

# BUSTED: THE STORY OF GENE KRUPA'S ARREST, JANUARY 19, 1943

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During the 1930s, the U.S. Government waged a war against a little-known plant called marijuana (*cannabis sativa*). Frequently used for medicinal purposes in the 1800s, it was introduced into America as a recreational drug during the first two decades of this century by Mexican immigrants. Better known by its many street names as "pot," "gace," "reefer," "Mary Jane," "hashish," "muggles," "grass," "weed," or "tea," marijuana became an alcohol substitute during and after Prohibition for lower class Americans for a number of reasons: it was cheap, could be produced practically anywhere, and needed considerably less preparation for consumption than alcohol.

The effects of marijuana were puzzling to most Americans, but it was generally understood that, when absorbed into the bloodstream by either ingestion or smoking, the drug might distort time and cause a mild sense of euphoria. In the 1920s, officials all but ignored the use of marijuana but when the drug became popular during the Great Depression, the government stepped up its attack.

Established in 1930, the Federal Bureau of Narcotics immediately began a decade-long campaign warning the American people against the dangers of marijuana. The Federal Marijuana Tax act of 1937 effectively curtailed the sale of the drug in the United States by imposing wide-sweeping restrictions on its distribution. Concurrently, marijuana was being demonized in local and national newspapers, magazines, and in popular scientific journals throughout the country. For example, in 1935, *American Mercury* published an article written by A. Perry titled, "The Menace of Marihuana."<sup>1</sup> This was followed by similar articles in *Literary Digest*, "Facts and Fancies About Marihuana,"<sup>2</sup> *Scientific America*, "Marihuana Menaces Youth,"<sup>3</sup> and *Christian Century*, "Youth Gone Loco; Villain is Marijuana."<sup>4</sup> The campaign was effective. In 1930, only sixteen states prohibited the use of marijuana. The following year twenty-nine states had antimarijuana laws and by the end of the decade, almost every state had passed stringent laws designed to eliminate the drug from society.

Armed with Federal and State regulations the government had, by the 1940s, a powerful weapon to use against the sale, production, possession,



and use of marijuana. Still, most Americans knew little about the drug. This unfamiliarity enabled the government to paint a distorted picture of the effect of marijuana, as David Solomon, editor of *The Marijuana Papers*, explains:

Deprived of the facts and primed on hysteria-provoking, apocryphal horror stories given to the press by the Federal Bureau of Narcotics, Americans were sold a mythological bill of goods. They were told that marijuana was a "killer drug" that triggered crimes of violence and acts of sexual excess; a toxic agent capable of driving normal persons into fits of madness and depraved behavior; a destroyer of the will; a satanically destructive drug which, employing lures of euphoria and heightened sensuality, visited physical degeneration and chronic psychosis upon the habitual user.<sup>5</sup>

The American public, fed by this steady stream of anti-marijuana propaganda, had reason to believe much of what it read. The evidence was right before them: swing music and its culture appeared to embody all of the dangers of the drug published in the press. One only had to listen to the "hot" tom-tom rhythms of Benny Goodman's "Sing, Sing, Sing" or watch the uncontrolled antics of a jitterbug trucking on the dance floor as proof that something had taken hold of American youth. It was easy to blame the "marijuana menace."

Jazz had long been associated with marijuana and reports of its use by some of America's best known performers occasionally appeared in newspaper and magazine articles in the 1920s and 1930s. During the latter decade, a number of song titles alluded to the drug: "Chant of the Weed," "Muggles," "Reefer Man," "Viper's Drag," and "Texas Tea Party," to name a few. This association was so well known that *Down Beat* was compelled to publish the following ominous warning in August 1938:

One of these days, say those close to the situation, the Federal Bureau of Investigation will investigate the claim that the marijuana weed is promiscuously used and smoked by players of swing music.

The idea that weed which is supposed to have first been taken hold of the low-down musicians playing in Harlem dives is now spreading to the bigger bands where instrumentalists now use it to emit the wild abandoned rhythms which comprise swing music is said to be arousing interest at J. Edgar Hoover's headquarters.

Whether it is true or not, the FBI is convinced that there is a good deal to the rumors which they have heard and they are planning an investigation, allegedly, *which may one day treat the U.S. to an expose which will rock the music world* [emphasis added].<sup>6</sup>



Three years later national attention quickly focused on the connection between marijuana and swing music when two musicians from the Charlie Barnet band, guitarist Anthony (Bus) Etri and trumpeter Lloyd Hundling, were tragically killed in an automobile accident in California. Investigators blamed the accident on marijuana found at the scene. Labeled the "marijuana death ride," both *Metronome* and *Down Beat* condemned the tragedy and screamed in headlines for immediate action by the American Federation of Musicians. "'Tear Their Cards Up!' . . ." urged *Down Beat*,<sup>7</sup> quoting musicians, while *Metronome* urged the American Federation of Musicians (AFM) to expel tea-hounds!"<sup>8</sup>

