

# Court Backs Full Secrecy Of Documents on Security

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WASHINGTON, Jan. 22—Citizens cannot use the Freedom of Information Act to gain access to unclassified sections of secret and top secret national security papers, the Supreme Court held today.

At the same time, the high court ruled that Government agencies could be compelled under the act to produce inter-office memorandums in court unless they were able to establish beforehand that such papers could not legally be subpoenaed in an ordinary court case.

The Court divided 6 to 3 in the national security aspect of the decision, with Associate Justices William O. Douglas, William J. Brennan Jr. and Thurgood Marshall dissenting. On the memorandum issue, only Justice Douglas disagreed with the eight-man majority.

The case arose in 1971 when Representative Patsy Mink, Democrat of Hawaii, and 32 other House members were unsuccessful in persuading President Nixon to release an interdepartmental report on an underground nuclear test scheduled for Amchitka Island, Alaska.

The Representatives went into Federal District Court, contending that the 1966 Freedom of Information Act entitled them to the information. The court ruled for the Administration, on the ground that the papers involved were protected by exemptions in the act covering classified material and memorandums that would not be available in an ordinary lawsuit.

## Decision Reversed

But the Court of Appeals for the District of Columbia reversed the decision, holding that only secret parts of classified documents were protected and ordering the judge to examine the papers in private to see if some of their contents could be made available to the members of Congress.

The appellate court said the judge could also determine whether the memorandums included "factual information" that could be made public, as opposed to details of "policy-making processes."

The Supreme Court majority decided today that classified material need not be submitted to the Federal judge at all to retain its exemption, but that agencies withholding memoran-

dums had the burden of satisfying the judge that they would not have been subject to subpoena in an ordinary civil case.

In his dissent, Justice Douglas declared that "the Government seeks to escape from the [Freedom of Information] Act by making the Government stamp of 'top secret' or 'secret' a barrier to the performance of the District Court's functions."

"The majority," the Justice continued, "makes the stamp sacrosanct, thereby immunizing stamped documents from judicial scrutiny, whether or not factual information contained in the document is, in fact, colorably related to interests of the national defense or foreign policy."

## Voice-Recording Upheld

The high court also ruled, in two cases involving an Illinois gambling investigation, that witnesses called before the grand jury could not invoke the constitutional privileges against self-incrimination and improper search to avoid recording voice and handwriting samples.

The Court ruled 7 to 2 against Antonio Dionisio in the voice-recording case, with Justices Douglas and Marshall dissenting. In the handwriting case involving Richard J. Mara, Justice Brennan also dissented for a 6 to 3 division.

In another decision, the Court voted 8 to 1 to stay a lower court decision that would have allowed Phillip and Daniel Berrigan, the antiwar priests, to travel to North Vietnam. Justice Douglas was the dissenter.

The Berrigan brothers are on parole from prison terms for having destroyed draft board records as a protest against the Vietnam war. The United States Parole Board has refused them permission to travel to Hanoi, but the United States Court of Appeals overruled that decision.

"Keeping alive intellectual intercourse between seemingly opposed groups," Mr. Douglas wrote in his dissent, "has always been important, and is even more important in view of the bridges of communication long destroyed between this country and North Vietnam, which are now being restored."

The stay will remain in effect until the Supreme Court has ruled on the validity of the Court of Appeals decision or has declined to review the case.