The MINE-MILL CONSPIRACY CASE

by Sidney Lens

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introduction by

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BIOGRAPHICAL NOTE

Sidney Lens has been active in the American labor movement for 30 years. He is the author of several books, including *Crisis of American Labor* and *The Counterfeit Revolution.* His articles have appeared in many American publications, including The Yale Review, The Harvard Business Quarterly, The New Republic, The Progressive, The Nation and the Christian Science Monitor.

INTRODUCTION

This pamphlet ably pleads before the sovereign American people the cause of some union men, past or present leaders of the Mine, Mill and Smelter Workers Union, who are appealing to the higher courts their conviction for "conspiracy to defraud the government" by falsely signing non-Communist affidavits under the Taft-Hartley law.

The issue is not communism but justice. And there is no better aid to communism than denial of justice in a land which boasts of the devotion to justice even to those to whom we may not wish to be just.

The prosecution in this case has much to explain. Three of the men indicted for conspiracy never signed the affidavits; the trial began after the Taft-Hartley Law was amended by the Landrum-Griffin Act which abolished the requirement of non-Communist oaths; and it was instituted in the midst of a strike of the Union against the Big Five Copper Companies more than three years after the original indictment had been handed down. For these and other reasons, it is difficult to resist the conclusion that the government was willing to do a little union-busting in the name of anti-Communism under the forms of law.

In any case the whole dubious doctrine of guilt in conspiracy is so deeply involved that should the decision of the lower court be sustained, civil liberties for us all would be less secure. Victory would go to the bureaucracy of a garrison state which is willing to sacrifice justice to a fetish called security. This is the conclusion I am forced to reach after reading the pamphlet which I commend to you.

—NORMAN THOMAS

THE MINE-MILL *CONSPIRACY* CASE

by Sidney Lens

EIGHT SHOEMAKERS stood before the bar of justice in Philadelphia, March 1806, charged with "conspiracy"—conspiracy to form a union and raise their wages. The prosecutor argued that an individual worker could himself ask for a wage increase, but when two or more did it together it was a . . . conspiracy. The shoemakers were convicted and their union dissolved.

In the years that followed the doctrine of conspiracy, borrowed from the ancient common law of England, was used against union tailors, hatters, spinners, carpet weavers, and others. Finally in 1842 the courts reversed themselves, holding that unions did not fit this "conspiracy" concept.

Who would have thought then, that more than a hundred years later government officials in the United States would resort to the same ruse? Who would have thought that the same doctrine would be dusted off once again to hamstring the labor movement? Unfortunately, this is exactly what is happening.

Nine unionists, present or past leaders of the Mine, Mill and Smelter Workers Union, have been convicted of "conspiracy to defraud the government" by falsely signing non-communist affidavits under the Taft-Hartley law. (The case against two others was thrown out by the judge for lack of evidence.) Unless the upper courts reverse this decision they face prison terms of eighteen months to three years.

Through the years many labor leaders have been in similar positions. Many have paid for their views and allegiances with jail sentences. But there is far more involved in this case. It is not only the nine men who may be victimized—or their union. A wedge has been opened in an old-door, and if it is permitted to widen it bodes ill for the whole House of Labor.

It would be the line of least resistance for some unionists to turn their backs on the Mine-Mill case. After all the union was expelled by CIO in 1950 for "communist-domination." The defendants were branded by the government with the unpopular epithet "communist." Union officials of AFL-CIO may therefore consider this an irrelevant cause and lull themselves to sleep with the false assurance that "it cannot happen to us."

History has proven all too often, unfortunately, that it can and does "happen to us." What starts as a campaign against a vulnerable seg-

ment of labor tends to spread to the less vulnerable. After the Haymarket riots in 1886, the legal attack against the anarchist leaders widened to include the Knights of Labor and the newly-formed American Federation of Labor. The injunctions used against the American Railway Union during the Pullman strike, and the Sherman Anti-Trust Law used against the Danbury Hatters' in 1908, were turned against other organizations as well. Whether we like it or not the cause of unionism is indivisible: all unions gain from labor's big victories and lose from its setbacks—no matter where the victories or defeats originate.

This is already happening with the revived conspiracy doctrine. Mine-Mill was the first target, having been indicted in 1956; now the target is widening to include not only independent unions but AFL-CIO organizations as well.

In 1959 eight members of the AFL-CIO Textile Workers Union were similarly charged and similarly found guilty. Vice President Boyd E. Payton, the director of Textile in the Carolinas, and seven of his associates, are serving prison terms of three to ten years for no other crime than trying to defend their union in the bitter strike against the Harriet-Henderson Cotton Mills at Henderson, N. C.

