

MITCHELL SEEKS TO HALT SERIES ON VIETNAM BUT TIMES REFUSES

COURT STEP LIKELY

Return of Documents Asked in Telegram To Publisher

By MAX FRANKEL
Special to The New York Times
WASHINGTON, June 14—
The New York Times this evening to refrain from further publication of documents drawn from a Pentagon study of the Vietnam war on the ground that it will cause "irreparable injury to the defense interests of the United States."

If the paper refuses, the department said, it will try to forbid further publication by court action tomorrow.
The Times refused to halt publication voluntarily.
The department's request and intention to seek a court injunction were conveyed by Robert C. Mardian, Assistant Attorney General in charge of the internal security division, to Harding F. Bancroft, executive vice president of The Times.

They spoke by telephone at about 7:30 P.M., which was some two hours before the first edition of today's issue of the paper was scheduled to go to press, with the third installment of the articles about the Pentagon study.

The Times issued the following statement:

We have received the telegram from the Attorney General asking The Times to cease further publication of the Pentagon's Vietnam study. The Times must respectfully decline the request of the Attorney General, believing that it is in the interest of the people of this country to be informed of the material contained in this series of articles.

We have also been informed of the Attorney General's intention to seek an injunction against further publication. We believe that it is properly a matter for the courts to decide. The Times will oppose any request for an injunction for the same reason that led us to publish the articles in the first place. We will of course abide by the final decision of the court.

Telegram From Mitchell
The following telegram from Attorney General John N. Mitchell was received at The New York Times, addressed to The Times' publisher, Arthur Ochs Sulzberger:

President and Publisher
The New York Times
New York, New York

I have been advised by the Secretary of Defense that the material published in The New York Times on June 13, 14, 1971 captioned "Key Texts From Pentagon's Vietnam Study" contains information relating to the national defense of the United States and bears a top secret classification.

As such, publication of this information is directly prohibited by the provisions of the Espionage Law, Title

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18, United States Code, Section 793.

Moreover, further publication of information of this character will cause irreparable injury to the defense interests of the United States.

Accordingly, I respectfully request that you publish no further information of this character and advise me that you have made arrangements for the return of these documents to the Department of Defense.

John N. Mitchell
Attorney General

The section of the United States Code cited by the Attorney General was described earlier in the day by a Pentagon spokesman as containing "certain ambiguities" about whether it applies to publications or only to their sources of secret information.

Government lawyers were divided on the matter, the spokesman indicated, because there appeared to be no precedent for application of that law to a publication.

Text of the Regulation

The section states: "Whoever knowingly and willfully communicates, furnishes, transmits, or otherwise makes available to an unauthorized person, or publishes, or uses in any manner prejudicial to the safety or interest of the United States or for the benefit of any foreign government to the detriment of the United States any classified information . . . shall be fined not more than \$10,000 or imprisoned not more than ten years, or both."

The Justice Department's request was the first direct contact between the Government and The Times about the publication of the Pentagon papers. It was also the most direct Government response to the first two installments of articles and documents.

The first group of materials, published Sunday, covered the clandestine warfare against North Vietnam before the Tonkin Gulf incident in August, 1964. The second installment, in this morning's issue, covered the decision to begin open bombing of North Vietnam in February, 1965.

Before Mr. Mardian's call, the Administration had said only that the Justice Department was investigating the disclosures, at the request of the Defense Department.

Secretary of Defense Melvin R. Laird said the disclosure "violated the security regulations of the United States."

The Secretary implied a difference between the violation of security regulations—by officials subject to these regulations—and violation of a law.

He said he had asked the Justice Department to determine the legal implications.

This morning, a formal Pentagon statement expressed concern about "this violation of security" but left determination of legal action to the Justice Department.

At the Justice Department this afternoon, a spokesman said the subject was still under consideration by Attorney General Mitchell. "We have yet to determine whether or not there is something to investigate," the spokesman added, explaining that Mr. Mitchell was dealing today with a statement on housing discrimination and had not yet considered the matter fully.

As of that time, there was said to have been no order for any Justice investigation, but other agencies of government reported intensive inquiries into the affair.

Mr. Mitchell, Secretary Laird and White House officials began to confer on the disclosures to The Times on Sunday.

