

# Nixon Tapes Going to Mitchell Judge

NYTimes FEB 9 1974

By ARNOLD H. LUBASCH  
Federal prosecutors disclosed yesterday that they had obtained two new White House tape recordings for the judge in the trial of former Attorney General John N. Mitchell and former Commerce Secretary Maurice H. Stans.

The two tapes contain conversations last March between President Nixon and his dismissed White House counsel,

John W. Dean 3d, about campaign fund-raising and Robert L. Vesco, the fugitive financier.

Defense lawyers had subpoenaed the tapes for possible use in assisting the defendants and attacking the credibility of Mr. Dean. He is a key prosecution witness for the Mitchell-Stans trial, which is expected to start Feb. 19 in Federal District Court here.

Mr. Mitchell and Mr. Stans,

who left President Nixon's Cabinet to lead his re-election drive in 1972, were charged last May 10 with obstructing a Federal investigation of Mr. Vesco in return for the financier's secret \$200,000 cash contribution to the President's campaign.

After the defense issued a subpoena last fall for White House tapes, Judge Lee P. Gagliardi, who is presiding over the case, decided that he should inspect any relevant tapes in private to determine if they contained material to which the defense was entitled.

The prosecution subsequently obtained one White House tape, which involved a Nixon-Dean conversation last Feb. 28 about the Vesco case, and turned it over to Judge Gagliardi.

John R. Wing, a Federal prosecutor, said at yesterday's pretrial court session that the Government had also submitted a March 20 tape to the judge and would provide him with a March 13 tape that is in the Government's possession.

"I have Feb. 28 and March 20," Judge Gagliardi noted, "but I have not yet been supplied with the March 13 tape, which you will make available."

Although the judge did not rule on whether the prosecution must turn over any of the subpoenaed tapes to the defense, he indicated his view that the Feb. 28 tape contained material that the defense was entitled to have.

Mr. Wing replied that the prosecutors did not believe that the defense was entitled to the tape at this time, but he indicated that any relevant portions would be provided if the judge considered it necessary.

## Critical of Jaworski

Marvin Segal, a lawyer for Mr. Mitchell, said that the defense also wanted any documents concerning Mr. Dean that Watergate investigators might have given to Judge Gerhard A. Gesell for a separate case in Federal District Court in Washington.

Walter J. Bonner, a lawyer for Mr. Stans, added that the defense believed that Mr. Dean should be barred from testifying because of what Mr. Bonner called "a very unfortunate remark" by Leon Jaworski, the special Watergate prosecutor.

Mr. Boner, referring to Mr. Jaworski's recent statement that the Government possessed no evidence to accuse Mr. Dean of perjury, contended that the Watergate prosecutor was saying in essence that "he and the Government were vouching for Mr. Dean's veracity."

"Unheard of, unheard of," Mr. Bonner exclaimed about the statement.

With the tape issue nearing resolution, the defense lawyers apparently intend to continue maneuvers designed to prevent Mr. Dean from testifying.

The start of the trial has been delayed because Peter Fleming Jr., a lawyer for Mr. Mitchell, remained occupied with a trial concerning stock-fraud charges involving the Four Seasons Nursing Centers of America in Oklahoma City.

That trial ended yesterday, enabling Mr. Fleming to return here to take charge of the Mitchell defense.

Mr. Mitchell and Mr. Stans are accused of conspiracy, obstruction of justice and perjury.