DAY, JUNE 18, 1971-

## U.S. Fails to Get Immediate Court Order **To Force Times to Turn Over Documents** JUN 1 8 1971 NYTimes

## Paper Gives List Identifying Data It Possesses By FRED P. GRAHAM

The Justice Department failed | over to the Justice Department, yesterday - at least for the Government agents might be present - to obtain a court able to use them to discover Senator Edward M. Kennedy order forcing The New York the identity of the source who called today for full disclosure Times to turn over for the gave them to The Times. The lawyer, Floyd Abrams, Vietnam policies and actions Government's inspection the secret Pentagon study from disclosed that the documents during the Administration of which the newspaper's series were Xeroxed and contained President John F. Kennedy. on the Vietnam war has been handwritten notations. He imdrawn.

Instead, The Times gave the might be identified, or the Senator Kennedy said. "But the Court and the Justice Depart-copying machine might be American people ought to be ment a list of descriptive head- traced, and declared that there- the final judge of the whole ings for those portions of the fore The Times would not give period of the 1960's, and bearchive in The Times' posses- up its copies. sion

**Government** Position

material from the papers.

Michael D. Hess, chief of

The purpose of this procedure was to permit the Government to identify the portions of the 7,000-page study that The Times has, without giving officials actual possession of The Times' copies.

Suggested by Judge

This result appeared to the civil division in the United satisfy United States District States Attorney's office here, crats announced that they Judge Murray I. Gurfein, who protested to Judge Gurfein that would ask United States Dishad withheld any immediate action on the Government's demand to see The Times's documents

Judge Gurfein had suggested this resolution of the dispute over the papers after ruling out the Government's demand for all classified material in the newspaper's possession. "I am not tolerating any fishing expedition into the files of any newspaper," he said.

The Vietnam series was halted by a temporary order on Tuesday. Articles published on Sunday, Monday and Tuesday dealt with events leading to the Tonkin Gulf incident, the decision to wage an air war against North Vietnam, and the first use of American ground troops in South Vietnam.

Each part of the series consisted of articles as well as documentary material.

During the court arguments yesterday, lawyers for The Times insisted that if the newspaper's own copies were turned

## NYTimes Kennedy Wants Data By MARJORIE HUNTER

Special to The New York Times WASHINGTON, June 17

of secret Government data on

"I don't have any idea what plied that the handwriting is in it or how it will turn out," fore, in Vietnam."

His demand for the disclosure of portions of a Pentagon In response, the Government study relevant to the Kennedy insisted that it needed to see years came as Congressional the papers to prepare for the protests continued over the hearing set for 10 A.M. today Government attempts to block on its suit to enjoin The further publication of a series Times from publishing further by The New York Times on the Vietnam study.

There were these developments. More than 20 House Demo-

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# U.S. Fails to Get Court Order on Study

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the Government could not support its claim that publication would harm the national interest unless it knew what The Times had planned to publish. Also, he said, "the court cannot frame an injunction unless the court knows what needs to be enjoined." At one point Mr. Hess offered to let representatives of The Times be present when the documents were being examined by the Government, but the suggestion was not taken up by the judge or The Times's lawyers.

Mr. Abrams' argument had two basic points. One was that the Government did not need The Times's documents, because at least 15 copies were known to have been made when the study was completed in 1968.

The second was that because surrender of the papers might compromise The Times's source, the First Amendment's free press guarantee shielded the newspaper from having to give up the documents.

**Copies Bear Notations** 

Mr. Abrams introduced a sworn affidavit by James L. ing statement: Greenfield, foreign editor of The ing statement: "The Times today continued to the United States Court of to the United States Court of Circuit. ment "the confidential source of the material."

made the situation fall within its own typewritten list of des-international of Judge J. Edward Lumbard, international description of the section of the section of the federal dis-the decision handed down scriptive headings for those H. Timbers of the Federal disseveral months ago by the parts of the Pentagon study it United States Court of Appeals possesses." United States Court of Appeals possesses. In San Francisco regarding a Yesterday afternoon a Gov-New York Times reporter, Earl ernment copy of the study and Caldwell. That court said that its supporting documents ar-the First Amendment shielded rived from Washington and Mr. Caldwell from having to was delivered to Mr. Hess. answer a subpoena to give grand jury testimony about Black Panther activities, bejury testimony about gause this would destroy his rejected the petitions of two contacts with his sources and groups who asked to join the Indermine his capacity gather news.

Judge Gurfein skirted the is-suie by suggesting that The missed without a hearing, was versity of Wisconsin today to Times furnish its list. It did so brought in the names of 10 begin a week-long conference tion of the material.

## Mayor Calls U.S. Suit A Threat to Freedoms

Mayor Lindsay said yesterday that The New York Times should be permitted to continue publishing its series on the United States involvement in the Vietnam war and added that "it would be use-ful for public education."

