

Judge Tells White House to Show Him Milk Files

By CHRISTOPHER LYDON

Special to The New York Times

WASHINGTON, July 27—In a preliminary setback for President Nixon's theory of executive privilege, a Federal judge ordered the White House today show him its files on the 1973 increase in Government milk price supports.

Ralph Nader, the consumer advocate, has charged in a lawsuit that the price adjustment, worth more than \$500-million to the dairy industry, was made in exchange for \$422,000 in contributions to the Nixon reelection campaign.

Judge William B. Jones did not commit himself to show the White House file of nearly 100 documents to Mr. Nader's lawyers.

But in demanding to see the documents himself, and then to decide their bearing on the suit and Mr. Nader's request for their publication, Judge Jones rebuffed the Administration's claim of an overriding privilege

to keep its internal papers private, and out of court altogether.

Three weeks ago, Leonard Garment, the White House counsel, argued "at the direction of the President" that release of the milk papers would injure the public interest and the constitutional doctrine of the separation of powers, by impairing the free flow of opinions and advice between the President and his staff.

Protection Is Claimed

Again, today, a Justice Department lawyer, opposing the half-way motion for the judge's private inspection of the documents, argued that the privacy of the White House's internal communications is absolutely protected, whether or not the papers are relevant to the Nader suit.

If the claim of executive privilege is weighed, and then set aside on grounds that the documents have a bearing on the case, said Irwin Goldbloom, the Government's lawyer in the courtroom debate this after-

noon, the court will have ruled in effect that "there is no privilege."

Yet Judge Jones, insisting on his own examination of the papers, clearly rejected the absolute claim of executive privilege and implied that if the papers document the alleged exchange of favors, they could not be excluded as evidence.

Lawyers in the case said that the records in question would be delivered to Judge Jones on Aug. 6.

William Dobrovir, Mr. Nader's lawyer in the milk case, commented to newsmen that the judge's ruling had a direct bearing on the efforts by Archibald Cox, the special prosecutor in the Watergate case, and the Senate Watergate committee to get White House tapes of conversations between President Nixon and his aides.

In both cases, Mr. Dobrovir noted, the White House had asserted an executive privilege over its internal files — including in both cases, as it happens, communications between Mr.

Nixon and John W.

Dean 3d, his ousted counsel. Mr.

Dobrovir found it broadly significant that Judge Jones had rejected the Government's claim that executive privilege and the lawyer-client privilege are paramount.

The Justice Department, however, disparaged the parallel between the milk and Watergate cases. Certain differences are obvious: Mr. Nader's lawsuit, which seeks to roll back the milk price increase, is a private lawsuit, involving an official act of the Government.

The milk case dispute focuses sharply on the question of executive privilege, but it does not appear to turn on the separation-of-powers question, which the White House says is central legal reason against complying with the different demands for the Watergate tapes.

The White House made no comment on Judge Jones's action today.