

Return to 400



By Ken Feil—The Washington Post
*Daniel Ellsberg holding a boxful
of the government edition of the
Pentagon Papers.*

Daniel Ellsberg:

By Sanford J. Ungar

Ungar is a Washington Post staff writer who covered the Pentagon Papers litigation last summer. The following excerpt from his book, "The Papers & The Papers," to be published by E.P. Dutton next month, traces Daniel Ellsberg's search for a way to make the Pentagon documents public.

ON NOV. 6, 1969, during a visit to Washington, Daniel Ellsberg met with Sen. J. W. Fulbright, chairman of the Senate Foreign Relations Committee, and several committee staff members.

Fulbright, by that time committed to American withdrawal from Vietnam, was notoriously angry over what had been established as the purposeful deception of Congress during 1964 to obtain passage of the Gulf of Tonkin resolution, which became the "functional equivalent" of a declaration of war against North Vietnam. Ellsberg played on that anger, not only telling Fulbright about the existence of the Pentagon Papers but also turning over to him a brief portion that dealt with the Tonkin Gulf incident; he also gave the senator notes on a separate command and control study of Tonkin, also

secret, which had been prepared by the Institute for Defense Analyses.

Ellsberg urged that the Pentagon Papers be made public, perhaps through full congressional release of their contents, but Fulbright, who had never met Ellsberg before, expressed caution.

"I didn't know what to do with [the Papers]," Fulbright recalled later. "I didn't want to get Ellsberg in trouble. I considered what to do with the portions he gave me—having executive hearings or something of that nature. But I decided that the best way would be to get them officially. Anyway, it wasn't clear then of what use they actually were in stopping the war."

The excerpts from the Papers were tucked away in the safe in the Foreign Relations Committee's offices on the fourth floor of the New Senate Office

The Difficulties of Disclosure

Building, but Fulbright lost no time acting on his promise to Ellsberg that he would try to do something about the study. Two days later he wrote to Defense Secretary Melvin Laird:

"It is my understanding that the Department of Defense prepared a . . . history of the decision-making process on Vietnam policy covering the period from 1940 to April 1968. The project, I was informed, began under Secretary McNamara and was completed under Secretary Clifford and was confined to a study of written data. It appears that a study would be of significant value to the Committee in its review of Vietnam policy issues, and I would appreciate your making it, as well as any later studies of a similar nature, available to the Committee."

First Confirmation

LAIRD PROMPTLY acknowledged Fulbright's letter, but then took more than a month to write back refusing the request for access to the Pentagon Papers. The Secretary's letter of Dec. 20, 1969, included the first formal confirmation by the Defense Department that the study even existed.

"In 1967, Secretary McNamara initiated a detailed history of the evolution of the present-day situation in Vietnam," Laird wrote. "It was conceived

as a compilation of raw materials to be used at some unspecified, but distant, future date. On the basis of the understanding that access and use would be restricted, the documents were designed to contain an accumulation of data of the most delicate sensitivity, including NSC papers and other presidential communications which have always been considered privileged. In addition, the papers included a variety of internal advice and comments central to the decision-making process. Many of the contributions to this total document were provided on the basis of an expressed guarantee of confidentiality.

"As intended from the start," Laird's letter continued, "access to and use of this document has been extremely limited. It would clearly be contrary to the national interest to disseminate it more widely. However, the Department of Defense is naturally prepared to provide the committee information with respect to executive branch activities in Vietnam for any portion of the period covered by this compendium. I hope you will appreciate the reasons why we are unable to comply literally with your request."

Fulbright did not exactly appreciate Laird's reasons. The senator wrote again on Jan. 19, 1970, noting that he had hoped that previous experience

with Laird had "marked the beginning of a more cooperative attitude within the executive branch on problems of this nature."

"The issue involved here," Fulbright stressed, "is not merely that of allowing committee members access to the documents but is far more fundamental, going to the heart of the continuing problem of striking the proper constitutional balance between the legislative and executive branches, particularly on foreign policy matters."

That argument might have been expected to appeal to Laird, himself a former congressman from Wisconsin; but he apparently paid absolutely no attention. Except for a pro forma letter of confirmation sent to Fulbright on Feb. 18, 1970, which promised to "be back in touch with you on this matter as soon as practicable," Laird remained silent on the subject for months.

