



Following are the texts of key documents from the Pentagon's study of the Vietnam War, December, 1963, through the Tonkin Gulf incident, 1964, and its aftermath. Except where otherwise noted, the documents are printed verbatim, with typographical errors corrected.

### McNamara Report to the President on the Situation in Saigon

"The Situation," from Secretary of Defense Robert S. McNamara, Dec. 21, 1963. I have discussed this very extensively with my colleagues in our country. I have discussed it very extensively with my colleagues in our country. I have discussed it very extensively with my colleagues in our country.

Nixon Takes Vows to Deny at White House

CITY TO DISCLOSE BUDGETARY TRIMS FOR DEPARTMENTS

### Vietnam Archive: Pentagon Study Traces 3 Decades of Growing U. S. Involvement

By NEIL RHEEMAN  
A massive study of how the United States went to war in Indochina, conducted by the Pentagon three years ago, demonstrates that four administrations progressively developed a sense of commitment to a non-Communist Vietnam, and the North to progress.

Three pages of documentary material from the Pentagon study begin on Page 35.

Though far from a complete history, even at 2.5 million words, the study forms a great archive of government decisions-making on Indochina over three decades. The study led its 30 to 40 authors to many findings, including:

U.S. URGES INDIANS AND PAKISTANIS TO USE RESTRAINT

Calls for 'Peaceful Political Accommodation' to End Crisis in East Pakistan

FIRST PUBLIC APPEAL

Statement Is Said to Reflect Fear of Warfare If Plew of Saigon Continues

# The Pentagon Papers

## A secret study of the Vietnam War set off an incredible sequence of events.

By John T. Correll

**I**n June 1967, Secretary of Defense Robert S. McNamara commissioned a sweeping study of the Vietnam War that would later become known as "The Pentagon Papers."

Earlier, McNamara had been a leading proponent of US involvement in Vietnam, but by 1967, he was disillusioned with the war and no longer believed in the policies he had been so instrumental in establishing.

His motives for launching the Pentagon Papers project are not clear. Years afterward, McNamara said his purpose had been to preserve a written record for researchers, but there are doubts about his explanation.

When the Pentagon Papers were published by the newspapers in 1971,



# DOCUMENTS FROM PEN—VIETNAM STUDY

Documents accompanying war, for the period of incident in August, excerpting is specified, and only unmistakable

## Johnson in '63

of Defense Robert S.

ed and are acting vigor-  
pective spheres.  
progress has been great  
since the coup, with  
in deteriorating in the  
July to a far greater  
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The Viet Cong now  
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ticularly south and west  
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Viet Cong has been  
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-ence Corps. In these  
et Cong have de-  
-cor roads, and are  
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we must get  
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strength in  
initially doubled.  
major increases  
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Cambodia; (b) the Mekong River water-  
entry from Cambodia; (c) some possible  
Delta. The best guess is that 1000-1500  
Viet Cong cadres entered South Viet-  
nam from Laos in the first nine months  
of 1963. The Mekong route (and also  
the possible sea entry) is apparently  
used for heavier weapons and ammu-  
-nition and raw materials which have  
-been turning up in increasing numbers  
-in the south and of which we have  
-captured a few shipments.

To counter this infiltration, we re-  
-viewed in Saigon various plans pro-  
-posed for cross-border operations into  
-Laos. On the scale proposed, I am  
-quite clear that these would not be  
-politically acceptable or even militarily  
-effective. Our first need would be im-  
-mediate U.S. mapping of the whole Laos  
-and Cambodian border, and this we are  
-preparing on an urgent basis.

One other step we can take is to  
-expand the existing limited but remark-  
-ably effective operations on the Laos  
-side, the so-called Operation HARD-  
-NOSE so that it at least provides rea-  
-sonable intelligence on movements all  
-the way along the Laos corridor; plans  
-to expand this will be prepared and  
-presented for approval in about two  
-weeks.

As to the waterways, the military  
-plans presented in Saigon were unsat-  
-isfactory, and a special naval team is  
-being sent at once from Honolulu to  
-determine what more can be done.  
-The whole waterway system is so vast,  
-however, that effective policing may be  
-impossible.

