

PRIVILEGE WAIVED BY MOLLENHOFF

Takes White House Data
to Fitzgerald Hearing

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— Clark R. Mollenhoff, a former Presidential aide, cast aside any question of executive privilege today when he produced a surprise batch of memos, some internal White House documents and one document marked "confidential" at the Civil Service Commission hearing for A. Ernest Fitzgerald.

The memos indicated that Mr. Fitzgerald's case had been brought to the attention of a number of White House aides, including H. R. Haldeman, John D. Erlichman, Patrick J. Buchanan, John W. Dean 3d, Jeb S. Magruder, Henry A. Kissinger, Bryce Harlow and William E. Timmons.

The memos dealt with discussions at the White House after Mr. Fitzgerald was dismissed from the Air Force Nov. 5, 1969, in what was called an "economy" move. In December, 1968, Mr. Fitzgerald, a management analyst, told Congress about large cost overruns on the C-5A military transport plane project.

After his testimony before Congress, Mr. Fitzgerald, who had been reviewing major Air Force projects, was assigned, instead, to review construction of a bowling alley in Thailand.

He has asked the Civil Service Commission to give him his old job back.

Doctrine of Privilege

Air Force lawyers had attempted to bar any talk of White House affairs by Mr. Mollenhoff, who served as special counsel to the President from August, 1969, to July, 1970. They argued that internal discussions and letters in the White House were confidential under the doctrine of privilege.

Herman D. Staiman, chief hearing examiner for the Civil Service Commission, ruled that Mr. Mollenhoff could testify about a Nov. 13, 1969, meeting with Air Force officials at the White House.

No further attempt to extend privilege to Mr. Mollenhoff was made today by the Air

Force.

Mr. Mollenhoff not only testified about the meeting in the Old Executive Office Building with two Air Force officials, but he also surprised lawyers for both sides with 15 later documents from his White House days.

He said that there had been negative comment on the case in liberal and conservative newspapers after the dismissal, and "I wanted to be certain the Defense Department was doing the right thing."

"It was obvious to me that their case had holes in it," he added.

He said that he was told by

Spencer J. Shedler, then Assistant Secretary of the Air Force for financial management, and his aide, Lieut. Col. James D. Pewitt, that there were questions about security leaks and possible conflict of interest in Mr. Fitzgerald's case, and that "he wasn't a team player."

Privilege Is Invoked

Both men testified at the hearings and invoked privilege in matters dealing with the White House.

Mr. Mollenhoff said that they were spreading the story to Congress and the White House despite an investigation by the Air Force's Office of Special Investigation, which had long since cleared Mr. Fitzgerald of conflict-of-interest and security-leak charges.

He said that he had continued to press the matter with other White House aides, saying that the reduction in force that cost Mr. Fitzgerald's job was "phony."

At one point, he and Mr. Buchanan prepared for the President an answer to use at a news conference held Dec. 8, Mr. Mollenhoff said. If a question arose about Mr. Fitzgerald, they recommended that the President answer it this

"It is true that Mr. Fitzgerald's job is being abolished, but it is not because of his performance. He has, to my knowledge, been a dedicated and effective public servant."

"After looking into it, I have decided to direct the Defense Secretary to find Mr. Fitzgerald another position of equal pay and stature — not a make-work job — where his talents can continue to be used by this Administration."

When the question came up at the news conference, however, Mr. Mollenhoff said, it was in a form in which President could "laugh it off," and the answer was never used.

Asked if there was any doubt in his mind that the matter had come to President Nixon's attention, he said there was none, "unless a half dozen people were lying to me."

Last Jan. 31, President Nixon declared at another news conference that he had made the decision in the Fitzgerald case and was "totally aware that Mr. Fitzgerald would be fired or discharged or asked to resign."

The next day, Feb. 1, the Presidential press secretary Ronald L. Ziegler, retracted the President's statement, saying that the President realized he "misspoke himself in response to that question and wanted me to clear that up at the soonest possible opportunity."