An editorial published shortly after the accident condemned the use of drugs by musicians but stated that swing musicians were being unfairly stigmatized by the inference that they needed the drug for musical reasons. Referring to an article published in "one of America's best known and most widely circulated newspapers—a Los Angeles daily," *Down Beat* chastised the newspaper for the following comment about the accident: "The tragedy started an investigation to determine if a marijuana ring has been supplying musicians with poisonous 'reefer cigarets' to GIVE THEM THE WEIRD SENSE OF TIMING FOR THEIR HOT, BOOGIE WOOGIE RHYTHMS [original emphasis]."<sup>9</sup>

This latter assumption echoed the government's 1938 warning about the connection between "wild abandoned rhythms" and swing musicians, an idea that would be played out in nearly every subsequent media account of swing musicians and marijuana. After all, it seemed logical that swing musicians needed extra help to "send" their listeners or themselves "out of this world" during a heated musical performance. This might be especially true if one observed the superhuman performances of Gene Krupa, "America's Ace Drummer Man."

For Gene Krupa, the early 1940s had been good. Anita O'Day, Roy Eldridge, and Buddy DeFranco joined his band; he was the subject of a three-page photomontage in *Life*;<sup>10</sup> and he signed a film contract with MGM. In the summer of 1942, the Gene Krupa Orchestra headed for the West Coast as part of an extensive nationwide tour. In addition, it seemed that his personal life was coming together; he was reconciling with his ex-wife Ethel.

By December 1942, Krupa's band was breaking attendance records at the Palladium Ballroom in Hollywood, and this success seemed certain to continue during his return trip, which included performances in Nebraska, Wisconsin, Illinois, Ohio, Pennsylvania, and Boston. At 34, Gene Krupa was riding on a wave of popularity he had not experienced as a bandleader; he was a national figure, movie star, recording artist, and the most famous



drummer in America. However, Gene Krupa was living in a powderkeg and sparks began flying the night of January 18, 1943.

Krupa's Palladium engagement ran from November 10 to December 28, 1942. The band then played a weekend job in Los Angeles before heading north for a week at the Golden Gate Hotel in San Francisco. While at the Palladium, Krupa replaced his long standing valet, Waverly Ivy, who had been drafted into the service, with John Pateakos, a twenty-year old "jitter-bug" who played drums and idolized Krupa. Adventurous, excitable, and young, Pateakos had spent the previous year traveling across the country; shortly after graduating from high school in New Bedford, Massachusetts, he went to New York, then worked his way to Chicago and finally to Los Angeles. He stayed at local YMCAs and sought employment in hotels, ball-rooms, and theaters — anywhere that would satisfy his craving for swing.

John Pateakos's first job in Los Angeles was as a mail carrier for 20th Century Fox, where he encountered many movie stars. Later, as an usher at the Palladium Ballroom, he made friends with Waverly Ivy and asked Ivy to recommend him as his replacement. Krupa hired him in late December or early January, shortly before opening at the Golden Gate on January 17, 1943. His responsibilities included setting up Krupa's drums and band equipment and laying out his clothes for each engagement. He was also a "gofer" and was frequently found in Krupa's room on the twelfth floor of San Francisco's St. Francis Hotel. He was known to the band and Krupa as "Johnny."<sup>11</sup>

Remembering in 1997 the events that took place 54 years earlier, John Pateakos recalled two suspicious men backstage at the Golden Gate Hotel during opening day, Monday, January 18. He would later recognize the same men that night when they appeared backstage after Gene Krupa's last show. The men were agents from the Federal Bureau of Narcotics, Joseph V. Guibbini and O.W. Polcuch, who were there with another agent to speak with Krupa.

The following account of what happened that evening is taken from the Appellate Court records of May 29, 1944:

On the night of January 18, 1943, three agents from the Federal Bureau of Narcotics, named Guibbini, Grady, and Polcuch, having been informed that appellant [Gene Krupa] was in the possession of marijuana cigarettes, called at appellant's dressing room in the theater in which he was playing, to interview him regarding the information they had received. Pateakos was present at the beginning of the interview, but the agents requested him to leave the room, which he did. After identifying themselves as federal narcotic agents, they asked appellant if he had any marijuana on his person or in his room, and



he denied having any. They told him they had been informed that he did have a quantity of marijuana in his possession, and he replied that there was nothing to the information.

They then asked him if they might search his dressing room, and he told them to "go ahead." While they were doing so Guibbini asked the appellant if he had ever used marijuana, and appellant stated that he had at one time, about 10 years ago, but that lately he had had nothing to do with it. While the search was going on, appellant asked permission to leave the room to go out and wash. He was allowed to do so, but as soon as he left Guibbini followed him and he observed the appellant about half way up the stairs leading to the second floor engaged in earnest conversation with Pateakos. Guibbini separated them, and brought appellant back to his dressing room, where he was further questioned.