The Textile case, like the Mine-Mill case, is so far-fetched it staggers the imagination. How, one wonders, could anyone be convicted on such a flimsy presentation in this day and age? Yet they were.

The appeals brief of the Textile Workers throws light on a fantastic story. The "conspiracy," it seems, began with an agent provocateur, Harold E. Aaron, hired by the State Bureau of Investigation. It was this man who discussed the plans for dynamiting in motel room meetings and who planned to lead them. The meetings, of course, were secretly tape-recorded and Aaron turned up as the state's star witness in an alleged conspiracy that *he himself hatched and proposed.* Nothing was ever dynamited, no crime ever committed. Everything in this case smells of a deliberate attempt to "get" the Textile leaders. But the men stand convicted.

This instance like that of Mine-Mill emphasizes the dangerous character of the conspiracy doctrine. If there is not enough evidence to prosecute someone for an actual crime, the government hails unionists into court on the charge of "conspiracy." Slowly but perceptibly this club is being wielded in an ever-broadening circle. In addition to the Textile and Mine-Mill cases, there is that of the AFL-CIO International Ladies' Garment Workers' Union in New York, charged with "conspiracy to violate the Sherman Anti-Trust Act." Former officials of a local union of the United Electrical Workers (UE) were tried in Cleveland for "conspiracy" to violate the Taft-Hartley Act.

What is so pernicious about the conspiracy doctrine is that it opens

the door to far-fetched evidence. You don't have to commit a crime; you only have to talk about it—and take some "overt" act. And you don't have to sit down in a room and actually plan the details of something illegal; you only have to have a general and often tenuous "agreement."

It is no wonder that eminent jurists have been critical of conspiracy trials. The late Chief Justice, William H. Taft, pointed out that such cases permit introduction of "much improper evidence." Judge Learned Hand observed that there are opportunities for "great oppression" in conspiracy indictments.

ELASTIC, SPRAWLING, PERVASIVE

Typical of the criticism levelled against the conspiracy doctrine is that by Supreme Court Justice Robert H. Jackson.

Justice Jackson wrote in 1949 that the conspiracy law is "elastic, sprawling and pervasive . . . As a practical matter, the accused often is confronted with a hodgepodge of acts and statements by others which he may never have authorized or intended or even known about, but which help to persuade the jury of the existence of the conspiracy itself. In other words, a conspiracy often is proved by evidence that admissible only upon the assumption that the conspiracy existed."

If permitted to stand, the ramifications of this conspiracy theory are endless.

Suppose two union leaders discuss putting a mass picket line around a plant. Suppose further that the courts in that state consider mass picketing illegal or have issued an injunction against it. Unionist "A" says to Unionist "B": "We'll never win this strike unless we have mass picketing and keep the scabs out." Unionist "B" agrees. Meantime, "A," without consulting "B," mimeographs leaflets giving instructions on how the picketing should be carried out. Perhaps the strike is settled before the leaflets are given out, or perhaps "A" decides it was a bad idea after all. No mass picketing takes place. Yet the government can haul not only "A" but "B" into court, and charge them both with an illegal conspiracy. Despite the fact that "B" was no longer involved, despite the fact that *nothing illegal actually took place* the men can be convicted under this "elastic, sprawling and pervasive" doctrine of "conspiracy."

Or suppose that a union leader tells his executive board that "something ought to be done about the scabs." And suppose that unbeknownst to him two other members of the board decide that the best thing to do is throw some golf balls through the strikebreakers' windows. They buy a couple of golf balls at the drugstore. But after thinking it over they change their minds. Once again, under the elastic provision of the

conspiracy doctrine, all three men are guilty—even the man who never knew about the golf balls.

This is the doctrine under which the Mine-Mill people have been convicted. If this doctrine were upheld almost no union leader in the country could escape its bitter claws. As we shall soon see, even the officers of the AFL in 1947-1949—from William Green down—could have been convicted of the same charge of "conspiracy to defraud the government." Of course, the government did not indict the AFL leadership because that would have created an irrepressible protest. But the Mine-Mill union, centered in the Rocky Mountain area, off the beaten path, isolated from AFL-CIO, is a much easier target.

