

## WAR PAPERS PLEA DENIED BY JUDGE

Two Congressmen Rebuffed  
in Suit for Full Disclosure

Special to The New York Times

WASHINGTON, Dec. 7 — A Federal district judge denied today a suit by two Congressmen to compel the release of all or part of the still classified segments of the Pentagon Papers.

At a hearing here last Friday Representatives Ogden R. Reid, Republican of Westchester, and John E. Moss, Democrat of California, co-authors of the Freedom of Information Act, asked Judge Gerhard A. Gesell to examine the still classified segments in a secret session and decide whether all or part should be made public.

In his written opinion today, Judge Gesell said that an independent court review like this was neither required by the Freedom of Information Act nor desirable. Judge Gesell ruled against the Nixon Administration last June in the Government's attempt to restrain the Washington Post from publishing articles based on the Pentagon Papers.

The two Congressmen specifically requested review of the material the Government withheld when it published a declassified version of the first 43 volumes of the papers last September—about 2 per cent of the total—and the four remaining volumes on the secret Vietnam diplomacy of the Johnson Administration. None of the newspapers that published articles last summer have obtained these four volumes.

### Legislation Urged

Mr. Reid said in a statement that Judge Gesell's opinion "points up the need for new legislation to give some independent reviewing body the authority and resources to evaluate classified documents and order declassification of those which are being improperly withheld from the public domain."

He said that the House Subcommittee on Foreign Operations and Government Information would hold extensive hearings in February to determine what kind of reviewing agency should be created and to propose legislation on this and other aspects of the classification of information by the executive branch. Mr. Moss is the subcommittee chairman.

The precise character of the proposed reviewing agency is a matter for the hearings to develop, Mr. Reid said, but he suggested that it could be a joint committee of the House and Senate.

The agency should be "accountable to Congress and the people and independent of the executive," Mr. Reid asserted.

### Purposes of Hearings

The hearings will explore the possibility that Congress might assume the power to declassify information it receives from the executive branch, a power the executive now exercises exclusively. The withholding of information from Congress even when Congress does not intend to make the material public will also be examined, and ways to strengthen the Freedom of Information Act will be sought.

One way in which Mr. Reid hopes to fortify the act is to narrow the criteria under which the executive can now withhold from the public matters "specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy."

In his opinion, Judge Gesell said this exemption made an independent court review unnecessary. He noted that counsel for the Congressmen had conceded at the hearing that the Government was claiming the exemption in this case "in good faith" because the decision to keep the relevant portions of the Pentagon Papers classified had been made "at the highest level of the Department of Defense after careful consideration."

### Review Held Undesirable

On the undesirability of a court review, Judge Gesell said:

"It is entirely foreign to our traditions to place papers in the hands of a judge for his private ex parte inspection, excluding them from the eyes of the litigants.

"The determination of the interests of national defense or foreign policy cannot be made by applying some simple litmus test to a document presented."

He added that since he had "no experience or background in such matters" he would need detailed "background briefing" by some neutral authority "even to make a tentative judgment and thus the litigation would proceed in secret with those seeking the data wholly excluded."

Mr. Reid said some way must be found to break what he called the pattern of "withholding, obfuscation and outright deceit" practiced by the executive branch in its information policy toward Congress and the general public and to make the executive "accountable" for its actions.