

# Aftermath of Decision

## Some, but Not All, of the Issues in Vietnam Papers Case Are Resolved

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WASHINGTON, June 30—The legal climax of the case of the Pentagon papers has settled some of the strange and novel issues involved, but by no means all. Legally despite the outpouring of nine separate opinions and a tangle of cross-concurrences, there now stands a tough minimum standard of proof that the Government must meet if it wishes to stop the presses again.

Three of the Justices were virtually agreed that no such prior restraint is permissible in any case and three more said they would allow it only if shown that the publication of some material would "surely result in direct, immediate and irreparable damage" to the nation. And although several Justices anticipated damage or embarrassment from the disclosure of some of the Pentagon documents, the majority of six found no potential damage great enough by any of their standards to justify censorship.

Historically, the freedom of the newspapers to publish some of the secrets of four former administrations shatters the precedent that only retired Presidents and their associates may interpret their performance in office for their contemporaries.

### Access May Be Greater

The decision in this case should go far, in fact and perhaps in law, to strengthen the claims of scholars and reporters who have vainly sought access to the data that Presidents habitually carry off to their libraries and then release only when they choose, in profitable memoirs.

And politically, major changes in the handling of Government information are bound to result, with long-term implications for the relationship between Congress and the executive and between the Government and its citizens.

As the State Department acknowledged today, new procedures are already being developed to permit Congress much better access to hitherto "privileged" information. And the Government as a whole has already indicated that it takes to heart the admonition of Justices Potter Stewart and Byron R. White that the best way to keep secrets is to preserve respect for the secrets kept.

### Overclassification Assailed

"For when everything is classified," Mr. Stewart wrote, "then nothing is classified, and the system becomes one to be disregarded by the cynical or the careless, and to be manipulated by those intent on self-protection or self-promotion."

The newspapers, in victory, also have much to think about. They were commended for their courage and enterprise in this case by only a minority of the Supreme Court. The three dissenting Justices could barely hide their resentment of what they portrayed as the arrogance and described as the "sensationalism" of the press.

Several Justices invited a calmer test of the Government's case in criminal proceedings. Several implored the newspapers to exercise judgment and restraint in what they choose to print, now that the choice is theirs, and Justice Harry A. Blackmun went so far as to suggest, conditionally, that the newspapers may deserve the blame for prolonging the war in Vietnam or delaying the release of American prisoners.

These possible, though undemonstrable, consequences were among those held out by the Government in the argu-

ment before the Supreme Court under a doctrine so broad that it might have justified an endless round of court actions against publications.

As Justice White noted, with Mr. Stewart's concurrence, the essential plea of the Government was that the President was entitled to stop any newspaper story when he can convince a court of a "grave and irreparable" injury to the public interest, whether or not the material is officially labeled secret, whether or not its publication is lawful and regardless of how it was obtained.

Six Justices were not prepared to let the Government travel down that road. But the three dissenters, who would have ordered extended litigation of this case and would have shown what they called "deference" to the opinions of the Secretaries of State and Defense, bespoke a widespread resentment of the press and a considerable body of opinion that would let the executive alone dispose of the secrets of state.

For the foreseeable future, it is doubtful that Congress will amend the laws to permit censorship in "national security" cases or that the Government will seek a similar confrontation in the courts. Nor is there any indication at the moment that the Justice Department will extend its criminal case against Dr. Daniel Ellsberg, who has admitted passing the Pentagon papers to the press.

### Mistrust in 2 Areas

But mistrust of "the media," as Vice President Agnew has discovered, runs almost as deep in some quarters as mistrust of the Government does in others.

Like several of the Justices, many citizens regard the publication of bad news, or discrediting information, about their country and its leaders as itself injurious, either to the nation or to its international security and interests.

Newspapers themselves—including the defendants in the current case—have on rare occasions presumed to foresee the consequences of what they print and softened or even omitted certain information in a desire to serve the national interest.

But cautious and conservative editors and reporters have discovered, over the years, that neither they nor the Government can be trusted to foresee such consequences.

### Data Withheld on Cuba

The New York Times, in reporting on plans for an invasion of Cuba in 1961, withheld the knowledge that it was "imminent" and that the Central Intelligence Agency was in charge. Right after the Bay of Pigs fiasco, President Kennedy showed anger that anything had been written about his plan. But a year later he confided to a Times editor that if even more had been printed, he and the nation might have been saved from humiliation.

As in every debate over censorship, therefore, the ultimate question is not whether some restraints are philosophically desirable, but whether anyone, ever, can be so omniscient and disinterested as to be trusted to act the censor.

The authors of the Bill of Rights chose to gamble for the United States on the possible damage that might result from total freedom of speech and rejected what they knew to be the certain damage of governmental restraint. It is that balance of risks that has been reaffirmed.