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W Post

Mitchell Trial Start Is Delayed

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NEW YORK, Oct. 23—Attorneys for John N. Mitchell and Maurice H. Stans have subpoenaed another White House tape recording, supposedly of a conversation concerning President Nixon's brother Edward.

At a hearing today at which Federal Judge Lee P. Gagliardi adjourned the beginning of Mitchell's and Stan's trial until Jan. 7 because of the tapes controversy, the new tape subpoena was discussed.

Walter J. Bonner, Stans' lawyer, supplied Judge Gagliardi with affidavits to support his subpoena for the tape, in advance of what he said was expected opposition to the subpoena from the prosecutors.

He said the tape involved a Feb. 28 meeting between the President and his then counsel, John W. Daen III, in which, Dean has testified, the President asked Dean whether his brother was involved in the secret \$200,000 campaign payment of Robert L. Vesco.

Dean has testified that he told the President that Edward Nixon had, indeed, been involved, but only innocently, as a go-between.

Judge Gagliardi consented to the government's request to delay the start of the trial for 11 weeks before word came from the White House that nine of the White House tapes would be supplied to Judge Sirica in Washington.

It is not clear whether the tape subpoenaed earlier here—of Dean's April 15 meeting with the President—would be made available to Judge Gagliardi here as well as to Judge Sirica in Washington.

Judge Gagliardi has ruled that he must examine such tapes if Dean is to testify in the trial of Stans and Mitchell on charges of conspiracy, obstruction of justice and perjury surrounding Vesco's \$200,000 payment and an investigation of his businesses by the Securities and Exchange Commission.

Because of the unavailability of the tapes, the prosecutors asked for the delay.

The government has said in court here that Dean's testimony was vital to its case. The indictment of Mitchell, Stans, Vesco and New Jersey politician Harry L. Sears states that Mitchell asked Dean to intervene in the SEC probe.

Further, three of the counts of perjury against Mitchell appear to pit Mitchell's word against Dean's.

Judge Gagliardi has ruled that the defense is properly entitled to use the tapes and any other data in the government's possession about Dean. His ruling was based on a law that requires such material to be made available to the defense to test a particular witness's credibility.

Attorneys for Stans and Mitchell did not oppose the government's motion to put the case off until January. The trial was due to start this morning.

Assistant U.S. Attorney John R. Wing, speaking before he knew of the White House decision to permit Judge Sirica to hear the tapes, said he had been in daily contact with the White House about the tapes and said that "they told us they can give us something."