Ellsberg, meanwhile, was searching for other people holding high office who might be willing to take dramatic action to help end the war. Late in 1969, after the massive Moratorium and Mobilization demonstrations in Washington, a number of outspoken legislators began to assert congressional prerogatives in foreign policy for the first time in years.

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One of the earliest and most brash legislative proposals was offered by Charles E. Goodell—the moderate Republican congressman from upstate New York who had undergone his own conversion on the war after being appointed to fill the Senate seat of Robert F. Kennedy. He introduced legislation that would have required complete withdrawal by December 1970. Goodell was unable to find a single co-sponsor for his bill, but it became a *cause celebre* in the peace movement. Ellsberg was impressed, and he enlisted to help Goodell drum up support.

Working with a group of other consultants to Goodell, but using his detailed acquaintance with the Pentagon Papers, Ellsberg helped draft the statement which the New York senator used as lead-off witness before the Foreign Relations Committee on Feb. 3, 1970, when Sen. Fulbright opened a new series of hearings on the war. In a few places, it was obvious that Goodell fudged while bending over backward to avoid using classified material in the speech; but the testimony was laced with reference and conclusions which drew heavily on Ellsberg's point of view.

At no point during his brief contact with the senator did Ellsberg tell Goodell that he had a copy of the Pentagon Papers; in fact, he never became aware of their existence until June 13, 1971.

Goodell, who lost his Senate seat in the 1970 election to Conservative James L. Buckley, later said he was sorry that Ellsberg did not tell him about the Papers, "because I think it would have made quite a difference if Congress had that information." Goodell acknowledged, though, that "I don't know what I would have done with them." In any event, Ellsberg felt that he must continue to work behind the scenes with the Foreign Relations Committee.

Fulbright's Problem

AS THE MONTHS passed, Ellsberg sought to prod Fulbright into action on the Papers. Late in February 1970 he submitted a large chunk of the contents—at least 3,000 pages photocopied from about 25 volumes of the study—to Norvill Jones, one of Fulbright's aides on the Foreign Relations Committee staff. Some of it he simply mailed from a post office in the Brentwood section of Los Angeles.

Fulbright reconsidered what he might properly do. But outright disclosure still seemed an unacceptable

course of action to him: "I thought there would be a big to-do by the administration on the question of classification, which might divert from the contents of the Papers. I thought that if we used them without release, the big attack would be on the procedure . . . If I had done it, this would have brought a good deal of criticism on the Committee; certain Republican members would have raised hell . . . I still thought they should be the subject of legitimate hearings."

As chairman of one of the most prestigious committees in the Congress, Fulbright had a special problem and saw direct release as possibly counterproductive. Despite his frustrations, on many occasions he does receive classified material from the executive branch in closed sessions; any breach of security on his part could be used as a basis for denying him such material in the future. Then he in turn might be answerable to his colleagues in the Senate for their inability to learn that little bit of the inside story to which they were accustomed.

And besides, whatever his policy views, Fulbright is a well-accepted member of the Senate "club"; he is not one to breach the standards and the etiquette under which it operates. He was in the bizarre position of having seen the Pentagon Papers but of feeling constrained not to quote publicly from them; instead he simply continued asking that they be made officially available. Fulbright wrote to Laird again on April 20, 1971. He got no reply.

By then, however, Ellsberg was exploring other means of getting the con-

tents of the Papers into the public domain. He attended a conference on "war crimes" sponsored by Columbia University law professor Telford Taylor and stressed to the international lawyers there that if any trial, or even mock trial, on the issue should be initiated, he know of the existence of papers that corresponded—in his mind, at least—to the Nuremberg documents used after World War II.

Ellsberg went as far as describing the Pentagon Papers to some of the lawyers and suggested that he could be named personally as a defendant or a witness in an attempt to get the Papers subpoenaed. He urged other constitutional lawyers to initiate civil suits and attempts to obtain court injunctions against the conduct of the war, offering the Papers as a dramatic piece of evidence. But no one was interested enough to pursue it.

The Cambodian Protest

IN MAY 1970 American forces crossed into Cambodia with South Vietnamese troops on a mission that the Nixon administration promised would wipe out "enemy" sanctuaries within 30 days. The upheaval of protest throughout the nation was enormous. The American troops would indeed withdraw into South Vietnam after 30 days, but vast numbers of people refused to believe the administration's proud declarations that the incursion had been a total "success."