Consider the specifics of the Mine-Mill case. The trial begins on November 2, 1959, in the federal court in Denver. The indictment against the eleven defendants was handed down three years earlier, but it has lain on the table all this time. The defendants include Irving Dichter, secretary-treasurer of Mine-Mill; Asbury Howard, a vice president; Jack C. Marcotti, regional director in the Arizona area; board members Al Skinner, Raymond Dennis, Chase Powers; staff members Harold Sanderson, Charles Wilson and Jesse Van Camp; former secretary-treasurer Maurice E. Travis—no longer associated with the union; and former staff member James Durkin.

Three of these men were never required by the law to sign non-communist affidavits. Dichter was not an officer of the union until a number of years after the so-called conspiracy was hatched. But they're all in the dock.

Defending the Mine-Mill unionists is the well-known civil libertarian lawyer, retired Brigadier General Telford Taylor, who acted as United States prosecutor during the famous trial of leading Nazis at Nuremburg. With him is George J. Francis, a Republican attorney in Denver, and Nathan Witt, Mine-Mill's regular counsel. On the other side is L. E. Broome, a Mine-Mill specialist for the Justice Department who has handled other cases against this union as well. He has three assistants by his side. On the bench is Judge Alfred A. Arraj.

The charge is that the eleven men conspired with four "co-conspirators"—communist leaders John Williamson, Gil Green, Fred Fine and Arthur Bary—to illegally use the services of the National Labor Relations Board. When eight of them "falsely" signed non-communist affidavits they were "conspiring to defraud the government." The "co-conspirators," it would be noted, are not on trial. They are supposed to be the top communist leaders who allegedly laid down the policies for lesser lights to follow, but they're not in this case. They haven't even been indicted. Could it be that the government did not feel confident it could adequately

tie them together with the defendants?

The date and the setting are most interesting. November 2, 1959, happens to be a few weeks after the Landrum-Griffin law was passed. Under the new law, Taft-Hartley non-communist oaths are abolished. Yet the eleven Mine-Mill men are charged with violating the abolished section.

Even more strange is the fact that November 2, 1959, happens to be a day when 35,000 miners, the heart of the Mine-Mill union, are in the midst of a bitter five-and-a-half-month strike against the major copper companies. Why were the indictments kept for three long years? Why was the case sprung only when the union was in a life and death struggle? Every union man worth his salt can guess the answer.

Equally baffling is another aspect. Maurice Travis, former Mine-Mill secretary-treasurer was brought to trial in another case for falsely filing the affidavit. He was convicted and his case is now on appeal. But the Attorney General's office refuses to follow the same procedure with the other Mine-Mill members in this case. He doesn't accuse them of violating any law—just "conspiring" to violate it. Could it be that the prosecutors felt they could not make a case if rigid rules of evidence were enforced? Could it be that they needed the "elastic" and "sprawling" rules criticized by Justice Jackson to make a case?

'PERSONAL AXES TO GRIND'

Many of the government's witnesses had personal axes to grind. One had left Mine-Mill and later became Labor Relations Director for the Kennecott Copper Corporation in Utah. Two or three had been fired by Mine-Mill. Three were paid agents for the FBI—one had earned $26,000 as a Department of Justice "consultant." Most of them had been deeply involved in the union's factional fights and some had led secession movements from Mine-Mill. Obviously they were not dispassionate witnesses.

But leaving that aside, the case itself rests on flimsy foundations. Stripped of legalisms and excess verbiage, it has two parts. Part one involves a man named John Lautner, a former Communist Party official and FBI undercover agent. Lautner, it seems, attended a meeting at the headquarters of the New York State Communist Party. At this meeting a communist leader was supposed to have outlined a new strategy for Party members in the unions. Up to that time the C.P. had opposed signing the non-communist affidavits, but the man whom Lautner heard that day said that it would now be permissible. Communists would merely write letters resigning from the Party, and then sign the Taft-Hartley oath. Presumably

this would make it legal because the oath stated that the affiant was not "now" a member of the Communist Party.

This is the heart of the government's case. Prosecutor Broome infers from this New York meeting that it was a secret instruction to all communist union members to "defraud" the government. Lautner himself never met any of the Mine-Mill defendants until the case began. No evidence was introduced that the communist leaders in New York communicated with the alleged conspirators in any way, or sent them instructions either written or oral. But according to Mr. Broome that wasn't necessary. The government only had to show that: A) The Communist Party proposed a method to evade the law; and B) if a union man was a member of the Communist Party he is liable to the charge of "conspiracy."

