

Access to Data Argued Before Supreme Court

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Unless the courts enforce the federal Freedom of Information Law, "the Ellsberg way is the only way" the public can overcome excessive government secrecy, former Attorney General Ramsey Clark told the Supreme Court yesterday.

But Clark's opponent, Assistant Attorney General Roger C. Cramton, argued that courts must keep hands off classified material when the government asserts the need for absolute secrecy of national defense information.

Eight of the nine justices listened as Clark, representing 33 members of Congress suggested that excessive secrecy might prompt future Daniel Ellsbergs to leak government secrets to the public.

Justice William H. Rehnquist did not sit during the argument. He was an assistant attorney general a year ago when his staff did legal work on several congressmen's demands for classified documents about the 1971 nuclear test at Amchitka Island, Alaska.

The U.S. Court of Appeals ruled that a district judge should inspect classified government papers in his chambers to see whether some information could be released to the congressmen or whether the non-sensitive material was "inextricably intertwined" with critical defense data.

Cramton said no court had ever issued such a ruling before and that this one should be reversed. Clark said the

ruling was a modest one and should be affirmed.

Cramton said a recent executive order tells government officials to weed out non-sensitive material for disclosure. But he contended that court inspection of the same material is not authorized by the 1967 Freedom of Information Act.

Justices Thurood Marshall and Potter Stewart asked whether that meant judges are forbidden to go beyond the government's mere assertion that all the test data was sensitive. Cramton replied, "I do not see how anyone could doubt" that classified nuclear secrets are critical to national security.

Cramton added that it would be "shocking" if individual members of Congress, as distinguished from Congress as a whole or committees using subpoena powers, had a greater right than ordinary citizens to compel release of secret documents.

The data was sought after environmentalists and others opposed to the underground nuclear test learned that there was dissent within the executive branch about the wisdom and safety of the blast.

Clark said that courts could at least examine the documents to verify the government's claim that the material was stamped secret. If the Supreme Court rules otherwise, he argued, it will "read the act out of existence" as a weapon against arbitrary government secrecy. The justices took the case under advisement.