

# Ellsberg Case Takes a Twist

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The Justice Department introduced a new element of intrigue into the Pentagon Papers case 10 days ago when it named a former South Vietnamese ambassador to Washington as an alleged "co-conspirator" in disclosure of the top secret Defense Department history of the Vietnam war.

Although it charged him with no crime, a federal grand jury in Los Angeles said that Vu Van Thai, 52, had "confered" with Daniel Ellsberg and two others to reveal classified documents in violation of the federal espionage act.

By doing that, according to lawyers who have followed the case for the past seven months, the government may have provided a vital clue to its prosecution strategy.

They suggest that the government's objective may be to make Thai, who became an outspoken advocate of a negotiated settlement to the war upon his retirement from Saigon's diplomatic corps in early 1967, a vehicle for proving Ellsberg's "intent" in releasing the papers.

Criminal conviction under the espionage act, or conspiracy to violate the act, requires proof that the defendant "has reason to believe" that the documents he revealed "could be used to the unjury of the United States or to the advantage of any foreign nation."

From the start, it has been assumed in legal circles that the government would have a difficult time establishing this in its case against Ellsberg.

## Aid Stressed

Ellsberg's lawyers have made it clear, for example, that when he takes the witness stand in his own defense, he will tell the jury that he intended to help, rather than hurt, the national interest by leaking the papers to the press.

But in its new indictment against Ellsberg on December 30, the government alleged for the first time that he had actually given the classified documents to a representative (in this event, an ex-representative) of a foreign power—Vu

Van Thai.

The indictment says that Thai "possessed" one volume of the papers on October 19, 1969.

It also charges that Ellsberg "did knowingly convey" and "did wilfully communicate, deliver and transmit" that volume to Thai "during the period from about August 29, 1969, to about May 20, 1970" in Los Angeles.

The volume involved covers American diplomatic contacts aimed at ending the war and obtaining release of U.S. prisoners, and is one of the four that Ellsberg has said he held back from the press because they were too sensitive.

After his retirement as a diplomat, Thai—once a high official under South Vietnamese president Ngo Dinh Diem—never returned to Saigon, apparently because of fundamental differences with then-premier Nguyen Cao Ky.

Instead, the wealthy and worldly-wise Thai stayed on in the United States, serving for about three-and-a-half years as a consultant to American research organizations, most notably the Rand Corporation in Santa Monica, California, where Ellsberg then worked.

Rand confirmed last week that Thai consulted with the "think tank" on questions involving Vietnam for three years beginning October 1, 1967.

Although none of his writings were published, a Rand spokesman said that Thai was the author of "internal notes," cryptically known as "D's" within the organization.

A Harvard professor close to Ellsberg said that Dan did a series of interviews with Vu Van Thai for Rand. They had long, long conversations. Dan thinks the world of him."

## Cues From Thai

Leslie Gelb, a long-time associate of Ellsberg, said "Dan took a lot of cues about South Vietnamese politics from Thai. He was always quoting him admiringly." Gelb was the director of the task force that wrote the Pentagon Papers.

Thai, now a consultant for a United Nations river develop-

ment program in the West African nation of Senegal, has refused to respond to repeated phone calls to Dakar, that nation's capital.

In a New York Times dispatch from Senegal, he was quoting him admiringly. "I am a friend of Dan Ellsberg." But he added that, "as to this case, it is a political affair, and since at the present time I am an international civil servant, rules forbid me to comment on a Vietnamese political affair."

Justice Department aides, invoking a ban on discussion of pending criminal cases, have also refused to elaborate on Thai's alleged involvement or to say whether the Vietnamese ex-diplomat cooperated in the Pentagon Papers investigation.

What Ellsberg's lawyers fear, however, is that the prosecution will seek to document any contacts Thai might have had with the North Vietnamese or with the National Liberation Front of South Vietnam, or even with Viet-



**VU VAN THAI**  
... Ellsberg's friend



**NOAM CHOMSKY**  
... "nothing to it"

name neutralists, about the war, and portray them as having a sinister intent.

