

High Court Upholds U.S. Data

1/23/73
By John P. MacKenzie
Washington Post Staff Writer

The Supreme Court ruled yesterday that the federal Freedom of Information Act safeguards the government's right to classify documents "secret" and "top secret" and does not increase citizen rights of access to classified material.

Splitting 5 to 3, the court spurned the bid of 33 congressmen to use the 1967 information law to smoke out allegedly overclassified government data.

Acting in a case growing out of the controversial 1971 nuclear blast on Amchitka Island in Alaska, the court also held that government agencies need not automatically surrender documents for inspection by judges when private citizens claim that the material is not entitled to the secrecy privilege asserted by the government.

The court also:

- Scheduled full-scale review this term of the constitutionality of state tax credits and tuition reimbursement to parents of parochial school children.
- Upheld the power of prosecutors, acting through grand juries, to compel individuals to produce examples of voice, handwriting and other personal characteristics although the evidence could help build a criminal case against the individuals.
- Granted the Justice Department's request to block a lower court order that would have permitted the Rev. Philip Berrigan and the Rev. Daniel Berrigan to travel to Hanoi over the objections of the U.S. Parole Board and the State Department.
- Refused to hear the contention of two workers in the Eugene McCarthy campaign that federal civil rights laws permit suing the city of Chicago for police violence after the 1968 Democratic National convention.

In the information act case, the court reversed the U.S. Court of Appeals for the Dis-

trict of Columbia Circuit, which ruled in 1971 that Rep. Patsy Mink (D-Hawaii) and 32 other congressmen might be entitled to see some secret papers detailing quarrels within the Nixon administration over the wisdom of an underground nuclear blast at Amchitka Island, Alaska.

Suing under the act, the congressmen argued that a mere classification stamp did not immunize from disclosure any nonsensitive material included with data that was properly classified. They said judges should view the files in their chambers and disclose data not intertwined with sensitive papers.

The lower court agreed with the congressmen and ordered a similar review in a judge's chambers of material said to be confidential advice to President Nixon. Both secrecy claims were made under exemptions to the information act and both exemptions were sustained by the high court.

Writing for the majority, Justice Byron R. White said the act's exemptions from disclosure were clear. Congress could have armed citizens with a stronger weapon against secrecy but chose not to, he added.

Joining White were Chief Justice Warren E. Burger and Justices Potter Stewart, Harry A. Blackmun and Lewis F. Powell Jr.

Stewart added in a concurring opinion that Congress, not the court, should be blamed if citizens' hopes for more information were dashed.

"Congress has conspicuously failed to attack the problem," Stewart said, but "it has built into the Freedom of Information Act an exemption that provides no means to question an executive decision to stamp a document secret, however cynical, myopic or even corrupt that decision might have been."

Justices William O. Douglas, William J. Brennan Jr. and Thurgood Marshall dissented. Justice William H. Rehnquist, former head of a Justice Department office which handled the Amchitka case, did not vote.

In other action?

Aid to Religion

The showdown on state aid to parochial school parents will come later this term in cases involving tax credits in New York and tuition reimbursement in Pennsylvania. A decision, which is expected by June, could tell whether the Nixon administration's tax credit proposals are constitutional.

Meanwhile the court, rejecting pleas by Catholic parents in Ohio, refused to block a Dec. 29 injunction by a federal court in Columbus against the awarding of state and local tax credits in that state. A stay of the lower court order might have indicated a prelim-

Secrecy

inary lineup of justices in favor of the state aid.

Grand Juries

The power of federal grand juries to compel witnesses to produce voice and handwriting samples—and to imprison recalcitrant witnesses until they comply—was sustained by a 6-to-3 margin.

Over the dissents of Douglas, Brennan and Marshall the court held that neither the right to privacy nor the privilege against self-incrimination, safeguarded by the Fourth and Fifth amendments, were violated by production of "identification" material.

Berrigans

Douglas alone dissented as the court stayed a decision against the Parole Board, which had denied travel permission to the Berrigan brothers to go to North Vietnam. The action cleared the way for a full hearing in U.S. District Court here on the travel restrictions.