

U.S. Fights Bid To Bare Secret Report on SST

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The Justice Department fought in court yesterday against a move to obtain release of a top-secret report to President Nixon said to be sharply critical of the supersonic transport (SST).

Prepared last year by a committee of scientists headed by industrial physicist Richard L. Garwin, the "presidential document" is not covered by the Freedom of Information Act, the department told the U.S. Court of Appeals.

But two members of the three-judge panel expressed sympathy with the efforts of the cities of New York and Boston and leading environmental activists to pry the study loose.

Attorney Peter L. Koff, representing the cities, the Sierra Club and Friends of the Earth, argued that Garwin's report contains "scientific studies and factual information (which) must be made available to the public."

The report, drafted at the specific request of Dr. Lee A. DuBridge, former director of the President's Office of Science and Technology, is understood to predict serious harm to the environment if the SST is developed and used in the United States.

Gerwin, testifying before the House Government Operations Committee last spring, said that the plane's runway noise would be as loud as 50 subsonic jumbo jets taking off simultaneously.

Citing environmental dangers among its potential problems, the Senate last week rejected the administration's request for an additional \$290 million in federal funds to proceed with the SST's development.

The House, which has ap-

proved the funds, may be asked today to instruct its representatives in the Senate-House Conference on the Department of Transportation Appropriations bill.

President Nixon has criticized the Senate's decision and asked that the vote be reversed.

Yesterday's court argument indicated that the administration is unwilling to see any information critical of the SST released in its own name.

Jeffrey Axelrad, representing the Justice Department, told the appeals panel that the President has the constitutional power "to withhold this document from anyone he thinks should not have it."

Judge Malcolm R. Wilkey, a Nixon appointee to the court, agreed. He compared the demand to a request to look into

"the file drawer in the President's desk."

But Chief Judge David L. Bazelon said that evidence indicated the report may be classified as an "agency record" under the jurisdiction of the Science and Technology office.

According to legal briefs on both sides, President Nixon first asked DuBridge for an assessment of the SST and the former science adviser later convened the Garwin group in implementation of that request.

Judge Francis L. Van Dusen of the Third Circuit Court of Appeals, hearing cases in Washington in an attempt to help the appeals court ease its backlog, warned that "no one is above the law, including the President."

He speculated that under the Justice Department theory, the President might "just adopt as his document" any information he did not want to be made public.

It has never been established whether the Freedom of Information Act, which took effect on July 4, 1967, applies to the President as well as federal agencies.

The only exceptions spelled out in the act itself include government records dealing with national defense and foreign policy.

When the case was before him last August, U.S. District Court Judge John H. Pratt dismissed the complaint and rejected the suggestion that he read the Garwin report himself to determine whether it should be released.

One option available to the appeals court in the current case—which it took under advisement—would be to order that Pratt reconsider his decision, perhaps with the aid of the report itself.

But in light of the current controversy over the SST, the panel could go as far as reversing Pratt and directly ordering that the report be made available to the public.

Congressional opponents of the SST have also sought to obtain the Garwin report.

In a related development yesterday, Sen. Gaylord Nelson (D-Wis.) introduced legislation which would have the effect of prohibiting the take-off or landing of foreign SST's—such as the Anglo-French Concorde and the Russian TU-144—in the United States.

His bill would set stringent anti-noise and anti-pollution standards considered almost impossible for a supersonic plane to meet.