

-NEW YORK, WEDNESDAY, JUNE 16, 1971-

**JUDGE, AT REQUEST OF U.S., HALTS  
TIMES VIETNAM SERIES FOUR DAYS  
PENDING HEARING ON INJUNCTION**

## SENATE STUDY SET

### Roots of Involvement Sought—Disclosure Worries Rogers

By JOHN W. FINNEY

Special to The New York Times

WASHINGTON, June 15—Amid continuing Administration criticism of the publication by the New York Times of articles on a secret Pentagon study on Vietnam, Senator Mike Mansfield, the Senate Majority Leader, said today that a Senate committee would hold hearings on how the United States got involved in the war.

The Montana Democrat told newsmen that the hearings would be held regardless of the eventual decision by a Federal Court judge in New York, on The New York Times's publication of a series of articles on the Pentagon study.

At a State Department news conference, Secretary of State William P. Rogers said that the publication of the articles on the study was "a very serious matter that was going to cause "a great deal of difficulty" in the United States relations with foreign Governments. These, he said, will question whether they can deal with the United States on a confidential basis.

#### Seeks 'White Story'

Senator Mansfield, who heads the Senate Foreign Relations Subcommittee on the Far East, said the purpose of the hearings would not be to find "scapegoats" or to force The New York Times to disclose how it obtained the secret study, made in the Pentagon, on the origins of the American involvement in the Vietnam War.

Rather, he said, the purpose would be to "Lay out the whole story before Congress and the American people" with the hope that it would be establish closer cooperation between Congress and the Executive on foreign policy and this "prevent future Vietnams."

As envisioned by Senator Mansfield, however, the proposed hearings would not be completely retrospective in nature, with an examination only of decisions made in the John

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The New York Times

William P. Rogers, State Secretary, at news session.

## MANSFIELD PLANS HEARINGS ON WAR

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F. Kennedy and Lyndon B. Johnson administrations. While he is still formulating plans, the Senate leader believes the hearings could provide a forum for an examination of the Nixon Administration's Vietnam policies as well as Congressional advice to the White House on how to end the war.

Senator Henry M. Jackson of Washington, who has been a leading Democratic hawk on the Vietnam war, said that he would press for a joint hearing by the Senate Armed Services Committee, of which he is a senior member, and the Foreign Relations Committee.

He said that such hearings, with testimony from former State Department and military officials, would try to find out "if we were not correct, where were we incorrect" and go into the "broader issues" of trying to draw lessons for the future from the Vietnam war.

Meanwhile, Nixon Administration officials were being careful not to get involved in the question of whether, on the basis of the Pentagon report, the Johnson Administration had misinformed or misled Congress about the steps it was taking to enlarge the war. Rather, Nixon Administration officials were focusing on whether security regulations and laws had been violated by the publication of articles on the Pentagon report by The New York Times.

#### Rogers Sees Violation

At the State Department news conference, Mr. Rogers said that the law dealing with the disclosure of classified information had clearly been violated since "the law clearly provides that secret documents and top secret documents should not become public until they are declassified."

Since articles based on the Pentagon study and some texts of documents accompanying it started appearing in The New York Times on Sunday, the Secretary of State said, the State Department has had démarches, or diplomatic inquiries, from foreign governments.

"If governments can't deal with us in any degree of con-



fidentiality," he said, "it's going to be a very serious matter."

Mr. Rogers made it clear that he was "not going to get involved in passing judgment on those events," particularly since the analysts and historians who prepared the study acknowledged that they did not have access to White House files. But more importantly, he said, "we are concerned about how to get out of the war, and that is what we are doing."

#### Ziegler Refuses to Comment

Similarly at the White House, the Presidential press secretary, Ronald L. Ziegler, refused to be drawn into a discussion of the contents of the report on the ground that the study dealt with "something that occurred in the previous administration. He said that the Nixon Administration had developed a new policy on Vietnam.

Under questioning by reporters, Mr. Ziegler also sought to emphasize that the Administration, in seeking a court injunction against further publication of the study, was seeking neither to quash the report nor to harrass The New York Times.

Rather, Mr. Ziegler took the position that the Administration had a statutory responsibility, once "highly classified material had been published," to seek the prevention of further publication of the material.

Mr. Ziegler said that President Nixon had not ordered Attorney General John N. Mitchell to ask The New York Times to refrain from further publication of the study. The Attorney General, the press secretary said, "informed the President that it was necessary to take the step so that the Government would not waive its responsibility to carry out the law . . . and the President accepted that judgment."

Senator Mansfield said that he was "delighted," that The Times had been publishing accounts based on the report, which had been prepared in 1967-68 by a large team of authors. It consisted of 3,000 pages of analysis and 4,000 pages of supporting documents.