CONCEPT OF 'COLLECTIVE GUILT'

This is a thin thesis for alleging a crime. It is a concept of "collective guilt" which is alien to American democracy. In our system a man is adjudged guilty for something he himself does, not something done or proposed by an organization to which he belongs. On the government thesis in this case it could convict almost anyone of conspiracy. Suppose the heads of a number of large corporations act together to fix prices. That is an illegal conspiracy. But do the actions of the corporation presidents make every foreman in their plants, every manager in their offices, also guilty of conspiracy? The democratic process demands that we must prove that each person individually conspired to evade the law. We can not establish the foreman's guilt on the basis of his collective relation to the company president.

But that is exactly what the government tries to do in the Mine-Mill case. The co-conspirators—who are not tried—are said to have proposed certain measures to meet the law. Since the Mine-Mill defendants are accused of having a tenuous relationship with these men in New York, they are also conspirators—even if they never met the New York people or discussed the problem with them.

This is a transgression of our concept of individual right that is exceedingly dangerous.

Broome, addressing the jury, pointed out that "it isn't necessary . . . to show that the parties charged as being involved in the agreement at some time and place gathered around a table and some one of them announced that 'We are meeting here for the purpose of conspiring to defraud the United States.' " In other words Broome feels that he doesn't have to show any *direct* link between the New York communists and the Mine-Mill "conspirators." He doesn't have to produce any communica-

tions, record of meetings, or anything else that would tie them together. He only must show that they followed "a concert of action . . . all looking toward achievement of the same end, and that an illegal end."

Put even more simply, Broome only had to show that the Party had ordered a certain course and that if the eleven Mine-Mill men could be proved to be communists they were guilty. It doesn't matter that three of them never signed affidavits, or that some, like Irving Dichter and Asbury Howard didn't sign them until 1954 or later, years after the New York meeting Lautner described. All that Broome felt was necessary was to show that the defendants were still acting like communists. In two instances, that of Asbury Howard and Jack C. Marcotti, the prosecutor could not even prove his case on this broad basis. Judge Arraj dismissed the charges against them entirely.

For the rest, the communist connection is tenuous. Various witnesses testified that they attended meetings in such and such a hotel in Denver or East St. Louis and that these were communist meetings. Another witness described a conversation in a drugstore with a defendant and this was supposed to be on communist business. Still another explained that he and a defendant talked about Party affairs over the dinner table in his home.

And that is all! That is the "conspiracy"!

Two questions suggest themselves at this point.

1. Were these men really communists?
2. Whom did they "defraud"? Whom in government or elsewhere did they hurt?

THE QUESTION OF COMMUNISM is a touchy one in present day America. Many people are presumed to be communists if they merely take the constitutionally-provided Fifth Amendment, or if they are named—without the right of cross-examination—by a Senate or House committee. It is a simple thing to label a man a communist. All of us remember the speech which launched Senator Joseph McCarthy—in which he said "I have in my hand" documents to prove that 205 State Department officials are communists. The "205" figure later shrank to a few dozen, and later to a mere handful and still later to nothing. Only one man was indicted and he was exonerated.

But let us assume that at least some of the Mine-Mill defendants *were* communists. In the case of Maurice Travis, he admitted when he signed the Taft-Hartley oath in 1949 that he had been a Party member prior to that time. Communism is not the charge against these men. (If

it were, they should be tried under the Smith Act.) They are tried on a conspiracy charge relative to the Taft-Hartley law. That is another matter entirely. And the government must prove its case beyond a reasonable doubt.

We Americans are proud of our rigid rules of evidence. In our system of jurisprudence we prefer that a dozen guilty men are freed while adhering to these rules, rather than have one man found guilty by flouting democratic safeguards.

It stretches the imagination beyond credulity to believe that men who had episodic meetings in drugstores or at dinner tables are PROVED to have been in a conspiracy.

But let's assume for the moment that the government did prove something. What are the eight men who signed the affidavits really guilty of? Whom did they hurt? What anti-social act have they committed? No matter how hard you look for underlying motivations the "crime" of the affiants was merely that they sought to defend their union.

The Taft-Hartley law, it should be recalled, was passed in 1947. For the next two years there was vigorous debate in the House of Labor over its provisions, including the non-communist oath. Many union leaders refused to sign it; John L. Lewis of the United Mine Workers in fact never attached his name to it and his union did not appear on the ballots in NLRB elections.

