

By ARNOLD H. LUBASCH

Defense motions to block the trial of John N. Mitchell and Maurice H. Stans were rejected yesterday by Federal District Judge Lee P. Gagliardi.

Judge Gagliardi ruled in a 47-page decision that he would begin the trial of the two former Cabinet officers in Federal District Court here as scheduled on Sept. 11 on charges of conspiracy, obstruction of justice and perjury.

Mr. Mitchell and Mr. Stans are accused of interfering with the Securities and Exchange Commission's investigation of major fraud allegations against Robert L. Vesco, a New Jersey financier who secretly donated \$200,000 in cash to President Nixon's 1972 election campaign.

In denying the defense motions to dismiss or delay the case, Judge Gagliardi said the indictment "charges that the defendants agreed to impair the S.E.C. investigation of Vesco in return for a cash contribution to the Committee for the Re-election of the President."

Indicted in May

Mr. Vesco was indicted with the defendants last May 10, but the Government's efforts to extradite him from Costa Rica have failed and he remains a fugitive.

With the prosecution's consent, Judge Gagliardi granted a defense motion to sever the charges against the other defendant in the case, Harry L. Sears, a former majority leader of the New Jersey State Senate who is scheduled to go to trial after the Mitchell-Stans case.

Defense lawyers asked Judge Gagliardi to dismiss the indictment on the ground that "massive prejudicial publicity" had made it impossible to obtain a fair trial for former Attorney General Mitchell and former Commerce Secretary Stans, who headed President Nixon's re-election campaign last year.

But the judge ruled that he would open the trial and question prospective jurors to determine their impartiality for the trial.

Judge Gagliardi observed that Mr. Mitchell's lawyers had argued that criminal allegations in the Senate's televised Watergate hearings had "exposed potential jurors to inadmissible evidence."

The judge also noted that lawyers for Mr. Stans had con-

tended that "the indictment itself springs from the infamous fountainhead of Watergate and that the flood of publicity engulfing the 'Watergate-Vesco' affair has deprived him of the right to an impartial and dispassionate jury."

"Both motions," the judge added, "frame the fundamental question of whether or not there can be a fair trial in view of the massive pretrial publicity."

The questioning of the prospective jurors was described by the judge as a "pragmatic approach" to determine if an impartial jury could be selected.

"The massive publicity concerning the Watergate scandal is unprecedented even in our era of mass media and instant communication," he said. But the judge added that "the publicity has not reflected the vituperative and vitriolic press" found in the murder case of Dr. Sam Sheppard, which resulted in a reversal of the conviction several years ago.

Judge Gagliardi denied defense motions that had accused the prosecution of misconduct in preparing and announcing the indictment of Mr. Mitchell and Mr. Stans.

Defense lawyers contended that the prosecutors in the case had made prejudicial references to the Watergate scandal while questioning Mr. Mitchell before the grand jury, that they had "leaked" news of the indictment to The New York Times and that they had made improper remarks when the indictment was announced last May 10.

Not Warranted

On the Watergate references to the grand jury, the judge ruled that the questions asked by the prosecutors were "sufficiently relevant" to the investigation of the case and did not constitute prosecutorial misconduct.

Stressing that the prosecutors denied that the Government had disclosed any information to the press, the judge said that the defense's "conclusory allegations of a leak" could not warrant a dismissal of the indictment.

Judge Gagliardi noted that the defense's final allegation of prosecutorial misconduct concerned the remarks made by

the United States Attorney at the time, Whitney North Seymour Jr., at a news conference when the indictment was announced.

Mr. Seymour had opened the televised news conference by saying, "This is a sad day in a series of sad days for those of us who are concerned about integrity in government and in the administration of justice." The statement was charac-

terized by Judge Gagliardi as "more an instance of misjudgment than misconduct."

"While we think it is a 'sad day' whenever a prosecutor sees fit to comment on a pending case in any but the most circumspect fashion," the judge added, "we do not read Mr. Seymour's remarks as tantamount to an expression of opinion as to the accused's guilt."