

# JUSTICES TO WEIGH U.S. SECRECY ROLE

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## Will Hear Plea on Extent of Government Authority to Bar Reports From Public

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By The Associated Press

WASHINGTON, March 6—

The Supreme Court agreed today to rule on the scope of the Government's authority to classify documents as secret and keep them from Congress and the public.

The case concerns nine reports and letters prepared for President Nixon in advance of an underground nuclear test that was held last year in Alaska.

The Federal Court of Appeals for the District of Columbia Circuit has ruled that an entire file cannot be classified and kept secret simply because some of the material in it is sensitive.

A Federal judge was directed to separate one kind of document from the other.

### Suit by Congressmen

The Justice Department objected, saying that this kind of judgment belonged exclusively to the executive branch of government. The dispute will be argued next winter and a decision reached by June, 1973.

The nuclear test file was assembled for President Nixon by a committee headed by Under-Secretary of State John N. Irwin. It contained reports on potential consequences to the environment, national defense and foreign relations of the test, known as Cannikin and conducted last November on Amchitka Island.

When word leaked out that

Continued on Page 27, Column 5

Continued From Page 1, Col. 3

some Government officials disapproved of the test, 33 members of Congress headed by Representative Patsy T. Mink, Democrat of Hawaii, sued for release of portions of the file.

The Supreme Court also acted today to speed up consideration of attempts by a grand jury to question assistants of Senator Mike Gravel, Democrat of the Pentagon Papers. This case also would have been heard next term, but Solicitor General Erwin N. Griswold sought and won promise of a ruling before the end of June.

Mr. Griswold told the court that not only was the grand jury in Boston slowed down but also that the Government might be deprived of important evidence needed for the prosecution of Daniel Ellsberg and Anthony J. Russo. They go on trial in Los Angeles on May 9 charged with theft of the once-secret study of the Vietnam war.

In a 5-to-2 decision, the high court prevented thousands of prisoners across the country from reopening their cases on the ground that a lawyer was not present at their preliminary hearings.

On June 22, 1970, the Court held that criminal suspects have a constitutional right to a lawyer at these hearings. This is when a judge decides whether to hold the suspect for a grand jury, whether to permit his release on bail and when the prosecution broadly outlines its case.

Justice William J. Brennan Jr. said in today's opinion that the ruling may be invoked to challenge convictions only if the preliminary hearing was

held after the date of the Court's ruling. Retroactive application, he said, would cause widespread disruption of court calendars while judges consider pleas for a new trial.

Justices William O. Douglas and Thurgood Marshall complained in dissent that the ruling was not in accord with "even-handed justice."