Guibbini thereupon went to a phone and instructed the room clerk at the hotel where appellant was staying to allow no one except appellant to enter the latter's room. Guibbini then proceeded to the hotel, leaving Polcuch with appellant. As Guibbini got out of the elevator at the hall leading to appellant's room he saw Pateakos waiting to enter the elevator. He brought Pateakos back to the room adjoining appellant's, occupied by the manager of the band, who was there present and upon searching Pateakos found in his pocket two envelopes, one containing 37 marijuana cigarettes and the other containing two whole ones, and one-half of one partially smoked.

Shortly thereafter, Polcuch and Grady arrived with appellant, and Polcuch and Guibbini took him to his room, where the officers found some fragments of marijuana in a drawer of a writing desk. Appellant denied having anything to do with the marijuana cigarettes or the fragments found. He was then taken back to the adjoining room, and Pateakos was taken to appellant's room. Pateakos refused then to make a statement in explanation of his possession of the marijuana cigarettes. He admitted having them in his pocket, but denied knowing anything about marijuana. He was then returned to the room where appellant was, and appellant stated if the boy had the marijuana cigarettes on him, it was his worry and not his (appellant's); that he did not have anything to do with it.<sup>12</sup>

The federal agents then took Pateakos to their office in San Francisco, where he was interrogated for several hours. Eventually, he signed a statement implicating Krupa.

Krupa called San Francisco's most famous defense lawyer, J.W. "Jake" Ehrlich, then making headlines defending Madge Bellamy in one of San Francisco's most celebrated trials. Bellamy, an attractive but fading movie starlet, was accused of attempting to murder socialite and lumber tycoon A. Stanwood Murphy when she chased him through the streets of San Francisco, ricocheting slugs from a .38 pistol off cars and buildings.



Ehrlich had earlier defended a number of Hollywood celebrities, including Erroll Flynn, James Mason, and Howard Hughes. He would later help clear Billie Holiday of drug charges and in the 1960s, Ehrlich would be asked to represent Jack Ruby.

Federal agents and San Francisco police arrived at the Golden Gate Hotel after Krupa's last performance on January 19 and arrested him, charging him with violation of section 702 of the Welfare and Institutions Code—contributing to the delinquency of a minor—a misdemeanor. Ehrlich accompanied Krupa to the San Francisco Jail House, where he was released after posting \$1,000 bail. The Federal Bureau of Narcotics had done what they said they would do five years earlier and “rocked the music world.”

Headlines jolted swing fans across the country. Krupa, the handsome, electrifying swing-era idol, was brought to the level of the “low-down musicians playing in Harlem dives.” National and local media announced the event to the world: “Gene Krupa Arrested Here In Juvenile Dope Case,”<sup>13</sup> exclaimed the *San Francisco Chronicle*, while the *San Francisco Examiner*, stated “Gene Krupa Linked to Dope Case: ‘Swing’ Drummer Seized by U.S. Agents.”<sup>14</sup> *Variety*, erring on the amount of bail, explained: “Krupa, Free on 2G Bail, Continues Tour Pending Trial on Reefer Rap.”<sup>15</sup>

Released on bail, Krupa rejoined his band, which was scheduled to play in Omaha, Nebraska. Two days later he returned to San Francisco to attend his preliminary hearing before Juvenile Court Judge Thomas M. Foley and to come face to face with his accuser, John Pateakos.

Pateakos's testimony given at the preliminary hearing described the events of the night of January 18, including his statement that Krupa told him to go back to the hotel and retrieve the envelope of marijuana cigarettes hidden in his overcoat pocket. As he did so, Pateakos could not look at Krupa sitting in the courtroom next to his lawyer. Serious damage had been done. The result of Pateakos's confession was an additional charge filed against Krupa; he was not only accused of contributing to the delinquency of a minor but was also charged with the more serious crime of using a minor to transport narcotics, a felony. Conviction meant a mandatory one to six years in San Quentin Prison without the possibility of parole. Further it would have effectively ended Krupa's career since the AMF prohibited convicted felons from obtaining a union card. Trial was set for April 19.

Undaunted and still believing the accusations against him would be proven untrue, Krupa returned to his band and continued the tour back to the East Coast. On January 29, the band stopped at the University of Wisconsin for the junior prom and a concert. On February 7, they began a two-week stay at the Panther Room at the Sherman Hotel, Chicago, where he



drew nearly \$6,000 during the first week. His next week was even more successful. *Variety* reported that the Panther Room was the "Hottest Spot in Town. Krupa Keeps 'em Clamoring for Admission. . . ." <sup>16</sup> Perhaps Krupa's notoriety increased attendance and bookings during his return trip. "Gene Krupa's ability to draw and to be booked apparently hasn't been deterred by the recent charges against him in San Francisco for contributing to the delinquency of a minor . . . in past couple months, Krupa has been booked for a string of eastern theaters that have played him in the past, and for Frank Dailey's Terrace Room, Newark, N.J." <sup>17</sup>

The band opened at the Terrace Room on April 16 for a four-week run. In California three days later, Ehrlich appeared before Judge Foley and entered a plea of guilty on Krupa's behalf to the original charge of contributing to the delinquency of a minor. Ehrlich also petitioned the court for probation. Foley took the petition under advisement and set sentencing for May 10.

