

U.S. Fails to Get Immediate Court Order To Force Times to Turn Over Documents

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NYTimes

Paper Gives List Identifying Data It Possesses

By FRED P. GRAHAM

The Justice Department failed yesterday — at least for the present — to obtain a court order forcing The New York Times to turn over for the Government's inspection the secret Pentagon study from which the newspaper's series on the Vietnam war has been drawn.

Instead, The Times gave the Court and the Justice Department a list of descriptive headings for those portions of the archive in The Times' possession.

The purpose of this procedure was to permit the Government to identify the portions of the 7,000-page study that The Times has, without giving officials actual possession of The Times' copies.

Suggested by Judge

This result appeared to satisfy United States District Judge Murray I. Gurfein, who had withheld any immediate action on the Government's demand to see The Times's documents.

Judge Gurfein had suggested this resolution of the dispute over the papers after ruling out the Government's demand for all classified material in the newspaper's possession. "I am not tolerating any fishing expedition into the files of any newspaper," he said.

The Vietnam series was halted by a temporary order on Tuesday. Articles published on Sunday, Monday and Tuesday dealt with events leading to the Tonkin Gulf incident, the decision to wage an air war against North Vietnam, and the first use of American ground troops in South Vietnam.

Each part of the series consisted of articles as well as documentary material.

During the court arguments yesterday, lawyers for The Times insisted that if the newspaper's own copies were turned

over to the Justice Department, Government agents might be able to use them to discover the identity of the source who gave them to The Times.

The lawyer, Floyd Abrams, disclosed that the documents were Xeroxed and contained handwritten notations. He implied that the handwriting might be identified, or the copying machine might be traced, and declared that therefore The Times would not give up its copies.

Government Position

In response, the Government insisted that it needed to see the papers to prepare for the hearing set for 10 A.M. today on its suit to enjoin The Times from publishing further material from the papers.

Michael D. Hess, chief of the civil division in the United States Attorney's office here, protested to Judge Gurfein that

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NYTimes

Kennedy Wants Data

By MARJORIE HUNTER

Special to The New York Times

WASHINGTON, June 17 — Senator Edward M. Kennedy called today for full disclosure of secret Government data on Vietnam policies and actions during the Administration of President John F. Kennedy.

"I don't have any idea what is in it or how it will turn out," Senator Kennedy said. "But the American people ought to be the final judge of the whole period of the 1960's, and before, in Vietnam."

His demand for the disclosure of portions of a Pentagon study relevant to the Kennedy years came as Congressional protests continued over the Government attempts to block further publication of a series by The New York Times on the Vietnam study.

There were these developments.

More than 20 House Democrats announced that they would ask United States Dis-

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the Government could not support its claim that publication would harm the national interest unless it knew what The Times had planned to publish.

Also, he said, "the court cannot frame an injunction unless the court knows what needs to be enjoined." At one point Mr. Hess offered to let representatives of The Times be present when the documents were being examined by the Government, but the suggestion was not taken up by the judge or The Times's lawyers.

Mr. Abrams' argument had two basic points. One was that the Government did not need The Times's documents, because at least 15 copies were known to have been made when the study was completed in 1968.

The second was that because surrender of the papers might compromise The Times's source, the First Amendment's free press guarantee shielded the newspaper from having to give up the documents.

Copies Bear Notations

Mr. Abrams introduced a sworn affidavit by James L. Greenfield, foreign editor of The Times, who said that "many of the Xeroxed copies bear handwritten notations" and that to give them up would "facilitate identification," by the Government "the confidential source of the material."

This, Mr. Abrams argued, made the situation fall within the decision handed down several months ago by the United States Court of Appeals in San Francisco regarding a New York Times reporter, Earl Caldwell. That court said that the First Amendment shielded Mr. Caldwell from having to answer a subpoena to give grand jury testimony about Black Panther activities, because this would destroy his contacts with his sources and undermine his capacity to gather news.

Judge Gurfein skirted the issue by suggesting that The Times furnish its list. It did so later in the day, but refused requests by reporters to release the list for publication—partially because to do so might be a violation of the temporary order against further publication of the material.

The Times replied to report-

Mayor Calls U.S. Suit A Threat to Freedoms

Mayor Lindsay said yesterday that The New York Times should be permitted to continue publishing its series on the United States involvement in the Vietnam war and added that "it would be useful for public education."

In one of several references to the controversy yesterday, Mr. Lindsay said the Government was "treading on a very sensitive area" in its actions against The Times and that its court case was "a threat to the freedoms guaranteed under the First Amendment."