Mine-Mill leaders also refused for a time to comply with the oath provision. But the pressures for compliance were persistent. Employers refused to bargain with Mine-Mill. Kennecott Copper put a wage increase into effect but it no longer recognized the union. It proclaimed publicly that it would deal with the organization only when it purged itself of the communist stigma, and it said that it would accept the signing of Taft-Hartley affidavits as "evidence" of non-communist domination. A thirteen-month zinc strike was in progress. In Connecticut there was a grave dispute over 5,000 brass workers and in Cleveland over die-casting workers. Various other unions were chipping away good-sized swatches from the Mine-Mill cloth. Mine-Mill organizers all over the country were pressuring the leadership to comply so they could be protected from secession.

Once the main body of labor had decided to sign the affidavits, there was little alternative but to comply. In one place after another a rival union challenged Mine-Mill at plants or mines where it had had bargaining rights for years. The rival would petition the National Labor Relations Board for an election and would appear on the ballot. Mine-Mill, because it had failed to comply, would counsel its members to merely vote no—against any union. Mine-Mill could then strike and force recognition. This was the time-honored method before the National Labor

Relations Board was established in the thirties. Many a militant or radical unionist in 1947 thought it could be done again.

Unfortunately life proved that it couldn't. Workers with a long pro-labor tradition just refused to vote "no union." Mine-Mill, it should be remembered, traces its lineage to the militant Western Federation of Miners and the radical Industrial Workers of the World. In every mining town there are still old Wobblies who can not countenance the idea of being without a union. Furthermore Mine-Mill was embarrassed when it found itself on the same side of the fence with management, which was also telling workers to cast a "no" ballot.

The end result was that in many places Mine-Mill took a severe beating. Unless it could use the facilities of the Labor Board it faced the prospect of being whittled away to a shadow. Regardless of what the Communist Party thought or felt, regardless of how pigheaded the communist leaders were in New York, regardless whether the Mine-Mill leaders were communists or "fellow travelers," the logic of events forced them to comply with the law, just as it forced other unionists—for instance, CIO president Phil Murray, who complied about the same time as Mine-Mill. These men, too, were hostile to the oath provision, but once *some* of the union leaders began to sign, others had to follow or suffer heartbreaking raids on their ranks. Only a strong union like the coal miners could resist to the end—and even then there is no doubt that District 50 of Lewis' union would have gained tens of thousands more members if it could have used the Labor Board facilities.

TO DEFEND THE UNION

Whether the Communist Party changed its view on non-compliance or not, whether the Communist Party ordered its members to sign the oaths or not, it is clear that the only purpose for compliance was to defend the union, prevent it from fragmenting, and preserve bargaining rights. This is hardly an anti-social attitude on the part of the union's leaders, one that warrants imprisonment. To defend the rights of the rank and file to retain their union is, in our union scale of values, a meritorious act; and we have bitterly criticized the Taft-Hartley law because it deprives many workers of this right—through the secondary boycott provisions, the exclusion of strikers from Labor Board elections, as well as the oath.

Perhaps a few of the Mine-Mill leaders *were* communists; Maurice Travis admitted that he had been a Party member until 1949. But it would have made no difference. The logic of events was forcing just about every union to comply with the oath provisions of Taft-Hartley. Whether a Mine-Mill leader was a communist or a Republican he could understand

this point without having to talk with any one in New York. If he was to save his union from raids and loss of membership he had to comply with the Taft-Hartley provisions. All the other unions that were charged with "communist domination" by the CIO in 1949-50 also complied. But except for Mine-Mill none of the leaders of these other organizations have been tried for "conspiracy."

No matter how one looks at the case, it is impossible to conclude that the oaths are the real issue. The fact that the case went to court during a major strike indicates that the purpose was to harass a union, rather than to see that justice was done. Reading the history of Mine-Mill since 1950—with all its contested Labor Board elections, the factionalism in its ranks, the secession of some of its locals — it is clear that the union had some difficult days. Many employers and many conservative government officials must have seen an opportunity to deliver the *coup de grace*. One can only deduce that it is this, rather than any violation of law or immoral act, which motivated the actions of the Attorney General.

A word must be said at this point about communism. The more one studies the Mine-Mill case the more clear it becomes that this is the real issue. There is little doubt that for some years the Mine-Mill union had some leaders who were friendly to the Communist Party. There is little doubt, too, that the role of many communists in our trade union movement has been factional and bureaucratic. The flip-flops of communist leaders every time there was a change in policy in Moscow has been a source of constant friction in the labor movement. Communists shifted from being anti-Roosevelt until 1934 to pro-Roosevelt until 1939; anti-Roosevelt and anti-war during the period of the Hitler-Stalin Pact; to pro-Roosevelt and pro-war after Russia was attacked by Germany; anti-Truman and anti-CIO policy when the cold war began, etc. Such zig-zags are untenable. They hardly make for confidence on the part of rank and file members who are asked to change their positions based on the winds that waft in from Moscow rather than their own personal needs.

