

# Ellsberg Indicted Again in Pentagon Case

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## Russo Is Also Charged— Former Saigon Envoy Called Co-Conspirator

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By STEVEN V. ROBERTS

Special to The New York Times

LOS ANGELES, Dec. 30—Dr. Daniel Ellsberg was indicted by a Federal grand jury again today, on 12 criminal charges, including conspiracy, for releasing the controversial Pentagon papers to the news media.

Anthony J. Russo Jr., a former colleague of Dr. Ellsberg at the Rand Corporation, was indicted on four counts, including conspiracy. Both defendants were ordered to appear here next Tuesday for arraignment.

In New York, Dr. Ellsberg said that the charges against him were "false" and that he was not aware of having "violated any criminal statutes."

### Charges More Severe

The new charges against Dr. Ellsberg, which also include theft of Government property and violation of espionage statutes, are considerably more severe than those leveled against him by the same grand jury last July.

At that time, Dr. Ellsberg, now a research associate at the Massachusetts Institute of Technology, was charged on two counts of converting Government property to his own use and illegally possessing Government documents.

Lawyers here said a conspiracy charge would be more difficult for the defense to answer. They said the conspiracy charge had become a favorite weapon of the Justice



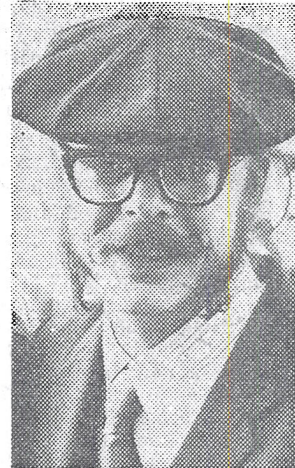
The New York Times/John Solo

Dr. and Mrs. Daniel Ellsberg here yesterday afternoon

Department because it was often easier to prove than other criminal charges.

Mr. Russo, a 35-year-old economist and engineer, had not been indicted in the case before. But he spent 47 days in jail for contempt last fall after refusing to testify before the grand jury.

The 25-page indictment, which was released here and in Washington this afternoon, also named two as co-conspirators—Miss Lynda Sinay, a Los Angeles advertising woman, and Vu Van Thai, a former South Vietnamese Ambassador



Associated Press

Anthony J. Russo Jr. on his way to surrender in Los Angeles yesterday.

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to the United States. Neither was indicted.

A grand jury is continuing to meet in Boston and has called more witnesses for Jan. 18. That investigation has been concentrating on how The New York Times and other media received and published the Pentagon Papers.

It was widely assumed, because of the people summoned to testify, that the Boston investigation was aimed at persons who helped Dr. Ellsberg distribute the documents or who had access to them before they became public.

This aroused charges of a "fishing expedition" into the antiwar movement and caused deep unease in the academic community, where many of the subpoenaed landed.

Proceedings have been halted in Boston partly because several potential witnesses, including Prof. Richard Falk of Princeton and Prof. Noam Chomsky of M.I.T., refused to testify until the Government indicated whether they had been subject to illegal wiretaps. The Government recently filed affidavits asserting that neither man had been wiretapped.

One of the main subjects of the inquiry in Boston has been Neil Sheehan, The Times correspondent who obtained the copy of the Pentagon papers that appeared in The Times. The New York Times has refused to comment on where its copy of the papers was obtained.

#### Copying of Documents

The grand jury here has focused on how Dr. Ellsberg copied the documents while he was employed by the Rand Corporation, a research company in nearby Santa Monica. Rand, which does considerable work for the Defense Department, had two copies of the study, on which Dr. Ellsberg worked while he was a Rand employe.

Both Dr. Ellsberg and Mr. Russo have admitted their roles in making the secret Pentagon study of the Vietnam war available to the public. Both have argued that releasing the papers was promoting the country's best interests.

Mr. Russo appeared in United States District Court here this afternoon to appeal the bail set for him. When it approved the indictments yesterday, the grand jury set a \$100,000 corporate bond for Mr. Russo, which meant that he would have to put up \$10,000 in cash.

After hearing all arguments, Judge Harry Pregerson ordered Mr. Russo's bail reduced to a \$50,000 personal recognizance bond, which meant that the defendant had to put up no cash.

During the hearing, Mr. Russo wore his long, thinning hair in a small bun at the back of his neck. He testified that he had not been able to work since

being called as a witness last June and was now "virtually penniless." When asked about his intent to appear for trial, Mr. Russo said he was "looking forward" to it.

"I am feeling very good today," he said in a husky voice, "because I will have a chance to appear in court. Make no mistake—I will appear."

The sealed indictment was filed yesterday afternoon here in Los Angeles and reporters in Washington were called to the Justice Department during the evening. They were informed of the indictment's contents but were prohibited from telling anyone, apparently because the indictment had not been officially unsealed.

