

Excerpts From Plea by Stans Counsel for Delay in

Special to The New York Times

WASHINGTON, June 12—Following are excerpts from the statement to the Senate Watergate committee today by Robert W. Barker, attorney for former Secretary of Commerce Maurice H. Stans, and the replies of Senator Sam J. Ervin and Senator Howard H. Baker Jr.:

Barker Statement

MR. BARKER: Mr. Chairman, I am Robert W. Barker, legal counsel for the honorable Maurice Stans.

Mr. Chairman and members of the committee, I appreciate this opportunity of making clear for the record Mr. Stans' legal position with respect to testifying before this committee at this time and under the prevailing circumstances.

First, I would like to clear up two items with respect to some of the confusion that may have arisen in the press. First, Mr. Stans has not requested and does not now request not to appear before this committee. He is merely requesting, Mr. Chairman, that in view of the impending criminal case in New York against him, his appearance be deferred until an appropriate time.

Secondly, no court has ruled or ordered Mr. Stans to appear and testify before this committee.

In the criminal proceeding in New York, the judge has invoked the local court's ruling which precludes the defendants or counsel discussing the controversy outside of the courtroom. Since this was made specifically applicable to Mr. Stans as one of the defendants, we applied to Judge Gagliardi for a ruling as to whether Rule 8 restrained Mr. Stans and counsel from appearing and testifying before this committee. We did not ask Judge Gagliardi to rule that Mr. Stans could not appear and testify.

The court ruled that Rule 8 did not apply to legislative hearings. It did not rule and reserved for a later ruling on whether the extensive blanket of publicity generated by the Watergate activities in this committee would impair the right of fair trial. He ruled that that would be considered at the time the trial is scheduled to commence on September 11.

Mr. Chairman, members of the committee, as you probably recognize, you have a very unique and unusual legal problem to face with Mr. Stans being called and subpoenaed to testify here today. He is the first witness to appear before your committee who is under an impending indictment for criminal matters arising out of the Presidential election campaign. As was pointed out this morning by Judge Sirica in his ruling in the District Court, the cases then before him did not involve people under pending indictments. He considered that an important distinction.

A Fundamental Ruling

The ruling which we will ask you to make is a very important and fundamental legal ruling. Since it involves Mr. Stans' personal and individual rights under the Constitution, it is much different than the position of the Special Prosecutor, Mr. Cox, when he asked merely that these hearings be deferred.

On May 10, the United States of America, of which this committee is part of a coordinate branch, changed the whole situation. It brought an indictment against Mr. Stans, charging him with very serious crimes arising out of the campaign and his duties as chairman of the Finance Committee.

As you know, Mr. Stans pleaded innocent.

Now, Mr. Stans is before this committee under subpoena, with a direction to testify about his function as chairman of the Committee to Re-elect the President. Inevitably, directly or indirectly, this hearing will influence any jury which might be called to hear the case in New York.

This places Mr. Stans in an impossible position and completely unfair one. Under our constitutional system, the fundamental laws of this land, an accused is entitled to a fair trial by an impartial jury, unimpeded by a deluge of publicity. In other words, as the Supreme Court said in *Estes v. Texas*, the concept of due process of law entitled the defendant to "both judicial serenity and calm."

Now, Mr. Chairman, the inevitable Klieg light of publicity which will result from Mr. Stans' appearance here would preclude any judicial serenity and calm at the trial

now set, as I say, for Sept. 11 in New York. It would also tend to deny him the possibility of an impartial jury of the kind guaranteed by the Sixth Amendment. To paraphrase the language of the Supreme Court in *Delaney v. U. S.*, Mr. Stans' appearance before this committee and the television and other news media related thereto would accomplish additional investigation and extensive publicity which would serve no other purpose than to further prejudice Mr. Stans' right to a fair trial.

Now, the Supreme Court, in speaking of the problem of publicity and fair trial, has said, "The Court has insisted that no one be punished for a crime without a charge fairly made and fairly tried in a public trial free of prejudice and passion, commitment, and tyrannical power."

Also speaking of freedom of the press, the Supreme Court has said, "that must not be allowed to divert the trial from the very purpose of the court system, to adjudicate controversy both in the calmness and solemnity of the courtroom according to legal procedures. Among the legal procedures is the requirement that the jury's verdict be based on evidence received in open court, not from outside sources."