Yet the fact remains that communism in itself is no crime in America. Furthermore, it is an irrelevant matter so far as the Mine-Mill leadership is concerned today.

The Mine-Mill Executive Board on January 18, 1957, issued a statement that: "The leaders of this union hold no brief for communism, the Communist Party, or its program. We are opposed to all forms of dictatorship, including the communist, and we stand as always for the elimination of all attacks on freedom of thought and civil rights, whether the arena is Hungary, South Africa, or the public schools, buses, mining camps, and factories of our own United States." No disciplined communist would condemn the brutal Soviet actions in Hungary in 1956. The

fact that the Mine-Mill leaders did so is testament to their present political beliefs.

For anyone interested in the strange history of American communism this background may have some significance. Certainly union men are justified in considering it. But it is hardly the issue in the Mine-Mill case. There is something broader and much more fundamental involved.

THE ISSUE IS THE CONSPIRACY LAW, and it would be myopic for other labor leaders to view the Mine-Mill case in any other light. If the conspiracy doctrine remains unchallenged, there are few union leaders immune from prosecution, and few unions free from political blackmail. Even the AFL leadership of 1948 and 1949 could have been put in the dock on the same charges. When the AFL decided to sign the non-communist affidavits in 1947, it found itself in an unhappy dilemma. Under its constitution the president, secretary-treasurer, and *all its vice presidents* were considered "officers." But one of these officers, Vice President John L. Lewis, stated categorically he would not sign. And if Lewis didn't sign, AFL affiliates would not be able to use the services of the Labor Board, even if the other officers did sign. The AFL solved the dilemma by altering its constitution so that vice presidents were no longer listed as "officers" but merely as "board members." The only two people required to file affidavits under this new circumstance were the President and Secretary-Treasurer. From the legal standpoint, this has all the ingredients of the Mine-Mill case. The AFL officials "agreed" together to circumvent the strictures of the law and they committed the "overt" act of changing their by-laws to do so. By the Attorney General's definition it is "conspiring to defraud." But, of course, no action was ever taken against the AFL. The government held its fire for more vulnerable organizations, and it held its fire until it could hurt the union during a long strike.

This term "defraud" incidentally is an interesting one. The government alleges that by falsely signing non-communist affidavits a fraud was committed by Mine-Mill leaders. But what does this fraud consist of? Merely that by signing the oaths Mine-Mill leaders made available to 80,000 members the right to participate in Labor Board elections and to file unfair labor practice charges. What is so fraudulent about that? Certainly the rank and file membership is entitled to these services whether they belong to Mine-Mill or any other union. If their officials sign the affidavits illegally the officials should be dealt with, not the 80,000 rank

and file members. As a matter of fact that's exactly what the Supreme Court ruled in another Mine-Mill case.

Back in May 1954, when a Chicago company refused to deal with Mine-Mill on the grounds that it was communist-dominated the National Labor Relations Board decertified the union. This was taken to the courts and in 1956 Justice William O. Douglas, speaking for a unanimous Supreme Court, issued the ruling that the government had been wrong. If there was any crime committed it was on the part of those who signed the affidavits, not the membership. The penalty should be assessed against the former, not the latter.

Justice Douglas stated for the Supreme Court that NLRB "has no authority to deprive unions of their compliance status under the non-communist affidavit provision" and that "the only remedy for the filing of a false affidavit is the criminal penalty" which the law provides.

No one has been defrauded by the signing of the non-communist oaths and no one — least of all the government — has been hurt — except perhaps other unions that might have been able to win Labor Board elections if Mine-Mill were off the ballot. But this is not the affair of the U.S. government. And the fact is that with all the negative publicity of communism and communist-domination the rank and file workers have in an overwhelming majority of cases voted for Mine-Mill. They were told over and over again about "communism" and "communist leaders" in their union but they still chose this organization. Whether they were right or wrong in doing so, who can argue that under our laws they do not have the right to be represented by a union of their own choosing? This isn't "fraud"; it is democracy of the highest order.

No matter how one views the issue of communism no one can view with equanimity the persistent hounding of this union, the persistent attempt to "get" it no matter how far afield the government must go to do so.

The union was expelled from CIO in 1950. Two years later the McCarran Committee conducted hearings in Salt Lake City directed against Mine-Mill.

