

MITCHELL JUDGE HALTS TRIAL HERE

Weighs Motion for Mistrial Over 'Apparent Excesses' in Prosecutor's Speech

By RALPH BLUMENTHAL

Federal Judge Lee P. Gagliardi abruptly suspended yesterday the conspiracy-perjury trial of John N. Mitchell and Maurice H. Stans for what he called "apparent excesses" by the chief Government prosecutor in his opening statement.

Judge Gagliardi said that he would rule Monday on demands by defense attorneys for a mistrial. He ordered the prosecutor, Assistant United States Attorney James W. Rayhill, to submit a "documented response" with his "excuses."

While neither side would comment on the surprising development, some observers in the court believed it unlikely that the judge would decide to discharge the newly picked jury, which had been carefully isolated from news of yesterday's Watergate indictments naming Mr. Mitchell along with six others.

Conspiracy Charged

The historic trial was interrupted just after the Government had told the jury that it would prove that the defendants had conspired to quash a Federal investigation of Robert L. Vesco, the fugitive financier, in exchange for his secret \$200,000 cash contribution to President Nixon's re-election campaign, that the defendants covered up the scheme and lied about it when questioned under oath.

At the close of his hour and 50 minutes presentation in the fifth-floor courtroom in the

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United States Court House in Foley Square, Mr. Rayhill told the jury of eight men and four women:

"As you sit through this case listening to the testimony and observing how the witnesses behave, consider how essential it is that a jury be given truthful testimony under oath.

"It is only by getting witnesses who tell the truth that our system of justice can work, and as you listen to the witnesses testifying before you, put yourselves in the place of the grand jurors who investigated this case, citizens like yourselves."

"I object to this; I vigorously object to this," shouted Mr. Stans's lawyer, Walter J. Bonner, jumping to his feet.

After Judge Gagliardi sustained the objection, and the jurors were escorted out for the lunch recess, Mr. Bonner called for a mistrial on the ground that Mr. Rayhill had improperly suggested to the

jury that the grand jury's indictment suggested that the defendants were guilty.

Judge Gagliardi had taken considerable pains ever since the trial began Feb. 19 to explain to prospective jurors that an indictment was only an accusation and did not constitute evidence of proof of anything.

After the lunch recess and before the jury returned, the judge read a statement that began:

"I am gravely concerned over the apparent excesses of the prosecutor in his references to the grand jury and its functions and bringing to it his personal conclusions as though he were a witness in the matter."

Trial Is Adjourned

The judge announced that instead of moving on, as planned, to the opening statement of the defense, he was adjourning the trial until 10 A.M. Monday.

Peter Fleming Jr., Mr. Mitchell's chief attorney, raised an arm in jubilation and grin-

ned. Mr. Rayhill looked stricken as other Government attorneys huddled around him.

Judge Gagliardi called in the jurors and told them that it was too late in the day to begin the defense statement, so the trial would resume Monday. The jurors are being sequestered in an unnamed hotel away from their families, with their reading matter another material screened by United States marshals.

In outlining its case, the Government disclosed that Harry L. Sears, former Republican leader of the New Jersey State Senate who was indicted as a co-conspirator in the case along with Mr. Vesco, would testify for the prosecution under a grant of immunity.

Mr. Rayhill, in telling the jury what the Government intended to prove, also cited testimony that Mr. Vesco, asked why he had made a contribution of \$200,000 to the President's re-election campaign, replied, "It's cheaper than paying the lawyers."