In general, the infiltration problem,  
-while serious and annoying, is a lower  
-priority than the key problems dis-  
-cussed earlier. However, we should do  
-what we can to reduce it.

6. Plans for Covert Action into North  
-Vietnam were prepared as we had re-  
-quested and were an excellent job.  
-They present a wide variety of sabotage  
-and psychological operations against  
-North Vietnam from which I believe we  
-should aim to select those that pro-  
-vide maximum pressure with minimum  
-risk. In accordance with your direction  
-at the meeting, General Kruskal of the  
-JCS is chairing a group that will lay  
-out a program in the next ten days for  
-your consideration.

7. Possible neutralization of Vietnam  
-is strongly opposed by Minh, and our  
-attitude is somewhat suspect because of  
-editorials by the New York Times and  
-mention by Walter Lippmann and others.  
-We reassured them as strongly as pos-  
-sible on this—and in somewhat more  
-general terms on the neutralization of  
-Cambodia. I recommend that you con-  
-vey to Minh a Presidential message for  
-the New Year that would also be a ve-  
-hicle to stress the necessity of strong  
-central direction by the government and  
-specifically by Minh himself.

8. U.S. resources and personnel can-  
-not usefully be substantially increased.  
-I have directed a modest artillery sup-  
-plement, and also the provision of uni-  
-forms for the Self Defense Corps, which  
-is the most exposed force and suffers  
-from low morale. Of greater potential  
-significance, I have directed the Mil-  
-itary Departments to review urgently  
-the quality of the people we are send-

**Daniel Ellsberg.** After two weeks on the run, Ellsberg (l) on June 28, 1971 arrives at the federal courthouse in Boston, where he was promptly arrested.

former President Lyndon B. Johnson and former Secretary of State Dean Rusk—who were not informed about the project—speculated that the intention had been to provide political ammunition for McNamara's friend, Robert F. Kennedy, who challenged Johnson for the Democratic presidential nomination in 1968.

"I never thought to mention the project to the President or the secretary of state," McNamara said in his memoirs. "It was hardly a secret, however, nor could it have been with 36 researchers and analysts ultimately involved." In actuality, the study was carried out with great secrecy, and special measures were taken to avoid discovery by the White House.

The Vietnam Study Task Force was created June 17, 1967 and tasked with creating an "encyclopedic history of the Vietnam War." Cleverly, McNamara did not assign the job to the regular historians in the Department of Defense. Instead, he gave it to his trusted colleague, John T. McNaughton, assistant secretary of defense for international security affairs. General supervision of the project was assigned to McNaughton's deputy, Morton H. Halperin. Leslie H. Gelb, the director of policy planning and arms control in ISA, was picked to direct the study on a daily basis.

There was an extraordinary number of linkages between the Pentagon Papers project and Harvard University. According to David Rudenstine, author of *The Day the Presses Stopped: A History of the Pentagon Papers Case*

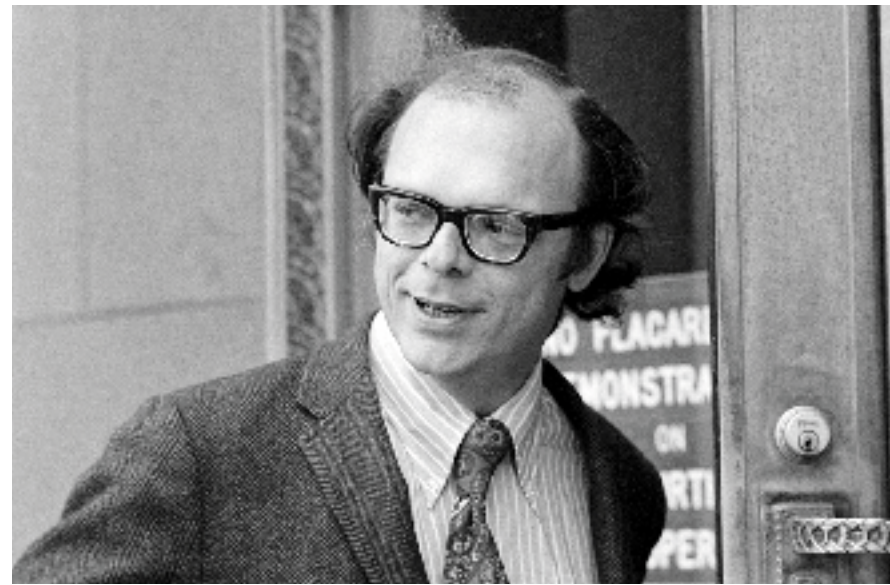
(University of California Press, 1996), the idea for the study may have first occurred to McNamara during a visit to the Kennedy Institute of Politics at Harvard in November 1966.

