

Mitchell-Stans Jury Asks for 'Don Nixon Memorandum'

By MARTIN ARNOLD

What has been called "the Don Nixon memorandum" throughout the 45-day Mitchell-Stans trial was the first official document the jury asked to review yesterday—its first full day of deliberations.

In the memorandum, apparently written by Robert L. Vesco and addressed to President Nixon's brother, F. Donald Nixon, Mr. Vesco threatens the President with disclosure of the secret \$200,000 cash contribution that the financier made to the President's re-election campaign unless a Federal investigation of Mr. Vesco's business affairs "is stopped promptly."

The memorandum, which was battled over bitterly by the Government and the defense, relates to the conspiracy and obstruction of justice counts against John N. Mitchell, the former Attorney General, and Maurice H. Stans, former Secretary of Commerce.

The jury of nine men and three women also asked late yesterday afternoon for a reading of testimony involving two



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Mitchell-Stans jury members returning to court yesterday to resume deliberations

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of the six perjury counts against Mr. Mitchell and Judge Lee P. Gagliardi's perjury charge to them.

The memorandum was addressed to F. Donald Nixon, after Mr. Vesco had told several persons he "was speaking to Newport Beach." Donald Nixon lives in Newport Beach, Calif.

It never reached the President or his brother. Instead, it was stopped on the way by Mr. Mitchell in November, 1972, shortly after the Presidential re-election. Mr. Mitchell gave it to Harry L. Sears, a Vesco associate, who kept it in his closet until it reappeared at this trial.

In the memorandum, Mr. Vesco refers to himself in the third person, "R.L.V." He outlines how he became entangled in an investigation of his financial affairs by the Securities and Exchange Commission, and also how he came to contribute to the President's re-election campaigns, which was then led by Mr. Mitchell and Mr. Stans.

"R.L.V." says in the memorandum that at the behest of Mr. Stans he made a secret \$200,000 cash contribution to the President's re-election; that the President's other brother, Edward C. Nixon, confirmed that Mr. Stans wanted the contribution in cash; and that it was suggested to him that he also make a \$50,000 contribution by check so that could become public.

Mr. Vesco and four of his associates pleaded the Fifth Amendment against self-incrimination when they testified before the S.E.C., so the memorandum reminds the reader this way:

"Efforts by the S.E.C. to ascertain, before Nov. 7 [Election Day], what R.L.V. did with the \$250,000 in question were not successful since knowledgeable parties refused to respond to subpoenas by such means as lack of counsel, constitutional rights and every other possible means.

The writer then underlined this part of the memorandum: "As a result of withholding data with respect to the \$250,000, the S.E.C. staff is seriously proceeding to bring criminal actions against R.L.V. and others."

The S.E.C. filed its charges against Mr. Vesco on Nov. 27, 1972. Mr. Vesco and 41 others were accused of defrauding investors of \$224-million.

Mr. Mitchell and Mr. Stans are charged with conspiracy, obstruction of justice and perjury in that they allegedly attempted to impede the S.E.C. investigation in return for the \$200,000 cash contribution.

During his testimony at this trial, Mr. Mitchell said that he only "thumbed through it [the memorandum]." Later, under cross-examination by John R. Wing, the chief prosecutor, he conceded that he might have read at least enough of it to have caught a passing reference to the \$200,000 contribution.

The importance of this, according to the prosecution, is that Mr. Mitchell received documents that could have helped the S.E.C. investigation—including "the Don Nixon memorandum"—and did not turn them over to the commission.

Mr. Wing put it this way in his summation:

"John Mitchell got it. And John Mitchell read it. And if John Mitchell is the innocent man, as he says he is, he wouldn't have given it back to Sears."

"Think about what an innocent, honest, law-abiding former Attorney General should have done with this obvious threat, with this clear attempt to interfere with the S.E.C.," Mr. Wing said.

Mitchell Response

Mr. Mitchell has testified that he considered the memorandum "a crude attempt to put muscle" on the Administration, and so he returned it to Mr. Sears, who he assumed would return it, in turn, to Mr. Vesco.

It is rule rather than the exception for jurors to ask for a reading or review of trial testimony and documents while they are deliberating.

That is because most judges do not encourage or allow jurors to take notes while sitting in the jury box, and so they go into the deliberating room with all the information supposedly in their heads, and it is often hard to remember what they heard from the witness box several weeks previously. Some judges, however, allow note-taking.

In the Pentagon papers trial in Los Angeles last year, for instance, the judge did encourage the jurors to take notes, and most of them did. But it is a tradition in this judicial district that jurors not be allowed to take notes.

Last night, before going out to dinner, the jurors asked to hear the testimony of Daniel Hofgren and Mr. Sears and Mr. Mitchell's answering testimony to both.

The jury also asked to have the judge's charge on the perjury counts reread to them. Both Mr. Hofgren, a former White House aide who was a campaign finance committee worker, and Mr. Sears gave testimony that directly contradicted Mr. Mitchell's.

The jury's request for such readings or reviews is made in a formal manner, with a written note from the foreman, in this case a young woman bank teller, to the judge. He, in turn, summons all the trial participants, the lawyers for both sides, the defendants, the press corps, into court to read to them the jury's note.

It is a moment of high expectation, for what if the note says that a verdict has been reached? And it points out that the real drama of the trial is at such a moment, when the jury is deliberating, and not, as one would suppose, when a sharp lawyer is exchanging thrust and parry in the courtroom with a witness on the stand.

It is, as one lawyer said yesterday, "the time and the theatre come together," for even if the jury's note does not portend that a verdict is near, it at least gives the courthouse hangers-on something to chew over.

And so one hears in the corridors, as they did last night, "they're getting them on perjury" and "they don't believe Mitchell" and "the judge's charge acquits them of perjury," and so forth. It is the intermission talk at a play opening on Broadway.

So into the night, while the jury deliberates, a surprisingly large crowd gathers outside of the courtroom waiting.

Secretaries who work for Federal prosecutors don't go home at 5 P.M. Federal prosecutors, who are in no way connected with this case, come to lend moral support to their colleagues, who are. There are law students and law clerks, also, who want to see what it's really like.

And outside in the street, in front of this large and grimy stone building on Foley Square, wait the large mobile color television trucks of the networks—all controlled by the whim of the nine men and three women who make up the Mitchell-Stans jury.