Ehrlich and Krupa must have discussed this strategy. It was a difficult decision, but Ehrlich probably believed that the State had enough evidence to build a strong case against Krupa on the felony charge. Pleading guilty to the lesser count seemed less risky. Furthermore, Ehrlich felt that Krupa's guilty plea on a misdemeanor would likely result in a fine and probation, a common penalty for such a charge.

Ehrlich describes his earlier meeting with Judge Foley in his autobiography, *A Life In My Hands*:

I discussed the matter with Tom Foley. I pointed out the obvious damage that the continuing publicity was doing to Krupa's professional career, as well as the human and social inequity of the penalties he was already paying—guilty or innocent—prior to any judicial determination of guilt or innocence. He agreed with me. I was also convinced that we were in agreement on another point: if Krupa would come back to San Francisco and plead guilty to the misdemeanor, he would be fined \$500 and no further penalty, no prosecution on the felony rap. <sup>18</sup>

This was not the case; Krupa's guilty plea would have overwhelming consequences for the drummer, his band, and his career, as he and the world would find out during his sentencing before Judge Foley in May.

When Frank Daily heard of Krupa's guilty plea he immediately petitioned the AFM to "yank Krupa from the Terrace Room." After meeting with Krupa, Ehrlich (who flew in from California) and AFM officials convinced Daily to allow Krupa to complete his contract. However, other problems surfaced. Krupa's contract for the Coca Cola Company radio



broadcast on April 26 was canceled, as was his May 26 opening at New York's Paramount Theater. The Paramount had received a warning from reform and religious "organizers" who threatened to picket the theater if Krupa should appear.<sup>19</sup>

Nevertheless, *Variety* reported that "Krupa's entanglement with the law in San Francisco has not harmed his b.o.[box office] since it occurred. In fact the picketing threats to the Par [Paramount Theater] are the first thus far. Everywhere his band has played it did better business than it had previously."<sup>20</sup>

Krupa followed his gig at the Terrace Room with a week at Boston's RKO Theater on May 7. Here, he was met by long lines and grossed over \$9,000. After a three-day stint at the Metropolitan Theater in Providence, Rhode Island, Krupa boarded a plane to San Francisco for sentencing before Judge Foley on his misdemeanor guilty plea. Judge Foley had postponed sentencing from the original date of May 10 to the 18th, when Krupa would be available. Ehrlich was shocked by what occurred during sentencing:

On the 18th of May, Krupa and I stood before Judge Foley. In my pocket were five \$100 bills for the payment of the fine that Judge Foley and I had discussed. Foley levied the fine and then double-crossed me when he went on to sentence Krupa to ninety days in the county jail. At the end of the ninety days, less the usual five days from each month for good behavior, Krupa would be tried on the felony charge.<sup>21</sup>

Krupa was probably taken back by the jail term. Most likely he had been reassured by Ehrlich that he would have to pay the fine and would receive probation. If so, the sentence would have come as a total surprise.

But others saw another side to the issue. Having pleaded guilty to the misdemeanor charge Krupa might very well avoid conviction on the felony charge of using a minor to transport narcotics. According to the *San Francisco Examiner*:

Net results of the sentence, court observers agreed, will be to assure Krupa's acquittal on the felony charge when it is called on June 8. They asserted that a jury verdict of "guilty" would be virtually impossible in view of the fact that Krupa has already been sentenced on the lesser charge.<sup>22</sup>

*Variety* agreed and ran the following headline: "Observers Foresee Krupa Freed on Felony Rap; Band to Remain Intact." The article then went on to explain what would happen to his band:



Gene Krupa's Orchestra will remain intact during the leader's absence. With a replacement at drums and possibly a w.k. [well-known] musician in front. The outfit will be billed as Gene Krupa's orchestra featuring \_\_\_\_\_. Neither replacements have been made yet but bookings have been setup for the outfit.<sup>23</sup>

Upon news of Krupa's 90-day jail term his orchestra was given a paid, two-week vacation and waited for the "well known leader" issue to be resolved. On May 18, Krupa began serving 90 days in the San Francisco County Jail and waiting for his felony trial scheduled for June 8.

There are conflicting reports about Krupa's treatment while he was in jail. These range from envy and retaliation to fair and compassionate treatment by jailers. The least plausible is the following description reminiscent of a scene from a Hollywood B movie:

He [Krupa] remembered arriving in prison. "The one screw took me to the laundry, where I'd been assigned to work. . . . The screw and I stood there before all the convicts and he said. "I've got a guest for you fellas. The Great Gene Krupa.' Well not one of the convicts cracked a smile. Then he gives them a big smile, don'tcha see, and says, 'The first guy that gives 'im any help . . . gets the hole. You understan' me?' He meant solitary. Well . . . the minute he walks out, all of 'em gather aroun' me, shakin' my hand, and one of 'em, a spokesman, says to me, 'What is it we can do to help ya, Mr. Krupa?'"<sup>24</sup>