Holmes Is Cited

The undeviating rule of the Supreme Court was stated long ago by Mr. Justice Holmes, when he said, "The theory of our system is that the conclusion to be reached in a case will be induced only by evidence and argument in open court and not by any outside influence, whether a private talk or public print."

Now, this was said in 1907, before the great media of radio and television existed. I am sure that if he were speaking today, he would include those great media within the scope of public print.

Now, as I have said, the Supreme Court has indicated that a defendant is entitled as part of due process of law to a fair and impartial jury trial free from outside influence. I pose this question: After all the publicity given these hearings and the Watergate situation in general, where in the U.S. can an impartial jury, uninfluenced by publicity, be found? Moreover, under our settled system of due process of law

and justice guaranteed by the Fifth Amendment, an accused has a right to remain silent, completely silent, and require the Government to go forward with the presentation of its evidence before the defendant need present his case or put on any evidence. By requiring Mr. Stans to appear here before one of the coordinate arms of the Government which has placed these charges would require Mr. Stans to present his case in advance of hearing the Government's case in New York. This clearly would deprive him of due process of law.

If Mr. Stans refuses to testify, as we understand it, he would be under a severe threat of citation for contempt of Congress and would face imprisonment. This places him under compulsion of either interfering with his own fair trial or going to jail. I repeat, this is a completely unfair position to put him in.

The only other alternative open to Mr. Stans, Mr. Chairman, is for him to refuse to testify on the grounds of the Fifth Amendment. This would tend to degrade and embarrass him and could severely interfere with fair trial, because he would be branded throughout the U.S. as a former Cabinet officer who had taken refuge behind the Fifth Amendment.

What would a prospective juror say about that?

Prejudice Held Likely

The courts have recognized and the facts in many cases show that the taking of the Fifth Amendment, even though it is a constitutional right, is likely to severely prejudice a person in the minds of the public, including prospective jurors.

Mr. Chairman and members of the committee, Mr. Stans is left no reasonable choice or fair opportunity. As lawyers of broad experience, each of you must recognize that fact. Therefore, under the prevailing circumstances, on behalf of Mr. Stans, I respectfully requested that the committee, and I strongly urged the committee in the interest of fairness and fair trying, defer Mr. Stans' appearance and testimony until the indictment in the Vesco case in New York has been disposed of.

It is probably already too late to preclude the publicity

Senate Testimony and Replies by Ervin and Baker

which will make a fair trial in that case impossible. However, I sincerely pray that the committee will at least not make the situation worse by proceeding at this time with Mr. Stans' testimony.

Thank you, Mr. Chairman and members of the committee.

Ervin Statement

THE CHAIRMAN: Well, Mr. Barker, you have made a very appealing statement to the committee. In view of the fact that the committee was appraised in advance of the nature of the position which would be taken in behalf of the witness, the committee considered this matter at great length this morning.

This committee has been authorized and directed by a unanimous vote of the Senate to investigate the question whether any persons, acting individually or in combination with others, engaged in illegal or unethical or immoral activities in connection with the Presidential election of 1972, or in connection with any campaigns of any candidates seeking nomination to run in that election which had the effect of perverting the integrity of the process by which Presidents of the United States are nominated and chosen.

I note in your statement that the only effect of requiring the witness to testify would be to prejudice his rights. I do not think that is the only effect of taking his testimony, because taking the testimony of this witness and the testimony of other witnesses will enable this committee to determine whether the activities suggested took place, whether those activities imperiled the integrity of the process by which the people of the United States select the occupant of the highest office within their gift—that is, the Presidency of the United States—and whether any new legislation is necessary or advisable to punish or prevent a recurrence of any activities which the committee may find were illegal or unethical or improper.

Now, the people of the United States certainly have a paramount interest in whether those who exercise high governmental power discharge or fail to discharge their duties. They have a high interest in learning

whether or not electoral processes for the nomination and selection of Presidents have been polluted. And I do not think, and I think the committee does not think that we should put off investigation of these matters until they can be determined by the court, because the Constitution gives the Senate not only the power but the duty to make investigations of this character.

