

Excerpts From Times Writer's Affidavit

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Following are excerpts from an affidavit submitted in United States District Court yesterday by Max Frankel, chief of the Washington bureau and the Washington correspondent of The New York Times, in connection with the case of the United States Government against The New York Times Company:

The Government's unprecedented challenge to The Times in the case of the Pentagon papers, I am convinced, cannot be understood, or decided, without an appreciation of the manner in which a small and specialized corps of reporters and a few hundred American officials regularly make use of so-called classified, secret and top-secret information and documentation. It is a cooperative, competitive, antagonistic and arcane relationship.

Without the use of "secrets" that I shall attempt to explain in this affidavit, there could be no adequate diplomatic, military and political reporting of the kind our people take for granted, either abroad or in Washington, and there could be no mature system of communication between the Government and the people. That is one reason why the sudden complaint by one party to these regular dealings strikes us as monstrous and hypocritical—unless it is essentially perfunctory, for the purpose of retaining some discipline over the Federal bureaucracy.

Rarely Just for Public

Presidents make "secret" decisions only to reveal them for the purposes of frightening an adversary nation, wooing a friendly electorate, protecting their reputations. The military services conduct "secret" research in weaponry only to reveal it for the purpose of enhancing their budgets, appearing superior or inferior to a foreign army, gaining the vote of a Congressman or the favor of a contractor. High officials of the Government reveal secrets in the search for support of their policies, or to help sabotage the plans and policies of rival departments. Middle-rank officials of gov-

ernment reveal secrets so as to attract the attention of their superiors or to lobby against the orders of those superiors. Though not the only vehicle for this traffic in secrets—the Congress is always eager to provide a forum—the press is probably the most important.

In the field of foreign affairs, only rarely does our Government give full public information to the press for the direct purpose of simply informing the people. For the most part, the press obtains significant information bearing on foreign policy only because it has managed to make itself a party to confidential materials, and of value in transmitting these materials from government to other branches and offices of government as well as to the public at large. This is why the press has been wisely and correctly called The Fourth Branch of Government.

Consistent Violations

I turn now in an attempt to explain, from a reporter's point of view, the several ways in which "classified" information figures in our relations with government. The Government's complaint against The Times in the present case comes with ill-grace because Government itself has regularly and consistently, over the decades, violated the conditions it suddenly seeks to impose upon us—in three distinct ways:

First, it is our regular partner in the informal but customary traffic in secret information, without even the pretense of legal or formal "declassification." Presumably, many of the "secrets" I cited above, and all the "secret" documents and pieces of information that form the basis of the many newspaper stories that are attached hereto, remain "secret" in their official designation.

Second, the Government and its officials regularly and customarily engage in a kind of ad hoc, de facto "declassification" that normally has no bearing whatever on considerations of the national interest. To promote a political, personal, bureaucratic or even commercial interest, incumbent officials and officials who return to civilian life are constantly revealing the se-

crets entrusted to them. They use them to barter with the Congress or the press, to curry favor with foreign governments and officials from whom they seek information in return. They use them freely, and with a startling record of impunity, in their memoirs and other writings.

Regular Misuse of Data

Third, the Government and its officials regularly and routinely misuse and abuse the "classification" of information, either by imposing secrecy where none is justified or by retaining it long after the justification has become invalid, for simple reasons of political or bureaucratic convenience. To hide mistakes of judgment, to protect reputations of individuals, to cover up the loss and waste of funds, almost everything in Government is kept secret for a time and, in the foreign policy field, classified as "secret" and "sensitive" beyond any rule of law or reason. Every minor official can testify to this fact.

Obviously, there is need for some secrecy in foreign and military affairs. Considerations of security and tactical flexibility require it, though usually for only brief periods of time.

But for the vast majority of "secrets," there has developed between the Government and the press (and Congress) a rather simple rule of thumb: The Government hides what it can, pleading necessity as long as it can, and the press pries out what it can, pleading a need and right to know.

Some of the best examples of the regular traffic I describe may be found in the Pentagon papers that the Government asks us not to publish. The uses of top secret information by our Government in deliberate leaks to the press for the purposes of influencing public opinion are recorded, cited and commented upon in several places of the study. Also cited and analyzed are numerous examples of how the Government tried to control the release of such secret information so as to have it appear at a desired time, or in a desired publication, or in a deliberately loud or soft manner for maximum or minimum impact, as desired.