In April 1953 a Mine-Mill organizer from Silver City, New Mexico, named Clinton Jencks, was indicted on charges of filing a false non-communist affidavit. This was the case in which a government informer, Harvey Matusow, later recanted his testimony and appeared as a union witness. The Supreme Court eventually overruled the lower courts on the ground that Jencks' attorneys had no access to FBI records in cross-examining government witnesses. Jencks was freed.

In December 1955 Maurice Travis was convicted of filing false non-communist affidavits and sentenced to eight years and an $8,000 fine. The

case was reversed by the Appeals Court and retried. Retrial resulted in another conviction January 1958 and another eight-year sentence, though the fine was reduced to $4,000. It is currently in the second appeals process and the Supreme Court will hear the case soon; it has granted certiorari.

In May 1954 the NLRB decertified the union at the Precision Scientific Co. When the Supreme Court reversed the NLRB, the *Arizona Republic* editorialized (December 16, 1956): "So this method of forcing the union to divest itself of its Red leadership has failed." The January 1957 *Engineering and Mining Journal*—an employer's organ—carried an article under the headline "Supreme Court Saves Mine-Mill." Its text said: "The Government—Two Swings to go: With one strike against it in court, the Government is pushing two other attempts to pin the Communist-infiltrated label on Mine-Mill and its officers." Those were the Subversive Activities Control Board proceedings and the present conspiracy case.

In August 1955 the union and its leadership were charged under the McCarran Communist Control Act. Proceedings before the SACB still continue. What the government hopes to accomplish by this is hard to determine. Not even the government attorney, L. E. Broome, can seriously believe that a favorable ruling by SACB can do anything more than continue the harassment. Even if Mine-Mill were to be labeled "communist-infiltrated" and ordered disbanded, there is at least five years of litigation ahead and the exceedingly doubtful prospect that the Courts would permit such a ruling to stand. The only justified conclusion is that the government is using the proceedings merely as a means of embarrassing the union and its leaders.

In November 1956 the present conspiracy case was initiated. After keeping the indictment in its files for three years the Attorney General finally dusted it off during the recent copper strike.

VENDETTA AGAINST A UNION

Everything about the government's behavior is indicative of a vendetta rather than an impartial application of justice. *Business Week* of November 24, 1956, caried the headline "Try, Try Again." "With two irons already in the fire," it said, "the government late last week made a third attempt to brand the independent Mine-Mill and Smelter Workers as a communist-infiltrated organization." *The Engineering and Mining Journal,* noted in December 1956 that "should the Justice Department be successful in its charges the result could split the union wide open. . . . A conviction from any of the three current moves—the trial of 14 officers,

the SACB action, and pending decisions by the Supreme Court—might start the mine union on the downhill road."

Is this the job of government—to start a union "on the downhill road," or split it "wide open"? To push it and hound it until it is exhausted, or extinct? Or is the task of government to enforce the law equally and indiscriminately? It is significant that one of the government witnesses admitted perjury during the trial itself—about his marital status and about his desertion from the army. Yet to this day he has not been prosecuted. These may be small matters, yet if the law is to be administered fairly what's sauce for the goose is sauce for the gander. In the light of the Landrum-Griffin revocation of the non-communist oath the Mine-Mill conspiracy charge is also a small matter at best. Reading the record of the case and putting it in the context of ceaseless "try, try agains" there is an inescapable feeling that the Justice Department prosecutors are not interested in impartial justice as much as in "getting" the union and its leaders.

Mine-Mill leaders estimate that the federal government has spent $1.6 million in these activities against it. Scores of FBI agents have interviewed union members and friends around the country. What this can mean in a small mining community of a few thousand people is obvious. An atmosphere of suspicion grows as each local union and each town learns that there is an FBI investigation. The effects of such harassment were evident when a moving picture called "Salt of the Earth" was released a few years ago. This was based on a strike by Mine-Mill in New Mexico. The union itself did not make the picture or invest any money in it, but theatres around the country were pressured not to show it and projectionists in various places refused to turn their projectors when the movie was scheduled.

The creation of such an atmosphere against any union is an unmitigated evil. We have witnessed in recent years what has happened to the labor movement as a result of the McClellan hearings into Teamster Union affairs. The original target was Dave Beck and later Jimmy Hoffa, but the effects of the hearings, the monitorship imposed by Judge F. Dickinson Letts, the trials of Hoffa, have resulted in stigma against the whole labor movement. It will be some time before the movement recovers from this blow.

