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# Judge's Extraordinary Sealed Ruling on CIA

Washington

In what may be an unprecedented court action, a federal judge here has dismissed a lawsuit against the Central Intelligence Agency, but his opinion has not been released to lawyers for either side or to the public.

U.S. District Judge Gerhard A. Gesell issued the opinion — which now is locked in a U.S. District Court safe — after he was ordered by the U.S. Court of Appeals to accept secret affidavits from high-level government officials concerning the case.

In the same order, an appellate court panel of Judges J. Skelly Wright and Edward A. Tamm directed Gesell to issue "any further orders" in the case under seal.

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Gesell dismissed the case Wednesday in a one-sentence order he placed in the public files.

The ruling was made in a suit filed by an organization known as the Military Audit Project, a private, non-profit group, which had asked the CIA to make public under the Freedom of Information Act any contracts or other documents concerning the Hughes Glomar Explorer project.

The project, which involved an attempt to retrieve a Russian submarine from the floor of the Pacific Ocean, was made public last year. The U.S. government has admitted financing the project, but contends

that any further admissions concerning the project itself or the possible existence of documents about it would jeopardize national security.

Gesell's order ends more than ten months of legal wrangling involving him, the plaintiffs and the government defendants over what details of the litigation could be made public.

As soon as one month after the suit was filed the government began attempting to file secret affidavits with Gesell.

Judge Gesell said in a written opinion last March that he felt such proceedings should be followed "only in the rarest ... special circumstances."

He said federal judges should not be placed in the position of conducting secret proceedings — which he compared to "star chamber" proceedings that are "alien to our entire jurisprudence" — as they can be under the FOI Act, and asked for further publicly filed affidavits.

Lieutenant General Brent Scowcroft, who is President Ford's top national security adviser, then filed a public affidavit in which he said the disclosure of any one details about the Glomar Explorer project might prompt other nations offended by the project to take "strong measures" that might "endanger U.S. military and diplomatic personnel and businessmen overseas."

After Scowcroft's affidavit was filed, Judge Gesell said he would "reluctantly" accept and review the requested Glomar documents out of the presence of the plaintiffs.

The government objected to that procedure, however, saying it would be an admission on their part that the documents even existed — a matter that the government considers classified. Instead, they won approval from the Court of Appeals October 1 to their suggestion that Gesell accept further secret affidavits as proof of the sensitivity of the matter.

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