

Court Rejects Nixon View Of 'Privilege'

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By Morton Mintz

Washington Post Staff Writer

A sweeping claim of executive privilege by President Nixon was rejected yesterday in the first court hearing of its kind in 166 years.

U.S. District Court Judge William B. Jones ordered the government to produce, for his private examination in chambers, 67 memos concerning the dairy industry and a 1971 decision in which the Agriculture Department reversed itself in order to increase price supports for milk.

The Justice Department told Jones it would comply.

On orders from President Nixon, the White House had asserted executive privilege for the papers. Their release, presidential counsel Leonard Garment said in an affidavit filed on July 11, "would be injurious to the public interest and to the constitutional doctrine of separation of powers."

The White House made a parallel argument Thursday in refusing a request by special prosecutor Archibald Cox for certain tape recordings and documents in the Watergate case. Former White House counsel John W. Dean III wrote some of the documents involved in both cases.

In Jones' court yesterday Justice Department attorney Irwin Goldbloom argued that the President could invoke executive privilege for the 67 memos even if he merely sketchily outlines or listed them, as was done in Garment's affidavit.

The court should decide only if the papers fall within the privilege because they involve advice, opinions or deliberations leading up to an executive decision, Goldbloom contended. He said the question of need of the papers by the people who brought the lawsuit—Ralph Nader's Public Citizen, Inc., and allied consumer groups—should not enter into the decision.

But Jones, telling Goldbloom that the Justice De-

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partment lawyer was getting "awfully close" to claiming that the privilege is absolute, told the government lawyer that his argument posed a dilemma: How he could decide what the memos actually are when all he has is the memos' uninformative listing?

"I don't see how I can sit here and say, 'That's fine,'" Jones said. "I'm going to break the dilemma. Please deliver those documents." Goldbloom said he would do so on Aug. 6.

The judge will examine the papers in camera (chambers), as proposed by William A. Dobrovir, lawyer for the plaintiffs. Jones then will decide which, if any, will be disclosed to Dobrovir.

Jones' ruling raised the possibility that prosecutor Cox may seek an in camera

examination of the documents he seeks by Chief Judge John J. Sirica. Dobrovir told reporters he considered Jones' ruling as a "very direct" bearing on the case.

The lawyer also said that yesterday's hearing was the first on executive privilege for White House records since 1807, when Chief Justice John Marshall approved a subpoena duces tecum for a letter in the possession of President Thomas Jefferson. The President turned over

Dobrovir relied on the 1807 case in argument, citing Marshall's conclusion that a presidential paper "essential to the justice of the case" should be produced.

Goldbloom readily agreed that none of the 67 milk memos—47 from the files of the White House, 16 from the Office of Management and Budget and 4 from the President's Council of Economic Advisers—involved national security.

Twenty-four of the memos, according to Garment's affidavit, were dated in March, 1971. In that year and in 1972, the political arms of three dairy co-ops—Associated Milk Producers, Inc.—Mid-America Dairy-men, Inc., and Dairymen, Inc.—contributed \$422,500 to Mr. Nixon's re-election campaign.

Then-Secretary of Agriculture Clifford Hardin denied an increase in price supports on March 1, 1971. One of the memos in dispute, dated March 3, dealt with a proposed meeting between leaders of the three co-ops and the President.

The flow of contributions to Mr. Nixon's campaign treasury began on March 22. On March 23, the co-ops had a meeting with the President at the White House—a meeting that was the subject of at least 10 memos, according to the Garment memo.

On March 25, Hardin announced that price supports would be increased after all. The reversal added roughly \$500 million to \$700 million to dairy farmers' income, co-op leaders have said. The White House had denied that campaign contributions influenced the reversal.