In one of several references to the controversy yesterday, Mr. Lindsay said the Government was "treading on a very sensitive area" in its actions against The Times and that its court case was "a threat to the freedoms guaranteed under the First Amendment."

Other comment came in a statement from the American Jewish Congress, whose executive director, Will Maslow, said:

"The American Jewish Congress urges not only that the effort to suppress the Pentagon report be aban-doned but that immediate steps be taken at every level of government to insure that the decision-making processes of our democracy are not hidden from public scrutiny."

the Xeroxed copies bear hand- to oppose the Government's de-Appeals for the Second Circuit, written notations" and that to the study on the ground it mould which sits in the United States give them up would "facilitate the study on the ground it would which sits in the United States dentification," by the Govern-

"The Times did not object to a court request that it give to This, Mr. Abrams argued, the court and the Government of Judge J. Edward Lumbard,

#### **Petitions Rejected**

Earlier yesterday, the judge to case as defendants to represent the interests of readers.

The statistic in the day, but refused academic figures who are on nuclear energy. The meeting requests by reporters to release known for their criticism of is the fourth international con-the list for publication—parti-United States Vietnam policy, ference on plasma physics and ally because to do so might be and who sought to represent controlled nuclear fusion rea violation of the temporary academicians' rights to receive search. It is sponsored by the order against further publica- the unpublished materials. International Atomic Energy

The Times replied to report-of the Massachusetts Institute Nations.

of Technology, Alexander Erlich and Seymour Melman of Columbia University, Richard Falk and Carl Schorski of Princeton, Robert Jay Lifton of Yale, Hans Morgenthau of the University of Chicago, Franz Shurmann of Berkley, George Wals of Harvard and Howard Zinn of Boston University.

#### Hearing for Readers

Judge Gurfein did grant a hearing to a group of readers of The Times, which included Representative Edwark Koch, Manhattan Democrat. Melvin L. Wulf, legal director of the American Civil Liberties Union, argued that readers' First Amendment rights to receive information needed to protected, because The Times lawyers "won't represent them fully."

"I don't believe that The Times is in here avowedly for the purpose of selling newspers but for the purpose of asserting that the general public has a right to read and hear," Judge Gurfein replied. He said thattheA.C.L.U. could file a friend-of-the-court brief for the group, but that it could not join as defendants because "there are 200 million people with the same right," and the case might be swamped with defendants.

where Judge Gurfein's court is located.

A three-judge panel composed a half-hour of arguments in the early afternoon.

At the conclusion of the argument Judge Lumbard pulled out and head a unanimous opinion in which the appeal was dismissed because "there is no practical impairment of the intervenors' interests."

### Atomic Conference Opens

MADISON, Wis., June 17 (AP) -Six hundred of the world's They were Noam Chomsky Agency, an arm of the United

# Kennedy Seeks Secret Vietnam Data

for permission tomorrow to intervene in the pending injunction proceedings by filing tion, Mr. Eckhardt said: "If liti-asked to testify will include a "friend of the court" brief supporting the position of The publishing [the remainder of its media and members of Con-Times.

**4**A House subcommittee on Government information announced that it would open hearings, probably next Wednesday, into Government Emerson of the Yale Law volvement in Vietnam. He said that the proper forum would information" from the America in the contract of the the the proper forum would be the Foreign Relations Cominformation" from the American people.

¶Senator Carl T. Curtis, a conservative Nebraska Republi- others in the group, William F. his own subcommittee on Far can generally regarded as hawkish on the war, commended The New York Times for printing the series and criticized the Government's extensive use of "secret" and "top secret" classification of documents.

majority leader, disclosed that Queens; and John G. Dow of "one high official" mentioned upstate New York. in the Pentagon study had called him and volunteered to "People of this testify if there is a Senate committee inquiry into the matter. Senator Mansfield declined to identify the caller.

#### New Yorkers Protest

**Representative Paul N. Mc-**Closkey, Republican of California, a vocal critic of the war, attempted to have the House adjourned today in protest over was rejected, 368 to 30.

**Representative Bella Abzug**, Democrat of Manhattan, introduced a resolution of inquiry, demanding that the Adminis-tration give Congress the text is sparking an agonizing repolicy in Indochina.

and Charleston, W.Va., last night, sentatives in Congress." said that the Pentagon study confirmed a charge he had American people were "brain-washed" about the war. "I faced the fact and came to the of top security. conclusion years ago, before it

House Democrats to intervene assistant to the President for Times and all other newspap-had read endangered national in the pending injunction pro- national security affairs.

critic of the war.

gation prevents The Times from representatives of the news

series] the intervenors will be|gress. denied important information bearing on matters before Con-field continued today to press gress."

pearing in court tomorrow in mittee, the Armed Services New York with Mr. Emerson Committee or a joint panel of and Mr. Eckhardt will be two both. If neither acts, he said, Ryan of Manhattan and Abner Eastern Affairs of the Foreign J. Mikva of Illinois.

