

Nixon Ex-Aide Rejects 'Executive Privilege'

By Morton Mintz

A former special counsel to President Nixon has rejected the administration's broad claims of immunity to questioning and says he will testify in behalf of a former Air Force official "brutally mistreated by his government."

The former aide—newsman Clark R. Mollenhoff—said executive privilege is being used to cloak an "unconscionable Air Force cover-up" in the case of A. Ernest Fitzgerald, who blew the whistle on cost overruns of \$2 billion in the C-5A transport program and later lost his job. A Civil Service Commission examiner is holding hearings on the Fitzgerald case.

Mollenhoff already has given lawyers for Fitzgerald a "memorandum for the files" he prepared on Nov. 13, 1969, after meeting with Air Force officials on the Fitzgerald matter at the White House.

Mollenhoff also gave Fitzgerald's lawyers copies of letters to President Nixon and his counsel John W. Dean III, in which he said:

• That for months after the Air Force Office of Special Investigations had established there was no foundation for vague charges that Fitzgerald had violated security and had a conflict of interest, top Air Force officials continued to "smear" Fitzgerald by repeating the charges to Mollenhoff at the White House as well as on Capitol Hill.

• That Mollenhoff challenged the officials, including Assistant Secretary Spencer J. Schedler and Col. James Bewitt, his executive officer, to document the report in writing but that they "stalled for weeks and months but never did admit that they had no case."

• That even Mr. Nixon could not have known of "the enormity of the crime," because Air Force Secretary Robert C. Seamans Jr. and his aides were able until recently to wrap the case in near-total secrecy.

• That David Wilson, an aide to Dean, had given the Air Force not only a copy of a letter Mollenhoff wrote to Dean but also a copy of the 1960 memo on the meeting with Schedler and Bewitt.

• That Dean said Mollenhoff acted without his knowledge and was "in Mollenhoff's words, 'obviously concerned about the case.'"

These papers that permitted them to fall into the hands of those who may be involved in a conspiracy against Fitzgerald.

• That executive privilege as asserted by Mr. Nixon is a "diservice" most of all to the President because "he is usually the one most in the dark about the petty and dishonest activities of his subordinates who control the flow of information to the President."

Although Mollenhoff, now chief of the Washington bureau of The Des Moines Register, stands ready to testify, the Air Force has objected.

As a result, appeals hearing examiner Herman D. Staiman has asked Fitzgerald's lawyers to submit written answers to these questions:

Were Mollenhoff's White House communications and conversations with executive branch officials "privileged"? Is Mollenhoff free to testify about them? Would he need prior White House authorization? Who can invoke the prior White House authorization apart from the witness?

Repeatedly in the hearing, Secretary Seamans, Assistant Secretary Schedler and Col. Bewitt invoked the privilege. On March 7, for example, Bewitt refused to say whether he met with Mollenhoff on Nov. 13, 1969, on the grounds that this was "privileged information."

Had someone directed Pew-

itt to refuse to answer? He refused to say. Had he come prepared to tell the whole truth?

"I came prepared to tell the truth," but "the whole truth" only "insofar as I can," he told William L. Sollee, a lawyer for Fitzgerald.

Seamans, testifying on Jan. 30, invoked executive privilege in refusing to discuss the White House role in the firing of Fitzgerald on Nov. 4, 1969, as assistant secretary for financial management. "I never received any instructions, but I will not say I did not receive any advice," Seamans said. "My view is that there should be executive privilege."

Attorney Sollee said yesterday that next week he will file a paper asserting an unqualified right for Mollenhoff to testify without permission from President Nixon or anyone else.

President Nixon, in reply to a question from reporter Mollenhoff at a press conference on Jan. 30, repudiated the consistent Air Force contention at an economy cutback forced out Fitzgerald. The firing, Mr. Nixon said, "was a decision that was submitted to me, I made it and I stick by it." The next day, however, presidential press secretary Ronald Ziegler said that Mr. Nixon realized on reading the confertnce transcript that he "misspoke."