Vietnamese politicians, especially those out of power and favor do not necessarily share the general simplified American distinction between "pro-Communist" and "anti-Communist" elements in Southeast Asia.

Since Rand has cooperated fully with the government investigation, the Justice Department could also subpoena Thai's "internal notes" and presumably spell out in court the point of view that he was expressing.

Although there is continuing legal dispute on this point, it is generally accepted that juries are permitted to infer a criminal defendant's "intent" on the basis of circumstantial evidence presented at trial.

The appearance of Thai's name in the new Ellsberg indictment also revived speculation that some of the subpoenas issued by another grand jury investigating the Pentagon papers in Boston may be based on the government's efforts to establish connections with a "foreign power."

#### Frequent Contacts

Two of the witnesses called to testify there—Noam Chomsky, a linguistics professor at the Massachusetts Institute of Technology, and Richard A. Falk, a professor of international law at Princeton—have had frequent contacts with the North Vietnamese and NLF in Hanoi and Paris.

Both of them are friends of Ellsberg, but have refused to testify before the grand jury about whether they had any knowledge of the Pentagon Papers.

After they raised the suspicion that they had been the object of wiretapping by the

government, a federal judge in Boston excused Chomsky and Falk from testifying. The government has since denied the wiretapping in formal court papers, however, and the two professors have been called to appear once again when the grand jury resumes its hearings on January 18.

(An appellate court ruling last Friday restricting the grand jury from questioning an aide to Sen. Mike Gravel (D-Alaska) had no effect on Chomsky, Falk or most other prospective witnesses.)

"Of the people close to Dan," Chomsky said last week, "Dick Falk and I have the closest connections to the North Vietnamese. I assume they would like to show and believe true that there was contact between Dan and the North Vietnamese, through us, on the Pentagon Papers."

Chomsky, who said he will continue to fight his subpoena on other grounds, added that "there is nothing to it. They'll be disappointed if I ever testify."

For his own part, Falk said any such suggestion is "far-fetched, given the realities."

He asserted that his contact with the Vietnamese Communists—for example, when he went to Paris last June to discuss the prisoner-of-war issue with negotiators at the Vietnam peace talks—was motivated by "ultra-patriotism. I was trying to help end the war."

Additional indictments in the Pentagon papers case are anticipated in Boston, however, and there, too, the government would presumably be permitted to establish the "intent" of disclosure in part on the basis of inferences that might be drawn from Ellsberg's relationship with Falk and Chomsky.

Ironically, this approach to

the prosecution may serve to frustrate other government agencies seeking to end the war, such as the Department of State.

As American policy has shifted toward winding down the war and attempting to withdraw from Vietnam, it is on just such recognized neutralists as Vu Van Thai—and perhaps even on individuals like Falk and Chomsky—that the U.S. government may have to rely for passing vital diplomatic messages.

#### Other Keys

Another clue to government other keys to government strategy in the new indictment of Ellsberg and Anthony J. Russo Jr., his long-time friend and Rand colleague.

Ellsberg's arsenal of defense lawyers had been expecting the original indictment returned against him last summer to be supplanted by a new and more specific one, but they were caught by surprise when the government moved only six days before pre-trial hearings were scheduled to open in Los Angeles.

By waiting so long, the Justice Department managed to flush out much of the defense's own strategy in preliminary court papers.

It became clear from the pre-trial motions filed on Ellsberg's behalf, for example, that the defense will assert that the Pentagon Papers prosecution involves a rare use of the federal espionage act and that it will also raise the specter of a "selective prosecution" of one person who leaked documents, while others go free every day.

One of Ellsberg's lawyers, former New York Republican Sen. Charles E. Goodell, acknowledged last week that the new indictment would be a harder one to defend against in court.

By using the conspiracy charge against Ellsberg and Russo, the government removed from itself the burden of proving every one of the alleged acts committed by the defendants. If their plans can be established adequately to the jury, that could be enough to obtain a conviction.

The government also tipped its hand by charging Russo only with "receiving" the classified documents in the new indictment.

Lawyers close to the case read that as meaning that indictments may be forthcoming in Boston against newspapers and publishing houses, along with individual employees of the organizations who personally "received" the Papers.