
NEXT STEP TODAY

Gurfein Decision Due Before the Expiration of Curb at 1 P.M.

*Excerpts from the arguments
and an affidavit, Page 10.*

By FRED P. GRAHAM

Federal District Judge Murray I. Gurfein refused yesterday to permit The New York Times to resume publication immediately of its material from a secret Pentagon study on Vietnam although The Washington Post began publishing a series of articles based on the study in its Friday issue.

In Washington, a Government move for a court order to halt The Post's series was rejected by a Federal District Judge.

Alexander M. Bickel, a lawyer for The Times, told the court here that "the readers of The New York Times alone in this country are deprived of this story." He insisted that the temporary restraining order imposed on Tuesday be lifted so that The Times could resume publication.

Wide Distribution Noted

The Washington Post article was distributed by The Washington Post-Los Angeles Times News Service, which has 345 publications as clients, and was also described at length in dispatches by The Associated Press and United Press International, which reach almost all the daily newspapers in the country as well as radio and television stations.

Judge Gurfein declined to act on the motion after the Federal Government gave assurances in open court that legal action would also be taken against The Washington Post if necessary to prevent further publication. Within hours Justice De-

partment lawyers moved in Federal District Court in Washington to enjoin The Post.

The restraining order against The Times is scheduled to expire at 1 P.M. today, which would free the newspaper to put the next installment in the series in Sunday's issue. Before the deadline Judge Gurfein is expected to hand down his decision on the Justice Department's action to enjoin The Times indefinitely.

The Times published the first three installments on Sunday, Monday and Tuesday, at which time the temporary order halted publication. The articles and documents printed covered events surrounding the Tonkin Gulf incident in 1964, the decision to bomb North Vietnam and the first use of American soldiers in ground combat in South Vietnam.

The effort by The Times to

Continued on Page 11, Column 5

NYT

6-19-71

Judge Refuses to Let Times Resume Its Series at Once

Continued From Page 1, Col. 8

dissolve the restraining order came at the beginning of a day-long series of open and secret hearings. The Government insisted on secret "in camera" testimony by three Washington officials on the ground that they would explain how further publication could damage national interests and that open testimony would itself cause harm.

In open arguments earlier, in a courtroom jammed with approximately double its capacity, Whitney North Seymour Jr., the United States Attorney here, told the Court that The Times had violated United States law and Presidential orders by illegally "declassifying" top secret documents by publishing them. That, he said, has "compromised our current military and defense plans and intelligence operations and has jeopardized our international relations."

The Times, in a legal brief and affidavits filed last night, asserted that the Government's security classification system was a sham in which documents were routinely overclassified and that officials used to hide em-

barrassing information while "leaking" other sensitive material.

In any event, The Times argued, the First Amendment forbids either the Executive branch or the courts to use "national security" grounds to prevent the news media from publishing any article except in such extreme situations as threatened publication of troop movements or battle plans in wartime.

In the abbreviated open testimony by the Government's witnesses, an attempt was made to show that the system of classifying documents "top secret" "secret" "confidential" or "restricted" was carefully administered to avoid abuses.

'Entwined' Information

Dennis J. Doolin, Deputy Assistant Secretary of Defense for Internal Security Affairs, said he had reviewed the Pentagon study on Vietnam on several occasions to see if it should be declassified because Senator J. W. Fulbright, chairman of the Senate Foreign Relations Committee, had asked to see it.

Mr. Doolin said that his staff considered the "universe" of security interests affected by the entire 47-volume study and

concluded that it could not be declassified. It would be impractical to declassify certain nonsensitive portions, he said, because the information was "entwined."

William B. Macomber, Deputy Under Secretary of State in charge of administration, testified that the three articles already published by The Times had damaged the United States' international relations. "It is absolutely essential to the conduct of diplomacy that governments be able to deal in confidence," he said, without fear that communications will appear in print.

The Vice Chief of Naval Operations, Vice Adm. Francis J. Blouin, testified that "it would be a disaster" to publish all the documents in the 7,000-page Pentagon archive. "Any intelligence organization would derive a great deal of benefit from the articles that have already been published," he asserted.

The Government's final witness, George MacLain, holds the title of director of the Security Classification Management Division in the office of the Assistant Secretary of Defense for Administration. He explained the intricate procedures by which documents become classified and, in some cases, lose their classified status years later.

The major answer by The Times came in an affidavit by Max Frankel, the Washington correspondent of The Times and the head of its Washington bureau, who called the Government's view of secrecy "antiquated, quaint and romantic." In practice, he said, it serves to mask a "traffic in secrets" in which officials peddle "secret" information for their own ends and journalists publish it in wholesale amounts.

Affidavits From Newsmen

That view of the secrecy system was supported by affidavits from journalists from The Times and other publications, which included stacks of clippings of articles based on classified information or documents.

During the morning session of the Judge referred repeatedly

to the duty of a "patriotic press" and suggested that disputes such as the spreading legal confrontation over the Pentagon study could be avoided if journalists would clear sensitive articles with the Government "from a security point of view" before publication.

"It seems to me that a free and independent press ought to be willing to sit down with the Department of Justice," he said, "and as a matter of simple patriotism determine whether the publication of any of them [classified documents] is or is not dangerous to the national security."

Mr. Bickel, who is a professor of law at Yale, replied that the suggestion was "utterly inconsistent with the First Amendment." He said it would lead to self-censorship by the press or censorship by government.

Other Affidavits Filed

Affidavits supporting the position of The Times position were filed by Theodore C. Sorenson, who served as special counsel to President John F. Kennedy; Sanford Cobb, president of the Association of American Publishers, Inc.; Col. Augustus McKnight, president of the American Society of Newspaper Editors; Adrian S. Fisher, former deputy director of the United States Arms Control and Disarmament Agency and dean of the Georgetown University Law Center; Francis T. P. Plimpton, former Ambassador and Deputy United States permanent representative at the United Nations and a former president of the Bar Association of New York City; James McGregor Burns, Pulitzer-prize winning presidential biographer and historian; Eric F. Goldman, former special consultant to President Johnson and now Rollins Professor of History at Princeton University; Barbara W. Tuchman, Pulitzer-prize winning historian; Neil Sheehan and Hedrick Smith, who are co-defendants in the suit, and four other reporters of the Washington bureau of The Times.