

For earlier clippings on Fitzgerald,
see refs with NYT 19 Sep 73, this file.

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Broad Effects Seen From Award

The Washington Star

WASHINGTON, Jan. 1—Six years of hearings in court, of depositions given before hostile lawyers, of waiting for rulings and of appeal ended in victory this week for A. Ernest Fitzgerald, the civil servant who was dismissed after he told Congress how Government mismanagement had caused a \$2 billion cost overrun on the C-5A airplane.

Mr. Fitzgerald, who was unemployed for four of the six years, won his fight to be rehired by the Government in 1973, receiving more than \$100,000 in back pay. But the four years of legal battles left him facing fees of more than \$400,000 from the two \$125-an-hour lawyers he had needed to counter his bureaucratic adversaries. That was far more money than a middle-level civil servant could expect to have.

Then, on Monday, in a ruling certain to have far-reaching effects, a Federal judge here ordered the United States Civil Service Commission to pay the costs of Mr. Fitzgerald's fight to have his job restored.

Unless it is overturned on appeal, lawyers say the ruling by Judge William B. Bryant of Federal District Court could encourage other Government workers to bring inequities and mismanagement into public view.

\$31,000 Annual Salary

Without such a ruling, these lawyers believe, the astronomical legal costs incurred by Mr. Fitzgerald in fighting his dismissal would strongly tend to silence civil servants aware of Government errors.

Mr. Fitzgerald, an energetic, bespectacled Alabamian, rose to a \$31,000-a-year GS-17 ranking in the Federal bureaucracy before top-level White House officials in the Nixon Administration decided to get rid of him. He had become these of-



Eric M. Freedman

A. Ernest Fitzgerald

ficials' target after appearing before Congress in 1969 and disclosing a multibillion-dollar cost overrun in the now-obsolete C-5A transport. His disclosure created controversy between the White House and Congress that lasted nearly a year.

Mr. Fitzgerald, who is married and has three children, was a civilian cost analyst in the office of the Secretary of the Air Force at the time of his testimony.

He told a joint Congressional subcommittee on economy in government how billions of tax dollars were wasted on the C-5A and other weapons programs. He said that the military and the Defense Department bureaucracy let the aerospace and munitions industries drive up the costs of weapons systems through various accounting schemes. The accuracy of his testimony was not challenged.

Shortly after Mr. Fitzgerald's testimony on the Pentagon cost overrun, President Nixon's chief of staff, H. R. Haldeman, received a memorandum from

of Legal Fees to Pentagon Aide

a low-level White House aide, Alexander P. Butterfield, who advised that the Administration should "let him [Mr. Fitzgerald] bleed" because "he must be given very low marks in loyalty; and after all, loyalty is the name of the game." Mr. Fitzgerald was then dismissed from his job.

Mr. Fitzgerald sought relief from the Civil Service Commission, arguing that he was the victim of retaliation.

But the Commission did not order his reinstatement, so Mr. Fitzgerald obtained two attorneys through the American Civil Liberties Union, John Bodner Jr. and William Sollee, both of well known Washington law firms.

"We had absolutely no idea it would go on for six years," Mr. Bodner said this week. "We thought we had a simple case and we could get him reinstated rapidly."

But a small army of Government lawyers was set to work against Mr. Fitzgerald—lawyers representing the Air Force, the Department of Defense, the Justice Department, the United States Attorney's Office and the Civil Service Commission.

These lawyers delayed hearings, refused to turn over documents, appealed every concession made and filed motions that required scores of time-consuming proceedings—and all the while Mr. Fitzgerald's attorneys were costing him \$125 an hour.

Precedent is Possible

Mr. Bodner and Mr. Sollee kept up the pressure and finally, nearly four years after he was dismissed, the Civil Service Commission ordered Mr. Fitzgerald reinstated. His old job had been abolished, however, so the commission found a new one for him at \$37,000 a year.

But even with those earnings Mr. Fitzgerald could not have

paid his legal fees. By that time, he owed Mr. Bodner's firm nearly \$225,000 and Mr. Sollee's firm almost \$150,000. It looked as though Mr. Fitzgerald had won the battle but lost the war.

"Major litigation like this," Mr. Bodner said, "literally eats the little guy alive. How can he be expected to fight all this legal talent the Government can bring to bear? They're getting paid yearly salaries to do what they do. What does it matter to them?"

If Judge Bryant's ruling in the Fitzgerald case stands up on appeal, it will set a precedent for all Government workers who feel they have been wrongfully dismissed from their jobs.

Although a Supreme Court decision two years ago in the Alaska pipeline case seemed to bar the emerging practice of awarding attorney's fees against the Government, Mr. Bodner and Mr. Sollee convinced Judge Bryant that the law required that Mr. Fitzgerald's liabilities be paid by the Government.

"The law says that when a person is wrongfully fired, action should be taken to make him whole again," Mr. Bodner said. "We argued that this included paying his legal fees. 'We didn't know if we would get them or not, but that's the price you pay if you're a lawyer. It happens all the time. The client simply can't pay the bill.'"

Mr. Fitzgerald, who is visiting his mother in Alabama, was quoted as saying that he hopes Judge Bryant's decision will lend encouragement to other Government employees who may have been unjustly dismissed and will encourage lawyers to take their cases. "The Government has the taxpayer's money," Mr. Fitzgerald said. "You go into these hearings and they oppose you with your own money." *WJBC*