No official here challenged the authenticity of the Pentagon study and the documents printed in The Times. Only a few members of Congress commented on their content. One of them, Senator Barry M. Goldwater, the Republican candidate for the Presidency against Lyndon B. Johnson in 1964, said he knew at the time of secret plans to widen the war and accused Mr. Johnson of having lied to the country.

The White House referred to the Pentagon all questions on the circumstances of the disclosure. Under vigorous questioning about the documents, it chose to emphasize that President Nixon had developed a "new Vietnam policy" and decided when he took office in 1969 "not to engage ourselves in a continuation or justification" of the policies of earlier administrations, which are the subject of the Pentagon papers.

Ronald L. Ziegler, the President's press secretary, said that a copy of the 1967-68 Pentagon study was brought to the White House this morning from the Defense Department.

Although Mr. Nixon and his aides were said to be unfamiliar with this "internal" archive, Mr. Ziegler stressed that the basic documents and information contained therein had been available to the new Administration and were fully considered in its own policy review in early 1969.

Asked whether The Times had informed the White House of its publishing plans, Mr. Ziegler said the newspaper "did not at any time check with us." Asked whether the President was concerned about the publication of secret documents, he replied:

"I'm not going to build up,

by White House comment, the exposure of classified information."

The only formal statement was that by the Pentagon referring the matter to the Justice Department. But this came after Secretary Laird was drawn into a discussion of the affair by Senator Stuart Symington, Democrat of Missouri, at a hearing of the Senate Foreign Relations Committee on foreign aid.

Senator Symington announced his intention to propose a "full examination of the origins of the war" for the benefit of future generations. Mr. Laird opposed the idea, arguing that a debate of the past "would not serve the interests of the country and would not help us disengage from Vietnam."

Stating a theme that he apparently hoped would dominate the reaction to the Times' disclosures, Mr. Laird said that "the divisions caused by debate of the past actions would not serve a useful purpose today." He has been trying to shift focus away from "why Vietnam," he said, to the means of disengaging in an honorable way.

Disclosive 'Unauthorized'

Mr. Laird said the disclosure of the Pentagon papers was "unauthorized" and "violates the security regulations of our Government." Although the study covers information only to 1968, he added, the information "remains sensitive" and its publication does not serve "a useful purpose." The Secretary said the documents would remain classified and would not be made available to the Foreign Relations Committee.

Senator Symington observed that the committee had tried several times to obtain the material, on a confidential basis. He said it was "shocking" that Congress had been kept ignorant of the materials and that even now he had to read about them in the newspapers.

Asked whether he knew who might have passed the materials to the Times, Mr. Laird said, "No, I don't yet know." But since there were so few copies, he added, "it won't be hard to track down whoever was responsible."

"This is highly sensitive information and should not have been made public," he declared.

Shortly afterward, Jerry W. Friedheim, the Pentagon briefing officer, read a statement that had been worked out after 24 hours of consultation among Mr. Mitchell, Mr. Laird, some White House officials and lawyers of the Defense and Justice Departments. Inferentially, the statement made a distinction between violation of Government security regulations and possible violations of law. It said:

"The Department of Defense



The New York Times

Senator Stuart Symington, left, Missouri Democrat, and Defense Secretary Melvin R. Laird at yesterday's hearing.

must be and is concerned about the disclosure of publication of highly classified information affecting national security.

"The material remains classified and sensitive despite the fact that it covers a period that ended in 1968.

It is our responsibility to call this violation of security to the attention of the Justice Department. We have done so.

The Government has the responsibility to determine what individual or individuals, if any, violated the laws relating to national security information by unauthorized disclosure of classified material."

Mr. Friedheim said officials of the Justice and Defense Departments had had various discussions of the matter, face to face and also by telephone, since Sunday, when The Times began publication of its series of articles.

He said the relevant law was Title 18 of the United States Code, Section 798, noting that it contained "certain ambiguities" as to whether it applies to publications or only to their sources of secret information.

"Some lawyers are of the opinion that the publication is liable to prosecution as well as the official [source]," the spokesman said, "but there appears no precedent to establish that point. Justice is studying the whole matter to decide who, if anyone, to charge with law violation."