This account, written in 1985, conflicts with contemporaneous descriptions. In September 1943, *Metronome* indicated, "Gene says he was treated very well in the San Francisco jail," and that he was given time to write and study music.<sup>25</sup> But perhaps the most reliable source is a letter written from his cell in which Krupa explains, "The officials in and immediately about the prison here are most kind, and I'm given time each day to pursue my study of music."<sup>26</sup>

But, normally upbeat and optimistic, Krupa was shamed by the accusations made against him. One visitor indicated that he was so depressed that he belonged in a "sanitarium instead of a cell."<sup>27</sup> On June 7, the day before his felony trial, Krupa was taken ill. Some sources indicated that he had somehow obtained illegal drugs and had taken an overdose. The jail physician, Dr. Lee Hand, was called and Krupa was driven in an ambulance to San Francisco Hospital, then to the Harbor Emergency Hospital and examined by Dr. Thomas Fitzpatrick, an intern. Hospital records showed that he might have ingested an overdose of phenolbarbital, a prescriptive sedative, which, if taken in substantial quantity, could cause death. The *San Francisco Examiner* indicated that he took three tablets<sup>28</sup> and one account had him arriving at the hospital in a "semi-stupor."<sup>29</sup>



But it seems unlikely that Gene Krupa meant to cause himself harm. If he had taken an overdose of phenolbarbital, he did not take enough to cause serious injury. In fact, after he was examined at Harbor Emergency Hospital, he was not returned to San Francisco Hospital but sent back to the County Jail. Evidently he did not require hospital care. Later in the day Krupa declined to see visitors "explaining he wasn't feeling well and was a bit off the beat because of an attack of nausea." In all likelihood Krupa was, as one of his jailers said, "just sick—or it might have been something he ate."<sup>30</sup>

However, Krupa's image was even more tarnished by this event since the newspaper account implied that drugs were involved and that he might have obtained them surreptitiously while in jail. The event might confirm public suspicions of substance abuse, or an apparent attempted suicide, or an unbalanced mental state. Nothing could be further from the truth.

While Gene Krupa may have been despondent he most certainly was not suicidal. In response to one of what must have been numerous fan letters he received in jail, Krupa wrote: "Tell all the kids how-ever, those that care to know, I'm striving with all my will power to keep the proverbial chin up, and ultimately if I lose it shall be only after a hard fight."<sup>31</sup> Krupa's incarceration was a humbling experience, but he was not without hope.

On June 8, the day after his bout with nausea, Gene Krupa's trial was once again postponed but not because of the overdose issue. John Pateakos, the prosecution's main witness, had disappeared. Since he had been apprehended by federal agents, Pateakos had spent most of the next thirty days in custody as a material witness. He appeared at the preliminary hearing on January 26 but continued to be detained until his release in February. He then returned to the rooming house in Los Angeles, where he had lived prior to being hired by Krupa. But when the felony trial began he could not be found. Rumors circulated that he had been paid to leave California. Neither local police nor FBI agents, who were looking for him as a draft dodger, could locate him. In all likelihood it appeared that Pateakos would miss the trial. This would certainly not harm Gene Krupa's case.

Krupa's felony trial on the charge of using a minor to transport narcotics began on June 8, but the prosecution quickly asked for a continuance. Over strong objections by Ehrlich, Judge Foley continued the trial until June 29, when he was assured that Pateakos could be found. But Pateakos was still missing when the trial began on June 29.

Initially things went well for the defense. Assistant District Attorney Leslie Gillen requested another continuance since Pateakos could not be found and asked for more time to produce additional evidence. Judge Fo-



ley not only denied his request but found him in contempt after Gillen reproached the court for disallowing the extension. However, Judge Foley called for a recess until the next morning, when the trial would proceed without the prosecution's main witness and the "additional evidence of Krupa's guilt."<sup>32</sup>

On June 30 a jury of nine men and three women heard the prosecution's evidence, which included a transcript of Pateakos's statement made during the preliminary hearing in January. His affidavit asserted that Krupa had instructed him to go to the hotel and get the marijuana cigarettes from his coat pocket. His actions at the hotel were confirmed by the bellhop who let him into Krupa's hotel room and by testimony by federal narcotics agents.

After the prosecution presented its case, Krupa took the stand as the only witness for the defense. His testimony is described in the appellate court records:<sup>33</sup>

[Gene Krupa] became a witness in his own behalf, and in contradiction of the denials he had made to the federal agents on the night of January 18th, he admitted that all of the marijuana cigarettes which had been taken from his clothes belonged to him. In this connection he testified that he brought them to San Francisco from Los Angeles in the clothing which Pateakos was required to take care of, and that he had smoked part of one of the cigarettes after coming to San Francisco. . . . He denied, however, that he had asked Pateakos on the night in question to remove them from the pockets of his clothes.

This last statement would remain consistent in almost every retelling of the event by Krupa.

He was also asked if it was true that most swing musicians used marijuana. Krupa replied: "It might be true of 'hot bands' playing in dives but that it would be impossible for members of a prominent band to habitually use marijuana in view of the split-second timing on radio, and the need for self-possession on the stage."

