a shred of evidence that that fine man sitting over there"—he pointed dramatically to Mr. Mitchell—"got together with this fine man, sitting over here, to fix one damn thing in regard to Robert Vescoe."

Mr. Wing was passionate in his rebuttal argument.

"Now, John Mitchell, your honor, wasn't Robert Vescoe's lawyer," he said. "He was the Attorney General of the United States, one of the highest public officials in the land, and must take judicial notice."

Speaking sometimes from notes, sometimes stepping away from the lectern without notes, he went on:

"And it is a fact which is absolutely critical to the charge in this case and to the facts in this case, because, in the real world, a person in that position doesn't go to the head of an independent regulatory agency on behalf of a private citizen."

"It is not proper. It is not legal," Mr. Wing said.

For part of the period involved in this case, Mr. Mitchell was still Attorney General, a post he left on March 1, 1972, to head Mr. Nixon's re-election campaign.

"Mitchell is still the Attorney General and while he is Attorney General he goes to [William] Casey [chairman of the S.E.C.] and he tells Casey that Vesco is being unfairly harassed, it's unfair, your staff is running away with the case," is the way Mr. Wing described the scene.

"That's what Casey testified to—some evidence Mr. Fleming apparently didn't hear," Mr. Wing said. "At that time he was Attorney General; not only that, he was the man responsible for Casey getting the appointment as chairman of the

"He's the man who goes to Casey and tells him that Vesco is getting a bad deal," Mr. Wing continued. "Now if that isn't political influence, I don't know what is."

Mr. Wing said that "for the for Vesco, and Vesco himself, were able to get a meeting" with Mr. Casey.

"John Mitchell had the clout. And that meeting that nobody else could get was easily arranged by John Mitchell," Mr. Wing said.

His voice deep with sarcasm, Mr. Wing added:

"It was not arranged because of the personality of John Mitchell. It was arranged by who he was, a man who had been the Attorney General, heading up the President's campaign for re-election, a man known far and wide as one of the closest people to the President of the United States."

The meeting was arranged between Mr. Casey and a Vesco representative by Mr. Mitchell on April 10, 1972, for that afternoon, according to trial testimony. That was the afternoon Mr. Vesco's \$200,000 contribution was given to Mr. Stans.

"The timing of that, your honor, is an incredible coincidence, and it says more than anything I could say as to the quid pro quo in this case," Mr. Wing said.

William R. Wing Finds Revolver