J. Mikva of miniois. The group includes nine other New Yorkers: Edward I. Koch, Mrs. Abzug, Charles B. this is to lay it all out, not to Koch, Mrs. Abzug, Charles B. this is to lay it all out, not to Rangal, all of Manhattan; Ben-look for scapegoats, not to look Bertram L. Podell, Brooklyn; for sources but to give those James H. Scheuer, the Bronx; Lester L. Wolff, Nassau; Her-their positions." Mike Mansfield, the Senate man Badillo, Manhattan-Bronx-

#### People 'Hoodwinked'

"People of this country are being hoodwinked and we want to put a stop to it," Mr. Dow a consultant committee to meet a double to be a consultant committee to meet a consultant committee to be a constantly digging said today. "I'm sick and tired with the President in times of to bring out the truth and keep of this secrecy business. Washington reeks of it."

The inquiry into Government information policies will be conducted by a House sub-committee headed by Repre-had urged disclosure of relesentative William S. Moorhead, vant data dealing with the Kenthe Administration's efforts to Democrat of Pennsylvania. The nedy decisions in Vietnam, Senprevent further publication of ranking Republican is Repre-the secret documents. The move sentative Ogden R. Reid of would "welcome having my mented case of public deceit by Westchester.

and Mr. Reid said:

"The New York Times case available." of the Pentagon study and more appraisal by the Congress of the Senate, commending The recent studies of United States laws and regulations that pre-Times and criticizing Governvent a free flow of informa-ment classification of information about our Government and tion, was viewed as significant The Secretary of Housing tion about our Government and tion, was viewed as significant durban Development, its activities to the American because of his generally con-Georgo Romney, speaking in public and its elected repre-servative views and his sup-turbed if information they en-

They said that they hoped tion. to have five days of hearings, "I made six years ago that the all of them open unless they problem here, either to the sons within any Administration found it essential to hold execu- American people or to the Gov- might "draw in their horns" "I live sessions to hear matters ernment of the United States, and not speak freely in the

was fashionable, that I had asked to testify are Attorney ries of articles on the docu-been deceived and the Ameri- General John N. Mitchell, De-ment," he told the Senate. can people had been deceived fense Secretary Melvin R. Laird, The move by the group of Rogers and Henry A. Kissinger, York Times, I commend The ments, he did not feel what he

Continued From Page 1, Col. 7 ceedings is being led by Rep- Two law professors, Joseph resentative Bob Eckhardt, a Bishop of Yale and Philip Kurtrict Judge Murray I. Gurfein liberal Texas Democrat and land of the University of Chicago, have agreed to testify, Explaining the group's posi-Mr. Reid said. Others to be

> Meanwhile, Senator Mansfor a Senate inquiry into the The group has hired Thomas origins of United States in-Relations Committee

Out of such an inquiry, he said, "perhaps we'll learn some lessons so there will be no future Vietnams and perhaps there might emerge a closer relationship between the Execuadvice and counsel.'

#### Newspapers Commended

In a joint statement announc-ing the hearings, Mr. Moorhead President Kennedy in 1962 and Senator Ja President Johnson in 1965 made Conservative-Republican

port of the Nixon Administra-

"I do not believe the serious is the fact that The New York development of alternatives to Among those who will be Times began publishing a se-policy for fear of future dis-

ers and newspapermen and wo-'security.

Ky Says He Didn't Miss Target-Entire North

SAIGON, South Vietnam, June 17 (AP)-Vice President Nguyen Cao Ky says its untrue that he bombed the wrong target in the first reprisal strikes against North Vietnam on Feb. 8, 1966 because, he says, all of North Vietnam was a good target.

The Pentagon study of United States involvement in Indochina published in part by The New York Times said that "in a last minute switch," the former air vice marshal "dumped his flight's bomb loads on an unassigned target in the Vinh Linh area, in order, as he explained, to avoid colliding with USAF aircraft which, he claimed, were striking his originally assigned target." This was said to have caused "consternation" among American target controllers.

The Vice President told newsmen: "Saying I missed the target or someone missed the target is not true because in North Vietnam every single inch . . . is a good target for us. I took the most dangerous target, the location of one regiment of antiaircraft."

with the President in times of to bring out the truth and keep crises, and, if asked to, give it squarely before the American people.

"I do find very serious fault, Mr. President, with the information classification and document security system of this country . . . the classification system should never be used confidential reports [on South- the officials of any agency or

Senator James L. Buckley, of New York, told newsmen today Senator Curtis's speech in that he was not at this point

"throwing darts at The New York Times," but he said that "two elements disturb me."

One, he said, is that foreign governments might be distrust to the United States might not be secure. The other, he said, is the possibility that per-

Buckley "In short," he continued, "I said that while he had not yet