

# A JUDGE MAY BAR DEAN AS WITNESS

Rules on White House Tape in Mitchell-Stans Case

By ARNOLD H. LUBASCH

A decision in Federal District Court here yesterday raised the possibility that the prosecution might be prevented from using former White House counsel John W. Dean 3d as a witness against John N. Mitchell and Maurice H. Stans.

Judge Lee P. Gagliardi told the lawyers in the Mitchell-Stans case to be ready for trial next Tuesday, but he indicated that Mr. Dean could be barred from testifying unless the prosecutors provided a White House tape recording or demonstrated that no relevant tape existed.

Mr. Mitchell and Mr. Stans, two former Cabinet officers who headed President Nixon's re-election campaign, are charged with obstructing a Federal investigation of a financier, Robert L. Vesco, in return for a \$200,000 cash donation that he gave to the campaign last year.

Mr. Dean, considered a significant witness in the case, reportedly told the President in a taped conversation last April 15 that he was seeking immunity from prosecution in the Watergate scandal in return for testimony against former White House aides.

Lawyers for Mr. Mitchell and Mr. Stans subpoenaed the April 15 tape recording and other White House material as evidence for cross-examining Mr. Dean and others to attack their motives for testifying and their credibility as witnesses.

The testimony of Mr. Dean is expected to be noteworthy because Mr. Mitchell allegedly caused the former White House

counsel to ask the Securities and Exchange Commission to block disclosure of facts about the secret Vesco contribution to the President's election campaign.

The prosecution moved to quash the defense's subpoena on the ground that it was too broad, that the material was not relevant and that the defense wanted to block the case by forcing the President to invoke his executive privilege over subpoenaed material.

Judge Gagliardi agreed with the prosecution's argument to quash the subpoena for most of the White House tapes and documents sought by the defense because, he said, that "is clearly a fishing expedition."

"Taking judicial notice of the large number of people on staff or employed at the White House," he said, "we find that any subpoena calling for conversations between unspecified persons is unreasonable and is therefore quashed for lack of specificity."

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But the judge added that Federal rules required the Government to provide the defense with any relevant prior statements that had been made by witnesses to be called by the prosecution.

"The Government must either indicate that the material would be produced at the appropriate time, if such material in fact exists, or that the material will be consciously withheld, for whatever reasons, whereupon the Government must accept the consequences of such action," he said.

"Given the nature of the circumstances surrounding these tapes," he said, "it is assuredly appropriate that the decision as to relevancy be made on the basis of an in camera, as opposed to an open court, examination prior to the testimony of the particular witness concerned."

The judge's decision meant that the prosecution would be required to inform him of any

relevant prior statements made by witnesses and possessed by the Government, including such material in the possession of President Nixon, because the President was part of the Government.

Not a witness could be called, the decision indicated, if he had made a relevant statement that the Government would be unable or unwilling to turn over to the defense for cross-examination.

Another hearing on the issue is scheduled before Judge Gagliardi in Federal District Court at 10 A.M. today.