

# Judge Rejects Glomar Secrecy

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A federal judge yesterday rejected, at least temporarily, a unique government attempt to submit secret pleadings in a public lawsuit over the Central Intelligence Agency-financed Hughes Glomar Explorer project.

The suit, a Freedom of Information Act request for contracts and other documents relating to the financing of the ship, was filed by the Military Audit Project, a privately financed watchdog group backed by millionaire Stewart Mott.

Justice Department attorneys, representing the CIA, asked U.S. District Court Judge Gerhard A. Gesell to view certain affidavits secretly in support of its motion to dismiss the case.

In giving the government 14 days to come up with a better and more detailed explanation of why he should accept any documents privately in the case, Gesell criticized the position in which the courts are placed when asked to secretly review government documents.

"It should shock the conscience and offend the spirit of our jurisprudence to move the entire judicial administration of this important act into the secrecy of chambers," Gesell wrote.

Government officials often ask judges in freedom-of-information cases to examine certain documents privately to determine if the materials should be turned over to the other side in a court suit.

Judges usually accept this material, review it, and determine how it should be handled.

However, in the case before Gesell and another case involving the Glomar Explorer before U.S. District Court Judge Oliver Gasch, the CIA has asked the judges to allow it to make legal arguments about the case without the plaintiffs' being present.

Gasch accepted the offer, reviewed the material and

dismissed the Glomar suit that was before him. Gasch's ruling is being appealed.

Gesell said use of private proceedings places the judge "in an untenable position which ignores fundamental considerations of due process."

"When this extraordinary arrangement is viewed in terms of its implications, it is readily apparent that considerations of convenience and expediency have been allowed to obscure the true role of the judiciary under our tripartite system," Gesell said.

He said a judge has a duty to "resolve rights of citizens upon facts and arguments that are presented in an adversary context exposed to public view. . . . It is only in the the rarest and most discrete special circumstances that a judge can properly resolve a controversy, even temporarily, *ex parte*."

He said the amount of private review by judges in freedom-of-information cases is "already enormous," and that the issue of *ex parte* submissions should be re-examined.

The government could help avoid the large number of *ex parte* proceedings by providing more information in open court about the material being demanded, Gesell said.

"Much will depend on the willingness of the government agencies to avoid blanket, boilerplate assertions of privilege and to develop types of indices and descriptions that enable a court to search out the truth in a public proceeding without destroying the secrecy which the government considers it essential to maintain," Gesell added.

The Hughes Glomar Explorer was built by Howard Hughes' Summa Corp. with CIA funds and used in an effort to retrieve a Soviet submarine from the Pacific Ocean floor. The government now wants to lease the ship to private industry.