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Soviets Here Got 'Papers' in '71

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The Soviet Embassy here obtained what federal authorities believe to have been a complete set of the top-secret Pentagon Papers during June, 1971, while the Justice Department was in court fighting to cut off newspaper publication of articles based on the documents.

According to Nixon administration sources, the Papers were delivered to the embassy on 16th Street NW on June 16, 1971, the day after U.S. District Court Judge Murray I. Gurfein, in New York, issued a tempo rary restraining order against The New York Times.

The man who delivered the documents, apparently alone at the time, included a letter, signed with an alias, stating his reasons for passing the Pentagon Papers on to the Soviet government, the sources said.

He has been sought for almost two years, they added, but still has not been even tentatively identified. The alias with which he signed the letter apparently could not be traced.

Nonetheless, the sources said, the federal government knew that the embassy had the documents in advance of arguments before the Supreme Court on whether The Times, The Washington Post and other newspapers were entitled to continue publishing the documents.

But the government continued to press its case, and the high court ruled 6 to 3 on June 30, 1971, that the Justice Department had not sustained its burden of proof in the civil suits against the newspapers.

The sources stressed that the FBI has no evidence directly or indirectly linking the copy of the documents obtained by the Soviets to any of the newspapers which published them or to Daniel Ellsberg, the former government employee who photocopied the Pentagon Papers and leaked them to the press after he was unsuccessful in getting members of Congress to release them.

(Ellsberg and Anthony J. Russo Jr., both one-time researchers with the Rand Corporation in California, were charged with conspiracy, espionage and theft of government property in connection with disclosure of the documents.

(But U.S. District Court Judge W. Matt Byrne Jr., citing severe governmental misconduct, last month dismissed the case against the two men before it went to a federal jury in Los Angeles.)

Fifteen copies of the final 47-volume version of the Pentagon Papers were distributed to federal offices and former government offi-

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cials in June, 1969. At least five copies of an earlier draft of the study, divided into 38 volumes, were also in circulation between 1969 and 1971.

Although Soviet possession of the Papers became known to U.S. authorities almost immediately, the information has been a closely guarded secret ever since.

Some details of the situation recently became public, however — in incorrect form, according to The Post's sources — during the final stages of the Pentagon Papers trial and during hearings of the Senate select committee investigating the Watergate affair.

Former White House aide Egil Krogh Jr., for example, swore in an affidavit submitted to Judge Byrne in Los Angeles, that in the summer of 1971 he "was informed by the Federal Bureau of Investigation that the so-called Pentagon Papers were in the possession of the Soviet Embassy, Washington, D.C., prior to their publication by The New York Times newspaper suggesting an effort to aid and abet an enemy of the United States (North Vietnam) through the ally (the Soviet Union)."

Krogh's affidavit was intended to explain the reasons for establishment of "an independent investigatory unit" in the White House, known as the "plumbers," to investigate leaks of national security information.

He acknowledged that the group, which included E. Howard Hunt Jr. and G. Gordon Liddy, later convicted as Watergate conspirators, had broken into the Beverly Hills office of Ellsberg's former psychiatrist and obtained assistance from the Central Intelligence Agency in probing what it considered a major breach of national security.

Bernard L. Barker, another convicted Watergate conspirator, told the Senate Watergate committee under oath on May 25 that he participated in the burglary at the psychiatrist's office to discover "information about a person (Ellsberg) who I had been told by Mr. Hunt was a traitor, who was passing, he or his associates, to a foreign embassy."

Contacted recently on the subject, Justice Department and FBI officials declined to elaborate, citing their concern for national security and foreign relations and a general reluctance to discuss unsolved cases.

A Soviet Embassy press spokesman said that Krogh's sworn allegation was "sheer nonsense."

The Post's sources within the Nixon administration, however, said that the former presidential aide merely erred on one significant detail—the question of whether the Soviet Embassy obtained the documents before or after their initial publication in The New York Times.

They also said it was inconceivable that Krogh had been misinformed by the FBI on the matter in 1971 and that he must have relied on some other source outside the bureau.

