

February 23, 1972

MEMORANDUM

To: Charles Nesson

From: Paul N. McCloskey, Jr.

Re: Daniel Ellsberg

I went to Viet Nam and Laos between April 7 - 17, 1971, with Congressman Jerome Waldie to try to ascertain (1) the extent of the destruction of villages in South Viet Nam, (2) the manner in which the Phoenix program was being operated and (3) the nature of the destruction of villages in Laos by Air Force bombing. A partial summary of our finding is attached as Exhibits A and B, being my testimony before the Senate Refugee Subcommittee and the Senate Foreign Relations Committee, respectfully.

On the second night after I returned -- April 19, Monday-- I spoke at Princeton University on a panel with Dan Ellsberg. Vance Hartke spoke first of his recent trip to Paris and discussions with the North Vietnamese, after which I spoke and then left before Dan Ellsberg spoke. Dan sat next to me and at some stage, either before or after I spoke, confirmed that I was correct on the matter of the deliberate deception by our government. He said he had documentary evidence confirming this and asked if he could come to Washington to see me.

A few days later I believe Dan came by to see me. At that time he left me with, I would guess, a stack about 8 inches high of xerox sheets which bore no security classification or identification, although it was apparent that they related to highly classified decisions made during the early 1960's. I promised Ellsberg I would go through the documents which he felt should be placed before the full Congress. We were then anticipating a vote to cut off the funds for the war in June, the so-called Nedzi-Whalen amendment.

Dan and I had several telephone conversations thereafter during which Dan asked urgently for the time to talk with me and brief me at length. We finally agreed that the only way this could be done was on an airplane during one of my regular weekend trips to San Francisco, and I believe he accompanied me to San Francisco and then returned with me from Los Angeles on the weekend of May 13-15. (Calendar page appended as Exhibit C).

On the plane to San Francisco I gave back to him the first set of papers that I had looked through, and when we returned to Washington he gave me another set of similar papers, also about 8 inches in thickness, as I recall.

In our conversation during the two 4 1/2 hour trips, he described the details of the 47 volume Pentagon study and wrote out in hand some notes about these documents. I particularly asked him to itemize the types and examples of deception which he felt the documents reflected, and he did so.

One thing that impressed me about our conversation was Dan's strongly-expressed statement on several occasions that he was willing to go to jail if necessary to make sure the truth was disclosed to the Congress. He felt the country had been deceived into going into the war, and that it was his duty to see that Congress not be deceived into continuing the war.

He told me he had given the documents to the New York Times, but had not authorized the release of the papers by the Times, and he was not certain he would authorize the New York Times to release it. He emphasized that it was the Congress that should get the information. In our conversations he never identified for me precisely what the papers in my hands were, and I never asked whether the papers he had given me were the papers themselves, copies of drafts, working papers, or what. I didn't ask because in his giving them to me he deleted some things. I was absolutely certain there was no crime in giving a member of Congress a document, regardless of classification, but I suggested to him that he should get the very best possible legal advice.

Ellsberg did not give me everything he had with him. We had quite a discussion about the law and whether or not what he was doing might be criminal in nature, and I urged that he have an experienced criminal lawyer, not just a constitutional lawyer. I promised him that I would identify the documents to the Senate Foreign Relations Committee before which I was scheduled to testify, and that I would also get

them to my own subcommittee, Foreign Operations and Government Operations, asking both the House and Senate to request the originals from the Pentagon. I told him, and he agreed, that the best way to get the Congress fully advised would be to have the appropriate committee chairman request them from DOD.

(At this time I had not yet experienced the repeated and deliberate refusal of DOD to give relevant information to Congress, although I had been having considerable difficulty in getting information on the Laos bombing.)

I testified before the Fulbright committee in late May, and Senator Fulbright indicated that he had had trouble getting the documents released. My own subcommittee hearings were postponed several times, and finally, shortly before the Nedzi-Whalen vote, the first New York Times publication occurred.

The Times was enjoined after the first three installments, and I was scheduled to testify before my subcommittee a few days later. Our subcommittee asked the Pentagon for the full 47 volume study, but DOD failed or refused to comply, and I was ready to present the documents to the subcommittee in formal testimony when Secretary Laird finally agreed to deliver the originals to Congress two days before I was scheduled to testify.

I dictated a file memorandum which told about Ellsberg's calls to me and furnishing me with the documents, and my Administrative Assistant inadvertently released this memo to a reporter who asked him if Ellsberg had been the source of the documents about which I was to testify.

A reporter asked me later if my Administrative Assistant's information was correct and Ellsberg had given me documents similar to those published by the Times. Within a few days Ellsberg called me and was quite upset. I told him that truth was the whole purpose of what he and I were trying to do and that neither my AA nor I would have revealed his name had not it already been published in New York, and that I felt neither he nor I should be deceitful in any way.

He said The Times had published the papers without his consent, that he had not affirmatively released them and was concerned that I had confirmed his identity. When the press asked me, I confirmed I had possession of the papers. I told Dan at the time that his search for the truth could not be consistently pressed with him or me lying to the press. Some time later the FBI asked to meet with me in my office. I invited the news media to be present. The FBI representatives asked me two questions, as I recall. Had Dan Ellsberg met with me on the plane and given me any documents? I answered yes. Would I show them to the FBI? no. They left after that. They later used this information in an affidavit to the court.

I kept the documents in my safe and, changing the locks on the safe, kept an intern in the office at all times until returning the documents to Ellsberg's attorneys a few days later.

Just before I was scheduled to testify about the documents to the House Government Operations Subcommittee, I announced publicly that I was going to turn these documents over to the Committee.

As to Ellsberg's actions, they seemed to me based entirely on patriotism. He wanted Congress to know the truth. After reading what he gave me, there was no question in my mind ^{but} that Congress should ~~see~~ see the documents. There was only one thing that looked to me that should not be made public, this being the name of a CIA officer identifued as "Lt. Col. Conein."

There was a reference to Diem's assassination and Conein's participation in the negotiations which preceded it. I felt this should not be shown to the public so his cover would not be blown.

I certainly do not think the papers would justify the label of top secret in 1971, and would guess we picked up thirty votes in the House in favor of ending the war by reason of the disclosure of the papers.


Paul N. McCloskey, Jr.