Daniel Ellsberg testified before the Foreign Relations Committee at Fulbright's invitation on May 13, 1970, and his message was a gloomy one. He said he was proud of the protest over Cambodia, "but I am afraid that we cannot go on like this, as seems likely unless Congress soon commits us to total withdrawal, and survive as Americans. There would still be a country here and it might have the same name, but it would not be the same country. I think that what might be at stake if his involvement goes on is a change in our society as radical and ominous as could be brought about by our occupation by a foreign power."

Ellsberg pointed to the continuity of U.S. policy in Vietnam over the years and, in an exchange with Fulbright, said that "having studied the documents of a number of administrations and found the internal rationales in terms of strategic interests palpably inadequate, I have more and more come to look at the domestic political contexts in which those decisions were made year after year." The interchange between Fulbright and Ellsberg inevitably turned to the Gulf of Tonkin incident, and they jointly chastised

the Defense Department for refusing to make studies of past events public. The senator complained of the mystery surrounding the command and control study of Tonkin compiled by the Institute for Defense Analyses: "Here is a study made at government expense, paid for by the taxpayers, and withheld from the Committee. I don't see any justification for such classification."

Ellsberg accommodatingly replied: "It is important that such few attempts at learning from our experiences should be exploited, be understood by those people who are involved in decision-making. I would wish, first of all, that President Nixon could have access to the information in that study and in other studies that were done directly for Mr. McNamara of our involvement. I would doubt very much whether anyone on the National Security Council staff has taken advantage of those."

Fulbright concurred knowingly: "I can't subscribe to this extension of the concept of classification to prevent our knowing about the past . . . It doesn't give democracy an opportunity to function at all."

Fulbright Tries Again

WHILE HE WAITED for the hearings that he felt certain Fulbright would call for the specific purpose of examining and exposing the lessons of the Pentagon Papers, Ellsberg also made them available, through intermediaries, to scholars from the Institute for Policy Studies, a radical-left think tank in Washington. They had been

working since February 1970 on a two-volume study of the planning of the Vietnam war. A team of interviewers helping Ralph Stavins prepare the section entitled "Washington Determines the Fate of Vietnam: 1954-1965" received some documents from Kennedy and Johnson advisers with whom they spoke, but the availability of the Papers meant that assertions could be reliably checked against an existing historical study.

For about a year the institute would make free use of the Pentagon Papers without any controversy. They were not hidden away in any peculiarly secretive manner; visitors remember having no trouble seeing them. But preparation of the book would take a long time—one volume was scheduled for release in the summer of 1971 and a second in the spring of 1972—and in any event this was not the kind of dramatic war-stopping disclosure that Ellsberg had in mind.

Fulbright, a man of delicate and gen-

tlemanly persistence, was still trying. He wrote to Laird again on July 10, 1970, asking that the Papers be made available to the committee. "It seems to me that the [Defense] Department has had ample time to consider this matter," he said. On July 21, a full six months after Fulbright had asked reconsideration of the decision not to make the study available, Laird wrote back to say no. He gave no additional reasons, nor did he answer Fulbright's point about sharing power over foreign affairs in the legislative and executive branches.

"My letter of Dec. 20, 1969," Laird said, "indicated that access to and use of this document, as intended from the start, has been and remains extremely limited. For the reasons expressed in that letter, I have again concluded that it would be clearly contrary to the national interest to disseminate the compendium more widely." That, under the rules permitting Cabinet officers an extraordinary degree of latitude in classification matters, was that.

Still stirring no public attention and being careful not to breach security himself, Fulbright took the Senate floor on Aug. 7, 1970, and denounced Laird's decision on the Papers. "The executive branch—in what has become a reflex action—has again slammed the door on Congress," Fulbright said. He warned, though, that "as the old saw goes: 'Nothing is secret for long in Washington.' I hope that the first enterprising reporter who obtains a copy of this history will share it with the committee."

"Making News"

SHORTLY AFTER becoming a research fellow at MIT in the fall of 1970, Ellsberg attended a seminar on "making news" given by Edwin Diamond, a former Newsweek writer lecturing on political science at the university; afterward he pumped Diamond with questions about The New York Times: "Where is power at the Times? Who runs what?" Diamond responded by mentioning the often-publicized rivalries between the daily news operation of the Times, the editorial page, and the Sunday edition.

