

Civil Service Examiner Lets Mollenhoff Testify

3/24/73 By Lawrence Feinberg
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Rejecting an Air Force claim of "executive privilege," a Civil Service Commission hearing examiner ruled yesterday that former White House aide Clark R. Mollenhoff can tell what he knows about the ouster of Pentagon management analyst A. Ernest Fitzgerald.

Mollenhoff — now Washington bureau chief of the Des Moines Register—had offered to testify on what he learned about the case while at the White House. But Air Force lawyers had argued he should not be allowed to do so because executive privilege keeps confidential such "advisory communications."

The Air Force had also complained that Mollenhoff had heard other witnesses at the Civil Service hearings conducted by examiner Herman D. Staiman as to why Fitzgerald lost his job.

Late yesterday afternoon Staiman telephoned lawyers for both sides and said he would allow Mollenhoff to testify. He gave no explanation for his ruling.

In an interview, Staiman said the hearings, which already have lasted 19 days, would resume as soon as Mollenhoff is able to appear. The

journalist was out of town and could not be reached for comment.

Fitzgerald has appealed to the Civil Service Commission for reinstatement to the \$33,000-a-year Air Force job which he lost after telling Congress about a \$2 billion cost overrun on the C-5A cargo airplane.

Mollenhoff, a Pulitzer Prize winner who has worked as a Washington reporter since 1950, served as a special counsel to President Nixon in 1969 and 1970.

He summoned Air Force officials to his White House office in November, 1969, after Fitzgerald was dropped from his job.

In letters written recently and made public last week by lawyers for Fitzgerald, the visitors were identified as Assistant Air Force Secretary Spencer J. Schedler and his aide, Col. James D. Pewitt. The letters—from Mollenhoff to Mr. Nixon and White House counsel John W. Dean III—said both men made "vague and unsubstantiated charges" that Fitzgerald was involved in "conflicts of interest" and "security violations," even though, Mollenhoff added, he did not mention the charges in a memo he wrote at the time of the visit.

At earlier sessions of the hearings, both Schedler and Pewitt have invoked executive privilege in refusing to say whether they discussed the Fitzgerald case with Mollenhoff or anyone else at the White House.

But both men flatly denied ever making critical remarks about Fitzgerald's integrity or loyalty.

The Air Force legal brief argued that Mollenhoff should not be allowed to disclose what he was told as a White House aide, even though he wants to, because disclosure would impede "full and frank discussion . . . within the executive branch."

Mollenhoff contended that the Air Force "has no legal authority to impose executive privilege on me." On Wednesday, Mollenhoff interrupted a hearing on the Fitzgerald case to demand that he be heard, calling the proceeding a "kangaroo court."