Other comment came in a statement from the American Jewish Congress, whose executive director, Will Maslow, said:

"The American Jewish Congress urges not only that the effort to suppress the Pentagon report be abandoned but that immediate steps be taken at every level of government to insure that the decision-making processes of our democracy are not hidden from public scrutiny."

ers' questions with the following statement:

"The Times today continued to oppose the Government's demand to produce any part of the study on the ground it would prejudice the sources.

"The Times did not object to a court request that it give to the court and the Government its own typewritten list of descriptive headings for those parts of the Pentagon study it possesses."

Yesterday afternoon a Government copy of the study and its supporting documents arrived from Washington and was delivered to Mr. Hess.

Petitions Rejected

Earlier yesterday, the judge rejected the petitions of two groups who asked to join the case as defendants to represent the interests of readers.

One petition, which was dismissed without a hearing, was brought in the names of 10 academic figures who are known for their criticism of United States Vietnam policy, and who sought to represent academicians' rights to receive the unpublished materials.

They were Noam Chomsky of the Massachusetts Institute

of Technology, Alexander Erlich and Seymour Melman of Columbia University, Richard Falk and Carl Schorski of Princeton, Robert Jay Lifton of Yale, Hans Morgenthau of the University of Chicago, Franz Shurmann of Berkley, George Wals of Harvard and Howard Zinn of Boston University.

Hearing for Readers

Judge Gurfein did grant a hearing to a group of readers of The Times, which included Representative Edwark I. Koch, Manhattan Democrat. Melvin L. Wulf, legal director of the American Civil Liberties Union, argued that readers' First Amendment rights to receive information needed to be protected, because The Times lawyers "won't represent them fully."

"I don't believe that The Times is in here avowedly for the purpose of selling newspapers but for the purpose of asserting that the general public has a right to read and hear," Judge Gurfein replied. He said that the A.C.L.U. could file a friend-of-the-court brief for the group, but that it could not join as defendants because "there are 200 million people with the same right," and the case might be swamped with defendants.

Both groups of would-be intervenors appealed immediately to the United States Court of Appeals for the Second Circuit, which sits in the United States Court House on Foley Square, where Judge Gurfein's court is located.

A three-judge panel composed of Judge J. Edward Lumbard, Irving R. Kaufman and William H. Timbers of the Federal district court of Connecticut heard a half-hour of arguments in the early afternoon.

At the conclusion of the argument Judge Lumbard pulled out and head a unanimous opinion in which the appeal was dismissed because "there is no practical impairment of the intervenors' interests."

Atomic Conference Opens

MADISON, Wis., June 17 (AP)—Six hundred of the world's top scientists met at the University of Wisconsin today to begin a week-long conference on nuclear energy. The meeting is the fourth international conference on plasma physics and controlled nuclear fusion research. It is sponsored by the International Atomic Energy Agency, an arm of the United Nations.

Kennedy Seeks Secret Vietnam Data

Ky Says He Didn't Miss Target—Entire North

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district Judge Murray I. Gurfein for permission tomorrow to intervene in the pending injunction proceedings by filing a "friend of the court" brief supporting the position of The Times.

¶A House subcommittee on Government information announced that it would open hearings, probably next Wednesday, into Government policies on withholding "vital information" from the American people.

¶Senator Carl T. Curtis, a conservative Nebraska Republican generally regarded as hawkish on the war, commended The New York Times for printing the series and criticized the Government's extensive use of "secret" and "top secret" classification of documents.

¶Mike Mansfield, the Senate majority leader, disclosed that "one high official" mentioned in the Pentagon study had called him and volunteered to testify if there is a Senate committee inquiry into the matter. Senator Mansfield declined to identify the caller.

New Yorkers Protest

¶Representative Paul N. McCloskey, Republican of California, a vocal critic of the war, attempted to have the House adjourn today in protest over the Administration's efforts to prevent further publication of the secret documents. The move was rejected, 368 to 30.

¶Representative Bella Abzug, Democrat of Manhattan, introduced a resolution of inquiry, demanding that the Administration give Congress the text of the Pentagon study and more recent studies of United States policy in Indochina.

The Secretary of Housing and Urban Development, George Romney, speaking in Charleston, W. Va., last night, said that the Pentagon study confirmed a charge he had made six years ago that the American people were "brainwashed" about the war. "I faced the fact and came to the conclusion years ago, before it was fashionable, that I had been deceived and the American people had been deceived on Vietnam," Mr. Romney said.

The move by the group of House Democrats to intervene in the pending injunction pro-

ceedings is being led by Representative Bob Eckhardt, a liberal Texas Democrat and critic of the war.

Explaining the group's position, Mr. Eckhardt said: "If litigation prevents The Times from publishing [the remainder of its series] the intervenors will be denied important information bearing on matters before Congress."