Others recall similar conversations with Ellsberg at the time, conversations in which he expressed more than his usual amount of curiosity about the internal structure and operation of newspapers, especially the Times. On occasion Ellsberg even called Ben Bagdikian, assistant managing editor of The Washington Post, to ask him how to get information concerning Vietnam to the appropriate reporters at the Times.

When Ellsberg had something to say

about the war and wanted to make sure it was read by the people he was criticizing, he would, like other East Coast intellectuals, write a letter to the Times. On Nov. 26, 1970, for example he wrote a bristling attack on the Nixon administration's Indochina policy. "Nixon's clearly announced and demonstrated strategy entails not only prolonging but vastly expanding this immoral, illegal, and unconstitutional war," he said in a letter endorsed by other MIT faculty members.

In the meantime, Ellsberg had continued to work with the Pentagon Papers and hardly made a secret of that fact. In September, 1970, at the 66th annual meeting of the American Political Science Association in Los Angeles, he delivered a 70-page paper called "Escalating in a Quagmire." In a long footnote to the paper Ellsberg said that his "assertions and speculations on U.S. decision-making" reflected his long experience in Defense and State Department jobs as well as "research since that time, in part as a consultant with official access." He apologized for making "generalizations . . . without specific citation," but said that approach was less unsatisfactory than "to rely entirely on the public record or to pretend to do so, to forego generalizations or to subscribe to wrong ones."

The paper, which would later be awarded a \$250 prize as the best one delivered at the meeting, attracted widespread attention and later appeared in revised and abridged form in Public Policy. It was perhaps the most cogent statement of Ellsberg's conclusions about the decades of American involvement in Southeast Asia.

In his paper Ellsberg disputed the widely accepted notion—advanced, among others, by Arthur Schlesinger Jr., the historian who had served as a

White House aide to John F. Kennedy—that the United States had stumbled unknowingly into a "quagmire" in Vietnam and simply never knew how to get out. On the contrary, Ellsberg said, the "internal record" indicates that each successive American President was "striding with his eyes open into what he sees as quicksand, renewing efforts and carrying his followers deeper in, knowingly." He went back to a speech on the House floor on Jan. 25, 1949, when then Rep. John F. Kennedy urged his colleagues to "assume the responsibility of preventing the onrushing tide of communism from engulfing all of Asia."

As an alternate model of the "quagmire" theory, Ellsberg suggested that what had been operating was the "stalemate machine," a policy that involved doing "what was necessary at any given time to avoid losing, and

not, at that time, much more." He inferred that a crucial "rule of the game" had been operating for all Presidents: "Do not lose the rest of Vietnam to Communist control before the next election."

Meetings With Kissinger

BEFORE HE ultimately took things into his own hands, Ellsberg made a last flirtation with the actual decision-making process in government. Early in August 1970, he had lunch in Washington with Henry Kissinger and Lloyd Shearer, the roving editor of *Parade* magazine. Kissinger indicated his interest in talking with Ellsberg alone about the war. Several subsequent appointments were made (including one that interrupted the Ellsbergs' honeymoon in Hawaii), but according to Ellsberg they were canceled each time by Kissinger at the last moment.

They did meet for half an hour at the Western White House in San Clemente in September, and as Ellsberg recounts it their conversation focused on the Pentagon Papers. Ellsberg learned that Kissinger had been one of the original advisers on the structure of the war history and that a copy of the final version was available to him. But Kissinger said he had not read the Papers, because they had little relevance to formulation of current policy.

Ellsberg, citing his own reading of the Papers, disagreed. He pressed Kissinger, urging him to assign at least one person the task of reading and analyzing the entire study. Kissinger promptly offered that job to his visitor. Ellsberg refused: "My feeling was that I'd been through all that before and I wasn't going to get in the position of being a staff worker for him."

Later, when the Pentagon Papers were disclosed, Kissinger was quoted as denying any knowledge of them.

The last confrontation between Ellsberg and Kissinger came in late January 1971 at a weekend conference in suburban Boston sponsored by MIT and several businessmen to discuss "the foreign policy crisis." Kissinger, one of the main speakers, told the group that "there are no good choices left in Vietnam" and that "this administration has been the best protection of those who most loudly deplore our policy." After several other people asked Kissinger questions, Ellsberg stood and pressed him to say whether the administration had estimated the number of Asian dead and wounded that might result from "Vietnamization," just as it had estimates of expected American casualties. When Kissinger began to speak of

"options," Ellsberg said, "I know the option game, Dr. Kissinger . . . can't you just give us an answer or tell us you don't have such estimates?"

