

Sultan

Constitutional Law I

Spring 1999

The New York Port Authority (The Authority) is an interstate compact between the State of New York and the State of New Jersey that has received the necessary constitutional approval by the United States Congress. The Authority has dominion and operational control over all airports, bridges, tunnels and shipping services in the greater New York City and northeast New Jersey area. This includes the three airports servicing New York City: LaGuardia, Newark, and JFK.

The SST Concorde is a supersonic transport jet liner that was developed under a joint agreement between France and Great Britain specifically to service the north Atlantic air corridors. It reduces the travel time between Paris or London to New York or Washington D.C. from nine hours to a little over three hours, and has just been put into service by Air France and British Airways.

The United States, France and Great Britain are parties or signatories to the International Civil Aviation Convention, a multilateral treaty that, among other things, automatically awards landing rights at airports located in countries that are members of the treaty regime. As required by the treaty, both France and Great Britain gave the United States formal notification of their intention to commence Concorde service to JFK and Dulles International - the latter being located on Federal land and operated by the United States Department of Transportation.

Upon takeoff and landing, the Concorde makes a very loud boom, a definite form of noise pollution. This greatly angers the residents living within ten miles of JFK as they deem it a threat to the domestic tranquility and property value of their homes. Thus, after the formal announcement of the pending service, they form a very large and vocal community group to "Stop the Concorde."

Following their extensive and continuing demonstrations and

petitions, the governing board of the Authority finally votes to deny landing rights to the Concorde at JFK. Air France and British Airway then join in a lawsuit requesting the United States District Court for the Eastern District of New York (with jurisdiction over the JFK area) to issue an injunction against the Authority permitting the new airplane to land.

A recent graduate of the UDSL, you are a clerk to the Federal Judge assigned this case. He requests that you prepare a memo on the constitutional issues presented by this controversy. He also requests that you list the most important issue first, with any other issues of lesser importance following those of greater importance. And, he requests that you then discuss each issue in the order that you have listed them.