

Paper Is Restrained Until Saturday-- A Hearing Set Then

Associated Press

New York

At the government's request, a federal judge ordered the New York Times yesterday temporarily to cease publication of a series on the Vietnam war based on a Pentagon study.

United States District Court Judge Murray I. Gurfein said the order will be in effect until 1 p.m. Saturday. He scheduled a hearing on the government's request for preliminary injunction for Friday morning.

In Washington, the Justice Department said the FBI had been asked to study possible criminal violations in regard to the Times' publications of what the government said are top-secret defense documents.

COMPLIANCE

A spokesman for the Times said in a statement, "The Times will comply with the restraining order issued by Judge Murray I. Gurfein. The Times will present its arguments against an injunction at the hearing scheduled for Friday."

In seeking the restraining order, the Justice Department cited a law which makes it a criminal offense for any person "having unauthorized possession" of classified documents to communicate, deliver or transmit such documents "to any person not entitled to receive it."

In addition, Jerry Friedheim, a Defense Department spokesman, said Monday that another law-making it a crime to publish information of a classified nature may be involved.

The penalty under either law is ten years in prison or a fine of \$10,000 or both.



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JUDGE M. GURFEIN
He issued the order

'INJURY'

The Justice Department had maintained that exposure of the secret data on which the Times' articles were based could "result in irreparable injury to the national defense."

The Times published articles on the study on Sunday, Monday and yesterday.

The series is based on a volume
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luminous study of American involvement in Indochina and the country's role in the Vietnam war. The Times said the report was undertaken by the Pentagon in 1967 at the direction of former Defense Secretary Robert S. McNamara.

So far the series has told about clandestine warfare against North Vietnam before the Tonkin Gulf incident in August, 1964. It said the administration of former President Johnson had reached a "general consensus" before the 1964 election that bombing of North Vietnam would begin early in 1965, and that Mr. Johnson decided in April, 1965, secretly to use American ground

troops for offensive action.

In his restraining order, Gurfein said:

"The questions raised by his action are serious and fundamental. They involve not only matters of procedure, but matters of substance and presumptively of constitutional implication as well . . .

"I believe that the matter is so important and so involved with the history of the relationship between the security of the government and a free press that a more thorough briefing than the parties had had an opportunity to do is required."

Gurfein said he granted the order "because in my opinion any temporary harm that may result from not publish-



AP Wirephotos

ALEXANDER BICKEL
Paper's defense attorney

ing during the pendency of the application for a preliminary injunction is far outweighed by the irreparable harm that could be done to the interests of the United States government if it should ultimately prevail."

Gurfein rejected a government request that the Times be required to surrender the Pentagon documents.

BELIEF

"I do not believe that the New York Times will wilfully disregard the spirit of our restraining order," the judge said.

Gurfein said he intentionally expressed no opinion on the merits of the case.

"But I believe this matter is brought in good faith by the United States and that on the balancing of interests mentioned, both parties deserve a full consideration of the issues raised," he said.

During the court hearing, the newspaper accused the Government of an obvious effort at "classic censorship" and rejected Gurfein's suggestion that it voluntarily suspend publication pending further court hearing.

Professor Alexander M. Bickel of Yale Law School, representing the Times, said he was not authorized to agree to that.

COMPLAINT

In its written complaint, the Government said that unless further publication is enjoined "the national defense interests of the United States and the Nation's security will suffer immediate and irreparable harm, for which injury the plaintiff has no adequate remedy at law."

Assistant United States Attorney Michael D. Hess, who filed the suit, claimed that withholding publication would not hurt the Times, but that each day the articles appeared the Nation's foreign relations received "serious injury."

When Gurfein asked Hess if there was any precedent for an injunction against a newspaper, Hess replied that the government was relying on a criminal statute dealing with possession of secret documents.

Under further questioning by the judge, Hess said he was not taking a position on whether the Times had obtained the papers lawfully or unlawfully.

CLARIFICATION

Later, Gurfein asked Hess to clarify that, and he replied: "We do assert they have unauthorized possession."

Bickel said that if Gurfein issues a restraining order he would be the first federal judge in U.S. history to order a newspaper not to publish something.

Bickel said the statute

upon which the government relies deals with espionage and such crimes, and that the government must produce "more than a general statement."

Court papers said the Times had access to data classified as top secret or secret, including a document entitled: "The Command and Control Study of the Tonkin Gulf Incident Done by the Defense Department's Weapons System EVALUATION Group in 1965."

PREJUDICE

Publication of the latter document would "prejudice the defense interests of the United States and result in irreparable injury to the national defense," the government said.

The Justice Department said it would file the suit after the newspaper said it "must respectfully decline" a government request to halt publication of the series voluntarily. The Times said it thought the articles were "in the interest of the people of this country."

The Justice Department issued a news release saying the Times had material which was labeled top secret.

DEFINITION

It defined top secret information as "that material of which the defense aspect is paramount and the unauthorized disclosure of which could result in exceptionally grave damage to the nation such as leading to a definite break in diplomatic relations affecting the defense of the United States, and armed attack against the United States or its allies, a war, or the compromise of military or defense plans, or intelligence operations."

In addition to Times president and publisher Arthur Ochs Sulzberger, others named in the suit were Times executive vice presidents Harding F. Bancroft and Ivan Veit; vice presidents Francis A. Cox, James C. Goodale, Sydney Gruson, Walter Mattson, John McCabe, John Mortimer and James Reston; editorial page director John B. Oakes; managing editor A.M. Rosenthal; Sunday editor Daniel Schwarz; associate editors Clifton Daniel and Tom Wicker, and reporters Neil Sheehan, Hedrick Smith, E.W. Kenworthy, Fox Butterfield, Gerald Gold, Allan M. Siegal and Samuel Abt.