During the prosecution's presentation it had been brought out that the Federal Agents received a tip that Gene Krupa had purchased a "large amount" of marijuana when he was in Los Angeles. But Krupa's testimony contradicts this:

Krupa testified that in the first place, he did not purchase marihuana in Los Angeles as charged by federal narcotics agents. He said somebody unknown to him—possibly one of his "fans"—admittedly a man who looked as if he might be a marihuana addict—had accosted him at the stage door of a Los Angeles theater and thrust an envelope in his hand. . . .



Krupa said he shoved the package into his coat pocket and later discovered that it contained marihuana cigarets. The entire matter was then forgotten, he said, until he happened to rummage through the coat pocket later in San Francisco and discovered the envelope. That was shortly before his arrest as he stepped from the stage of a local theater last January.

This account, or variations of it, is one of two Krupa supplied over the years. He also claimed that the illegal cigarettes were a gift from his departing valet, Westerly Ivy, as he explains in Burt Korall's *Drummin' Men*:

We were closing at the Hollywood Palladium, prior to my going to San Francisco to play at the Golden Gate Theater. My valet [who had gotten his draft notice] wanted to give me a parting present. He shopped around L.A. and finally decided on grass. Apparently he had a rough time buying it and shot off his mouth a little: "This is for the greatest guy in the world—Gene Krupa," he said. Someone heard and fingered me for the narco police.<sup>34</sup>

But the most colorful narration is provided by his attorney Jake Ehrlich, who recounted Krupa's version in the hep vernacular of the day. According to Ehrlich, Krupa said:

"I wouldn't con you, Master," he'd said. "I don't know a damn thing about this caper. The first time I pick up on the fact it's marijuana that's got them bugged is when the fuzz lay the story on me after they drop the net on Johnny [Pateakos]. They tell me he picked up the muggles in my suite, and I come all unzipped. That's a scene I don't dig, Jake; tea, goof balls, bennies—all that funny kind of quick energy. I don't need it! I got *me* [original emphasis]; that's plenty. If the kid had muggles, I sure don't know where he got it."<sup>35</sup>

Regardless of which story is to be believed Krupa's testimony rang hollow before the jury and "caused some embarrassment to listeners and which by its seeming lack of plausibility begged for rebuttal."<sup>36</sup> But Judge Foley, who at times seemed overwhelmingly in support of the defense, would not allow Assistant District Attorney Gillen time to gather his forces to rebut Krupa's explanation. He wanted to complete the trial that afternoon. Foley then declared a five-minute recess after which Gillen was told to proceed, but because Pateakos was absent and because he did not have time to produce "additional evidence," Gillen could not continue and rested his case.

At approximately 3:00 P.M. on June 30, the jury retired to ponder the fate of Gene Krupa. They returned to the courtroom two hours later and found him guilty as charged. Judge Foley would have no recourse: the law required that if found guilty of using a minor to transport nar-



cotics, he would be sentenced to one to six years in San Quentin Prison without chance of parole. Formal sentencing would take place two days later.

On July 2, 1943 Gene Krupa received the mandatory sentence, to run concurrent with his present jail term. The local press had a field day at his expense. Assistant District Gillen's closing remarks to the jury found their way onto the front page of the *San Francisco Chronicle*: "It is a deadly, dreadful, unpredictable drug. . . . Can the jury condone his [Krupa's] persuading or allowing a minor to even come into contact with it?"<sup>37</sup> The *San Francisco Examiner* printed the following comment by District Attorney Matthew Brady:

The conviction of Gene Krupa, it is to be hoped, will have a deterrent effect upon those who are careless regarding the welfare and morals of children and growing youth.

I want it to serve as a warning that San Francisco will not tolerate exposing minors to immorality, liquor and narcotics, regardless of the social standing of the offenders.<sup>38</sup>

Even Judge Foley, whose position shifted frequently during the trial issued this condemnation:

I hope this case will bring sharply to the attention of users of marihuana its vicious effects. It is ruinous to the morals and career and welfare of a person addicted, and above all, minors must be protected from contact with its vicious influence. I certainly trust that this case will bring to everyone's attention, especially to the attention of those who might use it for purposes of exhilaration, the consequences of its use.<sup>39</sup>

Ehrlich immediately filed an appeal which was granted by Judge Foley, and Krupa was returned to the San Francisco County Jail, where he continued to serve out his 90-day sentence.

After the two-week vacation given to them in May, Gene Krupa's band returned with trumpeter Roy Eldridge as leader and drummer Harry Jaeger filling in for Krupa. The band played a series of East Coast dates before returning to the Metropolitan Ballroom in Philadelphia for two weeks ending June 13. The ensemble then waited for the outcome of the trial. But one by one its members left; some were recruited by other bands, some returned home, others were drafted into the armed forces. When word came of Krupa's conviction and subsequent prison sentence, the band had effectively ceased to exist, and the likelihood of it ever being resurrected seemed doubtful.