Among Congressional Republicans, a common opinion was that the material published by The Times was far more damaging to the Democrats and the Johnson Administration than to the Nixon Administration.

"It is not harmful to this Administration," the Senate Republican leader, Hugh Scott, said. He said that the Nixon Ad-

ministration, when it took office, undertook a reassessment of Vietnam policy.

After a White House meeting with Republican legislative leaders, Senator Scott told reporters that there was a general feeling at the White House that the report was made public as a result of "an intraparty dispute" within the Democratic party.

While not criticizing The Times for its "editorial decision" in publishing its articles, Senator Scott said the study "should not have been stolen or leaked."

"In my judgment it was stolen," he said. "But I don't charge The Times. Somebody stole it."

Senator Mansfield and other congressional leaders felt that publication of the study would contribute to a growing disillusionment within Congress over the Vietnam war.

In the still sporadic reaction to the study, some of the harshest criticism was coming from Democrats. Senator Gaylord P. Nelson, Democrat of Wisconsin, said the documents "clearly show that those who made the decisions to deepen our involvement in the war in Vietnam were not only deluding the American public but deluding themselves as well."

"These documents do not contain any information that would endanger the national security," he said, "and it would be a disservice for any court to enjoin their further publication. Quite obviously these documents contain information embarrassing to the political and military leadership of the country, but that is no reason to deny the public information it is clearly entitled to have.

In Texas, a spokesman said former President Johnson would have no comment on the study under his policy of not granting interviews.

In Atlanta, Ga., the secretary of former Secretary of State Dean Rusk said he also would have no comment.

#### Humphrey Expresses Surprise

GRAND RAPIDS, Mich., June 15 (AP)—Senator Hubert H. Humphrey, who was President Johnson's Vice President, said today that the secret Pentagon study on Vietnam published by The New York Times was "never brought to my attention."

The Minnesota Democrat said that he remained unaware of the study during the time he

served in Congress and later when he was Vice President. He said he was "shocked and surprised" by the information in The Times articles.

"The Government must have secret documents, but I believe matters relating to what I call political decisions ought not to be secret," he said. "I believe in freedom of information and the right to know."

Mr. Humphrey said the "real tragedy in my mind" is the doubt cast on the credibility of the Government. Mr. Humphrey was here to address the Michigan A.F.L.-C.I.O. convention.

#### Salinger Suspects Nixon Leak

Special to The New York Times

PARIS, June 15—Pierre Salinger, the former press secretary to President Kennedy, expressed his suspicion tonight that the Nixon Administration was responsible for the leak of a secret study on the Vietnam war to The New York Times.

In an interview on the private radio station, Radio Luxembourg, Mr. Salinger said:

"The publication of these documents can only help Nixon. I would not be surprised if someone in the [Nixon] Administration gave a helping hand."

Mr. Salinger defended the Vietnam policy of President Kennedy, who, he said, wanted "to give aid to the South Vietnamese but did not want the United States to become the principal fighting force in a war which ought to be won by the South Vietnamese themselves."

He admitted that under President Kennedy the number of Americans in Vietnam rose from 800 to 16,000 but added that "this is far from Mr. Johnson's policy who committed 500,000 men."



# ARGUMENT FRIDAY

## Court Here Refuses to Order Return of Documents Now

By FRED P. GRAHAM

United States District Judge Murray I. Gurfein yesterday ordered The New York Times to halt publication of material from a secret Pentagon study of the Vietnam war for four days. Argument on publication thereafter will be heard Friday.

The judge granted a request by the Justice Department for temporary relief, but he gave no hint as to how he would

*Texts of complaint and court restraining order, Page 18.*

eventually rule. He also refused to order The Times to return the massive report immediately to the Government.

Declaring that the case could be an important one in the history of relations between the Government and the press, Judge Gurfein said that the temporary harm done to The Times by his order "is far outweighed by the irreparable harm that could be done to the interests of the United States" if more articles and documents in the series were published while the case was in progress.

### Statement by The Times

In a brief statement, The Times said that it "will comply with the restraining order issued by Judge Murray Gurfein.

"The Times will present its arguments against a permanent injunction at the hearing scheduled for Friday," the statement said.

Lawyers for The Times and the Justice Department told the judge, at the proceedings in the Federal District Court House at Foley Square, that this appeared to be the first time in the nation's history that a newspaper was being restrained by a court from publishing an article.

Meanwhile, the Justice Department disclosed in Washington that the Federal Bureau of Investigation was investigating possible violations of

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Associated Press

Murray I. Gurfein, Federal judge, issued order.

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federal criminal laws in connection with publication of the secret documents.

"The F.B.I. investigates all allegations of federal criminal violations and is doing so in this case," said John W. Hushen, chief press spokesman for the department.

