

DISMISSAL SOUGHT BY 3 IN VESCO CASE

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Mitchell's Attorneys Assail
Indictment—Stans and
Sears Join in Move

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By ARNOLD H. LUBASCH

Defense attorneys for John N. Mitchell moved yesterday to dismiss an indictment against the former Attorney General on the ground that the prosecution was "guilty of persistent and deliberate misconduct."

Dismissal motions were also submitted for former Commerce Secretary Maurice H. Stans and Harry L. Sears, former Republican leader of the New Jersey State Senate, who were indicted with Mr. Mitchell on charges involving a secret cash contribution of \$200,000 to President Nixon's 1972 election campaign.

The Federal indictment here on May 10 alleged that the three former officials took part in a conspiracy to influence a fraud investigation of Robert L. Vesco, a New Jersey financier, in exchange for Mr. Vesco's \$200,000 contribution.

Watergate Issue

In the motion papers filed in Federal District Court here, the defense attorneys accused the Government prosecutors of improperly injecting the Watergate case into the grand jury's investigation of the Vesco contribution.

The dismissal motion for Mr. Mitchell complained that the prosecutors had asked him in front of the grand jury here about persons prominently identified with the Watergate case in Washington.

It cited the following question and answer from Mr. Mitchell's grand jury testimony last March 20:

Q. Did you ever meet a man named Howard Hunt

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and Donald Segretti in the Waldorf in April, 1972?

A. You must be kidding. I most certainly did not. I testified previously I've never met either one of them in my life.

The motion contended that the question raised the suspicion that Mr. Mitchell was tied to political sabotage and "presumptively leveraged the grand jury toward indictment."

Watergate Not Related

Asserting that the Vesco investigation had nothing to do with the Watergate case, the defense attorneys argued that the prosecutors had a duty to keep Watergate references out of the presentation of evidence to the grand jury here.

They maintained that the injection of the Watergate issue "irreparably prejudiced" the defendants and deprived them of their constitutional right to a fair hearing before the grand jury.

Additional damage was done, they contended, when Government sources "leaked" news reports that Mr. Mitchell was likely to be indicted in the Watergate case.

"This prejudice to Mr. Mitchell culminated in what surely was an unprecedented incident in the administration of Federal criminal justice in this district," according to the defense lawyers.

They cited an article in The New York Times that "accurately predicted the nature of the charges" against the defendants in the Vesco case be-

fore the grand jury handed up the indictment.

After the grand jury indicted the defendants, the attorneys, maintained, the governmental "misconduct" continued with a televised news conference by the then United States attorney, Whitney North Seymour Jr.

The defense motions stressed a statement that Mr. Seymour made at the news conference May 10 announcing the indictment of Mr. Mitchell, Mr. Stans, Mr. eSars and Mrs. Vesco.

"This is a sad day," the Seymour statement said, "i na series of sad days for those of us who are concerned about integrity in government and in the administration of justice."

According to the defense attorney, Mr. Seymour "proclaimed guilt" before a trial, violated the rules of the court and deprived the defendants of their right to a fair trial.

"Mr. Mitchell was once the Attorney General of the United States," Peter Fleming Jr. and the other Mitchell lawyers observed in their motion. "He deserves no favors for this fact. But neither does he deserve unfairness."

'Not a Symbol'

"He is not a symbol of something, to be tossed about without regard to his rights," the attorneys continued. "He is above all else a citizen. He deserves what our Constitution guarantees all citizens. He did not receive those rights, which in fact were ignored."

In addition to the dismissal motions, the attorneys made several additional motions: for severing perjury charges

against Mr. Mitchell and Mr. Stans, for discovering evidence in the conspiracy case and for severing the missing Mr. Vesco from the scheduled trial.

A dismissal motion for Mr. Stans contended that the prosecutors had "intimidated" Kenneth W. Parkinson, one of Mr. Stans's attorneys, by summoning him for questions and leading him to believe he might be indicted.

The prosecutors, who have three weeks to reply to the defense motions, made no comment on them yesterday.

Judge Lee P. Gagliardi has scheduled Sept. 11 for the start of the trial of Mr. Mitchell, Mr. Stans and Mr. Sears, who pleaded not guilty to the charges against them.

Mr. Vesco left the United States before the indictment and remains a fugitive in the case.