Meanwhile the issue of John Pateakos took an interesting turn. A week after Gene Krupa was sentenced, John Pateakos was arrested in Los Angeles as a draft evader. Pateakos had received a draft notice in March 1943 and was ordered to take a physical that same month but failed to do so. The U.S. Government issued a warrant for his arrest for draft evasion, but FBI agents could not find him; neither could the San Francisco District Attorney's office, who sought him as a witness in the Krupa felony trial. In fact, the trial had been postponed three times in order for the prosecution to find their star witness. But did Pateakos disappear or did the D.A.'s office simply not want him found?

Jake Ehrlich contends that District Attorney Brady didn't want Pateakos to appear at the trial and that the prosecution knew where he was all the time. This was confirmed by Assistant District Attorney Gillen who revealed that Pateakos was "in Los Angeles during the time the State was looking for him as a State witness in Krupa's trial."<sup>40</sup> Just why did the D.A. not want Pateakos to appear at Krupa's trial? More importantly, why didn't Jake Ehrlich who also knew where Pateakos was, want him to appear at the trial? Presumably, Ehrlich would have welcomed a chance to discredit his previous testimony under cross-examination.

It would be several months before these questions would be answered. During the week of July 19 both lawyers would be battling each other in a Grand Jury investigation of bribery charges brought against Ehrlich. That investigation stemmed from a report that Pateakos was given \$650 to leave California during Krupa's felony trial. Brady made the accusations against Ehrlich, his associate Roy Scharff, and two Hollywood agents who acted as middlemen between Pateakos and Ehrlich's office, Barney McDevitt and Jack Lavin. The Grand Jury convened at 8:00 P.M. on the evening of July 20 to hear testimony from Pateakos regarding his whereabouts before and during the trial and if he had been bribed by Ehrlich to leave town.

Pateakos testified that he did not hide from either FBI agents nor detectives sent by the San Francisco D.A.'s office. He may have gone to Chicago in April, but he was in Los Angeles at the time of the trial. But Pateakos did say that he was given \$650 by Roy Sharff on April 29 with instructions to "get out of the State and stay out till the trial is over."<sup>41</sup>

Sharff admitted giving \$500 to Pateakos but claimed that the money was for back pay, lost clothing, and other incidental expenses. He denied that he told Pateakos to leave California. Furthermore, Sharff produced a statement handwritten by Pateakos clearly stating that the money he received was not connected with any legal action taking place against Krupa.



On July 24 the Grand Jury, after a divisive vote, refused to indict any of those charged by District Attorney Brady. Ehrlich commented that he was in good company with a number of famous lawyers who had been brought before grand juries, including Clarence Darrow. John Pateakos was inducted into the Army three days later and served as a medical corpsman until his tour of duty ended May 25, 1946.

Gene Krupa was incarcerated for 84 days. He was never sent to San Quentin, as some sources have stipulated, but was released on \$5,000 bail from the San Francisco County Jail August 9 pending the outcome of his appeal. The next few months were difficult for him, but he gradually began a slow and cautious reentry into the music business. Benny Goodman asked him to join his band for several USO appearances in November. In December he played with Goodman at the New Yorker Hotel. In early January he joined Tommy Dorsey at the Paramount Theater in New York and waited for the California Court of Appeals to make a decision.

Had "America's Ace Drummer Man" gone to sleep in January 1943 and awakened a year later he would have probably thought little had changed. True, he wasn't fronting his own band, but he was still getting standing ovations. He had won the 1943 *Down Beat* best drummer poll (beating Buddy Rich by over 2,500 votes), and critics who heard him with Goodman and Dorsey claimed he was playing better than ever. Yet a decision on his appeal had not been made, and it was still possible that he might have to return to jail to begin serving his sentence. The thought depressed him. At the end of the month, however, Krupa would have reason to be optimistic; John Pateakos recanted his earlier testimony which had implicated Krupa, caused his arrest, jail term, and felony conviction.

On January 14, 1944, a letter was sent to Gene Krupa, c/o Music Corporation of America. It contained \$1 and a request for a photograph and had been written by Private John Pateakos, a corpsman stationed at the Letterman General Hospital in San Francisco. The letter was forwarded to the New York office of attorney John Gluskin, Krupa's new manager, who in turn called Pateakos to arrange a meeting. The two men met on January 26, at the Mark Hopkins Hotel in San Francisco.

