

Stans' Subpoena Upheld

Judge in N.Y. Refuses to Bar Hill Appearance

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A federal judge in New York yesterday refused to block former Commerce Secretary Maurice H. Stans' subpoena to appear before the Senate Watergate committee despite claims that the publicity would prejudice his criminal trial.

At a similar hearing here, U.S. District Court Judge John J. Sirica hinted strongly that he would reject a plea to black out radio and television coverage of key Senate testimony by two other witnesses: former White House counsel John W. Dean III and Jeb Stuart Magruder, former deputy director of President Nixon's re-election campaign.

The restrictions on news coverage of Dean's and Magruder's expected confessions were sought by the government's special Watergate prosecutor, Archibald Cox, on grounds that nationwide broadcasting of them would seriously endanger fair trials "at an early date" for anyone indicted in the Watergate scandal.

Sirica withheld any decision until Tuesday, but he repeatedly voiced doubts that he had the authority to grant Cox's request.

With the Watergate grand jury still at work, Sirica objected that he was being asked to assert himself over congressional protests in a case where there are "no indictments, no defendants."

In an optimistic mood, the Watergate committee's chief counsel, Samuel Dash, said later that he expects Stans and then Magruder to be called to testify at the inquiry sometime next week, with Dean to follow.

Sen. Sam J. Ervin Jr. (D-N.C.), the committee chairman, told reporters on Capitol Hill, meanwhile, that the in-

vestigation will be expanded to include the White House-sponsored burglary at the offices of Pentagon papers trial figure Daniel Ellsberg's psychiatrist and other controversial actions by the Nixon administration in the name of "national security."

Ervin had been considering introduction of a Senate resolution broadening the committee's mandate, but he said he has shelved that plan. He said he has concluded that his committee already has "as much authority as an eastern potentate."

The New York hearing was
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sought by lawyers for Stans, who was indicted with former Attorney General John N. Mitchell there May 10 on obstruction-of-justice charges involving fugitive financier Robert L. Vesco's secret \$200,000 cash contribution last year to Mr. Nixon's campaign. The Securities and Exchange Commission was probing into Vesco's financial dealings at the time.

Stans' chief trial lawyer, Walter J. Bonner, protested to U.S. District Court Judge Lee P. Gagliardi that Stans' appearance before the Senate Watergate committee while under indictment "would add insult to injury." He maintained that Stans' chances for a fair trial would be "massively prejudiced."

Another of Stans' lawyers, Robert W. Barker, said the committee's staff had assured him that the "Vesco matter" would not be raised at the hearing but Barker said that "in our view the whole matter of Watergate and Vesco is interrelated and cannot be compartmentalized."

Judge Gagliardi was asked for "guidance" in light of local free-press, fair-trial rules barring public statements about pending criminal trials. Gagliardi had said May 30 that the rules applied to defendants as well as attorneys.

The New York judge emphasized yesterday, however, that the rules specifically state that they do not apply to legislative hearings.

"I find nothing in the rule to prohibit such testimony," he said in clearing the way for Stans' appearance.

Bonner said he plans to move for dismissal of Stans' indictment on the grounds that publicity has already made a fair trial impossible. Gagliardi noted that the trial is not scheduled to start until Sept. 11 and said he would consider the problem then.

At the hearing before Judge Sirica here, Phillip B. Hey-

mann, associate special prosecutor under Cox, contended that restrictions on news coverage of Dean's and Magruder's appearances could legally be tied to the court orders the Senate committee is seeking that would grant both men immunity from any prosecution stemming from their testimony.

Without such restrictions, Heymann argued, "the possi-

bility of fair Watergate trials at an early date is threatened seriously—not hopelessly, but seriously."

Sirica, however, noted that "we're dealing with the doctrine of the separation of powers."

"What authority do I have to tell the select [Watergate] committee they can't televise the hearings?" the judge asked. "Here we have no indictments, no defendants. We are dealing only in suppositions, isn't that true? We don't know if the grand jury is going to indict 1 person or 10."

Sirica said the situation might be different if he were being asked for a protective order involving suspects under actual indictment, but, he said, "here there's nothing before the court."

With local Watergate prosecutors Earl J. Silbert, Seymour Glazer and Donald Campbell sitting at the gov-

ernment table, Heymann argued that the truth would be best served "by a conjunction of limited televised hearings and prompt trials," but conceded that "some early identification of defendants" was needed.

When Sirica pressed him to say when indictments might be expected, Heymann said he could offer nothing firmer than U.S. Attorney Harold Titus's recent forecast of 60 to 90 days—"near the end of the summer"—although he said there was some chance they might be speeded up.

"I don't want to over-argue my case," Heymann apologized moments later in starting to restate the main points of his petition.

"I don't think there's any danger of that," Judge Sirica told him crisply.

Heymann cited both a 1952 Federal appellate court decision reversing the conviction

of an internal revenue collector in Massachusetts name Denis W. Delaney who was brought to trial shortly after hostile congressional hearings, and a 1962 Supreme Court decision overturning the murder conviction of a Louisiana man whose confession had been broadcast several times before his trial on a local television station.

Unrestricted grants of immunity for Dean and Magruder's testimony at televised hearings, Heymann contended, would "combine the difficulties" posed by both those precedents.

Dash called the fears "totally unfounded" and charged that the cases cited by the special prosecutor "support his arguments as strongly as a thread of gossamer."

The Senate committee counsel said the Delaney decision, for example, held only that his trial should have been postponed until the hostile atmosphere of the congressional hearings had evaporated. Dash said the same rule could easily be applied to trial of any Watergate defendants, whose trials are still months away.

"Publicity . . . alone has never been held by any court to prevent prosecution," Dash said. He protested that Cox's office was asking the courts to make "a severe invasion of the constitutional doctrine of the separation of powers" by improvising on grants of immunity that, he said, the law makes automatic upon congressional request.

Dash called television coverage of the Senate hearings important both in carrying out Congress's court-tested right to inform the public and in building public support for whatever remedial legislation the committee might recommend.

In addition, he told Judge Sirica, "we have received very valuable leads based on our TV coverage." Asked for details by newsmen later, Dash declined to elaborate.

Near the close of the hearing, Heymann, in an apparent retreat from his original position, asked Judge Sirica simply to grant immunity to Dean and Magruder "so long as the testimony is not broadcast without their consent."

Dean's lawyer, Charles Shaffer, and Magruder's attorney, James Bierbower, spoke at the hearing briefly to waive their clients' right to be present.