

# Mitchell and Stans Doubt a Fair Trial

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Defense motions contended yesterday that massive publicity made it impossible for former Attorney General John N. Mitchell and former Secretary of Commerce Maurice H. Stans to receive a fair trial on charges involving a \$200,000 cash contribution to President Nixon's 1972 election campaign.

The voluminous motion papers particularly criticized the Senate's televised Watergate hearings for questioning Mr. Stans and Mr. Mitchell "in a setting which was reminiscent of the Inquisition."

The two men are scheduled to go on trial with Harry L. Sears, former Republican leader of the New Jersey Senate, for an alleged conspiracy to obtain the \$200,000 campaign contribution to influence a Federal investigation of Robert L. Vesco, a fugitive financier accused of fraud.

The defense motions called for dismissing the charges against the defendants or at least delaying the case indefinitely and moving the trial out of New York.

The Government prosecutors are scheduled to reply on July 30 to the defense motions. The motions will be ruled on by Judge Lee P. Gagliardi, who has set Sept. 11 for the start of the trial in Federal Court here.

Lawyers for Mr. Sears joined with Mr. Mitchell and Mr. Stans in the "prejudicial publicity" motions as well as other dismissal motions that their lawyers filed last week in accusing the prosecution of misconduct.

Mr. Vesco, the New Jersey financier, was indicted with the other defendants on May 10, but he fled the country and his lawyers have not participated in the pretrial motions.

In a 57-page memorandum supporting the motions on pub-

licity, lawyers for Mr. Stans noted that they had attached 2,615 pages of exhibits containing many news accounts on the Vesco case and the Watergate scandal.

"This effort has been undertaken," they said, "because its subject — the Watergate-Vesco affair — has undoubtedly been the single most publicized event in the history of this nation."

The defense motions asserted that the Watergate scandal of burglary, bugging and political espionage had resulted in "massive, pervasive and prejudicial publicity" that precluded a fair trial for the defendants in the Vesco case.

Not only were Mr. Mitchell and Mr. Stans prominently mentioned in the Watergate investigation, their lawyers stressed, but they were also questioned at length on national television in the continuing hearings conducted by Senator Sam J. Ervin Jr., the committee chairman.

The Senate decided that the need for immediate public hearings, exceeded the importance of preserving the right of the defendants to a fair trial, according to the lawyers.

They declared that the defendants could not be "legally judged by jurors who have been exposed to the publicity of those other alleged crimes called Watergate."

## 'Inflamed Environment'

"Not only has there been massive prejudicial publicity," they said, "but much of this publicity was and is being generated by various parts of the

"In this inflamed environment," they added, "the requirement of an impartial jury contained in the Sixth Amendment cannot be met."

The defense lawyers, headed by Walter J. Bonner for Mr. Stans and Peter Flemming Jr. for Mr. Mitchell, emphasized that defendants in a criminal

case were entitled to "a fair jury drawn from a representative cross section of the community."

"The carnival atmosphere of Watergate, precipitated as it has been by the Senate hearings and the grand jury leaks," they said, "as a matter of law requires the disqualification of any juror who has read or heard of Watergate."

"There remains available, therefore, only those members of the community who may be presumed to be unconcerned with the rights and obligations of citizenship."

"In short, the Watergate publicity has not only disqualified most members of the community, it has in fact eliminated those citizens who would be the most appropriate jurors."

## With Less Publicity

The motion papers argued that the Watergate publicity required dismissal of the Vesco case, but they also advocated alternative plans to delay the trial indefinitely and remove it from New York.

"Short of a dismissal, which we believe is required," they said, "it seems clear that venue must be changed to a district not so permeated with publicity."

Watergate received more news coverage in New York than in most other areas, they continued, and "this district is disqualified additionally by reason of Channel 13's daily evening replay of all the hearings."

"Surely, if the case is ever to be tried," they said, "it should be tried at a time and in a place where, if it is humanly possible in the circumstances, the conclusions to be reached in the case will be induced only by evidence and arguments in open court, and not by any outside influence, whether of private talk or public print."