

Dollars for Defense (II)

By Tom Wicker

William F. Buckley Jr. observed in his syndicated column recently that John Mitchell and Maurice Stans probably had spent as much as \$200,000 apiece in legal fees to win acquittal in their trial for perjury, obstruction of justice and conspiracy to "fix" the Vesco case in the Securities and Exchange Commission. If anything, Mr. Buckley's probably is a conservative estimate, and he went on to say:

"I find it an inexplicable outrage that men prosecuted by the Government, and found not guilty by the jury, should be left short of the money to defend themselves."

It is not clear that Mr. Stans and Mr. Mitchell are short of defense funds, or that this idea aroused Mr. Buckley before the Stans-Mitchell trial; nevertheless, the point is well taken. Mr. Buckley even mentioned the possibility of legislation to "redress this incredible injustice" but commented: "One strains to hear the voice of the civil liberties lobby that seeks to correct it."

Last Sept. 28, under the title "Dol-

lars for Defense," the civil libertarian who writes these articles raised the question "when the prosecution is blatantly unnecessary . . . why shouldn't Federal judges have some discretion to assign part of all of the defense costs to the Government?"

The case then in point was that of the so-called Gainesville Eight, who were reported to have run up a legal defense bill of \$150,000, of which \$40,000 was then owed. Yet, fair-minded men almost had to conclude that the Government's case against them (the charge was conspiracy to disrupt the 1972 Republican convention) was ludicrously lacking in substance. In fact, the jury acquitted the Eight without discussion.

The trial of the Gainesville Eight was one of a number of cases—the Chicago Seven, the Camden 28, the Berrigan group at Harrisburg come notably to mind—in the Nixon years in which the Government sought to prove a conspiracy, and in which the evidence presented was notoriously weak or tainted. In the Camden trial, for instance, the major figure in organizing

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and leading a group to break into draft board offices turned out to have been a Government agent all along. All these trials, as they unfolded, appeared to have been brought as much for political purposes as for any other.

Everyone can judge for him or herself whether the Mitchell-Stans trial could be so described. It seemed clearly a weak case, however, and like many cases brought or approved by Mr. Mitchell himself, when he was Attorney General, it was at least in part a conspiracy case. Conspiracy charges tend to be generalized and vague, used mostly when the Government does not have solid evidence of a more specific crime; thus, Mr. Mitchell and Mr. Stans were charged with conspiring to fix the Vesco case, when that case, in fact, was not quashed or fixed.

To this layman, it seems reasonable that Judge Lee Gagliardi should have had the option, in the Mitchell-Stans case, to assign a portion of the de-

fense costs to the Government, if he could reasonably conclude that the charges were frivolous, or political, or unnecessary. The judges in the other trials mentioned should have had the same option.

After all, the taxpayers foot the bill for prosecutions—and those bills are immense, too, particularly when the full resources of the F.B.I. and other Federal agencies are mobilized. It seems blatantly unfair that tax money should support political prosecutions, while those prosecuted have to bear defense costs themselves, or through public appeal.

Already, the government has to pay some defense costs for indigent defendants. In suits against one of the states, victorious lawyers can be assigned legal fees to be paid by the state. In both the Kent State case and that of the massacre at Attica Correctional Facility, the courts have ruled that responsible public officials could be sued by aggrieved persons. Prosecutors are public officials; and it is not much of a jump from the

Kent State and Attica rulings to a procedure in which prosecutors and the Government could be held responsible for bringing cases unnecessarily and thus injuring defendants.

In the Attica matter, the New York Legislature is considering a proposal to appropriate some funds toward the defense of the sixty inmates who have been indicted—and well it might. About half of the defendants are still in prison, and if all of them are tried on all charges, their defense costs could run to millions of dollars; yet, the state has not indicted a single law officer or corrections official for the indiscriminate killings, the brutal reprisals and the lack of medical care for the wounded that have been documented by the McKay Commission.

Maybe a new rule of law assigning some defense costs to the government when the judge considered it appropriate might reduce the number of political or harassing prosecutions. At least, such a rule would ease what Mr. Buckley rightly called the "incredible injustice" to the victim.

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