McNaughton, who encouraged McNamara to sponsor the project, had been a professor of law at Harvard. McNaughton's first action, after receiving his direction for the study from McNamara, was to ask Harvard professor Richard E. Neustadt to lead it. When Neustadt was not available, McNaughton turned to Halperin and Gelb, who had been faculty assistants to Henry A. Kissinger at Harvard. (At one point, Kissinger himself was consulted on structure of the secret study. He does not mention this in his memoirs.) One more Harvard connection was yet to come when Daniel Ellsberg, Ph.D., Harvard, 1963, briefly joined the study in 1967 as one of the analysts.

Once McNamara set the project in motion, he did not interfere with it. He figured it would take about six people and would be finished in three months. Ultimately, Gelb employed 36 analysts. Half of them were active duty military officers. A fourth were federal civilian employees, and the final fourth were professional scholars. When McNamara left office in February 1968, the study was still in progress.

### The Study

Gelb's team worked primarily from documents in the Office of the Secretary of Defense files. There were no interviews, no calls to the military



**Anthony J. Russo Jr.** Ellsberg accomplice and co-defendant enters the federal courthouse in Los Angeles.

Photo © Bettmann/Corbis



**Robert S. McNamara.** Before his disillusionment, the Pentagon chief and architect of the war makes an upbeat tour of South Vietnam.

services for input, no consultation with other federal agencies. According to Halperin, these restrictions—as well as the top secret classification—were intended to keep national security advisor Walt W. Rostow from learning about the project, telling Lyndon Johnson, and getting it canceled.

The study drew mainly on McNamara's and McNaughton's files. William P. Bundy, former assistant secretary of state for far eastern affairs, also provided some material. The OSD files included some documents from the CIA and the services, but the study team had no access to White House files or to military department documents unless copies had been sent to McNamara or McNaughton.

On Jan. 15, 1969, five days before the Nixon Administration took office, Gelb sent the completed study to Secretary of Defense Clark M. Clifford, who claims that he never read it.

In his letter of transmittal to Clifford, Gelb said that the early chapters “concerning the years 1945 to 1961 tend to be generally nonstartling—although there are many interesting tidbits.” The fireworks were embodied in the bulk of the study that followed, covering the overthrow of South Vietnamese President Diem, the Tonkin Gulf incident, the beginnings of the air war and the ground war, strategy and diplomacy, and candid assessments along the way.

Gelb and Halperin classified the study “Top Secret—Sensitive.” As

author Rostenfeld has noted, “Sensitive” was not part of the official classification system. They added it as a signal that disclosure of the contents could cause embarrassment.

The study filled 47 volumes, a total of 7,000 pages. Of these, 3,000 pages were historical studies and the other 4,000 pages were government documents. The official title was “US-Vietnam Relations, 1945-1967: History of US Decision Making Process on Vietnam Policy.” It was dubbed “The Pentagon Papers” by the news media in 1971.

Only 15 copies of the study were produced. Of these, two copies were deposited with RAND, a federal contract research center that did a considerable amount of defense work. One of the RAND copies was contributed by Paul Warnke, who succeeded McNaughton at International Security Affairs. The other was from Gelb and Halperin, who had been given a copy jointly. Access to the RAND copies required concurrence from two out of the three donors.

### Ellsberg Copies the Papers

Daniel Ellsberg had drifted in and out of defense policy circles for years. He was on first-name terms with McNaughton, Halperin, Gelb, and Kissinger. He graduated from Harvard in 1952 and finished his course work for a Ph.D. in economics in 1954, but his doctorate was not awarded until he completed his dissertation in 1963. He served as a Marine Corps infantry officer for two years in the 1950s, then went to work for RAND.