Judge Gurfein, in his first day on the bench after having taken his oath of office last week, acted upon the Justice Department's argument that the publication of further articles by The Times would inflict serious injury on the nation's international relations.

The 63-year-old judge deferred until Friday a decision on the Government's request that The Times be ordered immediately to return the voluminous documents from which its Vietnam series has been drawn.

### Order Expires Saturday

The temporary restraining order issued by Judge Gurfein yesterday expires at 1 P.M. Saturday.

His action came a day after Attorney General John N. Mitchell had requested that The Times cease publishing the documents and The Times had refused to do so voluntarily.

Yesterday afternoon, the Justice Department filed a civil suit seeking to permanently enjoin The Times and 22 of its officers, editors and reporters from going forward with the series of articles on the origins of the Indochina war. Three installments had been published, including texts of official documents, and The Times had said that the series was to continue.

Word filtered through the city's legal community yesterday that the Government had requested an afternoon hearing on a temporary restraining order against The Times, and the courtroom was packed—mostly with young lawyers and spectators—when the mustached judge took his seat in Room 605 of the United States Court House.

The arguments pitted a 30-year-old staff member of the United States Attorney's office, Michael D. Hess, against Prof. Alexander M. Bickel of the Yale Law School, a 46-year-old constitutional authority who has been mentioned as a possible Supreme Court nominee. Prof. Bickel represented The Times and its personnel.

The gist of the Government's argument was that The Times had violated a statute that makes it a crime for persons having "unauthorized possession" of Government documents to disclose their contents under circumstances that "could be used to the injury of the United States or to the advantage of any foreign nation."

In his argument, Mr. Hess asserted that "serious injuries are being inflicted on our foreign relations, to the benefit of other nations opposed to our form of government." He told the judge that Secretary of State William P. Rogers had said today that several friendly nations had expressed concern over the disclosures in the articles.

With the Government facing the prospect of "irreparable injury" in its international relations, Mr. Hess said, The Times should be required to suffer a "slight delay" in its publication schedule until the case could be heard on Friday.

Otherwise, he said, the case would be mooted by publication of the material before a decision could be reached.

Professor Bickel, a tanned, dapper man in a brown suit and blue shirt, replied that this was a "classic case of censorship" that is forbidden by the first amendment's free-press guarantee. He also insisted that the statute being invoked by the Government was an anti-espionage law that had never been intended by Congress to be used against the press.

The law, Title 18 of the United States Code, Section 793, provides for a maximum punishment of 10 years' imprisonment and a \$10,000 fine against:

"Whoever having unauthorized possession of, access to, or control over any document . . . relating to the national defense, or information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, wilfully communicates . . . the same to any person not entitled to receive it, or wilfully retains the same and fails to deliver it to the officer or employe of the United States entitled to receive it."

Mr. Bickel contended that to rely upon this wording to bar a newspaper from publishing

certain matter "for the first time in this history of the republic" would set an unfortunate precedent. "A newspaper exists to publish, not to submit its publishing schedule to the United States Government," he argued.

#### 2 Groups Ask to Be Heard

During a final discussion in his chambers, Judge Gurfein heard brief statements from two civil liberties groups that asked to be heard as friends of the court. Norman Dorsen, general counsel of the American Civil Liberties Union, and Kristin Booth Glen of the Emergency Civil Liberties Committee made the statements and asked to be heard again on Friday.

Judge Gurfein instructed them to file briefs and reserved judgment on their request to be heard.

He urged The Times to consent to a restraining order, but Mr. Bickel refused, saying that to do so would invite future Government efforts to curb news publications. The order was issued over Mr. Bickel's objections.

The Times could have attempted to appeal the order to the United States Court of Appeals for the Second Circuit. However, such extraordinary appeals of temporary restraining orders are rarely granted, and The Times elected to try the issue on its merits before Judge Gurfein.

Mr. Bickel was accompanied in court by Floyd Abrams, a partner in the New York law firm of Cahill, Gordon, Sonnett, Reindel and Ohl.

The Justice Department named the following defendants in addition to The New York Times Company in today's injunction: Arthur Ochs Sulzberger, president and publisher; Harding F. Bancroft and Ivan Veit, executive vice presidents; and Francis A. Cox, James C. Goodale, Sydney Gruson, Walter Mattson, John McCabe, John Mortimer and James Reston, vice presidents.

Also, John D. Oakes, editorial page editor; A. M. Rosenthal, managing editor; Daniel Schwarz, Sunday editor; Clifton Daniel and Tom Wicker, associate editors; Gerald Gold and Allan M. Siegal, assistant foreign editors; Neil Sheehan, Hedrick Smith, E. W. Kenworthy and Fox Butterfield, reporters; and Samuel Abt, a foreign desk copy editor.