The hounding of Mine-Mill, though not so publicized, is equally pernicious. Not only does it create difficulties for some people who have severed their relations with the Communist Party; not only does it inflict on the public the mistaken notion that a large number of unions are "communist-dominated"; but in establishing the conspiracy doctrine it forges a sledge-hammer with which all of labor can be battered.

LEADING UNIONISTS SEE THREAT

Many important unionists in the AFL-CIO see this clearly. O. A. Knight, President of the Oil, Chemical and Atomic Workers and a vice president of AFL-CIO, writes:

> "We are gravely concerned about the prosecution of several officers and employees of your (Mine-Mill) organization on a charge of conspiring to defraud the Government by falsely signing non-communist affidavits.
>
> "Several aspects of the prosecution seem most peculiar to us—the fact that three of the individuals convicted never signed the affidavits, the fact that more than three years elapsed between the handing down of the indictment and beginning the trial, the fact that trial finally began in the midst of a long strike by your Union against the Big Five copper companies and the fact that trial began after the Taft-Hartley Act was amended to eliminate the requirements for non-Communist affidavits.
>
> "Even more disturbing is the fact that the prosecution is based on a 'conspiracy' charge. Historically the conspiracy charge has been a major device in attempts to destroy trade unionism. It will be a terrible blow to American unions if the conspiracy device again comes into common usage in the prosecution and persecution of unions."

Michael J. Quill, President of the AFL-CIO Transport Workers Union writes:

> "It is with serious concern and grave alarm that we view the prosecution of officers and members of the Mine, Mill and Smelters Union on a 'conspiracy' charge. We thought that such a charge, used often against the labor movement in this country during its infancy, had been relegated to the dust heap of history, where it belongs. Any attempt at its revival must be met with the united opposition of all organized labor!
>
> "It has become evident that the prosecution's case is miscellaneous hodge-podge. Three of the defendants convicted for 'conspiring to defraud the Government by falsely signing non-communist affidavits,' had never signed any such affidavit. The timing of the trial to coincide with the long strike waged by your union against the copper companies, three years subsequent to the indictment itself and *after* the amendment to the Taft-Hartley Act eliminating the requirements for the signing of such affidavits—all this seems to smack of anything but impartial justice!"

Frank Rosenblum, Secretary-Treasurer of the AFL-CIO Amalgamated Clothing Workers, and a venerated member of the House of Labor, writes:

"Regardless of political opinion or belief, there is common cause for concern in this situation. A victory for the Attorney General would be a victory for the anti-union forces in the country and a throwback to the long forgotten days when the trade union movement was continually subjected to so-called 'conspiracy' prosecutions. Every legal effort and appeal must be made to bring this matter to a successful conclusion."

HOW TO BREAK A STRIKE

Perhaps most significant was the statement by James Leary, assistant regional director of AFL-CIO in the Montana area. Leary was at one time a leader of the opposition to Reid Robinson and Maurice Travis in the Mine-Mill union, a firm anti-communist. He left the organization in 1947.

During the recent copper strike he said:

"With Mine-Mill the government again takes this time to start trials against union officials and former officers charged with falsifying their Taft-Hartley affidavits.

"Every time Mine-Mill has to hit the bricks the Attorney General of the United States or his staff starts these trials against its officers.

"They don't give a damn whether they are communists, but it makes good reading when these people are on strike."

There, it seems, is the nub of the question.

The conspiracy trials in the first half of the 19th century were not directed against unions because they had evil leaders, but because they were fighting the social evil of low wages. When the government begins a new wave of conspiracy cases—against an AFL Textile union for "conspiring to dynamite," and the ILGWU for "conspiracy to violate the Sherman Anti-Trust Law," and against Mine-Mill for "conspiracy to defraud"—the conclusion is inescapable that the real target is not a few union leaders or a few unions, but the militancy and strivings of labor itself.

To the Readers . . .

The fight of the International Union of Mine, Mill and Smelter Workers these past ten years has been a costly one. The legal defense, the public campaign, the printing of court records and extra defense staff have added up to a heavy burden. If other sections of the labor movement and liberals in the United States and Canada had not helped we could not have mounted this extensive fight-back campaign. Now that the issues are being joined in the U. S. Supreme Court we need help more than ever. Will you make as generous a contribution as you can to the Mine-Mill Defense Committee, 941 E. 17th Avenue, Denver 18, Colorado?

JOHN CLARK
President
International Union of Mine, Mill and Smelter Workers