In July 1964, McNaughton offered him a job as his special assistant. In that capacity, his most important duty was screening all of the information that came in on Vietnam. Ellsberg figured this would lead to his appointment “at the deputy assistant secretary level” in less than a year. That did not happen, and in 1965, he moved over to the State Department and went to Vietnam as a foreign service officer.

When Ellsberg returned to the Unit-



**Lyndon B. Johnson.** The Texan, seen here in 1964, soon became a war president. He later suspected McNamara of conniving with Robert F. Kennedy.

AP photo



**McNamara (l) and John T. McNaughton. McNamara bypassed regular DOD historians in favor of giving the project to McNaughton, a trusted political ally.**

ed States in 1967, Halperin and Gelb recruited him to work on the Pentagon Papers for several months. He went back to RAND in 1968. At this point, he was choosing his friends and associates primarily from the political left and his opposition to the Vietnam War had hardened.

In 1969, he requested access to the RAND copies of the Pentagon papers. Gelb was reluctant to give approval, but Halperin—who was then on Kissinger's staff at the National Security Council—spoke up for Ellsberg and Gelb relented.

Unknown to Halperin and Gelb, Ellsberg had already leaked at least one classified document to the *New York Times* in 1968. Now, finding himself in possession of “7,000 pages of documentary evidence of lying by four Presidents and their Administrations over 23 years to conceal plans and actions of mass murder,” Ellsberg decided to copy the study and “get it out somehow.”

Copying of the Pentagon Papers began the night of Oct. 1, 1969. Ellsberg enlisted Anthony J. Russo Jr., a like-minded colleague who had recently been let go by RAND, to assist him. They made their copies on a machine at an advertising agency owned by a friend of Russo's. Ellsberg carried the papers out of RAND at night in batches in his briefcase and returned them the next morning. He made multiple sets of the papers, which he would put to effective use in due time.

Ellsberg did not give the papers to the newspapers right away. Instead, he shopped them around Washington, of-

fering them to Kissinger, Sen. J. William Fulbright, Sen. George McGovern, and others. He found no takers.

### **New York Times and Nixon**

In February 1971, Ellsberg told Neil Sheehan of the *New York Times* about the papers and they began discussing the possibility of publication. In March, Ellsberg made the papers available to Sheehan. He held back four of the volumes, covering diplomatic history from 1964 to 1968, to avoid criticism that he had harmed the peace negotiations.

Sheehan made copies and took them to his leaders. The *Times* decided to publish the material, despite warnings from its lawyers that newspaper officials would be vulnerable to prosecution under the criminal espionage statutes.

Publication of all 7,000 pages in the newspaper was not possible. The editors decided to print 134 of the documents along with staff-written introductions and summaries instead of the long and dull “narrative-analyses” from the actual study. The published material did not go beyond the information in the study except where necessary to establish enough context for understanding by general readers.

The first installment appeared in the *Times* on Sunday, June 13, with a front page headline that said, “Vietnam Archive: Pentagon Study Traces Three Decades of Growing US Involvement.”

The debut of the Pentagon Papers was underwhelming. *Time* Magazine described the layout as “six pages of

deliberately low-key prose and column after gray column of official cables, memorandums, and position papers. The mass of material seemed to repel readers and even other newsmen. Nearly a day went by before the networks and wire services took note.”

President Nixon's reaction that Sunday morning was that the damage fell mostly on the Johnson Administration and that he should leave it alone. That afternoon, however, security advisor Kissinger convinced Nixon that he had to act on “this wholesale theft and unauthorized disclosure.”

“The massive hemorrhage of state secrets was bound to raise doubts about our reliability in the minds of other governments, friend or foe, and indeed about the stability of our political system,” Kissinger said in his memoirs.

Once energized, Nixon soon became obsessed. Dissatisfied with the FBI's progress in the case, he organized his own group of investigators in the White House. They styled themselves “the plumbers” because their job was to stop leaks.