The meeting was broken up, and the next day South Vietnamese troops entered Laos on operations heavily supported by American troops from the air—a showpiece of Vietnamization.

The Laos operations became the subject of one of Ellsberg's angriest public attacks on American policy, an article in the *New York Review* in March 1971. He wrote of "a coherent inner logic" to American policy; the old rule of "a decent interval" between American troop withdrawal and the fall of the Saigon government. "How many will die in Laos?" Ellsberg asked. "What is Richard Nixon's best estimate of the number of Laotian people — 'enemy' and 'non-enemy'—that U.S. firepower will kill in the next 12 months? He does not have an estimate. He has not asked Henry Kissinger for one, and Kissinger has not asked the Pentagon; and none of these officials has ever seen an answer, to this or any comparable question on the expected impact of war policy on human life. And none of them differs in this from his predecessors."

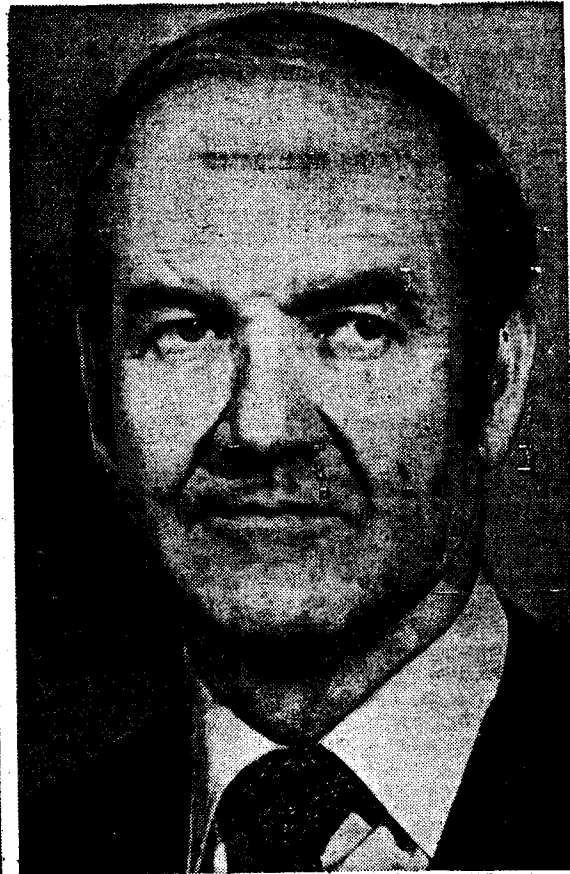
Trying McGovern

WHENEVER Ellsberg consulted lawyers, they advised him that he would be in a much safer position legally if he persuaded a member of Congress—protected by legislative immunity—to disclose the Pentagon Papers rather than doing it himself. As he became discouraged over the prospects with Fulbright—some of whose staff members began advising against holding hearings based on the Pentagon Papers — Ellsberg next chose Sen. George McGovern, sponsor of a major end-the-war amendment and the first declared candidate for the 1972 Democratic presidential nomination.

Ellsberg called on the senator in January 1971, saying he had classified material that would expose American policy in Vietnam so thoroughly as to end the war. According to Ellsberg's version of the story, McGovern agreed that he would accept the Papers but later backed down after consulting with Sen. Gaylord Nelson (D-Wis.), a good friend of McGovern and a lawyer. Later Ellsberg would attack McGovern for not having the courage to help flush out the truth on the war.

But McGovern's recollection of their relationship is substantially different. "I concluded after talking with him for a while that he was a hawk with a bad

conscience," McGovern says. "I've had a dozen professors and preachers and foreign service officers give me memoranda in the past that they said would end the war if disclosed . . . I had no idea what he had, and I didn't know if his judgment was good or bad. I didn't even know whether he was rational."

