

# Judge Defers Trial of Stans And Mitchell

By Philip Greer

Washington Post Staff Writer

NEW YORK, Sept. 11—The trial of former Attorney General John N. Mitchell and former Commerce Secretary Maurice H. Stans was put off at least a month today after an appellate court said it favored the delay but lacked the authority to order it.

Trial Judge Lee P. Gagliardi, who had previously rejected all defense pleas for more time to prepare its case, reserved decision on a new trial date, but indications were it would be between Oct. 11 and Nov. 26.

Mitchell and Stans were scheduled to go on trial today on charges that they attempted to obstruct a Securities and Exchange Commission investigation of fugitive financier Robert L. Vesco in return for a secret \$200,000 cash contribution to President Nixon's re-election campaign. They are also charged with perjury before the grand jury investigating the contribution.

With nearly 1,500 prospective jurors waiting to learn whether the trial would begin on time, six hours of arguments and rulings ranged over two courtrooms in the federal courthouse here.

In the morning session, the three-judge panel of the Second U.S. Circuit Court of Appeals heard attorneys for Mitchell and Stans argue that their clients' involvement in other government matters—especially the Senate Watergate hearings, the Watergate grand jury investigation and numerous civil cases—had prevented them from preparing their defense for the obstruction-perjury trial.

The attorneys also cited negative publicity stemming from the Watergate investigations—claims Gagliardi later refused to hear—in asking that the trial be postponed at least until October but preferably into the beginning of next year.

Government attorneys, on the other hand, claimed the defense had had adequate time but had chosen to use it to prepare motions, many of them on minor points, according to Assistant U.S. Attorney John R. Wing. In addition, the prosecutors said, the Court of

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Appeals itself did not have the power to overturn the pre-trial rulings of the U.S. District Court.

After a lunchtime recess, the appellate panel ruled, by a 2-to-1 vote, that, while it favored a postponement, it did not have the power to order one: The ruling, read by former Chief Judge Henry J. Friendly, said, "So far as defendants are concerned, our jurisdiction by way of appeal in criminal cases is limited to final judgments."

However, the judges added, "had we been in the position of the trial judge, we would have granted at least the

three-week extension to Oct. 4 that was requested." In briefs submitted to the court, Mitchell's attorneys had asked for a delay until at least Oct. 4. Stans' attorneys, in pre-hearing papers, mentioned Oct. 2, but asked that the trial be put off until the end of the Senate Watergate hearings.

The judges said they did not agree with Gagliardi's contention that the case, based on a 46-page, 16-count indictment, "is a very simple case."

"In a prosecution of this sort, which will receive nationwide attention, it is peculiarly important that justice not only should be done but should seem to be done," Judges Friendly and Wilfred

Feinberg said. "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 will almost certainly continue during the trial and will be presented on appeal if defendants should be convicted."

Judge J. Edward Lumbard, who dissented, said the court did have jurisdiction to overturn pre-trial rulings. "In my opinion," he said, "we should not be content to admonish

the trial judge to do that which it is clear he should do: we should exercise our supervisory power over the administration of criminal justice to ensure proper action on the part of the trial judge."

While the ruling did not require Gagliardi to change his earlier decisions, courthouse observers interpreted it as indicating that, should the trial go ahead immediately and Mitchell and Stans be convicted, the convictions would likely be overturned on appeal.

About 90 minutes after the ruling was handed down, Ga-

gliardi appeared in the big courtroom reserved for the trial. He asked the government attorneys if they were prepared to proceed and they answered affirmatively. When he asked Mitchell's attorneys the same question, Peter Fleming rose and, in an unusual action which he had disclosed in the appellate hearing, said, "We are not ready for trial, as your honor knows." William J. Bonner, trial attorney for Stans, also told the court he was not prepared.

"No doubt you have had the opportunity to read the ruling

of the Court of Appeals which indicates their view that it would be desirable to have a delay," the judge said. "This court concurs."

He then ordered the attorneys to settle on a new date. Nearly an hour later, they returned to say that, while government prosecutors and Mitchell's attorneys agreed to begin on Oct. 11 — one month from today — Stans' attorneys insisted they could not be ready until Nov. 26. It is not known when Gagliardi will schedule a new trial, but the ruling is expected to come soon.





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**Policemen escort former Attorney General John N. Mitchell into the federal courthouse in New York City.**