The courts have had approximately a year to deal with these matters and justice, has a habit of treading on leaden feet, so I certainly think it would be manifestly unfair and the committee concedes this to be true, and the committee has authorized me to state that in the unanimous judgment of the committee, no questions should be directed to the witness in respect to the matters alleged in the indictments in the U.S. District Court in New York. I would like to advise you and the witness at this time that if any question should be put to the witness which infrequently would require any testimony about the matters involved in that case, that it be called to our attention so we can be certain that it can't, will not be answered.

Right to Refuse

Of course, the defendant has a constitutional right under the Fifth Amendment to refuse to testify if his testimony would tend to incriminate him, and I can understand the reluctance of the witness to invoke that right.

The committee, as I say, has had—fortunately, you gave advance notice to the counsel and we considered this matter fully and it is the judgement of the committee, first, that the witness will not be asked any questions relating to the New York case; second, that the witness or counsel will be privileged to call attention of the committee to any question which might invade the field covered by that case; and third, that it is the duty of the committee, in the absence of an invocation of a constitutional right not to testify, to interrogate the witness. So the committee will require the witness, in the absence of an invocation of constitutional privileges, to testify.

MR. BARKER: Is it the position of this committee that if Mr. Stans did not proceed to testify they would seek a

citation for contempt against Mr. Stans?

SENATOR ERVIN: Well, that would be a matter that the committee would have to consider. Since that condition has not arisen, we have not passed on that, but I would say that it would be certainly within the prerogative of the committee to recommend to the Senate in the event the witness refused to testify without invoking the Fifth Amendment, that he be cited by the Senate for contempt of the Senate.

MR. BARKER: Mr. Chairman, what I am trying to make is a matter of record, that Mr. Stans is not doing anything voluntarily which would have his right to test in the proceeding in New York whether he can get a fair trial and whether the indictment should be dismissed on the grounds it is impossible for him to get a fair trial, and I want to be clear that you are ordering him to testify, and that he is not proceeding under circumstances which would waive that right.

SENATOR ERVIN: Well, in the absence of any objection to the contrary from any member of the committee, I would state as chairman of the committee, that you have made it perfectly clear and Mr. Stans has made perfectly clear to the committee that he is not voluntarily appearing to testify and that any testimony he may give to the committee is given to the committee merely because the committee orders him to give such testimony.

Proceeding With Mandate

SENATOR BAKER: The committee is not insensitive to the rather delicate position that Mr. Stans finds himself in. We are not insensitive to the whipsaw between the judicial system and the legislative system which would appear on the surface. But I think two or three observations might be appropriate to set the stage and to create the right atmosphere for our going forward at this time.

We are offering—we are not ordering Mr. Stans to testify simply to serve the purposes of this committee's desire to proceed. We are, as a coordinate branch of the Government, proceeding with the mandate given us by the Senate.

The case, the Delaney case

to which counsel referred, if my memory serves me, was a case that tested this theory and went out on the question of whether or not the court under these circumstances should delay and continue criminal prosecutions until after the legislative proceedings had been concluded.

I do not suggest the United States District Court for any district in the State of New York or that in which this case is pending, that they should grant a continuance. I rather say—not do I suggest that you should ask for a continuance. I rather say that there are remedies other than disposing of this witness without his testimony and without suspending the proceedings of this committee in view of the coordinate branch of conflict which is presented.

On the question of fair trial, if for no other reason than human sensibilities, I am concerned for a fair trial for a client in that respect and pledge on my part that no refusal to answer on that legitimate basis will be viewed by the committee or this member of the committee, as a failure of cooperation.

I believe, in conclusion, that this legislative committee, this committee of the Senate, a coordinate branch of the Government, can proceed with its mandate as required by the resolution which created it without jeopardizing the fairness of trial for either the Government or the defendant.

It is my fervent hope that we conduct ourselves in that way.

Thank you.

SENATOR ERVIN: I would just like to add that I agree with Senator Baker's observation that the chances—there has been so much publicity in the press that the chances for anybody getting a fair trial of anybody involved would rise with the completion of this hearing rather than postponement of this hearing and, as I construe the U. S. Supreme Court decision in the Hutchinson case, the committee is acting within the constitutional limits. And I also would like to say this, Mr. Barker, as one who admires legal craftsmanship, I want to commend the excellence and the eloquent manner in which you have undertaken to protect what you conceive to be the rights of the witness.