Definition of Classified Data

The cited legal section states: "Whoever knowingly and willfully communicates, furnishes, transmits, or otherwise makes available to an unauthorized person, or publishes, or uses in any manner prejudicial to the safety or interest of the United States or for the benefit of any foreign government to the detriment of the United States any classified information . . . shall be fined not more than \$10,000 or imprisoned not more than 10 years, or both."

The section contains a list and definition of classified information as bearing on codes, weapons and materials, intelligence activities and material obtained from the communications of foreign governments. Government attorneys are said to have found no case in which the law had been applied to a publication.

Mr. Friedheim said the Pentagon had determined that there were "a dozen or so" copies of the papers and that half of these, at the Defense Department, "have remained under extremely tight control." He said he did not believe the Pentagon's copies had either been duplicated or shown to unauthorized persons. He refused to say where the other copies had been kept.

There is a possibility, the spokesman remarked, that unauthorized copies were made at some point, "or even that a set of the study was stolen at some point." The materials run to about 7,000 pages of analysis and documentation.

As a practical matter, Mr. Friedheim said, the Pentagon regards individuals with authorized clearance to classified information as primarily responsible for the protection of such information.

He said Secretary Laird had been aware of the secret Pentagon study since he came into office in 1969 and had even once referred to its existence in public testimony before the Senate Foreign Relations Committee.

The spokesman then emphasized again Mr. Laird's "philosophical" conviction that it was more important to consider ways of disengaging from Vietnam than to "rake over the coals" of past policies.

At the State Department, a spokesman said he could not comment "on the accuracy of—or make any useful comment on the substance of—these papers until we have had an

opportunity to check the original."

Checking is difficult, the spokesman, Charles W. Bray 3d, added, because the department has not had time to locate its copy of the report, or even to determine whether it has one.

"Anyone familiar with the volume and dimension of our files could understand that," Mr. Bray said.

"Can you rule the possibility that Sate 'lost' its copy to The Times?" he was asked.

"Yes, I am on fairly safe ground ruling that out," he replied.

Secretary of State William P. Rogers had no comment but is likely to be asked about the materials at a news conference tomorrow.

In Congress, there were only a few other comments on the matter and no indication that disclosure of the Vietnam materials would significantly influence the Senate vote Wednesday on legislation that would require withdrawal of American forces from the war zone by the end of this year.

Senator George S. McGovern of South Dakota, a cosponsor of that measure and candidate for the Democratic Presidential nomination, said the documents told a story of "almost incredible deception" of Congress and the American people by the highest officials in Government, including the President.

He said that he did not see how any Senator could ever again believe it was safe to permit the executive branch to make foreign policy alone, and added:

"We would make a serious mistake to assume the kind of deception revealed in these documents began and ended with the Johnson Administration."

Senator Hugh Scott of Pennsylvania, the Republican leader, said that the "release" of the documents was "a bad thing, it's a federal crime." But he described their content as "very instructive and somewhat shocking."

"I think the American people have never been told as much as they could digest about the war until President Nixon assumed office," he added. "He has been more than candid. This President has taken the people into his confidence more than anyone else."

Asked whether The Times should continue publication of its articles, Senator Scott said the paper would have to decide "on its good judgment."

Representative Paul N. McCloskey Jr. of California, who has talked of challenging Mr. Nixon for the Presidency in the Republican primaries next year, discussed The Times articles and underlying Pentagon papers on the floor of the House.

He said "the issue of truthfulness in Government is a problem as serious as that of ending the war itself." He also complained of "deceptive," "incomplete" and "misleading" briefings given to him on a recent visit to Southeast Asia, often, he said, with officers who knew the statements to be incorrect standing mute in his presence.

"This deception is not a matter of protecting secret information from the enemy," Mr. McCloskey said. "The intention is to conceal information from the people of the United States as if we were the enemy."

Robert S. McNamara, the former Secretary of Defense, who commissioned the Pentagon study in 1967, was reported to have sent the copy later delivered to him to the National Archives.

Mr. McNamara turned down several invitations to make a public comment today on the ground that this was inappropriate to his present duties as President of the International Bank for Reconstruction and Development—the World Bank.