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**Cost Expert Who Disclosed
C-5A Overrun Reinstated**

By ANTHONY RIPLEY
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WASHINGTON, Sept. 18—A Civil Service appeals examiner reinstated today A. Ernest Fitzgerald, the Air Force cost analyst who disclosed a \$2-billion cost overrun on the C-5A aircraft project and then was dismissed, and ordered back pay totaling more than \$100,000 for him.



Associated Press
A. Ernest Fitzgerald in Washington after learning of his reinstatement.

Herman D. Staiman, the chief appeals examiner, stated that Mr. Fitzgerald's dismissal on Jan. 5, 1970, was "improperly" disguised as an economy move when, in fact, it was "purely personal," and, thus, contrary to Civil Service procedures.

The decision turned on the invocation of "executive privilege" and "privileged communications" between former Air Force Secretary Robert C. Seamans Jr. and the White House, and a White House memorandum that was disclosed during the Senate Watergate hearings that read in part, "We should let him bleed, for a while at least."

Position Rejected

Mr. Staiman rejected Mr. Fitzgerald's contention that he had been dismissed by the Air Force because he told Congress on Nov. 13, 1968, of the huge cost overruns on the C-5A transport plane.

Instead, Mr. Staiman ruled that the "prime factor" in the dismissal was an "erroneous" page one article in The Washington Post on Jan. 1, 1969, which said that Mr. Fitzgerald had lost his tenure as a career employe in the Air Force shortly after he testified.

"We find that the unjust publicity the Air Force received

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concerning this tenure controversy, which it considered Mr. Fitzgerald to be basically responsible for, was the prime factor in the deterioration of relationships and development of an adversary environment between Mr. Fitzgerald and the Air Force," the examiner said.

Mr. Staiman ruled that Mr. Fitzgerald never had "career tenure" and that his notification of such tenure, as the Air Force said, was a "computer error."

Mr. Fitzgerald was pleased with the outcome of the three-year struggle.

"If the Air Force goes along with the examiner's ruling," Mr. Fitzgerald said today, "I'll go back to work in the Pentagon. I'm ready now. I just have to put a little gas in the Rambler. I have unfinished business in the Pentagon."

The Air Force has 15 days in which to appeal the ruling. The Pentagon made no immediate announcement of its intentions.

During the hearings earlier this year, Secretary Seamans, along with others, invoked executive privilege and refused to discuss any matters that may have been discussed with the White House concerning Mr. Fitzgerald.

Mr. Staiman said at the time, "All I can do is take into consideration your refusal to answer the question."

In August, Mr. Fitzgerald's lawyers, who worked at no pay for the capital area office of the American Civil Liberties Union, forwarded to Mr. Staiman a copy of a White House memorandum that had come to light during the Watergate investigations in the Senate.

The memo was from Alexander P. Butterfield, then a White House aide, to his superior, H. R. Haldeman, then the

White House chief of staff.

It read in part:

"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.

"Last May he slipped off alone to a meeting of the National Democratic Coalition and while there revealed to a senior A.F.L.-C.I.O. official (who happened to be unsympathetic) that he planned to 'blow the whistle on the Air Force' by exposing to full public view that service's 'shoddy purchasing practices.' Only a basic no-goodnik would take his official business grievances so far from normal channels..."

"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 wrong-doing on our part."

Mr. Staiman ruled that "in light of Secretary Seamans's refusal to furnish testimony on conversations he had with, or advice he received from the White House staff; and our notification to the Secretary... we must conclude and do hereby find that Mr. Fitzgerald's May, 1969, statements were the subject of Secretary Seamans's discussion with the White House staff."

The examiner said those statements were "one of the underlying reasons" for the decision to abolish Mr. Fitzgerald's job in a reduction in force which the Air Force said was purely for economy reasons.

He also found that the Air Force Office of Special Investigations had gone into Mr. Fitzgerald's background and retained all the uncomplimentary things said about him while destroying the good comments.

Mr. Staiman said it was "unconscionable" for the Air Force to show such altered files to the Congress.

Mr. Staiman also noted that of 80 positions abolished in the Air Force Secretary's office under the reduction in force, Mr. Fitzgerald was the only employe who was so separated.

See

NYTimes 2 Aug 73, p. 20, col. 2

WXPost, editorial, 12 Aug 73

(Earlier clippings on Fitzgerald filed Nix Ad.)

Ramparts Jun 74, p. 23, article on Fitzgerald by TZ (Tom Zeman?); p. 21, article by Fitzgerald.

Filed Magazines.

NYTimes 2 Jan 76: (Federal judge rules that Civil Service must pay Fitzgerald's legal fees.)