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Mitchell-Stans Trial Delayed at Appeals Court Urging

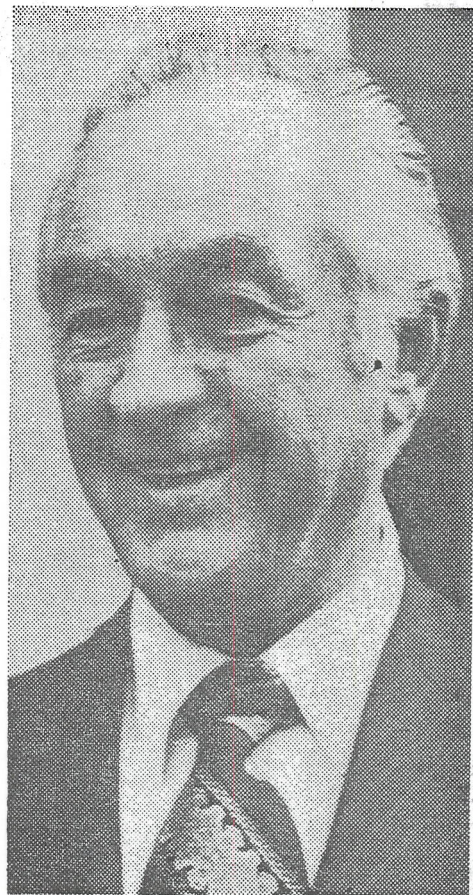
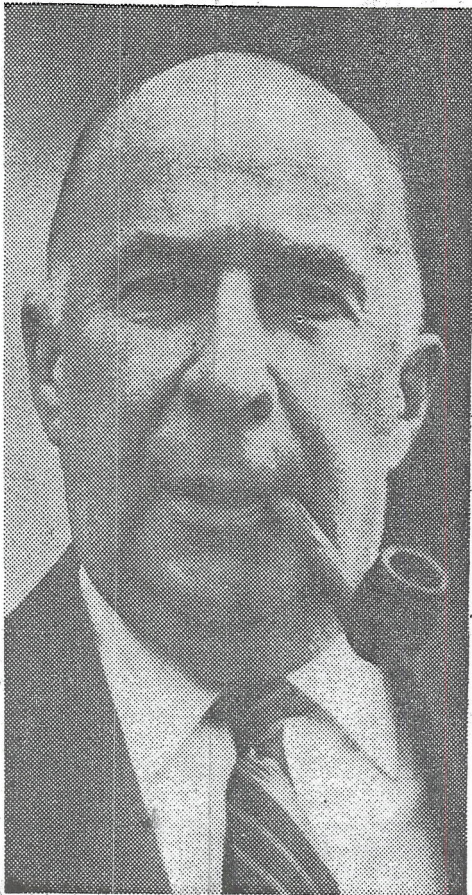
By **ARNOLD H. LUBASCH**

A dramatic last-minute postponement was granted yesterday for the scheduled trial of former Attorney General John N. Mitchell and former Commerce Secretary Maurice H. Stans.

Judge Lee P. Gagliardi, who was presiding over the case in Federal District Court here, agreed to the sudden delay 90 minutes after a postponement was urged in strong language by the United States Court of Appeals for the Second Circuit.

A new date will be scheduled later for the trial of the two former Cabinet officers on charges that they obstructed a major fraud investigation of Robert L. Vesco, a fugitive financier, in exchange for his secret \$200,000 cash contribution to President Nixon's 1972 election campaign.

More than 1,000 prospective jurors had already arrived at the United States Courthouse in Foley Square to begin the selection of a jury for the trial, which was supposed to start yesterday afternoon, but defense lawyers pleaded with the



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Former Attorney General John N. Mitchell, left, and former Commerce Secretary Maurice H. Stans, right, leaving Federal Court here yesterday after their trial was postponed.

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court of appeals to provide more time to prepare the case.