#### Unsealed by Judge

The indictment was unsealed by a Federal judge here this morning. The indictments were originally sealed, according to the Justice Department, to give agents a chance to arrest Mr. Russo. When informed of the charges against him today, Mr. Russo appeared voluntarily.

The first count of the lengthy indictment charged that between March 1, 1969, and Sept. 30, 1970, the defendants had conspired against the Federal Government for the following purpose: "Obtain and caused to be obtained, classified Government documents relating to the national defense, from Rand Corporation, Santa Monica, Calif., and Washington, D. C., and from other sources. The documents would be communicated, delivered and transmitted to defendants and others, none of whom would be authorized to receive them."

The next six counts involve specific acts of stealing, concealing and receiving stolen Government property, including nine volumes of the 38-volume Pentagon papers, a 1968 memorandum from the Chairman of the Joint Chiefs of Staff about Vietnam, and a case study of the 1945 Geneva conference on Indochina.

#### Possession and Reception

The final eight counts involve unauthorized possession and reception of these documents, in violation of three sections of the national espionage laws.

Miss Sinay had previously told the grand jury that she had received \$150 from Dr. Ellsberg for use of a Xerox machine she had rented. She was alleged in the indictment to have had unauthorized possession of one volume of the Pentagon study. Mr. Thai, the former South Vietnamese Ambassador, was also alleged to have had possession of one volume.

Arguments on motions in the original Ellsberg case had been set for next Tuesday, but lawyers following the case said they believed some of the arguments would now be rendered moot.

"It seems like some wasted



Associated Press

Miss Lynda Sinay, who was termed a co-conspirator, but was not indicted.

effort to me," said David R. Nissen, the Assistant United States Attorney in charge of the Government's case. "But my time has been wasted, too."

The Pentagon Papers, a collection of Defense Department documents about the origin and planning of the United States involvement in war in Indochina, first appeared in The New York Times on June 13.

The papers, including a 3,000-page analysis, to which 4,000 pages of official documents were appended, were commissioned by Secretary of Defense Robert S. McNamara. They covered the Administrations of four Presidents, showing the American involvement in Southeast Asia from World War II to mid-1968.

At that point in 1968, President Johnson set a limit on further American military commitments in Indochina and revealed his intention to retire. The Paris peace talks commenced.

The publication of portions of the papers in The Times, and subsequently in other newspapers, touched off a national debate on the role of the American press vis-à-vis considerations of national security.

#### Court Freed Newspapers

The issue was resolved in part on July 1 when the Supreme Court, by a vote of 6 to 3, freed The Times and The Washington Post to resume publication of the secret papers.

The Government had contended that publication of documents drawn from the Pentagon study would cause "irreparable injury to the defense of the United States," and had obtained court injunctions forcing the newspapers to suspend publication of the documents.

The Times started publishing a series of articles based on the Pentagon papers on Sunday, June 13, 1971. After the first three daily installments, the Justice Department obtained a temporary restraining order

against further publication.

The issue was then fought through the courts for 15 days until the Supreme Court ruling that held that, in this particular case, the right to a free press under the First Amendment to the Constitution overrode any subsidiary legal considerations that would block publication.

However, the Court did not make a general ruling that could be applied to similar cases in the future.

## Ellsberg Denies Charge

By DOUGLAS ROBINSON

Dr. Ellsberg contended yesterday that the Government's charges against him were "false" and that he was not aware of having "violated any criminal statutes."

"I stole nothing and I did not commit espionage," he said. "I violated no laws and I have not intended to harm my country."

Dr. Ellsberg, occasionally holding hands with his wife, Patricia, who sat beside him, answered questions at a news conference in the offices of one of his attorneys, former Senator Charles E. Goodell of New York.

Asked if he would have distributed the Pentagon papers had he known of the charges that would be brought against him, Dr. Ellsberg said, "No, I would have released the papers two invasions before I did."

He accused the Government of having indicted Mr. Russo on "fake charges" and said his co-defendant had offered to testify if a transcript of his appearance before a grand jury were made public. The Government's decision not to permit a public examination of any of Mr. Russo's testimony was a "deception," he said.

Asked what role the former South Vietnamese Ambassador, Vu Van Thai, had in the distribution of the papers, Dr. Ellsberg said that "ambassador Thai is out of the country and cannot use the legal system to defend himself."

"The allegations about Ambassador Thai are flatly and totally untrue," he maintained.

Dr. Ellsberg said his "Christmas present" from the Government in the form of the indictment "is nothing compared to the Christmas present the President has given American fliers recently shot down over North Vietnam."

"How can you measure the jeopardy I'm in to the penalty that has been paid by 50,000 American families and hundreds of thousands of Vietnamese?" he asked.

Dr. Ellsberg was accompanied by Mr. Goodell, who is head of the Daniel Ellsberg Defense Fund, and by his chief counsel, Leonard B. Boudin. The news conference was held in the law offices of Roth, Carlson, Kwit, Spengler & Goodell at 28<sup>o</sup> Park Avenue.