

# PROSECUTION ASKS MITCHELL DELAY

Seeks to Postpone Trial to  
Jan. 7, Citing Dispute  
Over Nixon-Dean Tape

By Arnold H. Lubasch

The prosecution, in a surprise move, requested yesterday a postponement of the scheduled trial of former Attorney General John N. Mitchell and former Commerce Secretary Maurice H. Stans in Federal District Court here.

The prosecution said that it needed a postponement until Jan. 7 because the White House refused "at this stage" to provide a tape recording that might be required at the trial if John W. Dean 3d, the former White House counsel, testifies.

Judge Lee P. Gagliardi reserved decision on whether to postpone the obstruction-of-justice trial, which is scheduled to start Tuesday.

Under decision by Judge Gagliardi two days ago, the prosecution could be prevented from calling Dean as a witness unless it produced a tape recording of his April 15 conversation with President Nixon, because the defense might require the tape as evidence to cross-examine the witness.

John R. Wing, the principal prosecutor in the case, said that "we must regretfully request an adjournment" in the hope that the constitutional dispute over the White House tapes will be resolved soon, either by a Supreme Court decision or by negotiations between Attorney General Elliot L. Richardson and the President's attorneys.

## Trial Risk Feared

"John Dean is a critical witness to the Government's case," Mr. Wing said, "and we feel that in the interest of justice and in the public interest we cannot afford to risk trying this case without Mr. Dean's testimony."

Mr. Wing observed that material subpoenaed by the defense lawyers included "an alleged tape of an alleged conversation on April 15" in which jdean reportedly told the President that he wanted immunity from prosecution in the Watergate scandal in return for testimony against White House aides.

The prosecutors do not believe that the tape recording is relevant evidence for the trial, Mr. Wing said, but they are "more than willing, if able, to turn over any such tapes" to Judge Gagliardi for his pri-

vate inspection to determine if the material is relevant.

He added that James W. Rayhill, another prosecutor in the case, had called J. Fred Buzhardt Jr., a White House counsel, to learn if such tapes existed and if they would be provided to Judge Gagliardi.

"Mr. Buzhardt called Mr. Rayhill back at 9:30 this morning," Mr. Wing continued, "and advised him that after speaking with the President this morning that he could not tell us whether there were any such tapes; and, if there were any, they would not be produced before your honor in camera at this stage."

The issue of the White House tapes "may very well be resolved in the near future" by negotiations or by court decisions, Mr. Wing suggested.

"Accordingly," he said, "we feel that in order to protect the record, in the interest of justice and in fairness to all parties, we must regretfully request an adjournment of this trial until Jan. 7."

## Later Date Suggested

Defense lawyers, who had obtained an earlier postponement, responded that Mr. Mitchell and Mr. Stans did not object to the prosecution's request, but they argued for a new date of March 15 to enable them to comply with other trial commitments.

Judge Gagliardi said that he would set Jan. 7 as the starting date if he decided to grant a postponement.

"You will know my decision in due time," he said at the end of a late afternoon session.

Mr. Mitchell and Mr. Stans were indicted last May 10 on charges that they obstructed an investigation of Robert L. Vesco, the financier, in return for his secret \$200,000 cash contribution to President Nixon 1972 election campaign.

Dean pleaded guilty yesterday in Federal District Court in Washington to a single charge of conspiracy to obstruct justice as part of a cover-up of the Watergate burglary and bugging scandal.

If he appeared as a witness in the Mitchell-Stans case here, Dean could be expected to provide significant testimony about an alleged effort to interfere with the Vesco investigation that was being conducted by the Securities and Exchange Commission.

Dean was named as a co-conspirator, but not as a defendant, in the Mitchell-Stans case, indicating that he had done something to advance the alleged conspiracy to obstruct the S.E.C. investigation and that he would testify for the prosecution.