

# Prosecution Rests in Mitchell Case; Mistrial Asked

By MARTIN ARNOLD

The Government rested its criminal conspiracy case yesterday against John N. Mitchell and Maurice H. Stans, as the defendants immediately filed motions for dismissal and mistrial.

These will be argued orally today and probably ruled upon by midnight, and then the defense is expected to start its presentation tomorrow.

During the 31 days of this trial, so far, 40 witnesses have testified for the prosecution, including John W. Dean 3d, President Nixon's former counsel, and F. Donald Nixon, one of the President's brothers. Most of the Government's witnesses have been reluctant witnesses, and many of them have been clearly hostile to the prosecution.

The President's other brother, Edward C. Nixon, is expected to testify for the defense.

Mr. Mitchell, former Attorney General, and Mr. Stans, former Secretary of Commerce, are accused of attempting to impede a Securities and Exchange Commission investigation of Robert L. Vesco, a financier, in exchange for a secret \$200,000 cash contribution made by Mr. Vesco to President Nixon's reelection campaign. Both men were leaders of the campaign.

## Nature of Charges

In all, they are jointly charged with one conspiracy count and three obstruction of justice counts; and each is accused on six perjury counts.

The thrust of the defense motions filed yesterday was that the Government had failed to prove either the conspiracy

count or the obstruction of justice charges.

"Every prosecution witness has denied any attempt or endeavor on the part of Mitchell or Stans to 'fix' the Vesco investigation or even to influence it in Vesco's favor," according to the main defense motion filed yesterday, which was entitled "Defendants' Joint Memorandum to Dismiss the Indictment."

## Motion for Dismissal

"At best the evidence tends to support an intention on Vesco's part to influence the investigation, but no evidence supports anyone's agreement therewith," the motion says, "and most significantly in terms of this trial, there is no evidence that either Mitchell or Stans discharged Vesco's purpose."

The filing of these motions, of course, are routine for any trial at this stage of the proceedings, after the Government has rested its case. It is also not unusual at this stage for a judge to dismiss some of the charges against a defendant, or defendants. Observers expect Judge Lee P. Gagliardi, who is presiding, to dismiss at least one count, and perhaps several.

It is generally conceded, even in private by the prosecutors, that the strongest elements of the case against the defendants are the perjury filed yesterday, there was no mention of these counts.

There has been direct evidence presented that, if not refuted, shows the defendants did indeed commit perjury. The only way that evidence can be refuted is by

putting Mr. Mitchell and Mr. Stans on the witness stand to testify for themselves.

## Perjury Evidence

The perjury evidence so far consists of transcripts of the defendants' grand jury testimony, which was read to the jury yesterday by Kenneth Feinberg, a prosecutor. This testimony has been directly contradicted by several of the Government witnesses.

On the other hand, much of the evidence presented against the defendants on the conspiracy and obstruction counts has been inferential: that is, witnesses have testified that one or the other of the defendants have asked them to delay the S.E.C. proceedings and there has been evidence that Mr. Stans tried to conceal the \$200,000 contribution, which was done.

But, except for one case, there has been little cause-and-effect evidence; testimony that because of a conversation with one or both of the defendants, or because of an act by one or both, anything illegal was done. The S.E.C., in the end, did not either delay its case against Mr. Vesco or drop it.

The exception is that there has been fairly strong evidence that Mr. Stans did succeed in getting the commission to drop one paragraph in its charges against Mr. Vesco. That paragraph would have led to the disclosure, for the first time, of Mr. Vesco's \$200,000 contribution to the Nixon campaign. Mr. Vesco and 41 others have been accused of defrauding investors of \$224-million. In one of their motions yes-

terday, the defendants asked for the dismissal of three of the obstruction of justice counts on the ground that they duplicate each other. At the onset of the trial, Judge Gagliardi indicated that he might drop one of those counts at the proper time.

In support of its motions to dismiss the indictment, the defendants contend that G. Bradford Cook, then an official of the S.E.C., continually brought up the Vesco case with Mr. Stans, rather than the other way around, and that, therefore, "the Government cannot contend that Stans is guilty of a crime where Government officials are the instigators of his conduct."

Mr. Cook, who testified at this trial, admitted to the jury that he committed perjury five times before the grand jury and said that indeed it was he who also brought up the Vesco case when speaking to Mr. Stans.

The trial, for all its historic importance—they are the first former cabinet officials to face prison in 50 years—has had few moments of drama, and only a few moments of comic relief.

John Dean succeeded in jamming the courtroom, and the corridors outside the courtroom, with people, mostly young, who wanted to see him testify. Many of them looked upon him as a sort of folk hero who, in the words of one, "would get Mitchell and Stans." The testimony of F. Donald Nixon, while not dramatic in itself, drew great interest, for here, for perhaps the first time

in the nation's history, a relative of a sitting President, in this case his brother, was taking the witness stand against two of the President's closest associates.

## Some Light Moments

And there was some comedy too. Much of the testimony, for instance, has involved Mr. Vesco, who was also indicted in this case, but who has fled the country. He has been depicted as a scoundrel and a rascal, as an astute businessman, and as an international name-dropper.

One witness testified that Mr. Vesco had tried to get his company to invest in one of his business enterprises by using the defendant names; only, the witness said, he called the two officials "Murray" Stans and "Billy" Mitchell.

Yesterday another witness testified that Mr. Vesco had bragged to her that his private airplane used to "belong to Frank Sinatra."

It has been a trial, so far, in which, court observers say, an unusual amount of the legal arguing has been done not in public, but in the judge's chambers.

These observers also say that they have rarely seen a trial—like this one—in which the judge insists that the lawyers refrain from arguing their objections until the court recesses, and the jurors are out of the room. By that time, these observers point out, the witness may be gone, and the objection therefore moot for all intents and purposes.