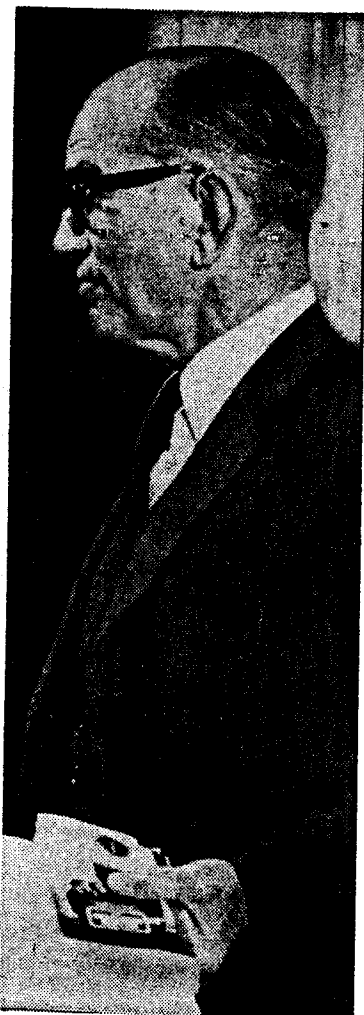


By Bob Burchette—The Washington Post

United Press International

Two of the senators Ellsberg approached were Charles Goodell and George McGovern.





The Washington Post

Fulbright and the published papers.

McGovern says he also pointed out to Ellsberg that it would be better to approach someone other than a candidate for President, in order to avoid the impression that the release was for purely partisan political purposes. McGovern, who was proud of a long record of voting against the war in the Senate, resented Ellsberg's argument that everyone should be willing to go to jail in order to end the war: "I figured that if anybody was to go to jail, it would be better for him to go than me, since I was a United States senator, doing what I think is important work."

John Holum, McGovern's legislative assistant, did not like Ellsberg. "There are a lot of people you encounter who are recent converts on the war," Holum observes with the passion of a longtime believer. "They usually don't have much to offer." He and other staff members were offended by Ellsberg's manner and the information that he had already "told off" Sen. Nelson.

McGovern denies that he ever encouraged Ellsberg or even looked at the Papers before making his decision. According to McGovern, he urged Ellsberg to go instead to a large newspaper, such as The New York Times or The Washington Post. In retrospect, however, he concedes that if a member of Congress had been willing to act, the press and the people might have been able to obtain and digest the information in the Pentagon Papers much more easily.

Enter Neil Sheehan

ELLSBERG felt that he had exhausted the major prospects in Congress. The press seemed to be the only solution, and the Times was his natural choice. It was simply a matter of choosing the right person to receive the material. That became easier when Ellsberg learned that Neil Sheehan—a former UPI correspondent whom Ellsberg had met in Vietnam and who was now working in the Washington bureau of the Times—was preparing an essay on 33 antiwar books for the Times' book review section.

Sheehan's piece, entitled "Should We Have War Crime Trials?", appeared in the newspaper on March 28, 1971. The men directing the war in Washington and Saigon, Sheehan observed, had "never read the laws governing the conduct of war . . . or if they did, they interpreted them rather loosely." Looking at the 33 books, he said, "If you credit as factual only a fraction of the information assembled

here about what happened in Vietnam, and if you apply the laws of war to American conduct there, then the leaders of the United States for the past six years at least, including the incumbent President, Richard Milhous Nixon, may well be guilty of war crimes."

That was enough for Daniel Ellsberg. Neil Sheehan and his wife, Susan, a writer for The New Yorker, visited Cambridge late in March, 1971; after a brief stay at the Treadway Motel there, they returned to Washington with an enormous bundle of disorganized photocopies of government documents, the Pentagon Papers.

On March 7, 1971, the Sunday edition of the Boston Globe carried a front-page story by Thomas Oliphant describing the nature of the study McNamara had commissioned. The headline read: "Only 3 Have Read Secret Indochina Report; All Urge Pullout." The three people to whom Oliphant referred were Morton Halperin, Leslie Gelb and Daniel Ellsberg. The last, described by Oliphant as "by far the most vocal in his opposition to the war," told the reporter in an interview that during his six years in government and consulting jobs "I was participating in a criminal conspiracy to wage aggressive war." There were quotes from Ellsberg's scathing article in the New York Review of Books, but not from the Pentagon Papers themselves. Still it was quite a scoop; except for a brief mention in the Oct. 25, 1970, issue of Parade magazine, Oliphant was the first to write publicly about the Papers. But no one else picked it up.

There would be a long wait. Daniel Ellsberg, who had paid attention to little else for a year and a half, was near despair.

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