



The Man Who Blew the Whistle

A. ERNEST FITZGERALD'S extraordinary battle with the Pentagon began on November 13, 1968, when the soft-spoken weapons-cost analyst from Alabama revealed in congressional testimony what was common knowledge in the defense community: that the Lockheed C5A transport plane would cost around \$2 billion more than originally estimated.

The impact of Fitzgerald's statement was tremendous. The C5A was not only the biggest single defense contract ever granted, but it was also supposed to be the showpiece of the Pentagon's new efficiency regime. Secretary of Defense Clark Clifford announced to a staff meeting after the overrun disclosure that he was "very displeased with Mr. Fitzgerald." Air Force Secretary Harold Brown called Fitzgerald into his office and told him, "You're a damn poor congressional witness." On November 25, Fitzgerald received a "Notification of Personnel Action." Routinely given job tenure eight weeks previously, he was now told that the tenure decision had been a computer error—the first such error in Air Force history.

In 1969, when Melvin Laird replaced Clifford and Robert Seamans, Jr. replaced Harold Brown, things got even worse for the outspoken analyst. In May, Seamans publicly accused Fitzgerald of illegally releasing classified documents. That same month, the Air Force Office of Special Investigations began looking for irregularities in Fitzgerald's sex life and drinking

habits (they found nothing).

Tension inside the Pentagon continued to mount. The Air Force inadvertently revealed that it had lied about the C5A's troubles in order to protect Lockheed's position in the stock market. Fitzgerald himself made several more congressional appearances. An attempt by his superiors to muzzle him backfired when he revealed his orders to an outraged congressional committee. On June 11, he was summoned to a meeting with Laird and Deputy Defense Secretary David Packard, and was told he would be moved out of the Air Force. Then, in November 1969, Fitzgerald was fired.

Senator William Proxmire, to whom Fitzgerald had first revealed the C5A overruns, convened a hearing to inquire into the dismissal. The Air Force claimed that Fitzgerald's job had been eliminated as an economy move. Proxmire cited the law forbidding retaliations against congressional witnesses and declared, "We know a crime has been committed. The provisions of this statute have been clearly violated."

By December, the Fitzgerald affair had reached the White House. Sixty congressmen signed a letter to the President protesting Fitzgerald's dismissal. Clark Mollenhoff, then a Presidential advisor, reviewed the case and wrote Nixon, "the Fitzgerald case is untenable." He advised that the man be allowed to keep his job. But White House aide Alexander Butterfield, who was later to let slip the existence of Nixon's tape collection, disagreed. Butterfield wrote in a memo to Haldeeman, "Fitzgerald is no doubt a top-notch cost expert, but he must be given very low marks in loyalty, and after all, loyalty is the name of the game." He added, "We should let him bleed for a while, at least. Any rush to pick him up and put him back on the federal payroll would be tantamount to an admission of earlier wrongdoing on our part." Butterfield's advice carried the day, and in January 1970 Fitzgerald left the Pentagon. He began an appeals process that was to take years before it yielded even partial results.

The Civil Service Commission hearing finally began in May 1971, behind locked doors. After three days, Fitzgerald and his lawyer decided to go to court to compel the Commission to open up the hearing. Fitzgerald quickly got a ruling in his favor, but the government decided to appeal, which took another year. Meanwhile, Fitzgerald went to work as a consultant

for the Joint Economic Committee of Congress and for Congressman Jerome Waldie of California.

In late 1972, the Court of Appeals ruled in Fitzgerald's favor, overturning the Civil Service policy of holding closed review hearings. In January of 1973 an open hearing began, and a new controversy developed. When Air Force Secretary Seamans was asked about his contacts with the White House on the Fitzgerald matter, he invoked executive privilege.

The next day, President Nixon held a press conference at which former aide Clark Mollenhoff, now back with the *Des Moines Register*, pressed Nixon on Seaman's use of executive privilege. Did that mean that Seamans had talked to Nixon personally about Fitzgerald? After trying to evade the issue, Nixon blurted out: "I was totally aware that Mr. Fitzgerald would be fired or discharged or asked to resign. . . . This was not a case of someone down the line deciding he should go. It was a decision that was submitted to me. I made it and I stick by it."

Nixon's remark was disastrous. He had managed to destroy the contention that the Air Force had been stubbornly defending for the past three years, that Fitzgerald was not fired but simply phased out by budgetary considerations. The next day, Ronald Ziegler announced that Nixon "simply misspoke himself" in replying to Mollenhoff. "The President did not have put before him the decision regarding Mr. Fitzgerald." But documents produced by Mollenhoff indicate otherwise. And two other witnesses at Fitzgerald's Civil Service hearings subsequently invoked executive privilege.

In September of last year, in an ambiguous and reluctant action, the Civil Service Commission at last ruled that Fitzgerald must be reinstated at the Pentagon with back pay, but did so in a way that failed to fully vindicate him. The Commission's decision also tried to take the Nixon Administration off the hook for retaliating against a congressional witness. Now back at the Pentagon, Fitzgerald has been given a lesser job than before and still has not collected that back pay. His lawyers are pursuing both matters, and are also suing the government for legal fees and damages. Fitzgerald has changed a great deal since the days he took a pay cut to work for the Pentagon because he admired McNamara's "tough talk" about cost cutting. But such institutions as Lockheed and the Pentagon haven't changed a bit.

—T.Z.

SEE SF CHRONICLE 5 SEP 74
FILED NIX AD

X 20 JAN 70
(NYT 2 APR 73
P. 20, COL 2)

RAMPARTS 23

MAY 25 1974 SEP 13 1974
 FILED WITGARD