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**Mitchell Mistrial Denied;
 Lawyers Begin Defense**



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Judge Lee P. Gagliardi announcing his decision to deny the motion for a mistrial yesterday in Federal Court.

By MARTIN ARNOLD

A defense motion for a mistrial was denied yesterday in Federal District Court here and then lawyers for John W. Mitchell and Maurice H. Stans used their opening statements to depict the two as men of high character who had devoted their lives to public service.

The former Attorney General and the former Secretary of Commerce are accused of attempting to impede a Federal investigation in return for a secret \$200,000 contribution to President Nixon's re-election campaign from Robert L. Vesco, a financier who is now a fugitive.

The defendants' motion for a mistrial was made on Friday after a Government attorney, in his opening statement, compared the jurors with the grand jurors who had handed up the indictments against the defendants. Defense lawyers contended that such a comparison had been made to infer that an indictment was similar to

a conviction, and Judge Lee P. Gagliardi, noted the Government's "apparent excess."

But yesterday the judge said that such an inference was not intended by the Government, and he noted that on five separate occasions he had instructed the jury on the nature of an indictment and the presumption of innocence.

Peter Fleming Jr., one of Mr. Mitchell's lawyers, said in his opening statement that the \$200,000 contribution had to be seen in its proper context; it was, he said, less than one-third of 1 percent of the \$60-million raised for President Nixon's 1972 campaign.

"It is as if in an election costing \$100, Vesco contributed I think 33 cents," Mr. Fleming said. The question, he added, was "whether in essence John Mitchell would sell his life for 33 cents?"

Walter Bonner started his

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opening on behalf of Mr. Stans by declaring that he was "not prepared to make the Gettysburg Address." He said that Mr. Stans "is a man from a humble background, a man blessed by his God with a fine mind and a man who has used that mind and used it well on behalf not only of himself, for that personal gain, but for his country."

He chieftained wealth, Mr. Bonner said of his client, and he used it "generously," and "this is part and parcel of the man who for the first time in his 66 years stands in this courtroom now accused of these crimes."

Mr. Stans did not make public the \$200,000 contribution from Mr. Vesco, the lawyer said, not because he had anything to hide, but because his interpretation of the law, and the interpretation of his lawyers, said that he did not have to make that information public.

Throughout the opening statements and after, when five witnesses were heard, the two defendants sat impassively staring straight ahead, Mr. Mitchell in a dark gray suit, Mr. Stans in a dark blue pin-stripe with a so-called "elephant hair" good-luck bracelet on his left wrist.

Mr. Mitchell sat flanked by his lawyers at a table facing Judge Gagliardi; Mr. Stans, flanked by his attorneys, was at a table at a right angle to the Mitchell one so that he was facing the jurors. The courtroom is small, holding about 85 spectators, including about 40 members of the press. The judge's wife and his secretary had front row seats for the occasion.

After the luncheon recess, just before court started again for the afternoon, Mr. Mitchell sat by Mr. Stans for five or

ten minutes. Both were silent.

Both Mr. Fleming and Mr. Bonner have adopted so far a somewhat folksy approach to the jury. Mr. Fleming, a tall man with rather long graying hair, told the jury, for instance, that "most people don't like lawyers and I am not entirely sure I blame them."

He then said "this case is entitled United States against John Mitchell," but added: "You may find that you [the jurors] are the United States, not them, not the Department of Justice, not even his honor, certainly not me. You are the United States."

Mr. Fleming also used his opening to attack the credibility of expected Government witnesses. He pointed out, for instance, that Harry L. Sears, who was an attorney for Mr. Vesco and who was a New Jersey State Senator and chairman of the President's re-election campaign in New Jersey, received immunity from prosecution in this case even though he was indicted as a codefendant along with Mr. Mitchell and Mr. Stans.

Richardson Role

He said, too, that Laurence Richardson, another expected Government witness, "a central member of this alleged conspiracy," is "not even named as a defendant, can't therefore be convicted of any crime, can't go to jail." Mr. Richardson allegedly delivered the \$200,000 from Mr. Vesco, who was indicted as a defendant but who has left the country and is now living in Costa Rica.

Mr. Mitchell and Mr. Stans are accused of conspiracy, obstruction of justice and perjury. Regarding the perjury charges, Mr. Fleming said that in all the pages of grand jury testimony taken from Mr. Mitchell—while the grand jury was investigating this case—there were only six points of conflict, "one man's word against another," to support the perjury charges. Mr. Bonner told the jury that

while Mr. Stans was traveling 45,000 miles through the United States raising money, "his wife of 40 years was hospitalized with a blood disease so rare that we have only 100 recorded cases in this country," and that "he had to be treated himself because of the way he reacted to her lying in that bed."

When Wife Was Dying

He was approached about taking the \$200,000 contribution at about the very same time that his "wife of 40 years lay dying" and that he was "beset with lawsuits" and "other matters of Government harassment," Mr. Bonner said.

After the opening statements, the Government presented five prosecution witnesses. The first, Irving M. Pollack, a member of the Securities and Exchange Commission, was put on the stand to elicit details on how the commission operates. The defendants are accused of receiving the \$200,000 contribution after they agreed to try the S.E.C. to halt its inquiry into Mr. Vesco's financial dealings. Other Government witnesses were Le Jablonsky, who was Mr. Mitchell's secretary from September, 1971, through July, 1972; Arden Chamber, Mr. Stans's secretary; John Donald, the auditor for the Camelback Inn in Scottsdale, Ariz., and Roland M. Hudson of the Chesapeake and Potomac Telephone Company. Mr. Hudson will return to the stand when the trial resumes this morning.

Muskie Impeachment View

NORMAL, Ill., March 4 (AP)—Senator Edmund S. Muskie, Democrat of Maine, says a President can be impeached for political wrongdoing. Speaking last night at Illinois State University, Mr. Muskie said the act of impeachment gives "the people the right to remove the President for a great political offense."