AN INDEFENSIBLE VERDICT

Why are gang land leaders—guilty of no direct crime—jailed, while convicted Communists go free?

by Herbert W. Stanley

THE CONVICTION of 20 Apalachin defendants in the Federal Court of Judge Irving R. Kaufman seems a serious miscarriage of justice. The defendants were charged technically with the offense of conspiracy to conceal the purpose of their meeting in a private house in Apalachin, New York, on November 14, 1957. Actually they were indicted and convicted by an extremely questionable twisting of the law when the law enforcement officers found themselves unable to secure direct evidence of their criminality. The trumpery charge of conspiracy was leveled against them in order to make certain that they did not escape punishment.

The only justification of such legal tactics is that defendants, with a single exception, were men of criminal records. It was presumed by the law enforcement officers, and probably correctly, that they met in Apalachin to discuss and plan future criminal activities. But all this, even if true, does not justify the government in meting out punishment to men upon the sole ground of "presumption," and in the absence of actual evidence. It does not justify law enforcement officers in depriving defendants of their inalienable constitutional rights. To clothe public officials with authority to punish private citizens upon mere presumption would be a dangerous abdication of personal liberty.

Such an issue transcends in its importance any criminal danger which may have been threatened by the Apalachin meeting.

There is strong indication that the Fourth Amendment, guaranteeing the people against "unreasonable searches and seizures," has been cynically violated in this case. However, Judge Irving R. Kaufman, virtually instructing the jury to bring in a directed verdict, declared "that the law-enforcement procedures disclosed by the record in this case were altogether proper."

What actually happened was this. On November 14, 1957, a gathering of some 63 men took place at the isolated estate of the late Joseph Barbara, Sr., a man known to the police for his association with rackets. Many of those in attendance were men under police surveillance for suspected racketeering activities. When the guests learned that the police had the grounds surrounded, they attempted to leave before holding a meeting. They were halted by State Police under the direction of Sgt. Edgar D. Creswell, were taken to the barracks at Vestal, New York, and there questioned. Some of them were released; others were held without trial for extended periods of time when they refused to answer questions put to them by the examining officers.

LATER, Milton R. Wessel, special assistant attorney general of the United States, entered the case and, at his insistence, the Federal Grand Jury indicted 27 men on the grounds of conspiracy. It named 36 others as co-conspirators. Twenty-one of the 27 were brought to trial on October 26, 1959, one being acquitted.

Guilty or not guilty, it cannot be disputed that the law enforcement officers in this case stretched the law high-handedly in an effort to get the 20 behind bars. When the raid was made, it was confidently expected that some one of those questioned would crack under questioning and would supply evidence that the gathering in Apalachin was related to crime. All those arrested and examined told the same story—that the gathering was a social one. No meeting or business discussion had taken place. This left the officers with no other choice but to release them and admit lack of evidence.

Mr. Wessel, however, believed that the Apalachin group could be brought to court on another charge. The flimsy charge of conspiracy was cooked up. Mr. Wessel has made the charge stick in court. The plea of the counsel for the defendants that their rights under the Fourth Amendment had been violated was waived aside.

One does not need to have sympathy with the dubious Apalachin guests to realize that their conviction establishes an extremely dangerous legal precedent. If bad men can be deprived of their constitutional rights in order to get a verdict, good men can also be placed in jeopardy. If prosecutors like Mr. Wessel are allowed to convict men, not for what they have done, but because they refused to answer questions, then the field is open for future vindictive prosecutions in the political and controversial opinion fields.

In contrast, many of our courts seem afflicted with judicial

catelepsy when they confront cases involving Communists.

How different has been the procedure when defendants are Communists charged with the far more serious crime of treasonous activities against the United States! In such cases, instead of straining the law to prove guilt, as in the case of the Apalachin group, government prosecutors and courts have only too frequently strained the law to establish the fact of Communist innocence. Apparently there are two standards—one for Communists and one for alleged racketeers.

TO CITE only two of the most scandalous miscarriages of justice in favor of Communists, recall the Coplon and the Bridges cases.

Judith Coplon, an employee of the Department of Justice, was arrested in New York on March 4, 1946, in the act of turning over stolen FBI documents to Valentin Gubichev, Soviet espionage agent. She was tried twice—in Washington, where she received a 40-month-to-ten-year sentence on one count, and in New York, where, with Gubichev, she received a 10-year sentence on the other. During the whole trial period she was out on bail.

