

Dollars for Defense

By Tom Wicker

IN THE NATION

Vice President Agnew, in his travail, has let it be known that he will organize a defense fund to pay the legal costs he is facing. So will Mr. Egil Krogh, the former White House aide who has been indicted on charges of authorizing the burglary of a Los Angeles psychiatrist's office.

Mr. Agnew probably can get adequate financial help from political and personal sympathizers, but Mr. Krogh may find the going harder, since Herbert Kalmbach, Maurice Stans and other wizard White House fund raisers are temporarily out of business. Apparently, Mr. Krogh hopes to persuade potential contributors that his is not an ordinary criminal trial but as much a political case as, say, that of Daniel Ellsberg.

Confronted with the same problem in the same case, Mr. G. Gordon Liddy pled indigence and asked for a court-appointed attorney. He told the judge he had only \$34, which will not hire much of a lawyer.

Ironically enough, the best way to measure the problem facing these defendants may be through the experience of numerous persons recently brought to trial by the Government in essentially political prosecutions—the Chicago Seven, the Camden 28 and the like. Even if ultimately found not guilty, such defendants can be severely harassed and penalized—financial ruin is possible—by the fact of having to pay for a defense. The prosecution, on the other hand, is financed by the taxpayers, since it has the Department of Justice, the U.S. Attorneys, the F.B.I. and all other government agencies at its disposal.

When the Gainesville Eight was recently acquitted in Florida, published reports put their legal defense costs at something like \$150,000, of which \$40,000 was still owed. Presumably that sum will have to be raised from sympathetic persons.

More details are available about the enormously expensive defense effort on behalf of Daniel Ellsberg and Anthony Russo, whose long and complex trial on charges growing out of the publication of the Pentagon Papers finally was voided because of government misconduct. The Ellsberg-Russo defense raised and spent just about \$1 million; the case against them was financed by the taxpayers, and one estimate—by Time magazine—put the cost of prosecution at \$4 million.

None of the Ellsberg-Russo fund went to the personal support or living expenses of the defendants or their families. About \$250,000 was spent for attorneys' fees—not a huge sum, since there were five lawyers on the defense team, which served for more than 20 months; the figure also covers

the legal expenses of several witnesses before grand juries in Boston and Los Angeles. In contrast, attorney William O. Bittman was reported in Ervin Committee testimony to have been paid \$156,000 for a few months' services in behalf of E. Howard Hunt in the Watergate matter.

I am indebted to Stanley Sheinbaum, the principal fund-raiser, for the following data on other Ellsberg-Russo defense costs:

A research staff of twenty persons, mostly law students, were paid \$30 to \$90 a week apiece for such tasks as tracking down every substantive item in the Pentagon Papers that had been printed before the Papers themselves, and indexing each day's trial transcript. The transcript itself cost about \$10,000 a month to a secretarial service.

Paying the expenses of thirty defense witnesses traveling to the West Coast came to more than \$15,000. In addition, emissaries had to visit these witnesses, persuade them to testify and consult on their testimony, all at defense expense. Once, a bit of evidence could only be had from a library in Paris; that required a \$40 phone call and another \$40 expense to fly the document to Los Angeles.

Overall, the telephone tab ran roughly \$5,000 a month. Complicated defense effort could not be operated out of briefcases and a set of offices had to be maintained; in Los Angeles, an office car also was needed. The cost of duplicating documents—to produce more than 900,000 separate pieces of paper—was about \$5,000 monthly.

Of course, the Government has to take cases to court when the evidence warrants it. The Ellsberg-Russo indictments rudely stretched the meaning and intent of the statutes under which they were drawn, but the issues raised by the Pentagon Papers probably demanded trial. Too often in the numerous political trials of recent years—which have resulted mostly in such ludicrous convictions as Philip Berrigan's for smuggling letters out of prison—the evidence has not appeared to warrant anything but laughter.

When the prosecution is blatantly unnecessary, as it turned out to be most notably in the case of the Gainesville Eight, why shouldn't Federal judges have some discretion to assign part or all of the defense costs to the Government? Since taxpayers still would be footing the bill, that probably wouldn't stop vindictive or frivolous "conspiracy" prosecutions intended more to harass than to do justice. But it might at least take some of the burden off the victims.