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Curb Sought on Mollenhoff Testimony

By ANTHONY RIPLE

WASHINGTON, March 21 — Air Force lawyers are attempting to extend the doctrine of "privileged" communications to cover a former White House aide who has become a central figure in the Civil Service Commission hearings on the layoff of A. Ernest Fitzgerald.

In a legal brief filed with Herman D. Staiman, Chief of the appeals examining office of the commission, Air Force lawyers seek to block any mention of White House dealings if the examiner allows Clark R. Mollenhoff to testify.

Mr. Mollenhoff served as special counsel to the President from August, 1969, to July, 1970. Mr. Fitzgerald's lawyers, William K. Sollee and John Bodner Jr., want to call him as a witness.

Mr. Fitzgerald is a former management analyst with the Air Force who was let go in an "economy" move after he disclosed huge cost overruns on the C-5A airplane contract. Mr. Fitzgerald is fighting to regain his old job at the Civil Service Commission hearing.

'Confidentiality' Argued

In a 13-page memorandum signed by Thomas W. Nelson, administrative assistant to the Secretary of the Air Force and presented by Lieut. Col. Claude Teagarden, the Air Force made clear it was not invoking "executive privilege" but instead "confidentiality of advisory communications."

The issue of privilege has become a much debated point in a series of clashes this year between the White House and Congress.

The Air Force argues that it is not seeking executive privilege, which relates to the sep-

aration of powers between the President and Congress, but, instead, "the well-established governmental privilege to decline to produce materials relating to internal deliberations, opinions or recommendations essential to the decisional or policy-making functions of the executive branch."

The Air Force argues that Mr. Mollenhoff should not be allowed to testify anyway since he attended some of the hearings as a newspaper reporter. Mr. Mollenhoff is Washington bureau chief for The Des Moines (Iowa) Register and Tribune.

Lawyers Seek Appearance

Mr. Fitzgerald's lawyers argue that they are developing evidence as the case goes along and could not predict they would eventually call Mr. Mollenhoff. Now they have to call him, they said, after three other witnesses they requested refused to testify on possible White House involvement in the layoff of Mr. Fitzgerald.

They also argue that the power to call a witness who may have heard previous testimony lies with Mr. Staiman.

Mr. Mollenhoff was at the hearing room this morning in a

noisy, animated and unscheduled appearance.

He called the proceedings a "kangaroo court" and said that he was ready to testify. "Every effort is being made to keep the facts from being put on the line," he said.

Mr. Staiman said that he was interrupting the hearing.

"If the truth is an interference, then I am interfering," Mr. Mollenhoff said.

"If you don't stop your interruptions, I'll have to ask you to leave the room," Mr. Staiman said.

Mr. Mollenhoff left a short time later.

"It appeared to be a hearing that was avoiding the truth," he said later. "It is the most peculiar effort to extend executive privilege to someone who doesn't want it."

The hearing has lasted 18 days — 12 of them in public sessions — over the last two years.

Mr. Fitzgerald contends that he was not let go in an economy move but dismissed because he had made the cost overruns public.

Mr. Staiman said that he would rule in the next few days on whether Mr. Mollenhoff can testify.