### **What the Study Disclosed**

Most of what the Pentagon Papers revealed was already known in a general way, or at least suspected. A *Washington Post* editorial June 17 said, “The story that unfolds is not new in its essence—the calculated misleading of the public, the purposeful manipulation of public opinion, the stunning discrepancies between public pronouncements and private plans—we had bits and pieces of all that before. But not in such incredibly damning form, not with such irrefutable documentation.”

The archive also provided complete documents rather than excerpts, and it exposed the differences between official public statements and what government officials were saying to each other internally. Among the instances noted were these.

- The Diem overthrow. The Kennedy Administration professed shock and surprise when South Vietnamese President Ngo Dinh Diem was overthrown and killed in November 1963. However, in a top secret cablegram Aug. 29, Ambassador Henry Cabot Lodge said, “We are launched on a course from which there is no respectable turning back: the overthrow of the Diem government.” On Oct. 30, McGeorge Bundy, special assistant to the President, cabled Lodge that “once



**Leslie H. Gelb.** DOD policy planning head had day-to-day control of the study. He later became a State Department official and New York Times correspondent.

a coup under responsible leadership has begun, ... it is in the interest of the US government that it should succeed.” Bundy said there should be no direct US intervention on either side “without authorization from Washington.”

■ Escalation of the war. In the 1964 election campaign, the Democrats depicted Republican challenger Barry M. Goldwater as a dangerous extremist, determined to expand the war into North Vietnam. In fact, the Administration’s thoughts were not all that different from Goldwater’s.

In September, a contingency plan by McNamara’s confidant, McNaughton, proposed actions that “should be likely at some point to provoke a military response [and] the provoked response should be likely to provide good grounds for us to escalate if we wished.” Care should be taken, McNaughton said, so these actions were not “distorted to the US public” before the upcoming elections.

■ The ground war. In October 1964, Johnson said, “We are not about to send American boys nine or ten thousand miles away from home to do what Asian boys ought to be doing for themselves.”

In March 1965, two Marine battalions landed at Da Nang for the sole purpose of defending the air base there. Less than a month later, their mission was changed “to permit their more active use.” The White House directed that “premature publicity be avoided” to “minimize any appearance of sudden changes in policy” and continued

to deny that the mission of ground troops in Vietnam had changed. In July, Johnson approved the deployment of 44 ground battalions to Vietnam.

■ Purpose of the war. In early 1964, Johnson and McNamara said that the central US aim was to secure an “independent, non-Communist South Vietnam.” In a March 24, 1965 “Plan for Action for Vietnam,” McNaughton listed a different set of priorities:

“US Aims: 70 percent—To avoid a humiliating US defeat (to our reputation as a guarantor). 20 percent—To keep SVN (and the adjacent) territory from Chinese hands. 10 percent—To

permit the people of SVN to enjoy a better, freer way of life. ALSO—To emerge from the crisis without unacceptable taint from methods used. NOT—To ‘help a friend,’ although it would be hard to stay in if asked out.”

### The Case Goes to Court

The Justice Department had several options in how to proceed with the Pentagon Papers case. One of its most powerful tools was the Espionage Act of 1917, which authorized criminal prosecution of whoever “communicates, furnishes, [or] transmits” classified information to unauthorized persons or who “publishes or uses” such information “in any manner prejudicial to the safety or interest of the United States.”

The government decided to move first against the newspapers. Instead of waiting until the articles had been published and then prosecuting on criminal charges, the Justice Department chose to seek “prior restraint,” attempting to block any further publication before it happened. That legal approach was far more difficult than criminal prosecution.

In a telegram to the *New York Times* June 14, Attorney General John N. Mitchell said the material was protected by the Espionage Act and that “further publication of information of this character will cause irreparable injury to the defense interests of the United States.” Then as later, the government could not seem to do

**Morton H. Halperin.** McNaughton’s deputy had general supervisory authority over the project. In 1969, he moved from the Pentagon to Henry Kissinger’s National Security Council staff. The FBI, acting without a court order, wiretapped numerous conversations between Halperin and Ellsberg.





