

Ellsberg and Legal Fees

Fighting Public's Fight Can Thin Your Wallet

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LOS ANGELES, July 4— "There are people in this room who I know can afford three, four, five hundred dollars. I don't think it is right not to give. The only thing you jeopardize is your wallets; these men have jeopardized their lives."

Stanley Scheinbaum, president of the Pentagon Papers Fund, Inc., told that to a near-capacity audience in the Beverly Hills High School auditorium a few weeks ago.

The affluent, liberal listeners had been treated to speeches by Daniel Ellsberg, Anthony Russo and Sen. Mike Gravel (D-Alaska), and now it was time to put their money where their ideological commitment was—to help pay for the Ellsberg-Russo defense.

But it was hard going for fund raiser Scheinbaum. Even after he switched from a soft and sincere sell to a hard and hortatory one, there was little response. The buckets were passed without much success.

Finally, a gimmick caught on. Someone offered \$100 for a Bantam Books edition of the Pentagon Papers autographed by Ellsberg and Russo. The autographed books, which sell on the newsstands for \$2.25, went out at \$10 per copy after that.



DANIEL ELLSBERG.
— paying the piper

The next morning, in U.S. District Court here, as pretrial proceedings in the conspiracy, theft and espionage case against Ellsberg and Russo droned on, Scheinbaum sighed heavily with disappointment.

His special "pitch" the night before had brought in \$2,500. There was another \$1,500, the Ellsberg-Russo share of the evening's "gate" after it was split with the local branch of the American Civil Liberties

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Union, which sponsored the meeting.

The total was \$4,000 for the defense fund.

That was enough to pay for about two days of defending Ellsberg and Russo in court for disclosure last year of the top secret history of American involvement in Southeast Asia.

Altogether, the total bill for defending the case is expected to exceed \$500,000.

And that does not include the defendants' promise to help pay the legal bills of friends who were subpoenaed before federal grand juries here and in Boston, but have waged costly fights against testifying.

On the prosecution side, although it is almost impossible to calculate the value of the government resources poured into the Ellsberg-Russo trial, the cost may be even greater according to some estimates, more than \$1 million. That expense is borne by the taxpayer.

But it has become increasingly clear that recent trials in which the executive branch and antiwar protesters of one stripe or another have a courtroom showdown are among the most expensive elements in the democratic process.

The trial of the Rev. Philip Berrigan and other Catholic militants in Harrisburg, Pa., earlier this year, for example, also cost the defense about half a million dollars.

That was with two of the defense attorneys, including former Attorney General Ramsey Clark, donating their services and with expenses of two of the defendants paid for by the government after they had been certified as "paupers." Had the defense not rested its case in Harrisburg without presenting a single witness, the cost might have been about 50 per cent higher.

The "Chicago" Seven trial, which lasted several months in late 1969 and early 1970, is estimated to have cost the defense almost \$1 million.

Although it involved some different issues and charges, the recent trial of Angela Davis in San Jose, Calif., was similarly expensive.

Little is known about the

total defense expenses in the Davis case—money is still being raised to pay them off—but the California State Legislature has appropriated almost \$1 million to pay the special prosecution costs, including extraordinary security arrangements at the Santa Clara County Courthouse in San Jose.

Scheinbaum, an economist and philanthropist who was elected a delegate to the Democratic National Convention from Santa Barbara his year, was shocked to discover the magnitude of his fund-raising task in the Ellsberg-Russo case.

When he was recruited for the job last fall, without pay, he thought his goal would be \$250,000.

With a few zealous supporters willing to donate more than \$10,000 each, that seemed attainable.

But the cost rose when the Justice Department added Russo to the indictment instead of merely calling him as a grand jury witness and when the trial was delayed until this summer.

Each time the defense has won a postponement on a pretrial issue, and each time U.S. District Court Judge W. Matt Byrne Jr. has delayed a ruling over a weekend, Scheinbaum has shuddered.

The way he calculates it, this phase of the case costs about \$15,000 a week.

That includes a large arsenal of lawyers. A few members of a left-leaning law commune here called the "Bar Sinister," refuse to accept more than \$1,250 a month for their part in defending Russo.

But even at half their normal fees—a reduction they have voluntarily agreed to—some of Ellsberg's lawyers, including Leonard Boudin and former U.S. Sen. Charles E.

Goodell, are very expensive. (Exactly how expensive, Scheinbaum won't reveal.)

"There's a lot of arm-twisting in this thing," says Scheinbaum of his efforts to keep costs down.

Without feeling the slightest bit disloyal, he was delighted this week when Byrne refused to grant the defense request for an evidentiary hearing on its claim that Ellsberg and Russo are the victims of "selective prosecution."

The bill for bringing witnesses here, housing and feeding them, and sending them back home to the East Coast would have been \$10,000.

Some expenses exasperate Scheinbaum, but he does not find out about them in time to raise objections.

It cost the defense \$3,000, for example, to seek dismissal of the indictment through a special motion complaining that the Justice Department had violated grand jury secrecy by disclosing the indictment to newsmen in Washington while it was still under seal here last December.

Surprising almost no one, that motion was denied out of hand by the judge.

Other costs to the defense include housing many of their aides and assistants in a modern apartment complex that is a 15-minute walk from the U.S. Courthouse here, frequent transcontinental plane fares and endless court transcripts.

The prosecution shares many similar costs. One prosecutor, Warren P. Reese, for example, lives in San Diego but stays in a hotel here all week long.

"Our lawyers don't charge as much as the others," says one Justice Department spokesman in Washington. But in fact, the three prosecu-

tors in the case, who have worked almost exclusively on it for nearly a year, earn an annual total of about \$82,000.

Chief prosecutor David R. Nissen refuses to discuss who else has worked on the Ellsberg-Russo case, but the chief of the Los Angeles office of the FBI and an aide from the Justice Department's Internal Security Division are in the courtroom every day.

The court costs—with the judge earning an annual salary of \$40,000—could also be added to the tally of government expenses. So could much of the FBI's investigative work in the case.

Government officials insist, however, that any such calculations are unrealistic, since many of the costs would be borne by the government whether this case were on trial or not.