Krogh, through his attorney, refused to meet with a reporter to discuss his affidavit and his sources of information in 1971, or to submit answers to specific questions. The attorney said that Krogh, on the basis of "straight national security considerations," does not feel "at liberty" to go further.

The administration sources said that, contrary to other earlier reports, the documents did not come to the Soviet Embassy by mail and the embassy never contacted the State Department about returning them.

They said there is some question, however, as to the completeness of the copy of the Pentagon Papers obtained by the Soviets.

It is believed that the copy included the four "diplomatic volumes" dealing with early third-party contacts between the United States and North Vietnam aimed at a negotiated settlement of the conflict in Southeast Asia.

Those volumes, constituting a separate part of the top-secret history of U.S. involvement in Vietnam, were held back from the newspapers by Ellsberg in 1971, but were obtained by The Post and other publications through syndicated columnist Jack Anderson in June, 1972. Although still classified, they also eventually became public court exhibits in Los Angeles during the trial of Ellsberg and Russo.

For reasons that were not immediately clear, the matter of Soviet possession of the documents was never brought to the attention of the federal courts—publicly or privately—during the civil suits against the newspapers or the criminal proceedings against Ellsberg and Russo.

In attempting to prove their espionage case against those two defendants, the Justice Department prosecutors relied on the alleged damage that might have been done to the "national defense" had a hypothetical foreign intelligence analyst gained access to the Papers in 1969, when Ellsberg and Russo photocopied them at a Hollywood advertising agency.

(Although the jury never got to hear Judge Byrne's charge or to deliberate on the case, most jurors, in interviews after the dismissal, said they were unconvinced on that point.)

Ellsberg insisted to reporters after the Krogh affidavit was submitted that he knew nothing about the Soviet Embassy obtaining the documents and that Krogh's allegations were a "false" justification for the activities of the White House "plumbers."

Federal officials now acknowledge that they too are puzzled about why Krogh, who is widely known for his sensitivity to "national security" questions, would have raised the issue for public speculation in his affidavit.

Attorney General Elliot L. Richardson acknowledged during his recent confirmation hearings before the Senate Judiciary Committee that Krogh had consulted with him before submitting his affidavit to the court in Los Angeles.

Richardson said he had personally encouraged

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Krogh to "make a clean breast" of his involvement in the White House investigation of Ellsberg.

The details now available about the Soviet Embassy's possession of the Pentagon Papers help to explain President Nixon's statement of May 22 that when the papers were published "there was every reason to believe this was a security leak of unprecedented proportions." But those details also raise serious implications concerning the administration's past and future conduct in court cases concerning the documents.

If the man who delivered them to the embassy is ever identified and located, for example, he could be the subject of a far stronger espionage case than the abortive one against Ellsberg and Russo.

Some Justice Department sources suggested that this possibility may help explain the administration's refusal thus far to say that it is definitively dropping a separate federal grand jury investigation of the Pentagon Papers leak that was begun in Boston in the summer of 1971, but suspended in late 1972.

One major unanswered question is why the Justice Department continued to press its case against the newspapers at the Supreme Court in 1971, if it already knew that the documents were in the hands of Soviet officials.

The Post's sources said that Solicitor General Erwin N. Griswold was unaware of the information at the time he argued the government's case before the high court and the U.S. Court of Appeals here.

If he had been, he might not have told the justices on June 26, 1971, that publication of the most sensitive material in the Pentagon Papers "will affect lives. It will affect the process of termination of the war. It will affect the process of recovering prisoners of war."

Other government attorneys, arguing before federal judges at the time, urged that it was essential to keep the documents secret so that the information in them would not fall into the hands of foreign powers.

One Justice Department official offered the opinion that if the federal courts had been let in on what the FBI already knew, the cases against the newspapers might have been rendered immediately "invalid."

Some judges, the official suggested, "might have said, 'Why keep this stuff from the people any longer, as long as the opposition (the Russians) have it?"

The Post's sources said they had no idea what the Soviets might have done with the Pentagon Papers on obtaining them or whether the Moscow government found them "useful."