**Henry A. Kissinger (I) and Richard M. Nixon.** At first, Nixon ignored the leak, but Kissinger convinced him he had to act on “this wholesale theft and unauthorized disclosure.” Once energized, Nixon became obsessed, organizing his own group of unofficial “plumbers” to plug national security leaks.

anything right. The telegram was mistakenly transmitted to a fish company in Brooklyn.

Also on June 14, McNamara had dinner with his friend, the noted *New York Times* columnist James B. Reston, and told him he thought the *Times* should continue publishing the papers.

After the first three installments, the Federal District Court in New York issued a temporary restraining order against the *Times*. Ellsberg, who had multiple copies of the papers, dropped out of sight and made deliveries elsewhere. As soon as one newspaper was enjoined, the next one picked up publication. The *Washington Post* began publication June 18, followed by the *Boston Globe*, the *Chicago Sun-Times*, the *St. Louis Post-Dispatch*, and 12 other papers.

Lawyer Edward Bennett Williams advised the *Washington Post* to go ahead and publish. “What’s Nixon going to do?” he said. “Put every major editor and publisher in jail?”

On June 30, the US Supreme Court reversed the injunctions against the newspapers, ruling that the government had not met the “heavy burden of showing justification for the enforcement of such a restraint.” However, five of the nine justices mentioned explicitly that the government could prosecute the newspapers under the criminal statute.

### **Ellsberg and Russo**

The FBI chased Ellsberg for two weeks. When he ran out of copies to

distribute, he surrendered and was indicted on June 30 by a grand jury in Los Angeles for violating the Espionage Act and for theft of government property. More charges, including conspiracy, were added in December. By Ellsberg’s accounting, he faced the possibility of 115 years in prison. Russo was named as a co-conspirator.

The trial began in January 1973. It came to a surprise ending after prosecutors told the judge on April 26 that they had learned that two government employees, E. Howard Hunt and G. Gordon Liddy—who had already been convicted of conspiracy, burglary, and wiretapping in the Watergate case—had broken into the office of Ellsberg’s psychiatrist looking for evidence.

Hunt and Liddy were, of course, “the plumbers,” who had been recruited by the White House to stop leaks in the Pentagon Papers case. They had burglarized the psychiatrist’s office in September 1971, prior to their break-in at the Watergate in June 1972.

Nor was that all. Without a court order, the FBI had wiretapped telephone conversations between Morton Halperin and Ellsberg. The tapes and logs of the wiretaps had “disappeared” from the files of both the FBI and the Justice Department.

On May 11, the judge declared a mistrial and dismissed the charges against Ellsberg and Russo. The cover-up of the Watergate burglary by the plumbers eventually led to Nixon’s resignation in 1974.

### **The Papers and National Security**

Most accounts of the Pentagon Papers case focus on freedom of the press issues, and the effect on national security is usually treated as secondary.

The bottom line is that the Pentagon Papers were grossly overclassified and did not cause a national security problem of any significance, although they might have done so. The Vietnam War was not yet over in 1971. The Pentagon Papers gave the North Vietnamese rich insights into early US objectives, strategies, uncertainties, and degrees of commitment. However, the documents were several years old by the time of publication so the insights, to considerable extent, had been overcome by events.

For the most part, the Pentagon Papers were about the machinations of politicians rather than about operations of the armed forces, and their publication appears to have had little or no effect on the remaining course of the war.

Solicitor General Erwin N. Griswold, who presented the government case to the Supreme Court, had not been permitted to see all of the papers. In 1989, Griswold called it an instance of “massive overclassification” and said he saw no “trace of a threat to the national security” in what was published.

Melvin R. Laird, Secretary of Defense at the time, said he had not read the full report when he came to the Pentagon. “I had already spent seven years on the defense subcommittee of the House Appropriations Committee listening to McNamara justify the escalation of the war,” he said. “How we got into Vietnam was no longer my concern.”

Attorney General Mitchell said that Laird had told him publication of the Pentagon Papers would damage national security. However, according to Rudenstine, who interviewed Laird for *The Day the Presses Stopped*, “Laird contended he was glad the papers were in the public domain, for he felt they strengthened his policy recommendations that the United States should pull its troops out of South Vietnam far more quickly than it was doing.”

