

The War: The Record and the U.S.

By MAXWELL D. TAYLOR

WASHINGTON—I am grateful to The Times for affording me this opportunity to explain why I think the action of the paper in publishing selected portions of the highly classified Gelb study was contrary to the national interest.

In brief, my position is that this action contributes to further misunderstanding and confusion regarding the events portrayed, tends to impair the working of the foreign policy process, and adds to the disunity which is already undermining our strength as a nation. These views are largely independent of the legal aspects of the case, and of the importance or lack of importance of the classified material which has been revealed.

As history, the articles are unreliable and often misleading because of the incompleteness of the basic source material and the omissions and suppressions resulting from the selective process carried out by the Pentagon authors and the editors of The Times. The Gelb group had only limited access to reports from without the Pentagon, whereas the White House, State, C.I.A., and other agencies were key participants in the activities under review.

Starting from this incomplete data base, Gelb's analysts exercised a form of censorship in choosing what data to use, or what to exclude. The Times performed a similar function in deciding what to publish from among the 47 Gelb volumes. Thus, in the final publication, the principle served was not the right of the people to know all about the Government's Vietnam policy, but rather the right of The Times to determine what parts the public should know about it. As one member of that public, I would like to know the criteria employed by The Times in making its determinations.

The resulting literary product is a melange of incidents presented in a disjointed way which makes them dif-

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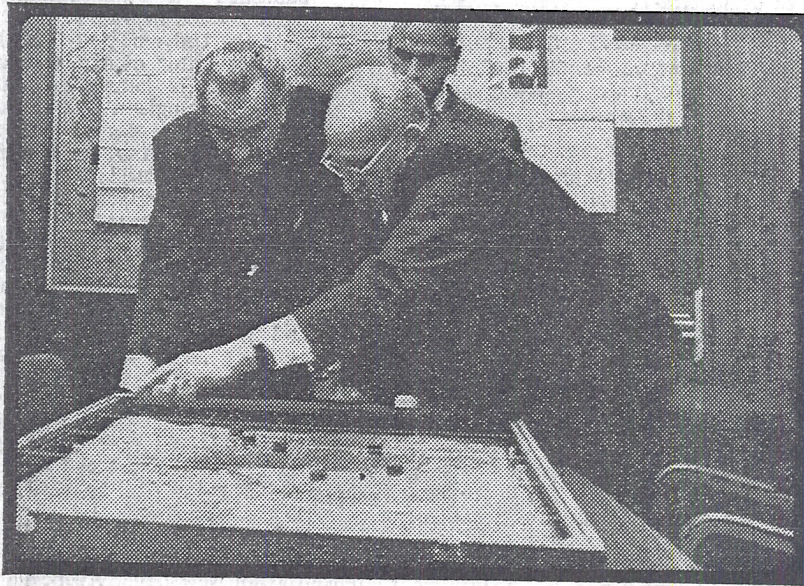
ficult to understand and to relate to one another. It is hard to distinguish approved governmental actions from individual views of comparatively low-ranking staff officers. There is often a perceptible antiwar bias in the commentary which suggests that the officials involved were up to something sinister and surreptitious rather than carrying out publicly approved national policy. For these reasons, I am afraid that the articles will confuse rather than enlighten the persistent reader willing to wade through them.

The damage which I foresee to foreign policy is from two sources. If it becomes accepted usage that any dis-

loyal employe of government can find in the press a ready market for governmental secrets, no secret will be safe. In the atmosphere of suspicion and fear of betrayal created within government, one can hardly expect to get forthright opinions and uninhibited recommendations from subordinates who must consider how their views will read in the morning press.

There will be a similar reaction among our international associates. Already we are seeing the embarrassment of allies such as Australia and Canada over references appearing in The Times articles. Other nations are viewing with dismay this latest evidence of

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internal disarray in the United States and are doubtless reminding themselves of the need for reticence in future dealings with us. Only the propagandists of Hanoi and Moscow find cause for rejoicing. And they are openly enjoying themselves.

My last concern is over the effect of this incident on our national unity, of late a prime target of subversive forces seeking to undermine the sources of our national power. There has been an arrogance in the way The Times has thrown down the gauntlet in challenging the Government's right to identify and protect its secret which assures a bitter public fight. The Times has not only challenged the Government's right to make this determination but has undertaken to substitute its own judgment in deciding what secrets are entitled to protection.

