

# Federal Judge Sets Hearing on Appeal for a Delay in

By **ARNOLD H. LUBASCH**

A hearing that could delay the trial of John N. Mitchell and Maurice H. Stans was set yesterday by Judge Henry J. Friendly of the United States Court of Appeals for the Second Circuit.

Defense lawyers asked the Court of Appeals for a "reasonable postponement" of the trial of the two former Cabinet officers on charges that they had obstructed a fraud investigation in return for a \$200,000 donation to President Nixon's re-election campaign in 1972.

A few hours after the appeal for a delay was filed, Judge Friendly ordered a hearing on it for next Tuesday morning, the day that the trial is scheduled to start in Federal District Court here.

The Court of Appeals could reject the defense move and require the trial to start on **MUESDAY**, or it could grant the requested delay, or it

could reserve its decision and temporarily stay the trial until it decides whether to grant a delay.

The trial is scheduled to open with the questioning of prospective jurors to select an impartial jury on Tuesday, but the exact starting time has not been announced.

are given an opportunity to ask to be excused from jury service before they are sent to a trial courtroom for questioning. This process could take up the morning, so that the jury selection for the trial might not begin until the afternoon.

The Mitchell-Stans trial could

begin on Tuesday afternoon if the Court of Appeals refuses to grant the defense's move for a delay.

The lawyers for former Attorney General Mitchell and former Commerce Secretary Stans asked the Court of Appeals for the delay on the ground that District Judge Lee P. Gagliardi, who will preside over the case, used his authority by ordering the trial to start on Sept. 11.

Judge Gagliardi issued a 47-page decision last Wednesday that denied a series of defense motions to dismiss or delay the case, ruling that the trial

must start on schedule.

The defense lawyers went to the Court of Appeals yesterday to insist that they needed more time to prepare for the trial on a May 10 indictment that charged both Mr. Mitchell and Mr. Stans with conspiracy, obstruction of justice and perjury.

## Basis of Indictment

The indictment alleged that they had interfered with a Securities and Exchange Commission investigation of Robert L. Vesco, a financier from Boonton, N. J., after he secretly contributed \$200,000 in cash to the Finance Committee to Re-elect the President.

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## Trial of Mitchell and Stans

Lawyers for Mr. Stans asserted in their petition to the Court of Appeals that Judge Gagliardi's decision to press forward with the trial next Tuesday represented an "arbitrary and headlong rush to judgment."

Mr. Mitchell's lawyers urged the Court of Appeals to delay the trial until at least Oct. 4, "for the purpose of allowing counsel adequate time to prepare his defense."

"We believe strongly," they added, "that the trial of this case should be adjourned indefinitely because of massive prej-

udicial pretrial publicity, particularly in connection with the so-called Watergate matter."

The lawyers for both defendants had complained that their rights to a fair trial with an impartial jury in the Vesco case had been violated when Mr. Mitchell and Mr. Stans were compelled to testify in the Senate's televised Watergate hearings.

Their petition to the Court of Appeals noted that decisions on pretrial motions were not normally subject to appeal, but they contended that the Mitchell-Stans case involved "exceptional circumstances."