

Executive Privilege Is Asserted In Dairy Industry Fund Memos

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Acting on orders from President Nixon, the White House asserted executive privilege yesterday in an effort to keep secret dozens of memos concerning the dairy industry and the government's controversial 1971 increase in milk price supports.

In an affidavit filed in U.S. District Court here, acting White House counsel Leonard Garment maintained that release of the contents "would be injurious to the public interest and to the constitutional doctrine of the separation of powers . . ."

The documents had been subpoenaed in a lawsuit brought by consumer groups who charged that the higher



LEONARD GARMENT
... holding back memos

price supports were a payoff for early campaign contributions to Mr. Nixon's 1972 re-election effort.

Listing some 67 memos,

along with several supporting charts and papers, Garment said he was holding them back "at the direction of the President."

The move apparently sets the stage for the first court test of executive privilege concerning the Watergate scandal and other misdeeds allegedly involving the White House.

It could also put the White House on a collision course with special Watergate prosecutor Archibald Cox—unless the President chooses to give Cox' office what he is withholding from the private litigants. The Watergate special prosecution force has already earmarked the Nixon campaign's "milk money" as one of the targets of its investi-

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gation into the financing of last year's presidential elections.

The campaign contributions, totaling \$422,500 in 1971 and 1972, came from three dairy farm groups that won an increase in the government's price support for milk after an initial turn-down by then Secretary of Agriculture Clifford Hardin on March 1, 1971.

He reversed himself later that month after meeting at the White House March 23 with Mr. Nixon and more than a dozen representatives of the three dairy co-ops—Associated Milk Producers, Inc., Mid-America Dairymen, Inc., and Dairymen, Inc.

Their contributions to Mr. Nixon and the GOP began a day earlier, on March 22, with \$10,000 from the political arm of AMPI. The three dairy farm lobbies gave a total of \$317,500 in 1971, most of it to dummy committees organized for Mr. Nixon under titles like the "League for a Better Nation" and "Americans Concerned."

The documents withheld yesterday, sketchily outlined in Garment's affidavit, indicate a flurry of White House activity leading up to the meeting with Mr. Nixon.

"These guys were just passing them back and forth madly," said William A. Dobrovir, the attorney for Public Citizen, Inc., and other consumer groups that filed the lawsuit, after reviewing Garment's list.

U.S. District Court Judge William B. Jones will schedule a hearing on the issue shortly. Dobrovir said he would insist on the documents, "to the Supreme Court, if necessary."

The contested papers include 47 White House memos, another 16 from the Office of Management and Budget, and four from the files of the President's Council of Economic Advisers. Twenty-four of them were dated in March of 1971.

On March 3, 1971, for example, OMB produced, according to Garment's affidavit, "an internal memorandum . . . setting forth various recommendations and considerations with respect to the 1971-1972 dairy price support program" while another memo of the same date was passed "between personnel in the office of the Council of Economic Advisers." Meanwhile, still another March 3, 1971, memo was circulated "between officials in the White House" "concerning a proposed meeting by the President with leaders of the dairy industry."

At least 10 other memos on the list dealt with the March 23 meeting. The White House also invoked secrecy for a March 24 memo from the under secretary of agriculture to the OMB's assistant director, "to which is attached a proposed press release."

The next day, on March 25, Hardin announced that milk price supports would be increased after all, from \$4.66 to \$4.93 a hundred-weight. Dairy co-op leaders have said the decision added roughly \$500 million to \$700 million to dairy farmers' income.

The White House has denied that the co-ops' campaign contributions influenced the decision, and insisted that it was made in the Agriculture Department.

But a key official of AMPI has testified in a pretrial deposition that "we never figured this was Secretary Hardin's decision." An official of Mid-America Dairymen's political fund also said, in a letter turned up by the lawsuit, that the campaign spending programs of the three co-ops "played a major role in this administrative decision."

One of Mr. Nixon's oldest friends and political confidants, Murray Chotiner, has acknowledged furnishing the dairy co-ops with the

names of the dummy committees that got most of the campaign contributions before their role came to light. Chotiner resigned as special counsel to the President in March, 1971, and immediately joined the successful lobbying campaign to overturn Hardin's decision. He has denied any connection between that and the \$422,500 in contributions.

Five other memos that the White House wants to keep confidential, according to Garment's affidavit, were prepared by ousted White House counsel John W. Dean III in 1972 regarding the lawsuit, which demands a rollback of the 1971 price support increase. Two of them were written on Feb. 1, 1972, less than a week after the suit was filed.

Insisting on secrecy for them all, presumably as presidential papers, Garment argued that the President "is entitled to receive frank recommendations, opinions and considerations from his staff and subordinates in the discharge of his constitutional powers. Any impairment of the free flow

of considerations, recommendations, deliberations and advisory opinions to the President and among his staff would adversely affect the public interest."

Aside from Mr. Nixon's own personal testimony, presidential papers appear to be the last big preserve for which the President is still staking out a claim of executive privilege. A White House memo dated May 3, 1973, said the privilege should be invoked, even before a grand jury, when questioning involved "presidential papers," which the memo broadly defined as "all documents produced or received by the President or any member of the White House staff in connection with his official duties."

Special prosecutor Cox, by contrast, has said he has been "assured of access to all documents, files and other papers in the executive branch." He is not believed to have run up against any claims of executive privilege in his continuing requests for White House documents thus far, but his office refused to comment yesterday when asked whether any papers have been withheld on that or any other grounds.

In presiding over the Public Citizen, Inc., lawsuit, Judge Jones has already rejected an attempt by the Justice Department to maintain the secrecy of 32 Agriculture Department documents on the grounds that they were intra-agency memoranda whose production would jeopardize the government's decision-making process.

Attorney Dobrovir has asked that the documents listed by Garment either be turned over to him or examined by Judge Jones for determination of those that are relevant. Dobrovir said he would also seek a White House memo about a May 18, 1971, meeting at which former presidential counsel Dean and former White House chief of staff H. R. Haldeman discussed secret handling for the Nixon campaign's "milk money" before most of the donations had even been made.

Dean gave a copy of the memo, which he said was prepared by Haldeman aide Gordon Strachan, to the Senate Watergate Committee last month. It was not on Garment's list of privileged documents, but Dobrovir said the White House has yet to supply him with it.

"I hope that only reflects the fact that they (the White House) haven't found it," Dobrovir said. "They're either supposed to give it to me or assert privilege. They haven't done either. It's clear that (Haldeman and Dean) were talking about money they hadn't gotten yet."