Few people have ever seen or read more than a fraction of the Pentagon Papers. Study director Gelb estimated that the *New York Times* published only about five percent of the material from the study. A Bantam paperback in July



**E. Howard Hunt.** Along with G. Gordon Liddy, Hunt on Sept. 3, 1971 burglarized a doctor's office, seeking dirt on Ellsberg. Watergate came nine months later.

1971 reprinted the *Times* reports and sold 1.5 million copies.

A fuller text appeared in the so-called Gravel edition, published in four volumes by Beacon Press in 1971. Ellsberg had given one of his sets to Sen. Mike Gravel (D-Alaska), who entered it into the Congressional Record. The preface to the Gravel edition says that it consists of “about 2,900 pages of narrative, 1,000 pages of appended documents, and a 200-page collection of public statements by government officials justifying US involvement in Vietnam. According to the information reported in the press, the Defense Department study included in total a narrative of about 3,000 pages and documents amounting to about 4,000 pages.”

The Gravel edition had low circulation, as did a House Armed Services Committee version authorized by the Nixon Administration and issued by the Government Printing Office in 1971.

The classification imbroglio came full circle in 1974 when Morton Halperin—who was responsible for applying the top secret-sensitive classification to begin with—sought public release of additional parts of the papers under the Freedom of Information Act. He obtained most of the material, which was published in 1983 by the University of Texas. The last of the documents was finally published in 2002 by the National Security Archive.

Curiously, despite all of the official

and unofficial publishing activity, the Pentagon Papers remain classified today.

### The Age of Whistle-Blowing

With the passage of time, Ellsberg has become something of a folk hero. A popular misconception has also arisen—reinforced by the *New York Times* and others—that after the Pentagon Papers experience, the press is free to publish classified information whenever it chooses.

That belief was expressed again by Bill Keller, executive editor of the *New York Times*, in a letter May 2, 2006 to the *Wall Street Journal*, which had criticized the *Times* for the recent publication of classified information.

“Presidents are entitled to a respectful and attentive hearing, particularly when they make claims based on the safety of the country,” Keller said. In the current instance, “President Bush and other figures in his Administration were given abundant opportunities to explain why they felt our information should not be published. We considered the evidence presented to us, agonized over it, delayed publication because of it. In the end, their case did not stand up to the evidence our reporters amassed, and we judged that the responsible course was to publish what we knew

and let readers assess it themselves. You are welcome to question that judgment, but you have presented no basis for challenging it.”

Contrary to Keller’s claim, there is no law, court decision, or precedent from the Pentagon Papers case or anywhere else that legalizes the leaking of national security information or allows newspapers to decide for themselves which secrets to publish.

The Espionage Act is still in effect. Under that act, in January 2006, former Department of Defense analyst Lawrence A. Franklin was sentenced to more than 12 years in prison for passing classified information to a pro-Israel lobbying group. Those who received the material from him are vulnerable to prosecution under the same act.

“Whistle-blowing,” in which federal employees reveal the government’s dirty laundry to the news media and Congress, is often regarded positively by the public. There are several “whistle-blower protection acts,” but they do not give leakers nearly as much latitude as some enthusiasts believe.

In the case of national security information, a whistle-blower can take the information to Congress or to an inspector general within the department. Passing such information to the newspapers is a crime under the Espionage Act.

Ellsberg and Russo were not acquitted, nor was the law set aside. The case against them was thrown out of court because it had been compromised by outrageous actions on the part of the government.

The Supreme Court decision on the Pentagon Papers had nothing to do with freedom of the press. The Justice Department went after the newspapers seeking prior restraint and failed to make its case. As a majority of the Supreme Court justices noted, the avenue to criminal prosecution was still wide open.

In a technical sense, the government had a number of legal moves remaining, but the series of fumbles had made it politically impossible to push the prosecution any further.

The outcome of the case was the result of government bungling and malfeasance and nothing else. ■

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*John T. Correll was editor in chief of Air Force Magazine for 18 years and is now a contributing editor. His most recent article, “The Flying Tigers,” appeared in the December 2006 issue.*