On December 5, 1950, the New York Court of Appeals reversed the decision on the technical grounds that she had been arrested without a warrant and that wire-tapping had been used, and the lower court was instructed to retry her. The indictments remained in effect but the Department of Justice, in two administrations, always found reasons for not placing Miss Coplon on trial. She is still at liberty, her case a dusty file in the archives of the Department. Gubichev, her accomplice, at the intervention of Secretary of State Dean Acheson, was given a suspended sentence and was allowed to return to the Soviet Union.

The leniency of the government in the case of Harry Bridges, president of the International Union of Longshoremen and the man who holds the political balance of power in Hawaii, is even more amazing. Bridges has been in and out of the courts for 20 years, in repeated government actions to deport him to his native Australia as a Communist. The fact of his former Communist Party membership has been attested by numerous witnesses who knew him inside the Party. Even the number and a facsimile of his membership card were revealed. Way back in 1939, James M. Landis, who had been appointed by Secretary of Labor Perkins as a special examiner to review the Bridges case, ruled that Bridges had been a Communist. Another administrative hearing in 1941, presided over by Judge Charles B. Sears, ruled that he had been a member of the Communist

Party and hence was subject to deportation. Justice Frank Murphy of the U. S. Supreme Court intervened in this instance and halted Bridges' deportation.

New evidence having been found, Bridges was placed on trial in 1950 in the U. S. District Court on the charge that he had committed fraud in applying for naturalization. He was convicted and an order for the revocation of his naturalization issued. But again he was saved by the Supreme Court. In a ruling which would have delighted Prosecutor Wessel, the Supreme Court ruled that the conviction was outlawed by the statute of limitations, even though, at the time Bridges committed his offense, the five and not the three law provision was in operation, and Bridges' fraud had been commited four years before the trial.

ONCE AGAIN an effort was made to require Bridges' deportation by a civil action to cancel his naturalization in the San Francisco Federal District Court of Judge Louis E. Goodman. Defended by the Nuremberg Trial wonder, Telford Taylor, Bridges again triumphed. Judge Goodman justified his curious verdict by declaring that "Only a weak yielding to extra-judicial clamor could excuse acceptance of the testimony of the witnesses in this case." The "witnesses" were five former members of the Communist Party who swore that they knew Bridges in the Party.

The end result of all this judicial tenderness for Harry Bridges is that he was able, on January 3, 1959, to fly to Europe on an American passport to confer with officials of the Communist-controlled WFTU, which has been described by the informed Victor Riesel as a "conduit" of Communist money and manpower "for the sabotage of our military and naval strength." He was able to confer later in Moscow with the heads of the All-Soviet Trade Union Council.

It is difficult to avoid the conclusion that if half the sternness with which Montana and the other Apalachin defendants have been treated had been employed against Bridges, he would not now be in the United States working insidiously for Soviet objectives.

It is probable that the decision of the Kaufman court will be set aside on appeal. The decision of the United States Supreme Court on November 23, 1959, in another case involving the Fourth Amendment indicates that it will set aside the verdict, if and when the case reaches it.

However, until it is overruled, the Kaufman decision will stand as a legal threat against any American who now believes that the Fourth Amendment is a sufficient safeguard of his civil liberties.

WE GAVE IT TO THEM

U. S. trustfulness gave Russia the know-how to become our deadliest rival

by Harold Lord Varney

When Americans grimly contemplate the vast powerhouse of military and industrial might which Soviet Russia has become, it is cold comfort to realize that it was the United States which gave it to them.

Today Soviet Russia is the world's prime "Made in America" exhibit. The techniques, the know-how, the priceless industrial secrets that have enabled the Russian Communists to telescope 50 years of economic progress into a single 18 years have all been given to the Kremlin by an easy-mark America. We have the unique distinction in history of having created our own enemy.

Forty years ago, when Soviet Russia was the pariah nation of Europe, mentioned by Westerners only in terms of pitying contempt, the idea that its feeble Communist regime could ever develop into a military danger to the United States would have seemed fantastic. It was the time when the Fabian H. G. Wells journeyed hopefully to Russia only to return to tell his readers that the Bolsheviks had gotten aboard a "derelict." It was the time when Soviet economic life had plunged to such a sub-human level that President Harding persuaded an economy-minded Congress to appropriate $20 million of American money, to be expended under the Hoover relief organization, to save famine-wracked Russia from sinking into cannibalism.

The author remembers with crystal clearness the scathing contempt with which responsible Americans greeted any warning against the future Russian danger during those years. One bright young business man (later a top-flight industrialist) summed up the prevailing opinion, after the author had addressed his business group on the coming menace of Red Russia. "It will take at least 100 years for the Bolsheviks or their successors to get Russia back