The group has hired Thomas Emerson of the Yale Law School to represent them. Appearing in court tomorrow in New York with Mr. Emerson and Mr. Eckhardt will be two others in the group, William F. Ryan of Manhattan and Abner J. Mikva of Illinois.

The group includes nine other New Yorkers: Edward I. Koch, Mrs. Abzug, Charles B. Rangel, all of Manhattan; Benjamin S. Rosenthal, Queens; Bertram L. Podell, Brooklyn; James H. Scheuer, the Bronx; Lester L. Wolff, Nassau; Herman Badillo, Manhattan-Bronx-Queens; and John G. Dow of upstate New York.

People 'Hoodwinked'

"People of this country are being hoodwinked and we want to put a stop to it," Mr. Dow said today. "I'm sick and tired of this secrecy business. Washington reeks of it."

The inquiry into Government information policies will be conducted by a House subcommittee headed by Representative William S. Moorhead, Democrat of Pennsylvania. The ranking Republican is Representative Ogden R. Reid of Westchester.

In a joint statement announcing the hearings, Mr. Moorhead and Mr. Reid said:

"The New York Times case is sparking an agonizing reappraisal by the Congress of laws and regulations that prevent a free flow of information about our Government and its activities to the American public and its elected representatives in Congress."

They said that they hoped to have five days of hearings, all of them open unless they found it essential to hold executive sessions to hear matters of top security.

Among those who will be asked to testify are Attorney General John N. Mitchell, Defense Secretary Melvin R. Laird, Secretary of State William P. Rogers and Henry A. Kissinger, assistant to the President for national security affairs.

Two law professors, Joseph Bishop of Yale and Philip Kurland of the University of Chicago, have agreed to testify, Mr. Reid said. Others to be asked to testify will include representatives of the news media and members of Congress.

Meanwhile, Senator Mansfield continued today to press for a Senate inquiry into the origins of United States involvement in Vietnam. He said that the proper forum would be the Foreign Relations Committee, the Armed Services Committee or a joint panel of both. If neither acts, he said, his own subcommittee on Far Eastern Affairs of the Foreign Relations Committee would hold hearings.

"The only way to face up to this is to lay it all out, not to look for scapegoats, not to issue subpoenas, not to look for sources but to give those involved a chance to explain their positions."

Out of such an inquiry, he said, "perhaps we'll learn some lessons so there will be no future Vietnams and perhaps there might emerge a closer relationship between the Executive and the Congress, perhaps a consultant committee to meet with the President in times of crises, and, if asked to, give advice and counsel."

Newspapers Commended

Noting that Senator Kennedy had urged disclosure of relevant data dealing with the Kennedy decisions in Vietnam, Senator Mansfield said that he would "welcome having my confidential reports [on Southeast Asia trips he made] to President Kennedy in 1962 and President Johnson in 1965 made available."

Senator Curtis's speech in the Senate, commending The Times and criticizing Government classification of information, was viewed as significant because of his generally conservative views and his support of the Nixon Administration.

"I do not believe the serious problem here, either to the American people or to the Government of the United States, is the fact that The New York Times began publishing a series of articles on the document," he told the Senate.

"In short," he continued, "I do not find fault with The New York Times, I commend The Times and all other newspapers and newspapermen and wo-

SAIGON, South Vietnam, June 17 (AP)—Vice President Nguyen Cao Ky says its untrue that he bombed the wrong target in the first reprisal strikes against North Vietnam on Feb. 8, 1966 because, he says, all of North Vietnam was a good target.

The Pentagon study of United States involvement in Indochina published in part by The New York Times said that "in a last minute switch," the former air vice marshal "dumped his flight's bomb loads on an unassigned target in the Vinh Linh area, in order, as he explained, to avoid colliding with USAF aircraft which, he claimed, were striking his originally assigned target." This was said to have caused "consternation" among American target controllers.

The Vice President told newsmen: "Saying I missed the target or someone missed the target is not true because in North Vietnam every single inch . . . is a good target for us. I took the most dangerous target, the location of one regiment of anti-aircraft."

men who are constantly digging to bring out the truth and keep it squarely before the American people.

"I do find very serious fault, Mr. President, with the information classification and document security system of this country . . . the classification system should never be used to cover up a lie or a documented case of public deceit by the officials of any agency or government."

Senator James L. Buckley, Conservative-Republican of New York, told newsmen today that he was not at this point "throwing darts at The New York Times," but he said that "two elements disturb me."

One, he said, is that foreign governments might be disturbed if information they entrust to the United States might not be secure. The other, he said, is the possibility that persons within any Administration might "draw in their horns" and not speak freely in the development of alternatives to policy for fear of future disclosure of their views.

However, Senator Buckley said that while he had not yet read all the published documents, he did not feel what he had read endangered national security.