After hearing arguments on the plea in the morning, the court of appeals announced at 2 P.M. that the trial ought to be postponed, at the same time admonishing Judge Gagliardi to reconsider his refusal to give the defense more time.

The three-judge appeals panel was divided on the ruling, with Judge Henry J. Friendly and Judge Wilfred Feinberg deciding in the majority opinion that the court of appeals lacked the authority to grant more time in the defense.

Urges Order on Delay

In a dissenting opinion, Judge J. Edward Lumbard said the court of appeals should order the delay in the interest of justice instead of merely admonishing the trial judge to reconsider his denial of the defense motion.

The admission proved sufficient, however, because Judge Gagliardi soon summoned the prosecution and the defense to the courtroom to tell them that he was adopting the suggestion of the appeals court for a postponement.

Judge Gagliardi, who usually presides in a briskly cheerful manner, appeared tense and drawn as he told the opposing

lawyers to confer for half an hour to decide on "a mutually acceptable trial date."

Mr. Mitchell and Mr. Stans, who were the leaders of President Nixon's election campaigns in 1968 and 1972, talked quietly with each other in the courtroom while their lawyers conferred with the prosecutors.

When the lawyers returned, the prosecution proposed that the trial begin in one month, on Oct. 11, but Walter J. Bonner protested that Mr. Stans that he could not be ready for trial before late in November.

Doubts Impartiality

Peter Fleming Jr. argued for Mr. Mitchell that prejudicial publicity made it impossible to select an impartial jury, but he said that his defense could be ready for the suggested Oct. 11 date.

Judge Gagliardi then announced tersely that he would reserve his decision on the trial date and would inform the lawyers "in due course" when the trial would start, presumably on Oct. 11 or later.

In the seven-page decision for the court of appeals, Judge Friendly observed that the defense lawyers had complained that more time was needed to prepare the case because the defendants had been occupied with testifying in the Senate's committee's Watergate hearings as well as with inquiries by the Watergate prosecution and many civil cases.

"The only reason adduced for proceeding on Sept. 11 rather than a somewhat later date which we find at all persuasive is the desire to select a jury in the interval before resumption of the Senate hearings," Judge Friendly said.

"However, this is somewhat counterbalanced by the fact that if the trial begins before completion of the Senate hearings, now scheduled for early November, the jury will be sequestered as the Government has requested.

Appearance of Justice

"In a prosecution of this sort, which will receive nationwide attention," he continued, "it is peculiarly important that justice not only should be done but should seem to be done.

"A postponement of trial for a few weeks would be a small price to pay for stilling complaints, even if they were unjustified, that these defendants had not been given a fair opportunity to prepare their case and to avoid an issue which would almost certainly continue during the trial and will be presented on appeal if defendants should be convicted.

"While the high positions formerly occupied by the defendants entitle them to no more consideration than is accorded the ordinary citizens, they deserve no less."

"If, on further reflection, the

judge [Gagliardi] should adhere to his determination, a course we hope he will not follow," Judge Friendly added, "defendants, if convicted, will be able to raise the issue on appeal."

The one-page dissent by Judge Lumbard declared, however, that the Court of Appeals should direct Judge Gagliardi to set "a trial date not earlier than Nov. 1."

"This court is not powerless," Judge Lumbard said, "in the face of the circumstances presented to the district court, to require that, in a case of this importance, without precedent in the history of the country, that adequate time be allowed for the defendants to prepare their defense to these numerous, complicated and somewhat novel charges in a 16-count, 46-page indictment."

Mr. Mitchell seemed tense but amiable when he appeared in the Court of Appeals on the 17th floor of the courthouse to listen to the arguments and the decision on the defense's plea for a delay, although his presence was not required.

Asked why he had come, Mr. Mitchell joked with a reporter and replied amiably, "Just native curiosity."

The 60-year old former Attorney General ate sandwiches with his lawyers in a court clerk's office before going down to the first-floor trial courtroom, where he was joined by Mr. Stans, for Judge Gagliardi's decision to delay the trial.

All the prospective jurors were sent home, but they can be recalled for a new trial date.