If allowed to continue in its present form, the controversy will provide a further revelation to our enemies of our internal divisions at a time when we need all of our strength and prestige to effect an honorable settlement of the Vietnam war.

There should be ways for reasonable men to reconcile the needs of a free press and of national security without resort to exaggerated classification of documents by the Government or resort to the role of "fence" on the part of the press. Without security a free press cannot long endure, nor can the society and economy which sustain it. Without strong, articulate information media, the Government cannot communicate with the electorate, or win popular support for the needs of national security.

The press should be able to fulfill its secular role of exposing rascals and mistakes in Government without making common cause with the enemies of Government. We must have both a free press and an effective Government capable of defending and enhancing our national interests (against all enemies, foreign and domestic). If we expect to remain a great nation, these are not alternatives.

Incidentally, there has been frequent reference of late to the presumed embarrassment caused by The Times article to the governmental participants mentioned. If anyone is interested, I am not among the embarrassed. In the period covered by these documents, I was working earnestly for peace and security in Southeast Asia, an objective which the Congress had just determined by an overwhelming majority to be vital to the national interest. We toilers in the hot Vietnamese sun took that mandate seriously, and the Gelb study portrays us hard at work in obedience to it.

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By PHILIP B. KURLAND

CHICAGO—Anyone with the self-righteousness of a Melvin Laird or a Tom Wicker has little difficulty determining the proper outcome of the present controversy between the Government and The New York Times. But certitude is only an anagram of and not a synonym for rectitude. The respective battle cries of "free speech" and "national security" frame the question; they do not answer it.

What is demonstrated by the newspaper's desire to publish and the Government's desire to censor the Pentagon history of the early years of American involvement in Vietnam is a conflict between these two primary values of a democratic society. They are both primary because the kind of society to which we aspire cannot survive without the freedom to reveal facts and express ideas any more than it can survive without freedom from restraint of domestic and foreign enemies who would subvert the form of government that is the guarantor of free speech.

Except for the doctrinaires, some of whom occupy important places in the Fourth Estate no less than in the three branches of the national Government, neither freedom of speech nor protection of national security is an absolute. The Constitution has never been authoritatively construed to mean that all expression by sound or writing must be free from constraint. Some libel—not much—is still actionable. Criminal sanctions are still imposed on those who incite to crime and violence by words. Contracts are still enforced. The right to speech is limited as to time, place, and manner. Words have consequences and responsibility for those consequences is often affixed by the law.

At the same time, national security has not been permitted to mean that the Government has the right to suppress all risks by whatever means. Persons in so-called sensitive jobs can be removed only by conforming to the procedures that the Constitution commands; suspicious persons cannot be subjected to preventive detention, except in Washington, D. C.; the privilege against self-incrimination and the other protections of the Bill of Rights are available even to those charged with subversion.

The conflict over the official Vietnam history, however, does invoke a free-speech principle heretofore regarded as absolute. The principle, derived from English experience and law, is that the press may not be subjected to "prior restraint." Whatever degree of punishment might be imposed on the press for publishing what it should not publish, publication cannot be prevented. This is historically the essence of the First Amendment as it was

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framed; all additional limitations are later growths. But that absolute, tested against criminal libel and slander in the famous case of *Near vs. Minnesota*, has never been weighed against a claim of national security.

I expect that, if a clear and major and imminent danger to national security would result from a given publication, the Constitution will be read to permit restraint by injunction. Certainly this would be true in time of declared and total war. It is harder to imagine such a breach of security in times of peace or limited, undeclared war.

Even if we assume, however, that "national security" is a valid reason for restraint of the press, the question remains who is to determine whether a threat to the national security exists. It seems clear enough that those who indiscriminately stamp documents as "confidential," "secret," or "top secret," cannot be the judges of their own judgments. They are more likely to cover blunder and stupidity, embarrassment and fabrication, than information harmful to national security.

It would seem that if the judicial process is sought to be used to re-

strain publication the judgment as to the seriousness of any threat to national security must be the court's.

The Vietnam war has done more to rend the fabric of American society than any crisis in our history, except perhaps only the Civil War. It is unfortunate that to the intolerable burden is now added a serious threat to the press's freedom. It would be a mistake to treat this issue as of the same importance as the exchange of vilifications between the news media

and the present Administration. That is a contest of small intrinsic importance. The immediate question is of vital importance to the future of American democracy, for it clearly tests our commitment to two primary values: the security of the nation and the freedom of its people.

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