The meeting between Gluskin and Pateakos was cordial; both men reminisced about the ordeal of the past year. Gluskin showed Pateakos a notebook of newspaper clippings and remarked that Krupa was anxious about his upcoming appeal and was depressed at the thought of returning to jail. Gluskin also said that Krupa continued to maintain that he never told Pateakos to go to his hotel room and get the marijuana cigarettes as alleged by the prosecution. In a startling revelation, Pateakos said that Krupa never



told him to get the marijuana cigarettes from his hotel room. Then, Pateakos gave a different version of what happened the night of January 18, 1943:

As Gene came off the stage, soaking wet as usual, these three men [agents Gubbini, Grady, and Polcuch] walked over to him and said they wanted to talk to him. They walked Gene into his dressing room and I walked right in after them. I felt something was wrong. [The agents] told me to leave the room. I looked at Gene who nodded approval but he had a very particular expression on his face. I felt then that something was going to happen. I waited outside the dressing room for quite a while. Gene finally came out, pale as a ghost and still soaking wet although he still had his robe on. He was all shaken up and excited. He motioned me to go with him and by now I was all excited myself. We started to walk toward the washroom. Gene seemed unable to talk at first but finally said to me "Johnny, I want you to do something for me," and before he could say another word, the [agent] broke up the conversation, walked Gene back to his dressing room and left me standing there alone. Right then and there, I thought I knew what Gene wanted me to do. He was a nice guy and I wanted to help him. So I ran as fast as I could back to the hotel and tried to get Frank Verniere [Krupa's manager] on the phone but it was busy. I finally got a bell-hop to let me in. I took an envelope of cigarettes out of the pocket of his coat in the closet and left the room. Then I remembered there were also a few cigarettes in a drawer of the writing desk. So I returned to the room and took those cigarettes out of the drawer, put them in an envelope and left the room.<sup>42</sup>

Gluskin interrupted him and asked if Gene Krupa had ever told him to go to Krupa's room and remove the marijuana cigarettes from his coat. Pateakos said: "Gene never asked me to remove the cigarettes from his coat in his room, he never had the chance to; but I was sure I knew what he wanted me to do and I wanted to help, so I did it."<sup>43</sup>

The remaining portion of Pateakos's story parallels the description cited in the appellate court records with the exception of what transpired when Pateakos was brought to the Federal Bureau of Narcotics office after leaving Krupa's room at the St. Francis Hotel. When he was taken into custody, Pateakos continued to remain silent and refused to say anything that would implicate Krupa. In fact, he denied that he even knew what marijuana cigarettes were or that he had ever seen them before. What happened next would certainly not have appeared in any official account of the evening:

After quite a while trying to make me say something, the agents took me over to their office alone. There they really gave me the works. They pushed me



around and threatened to hit me with a black-jack and beat me up if I still refused to talk and furthermore, would put me in jail for possession of the cigarettes.

At this time it must have been well into the early hours of the morning, and he was tired and afraid. Eventually Pateakos told the agents what happened, but it was not what they wanted to hear. He reiterated that Krupa had not told him to get the dope from his room and that he had decided to go to the hotel and get the cigarettes because that's what he thought Krupa had wanted him to do. But the agents were not satisfied with his story. They continued to threaten him and then finally told him that whatever he said "wouldn't make any difference to Gene because he would be in exactly the same trouble anyway."<sup>44</sup> To an exhausted twenty-year old, threatened with physical harm and possibly jail, this might have made sense. Furthermore, he was alone. Without legal help or assistance of any kind, John Pateakos, believing that whatever he said could not hurt Gene Krupa anymore than he already had been hurt, agreed to sign a statement saying that Gene Krupa had asked him to go to his hotel and get the marijuana cigarettes in his overcoat.

Gluskin thanked Pateakos for his candor and the meeting ended. On January 29, Gluskin sent Pateakos a nine-page letter describing the events of their meeting and asked him to sign each page as verification that the details described in the letter were true. After making some minor corrections, Pateakos complied and returned the letter. Gluskin notified Attorney Ehrlich of Pateakos's statement, and Ehrlich brought it to the attention of the San Francisco Juvenile Court.

On February 10, the case was brought before Juvenile Court Judge Theresa Meikel. Pateakos admitted that he had lied during his previous testimony, and a deposition to this effect was entered into evidence by Ehrlich. Judge Meikel admonished Pateakos and told him that he could be charged with perjury for giving false testimony. But it also became clear that he had probably signed the original statement under threats made by federal agents and the D.A.'s office. Consequently, Pateakos was never charged with perjury.

Now it is understandable why the D.A.'s office chose not to find Pateakos during Gene Krupa's felony trial. They may have believed Pateakos would simply tell the truth: that he had been coerced into making a false statement. Regardless, the matter became moot when on May 29, 1944, Krupa won by a 2-1 decision by the Court of Appeal of California. The majority decision was based upon a finding that the felony



and misdemeanor charges were founded on the same action and that punishment for both constituted double jeopardy. Although there were threats made by the D.A.'s office to bring the decision to the State Supreme Court, nothing was ever done. While Krupa was never really cleared of the charges brought against him, after the appellate court decision he was free.

Several stories have been perpetuated through the many tellings of Krupa's drug bust. Krupa frequently charged that he had been caught in a political maelstrom between two old adversaries, Ehrlich and Brady.<sup>45</sup> This is true. Ehrlich and Brady were fierce opponents in some of San Francisco's most notorious trials. But their squabbles had little or no direct impact on the outcome of Krupa's legal battles.

Krupa also stated that Brady was coming up for reelection in the fall of 1944 and needed a sensational trial in order to win.<sup>46</sup> If Brady was counting on Krupa's trial and subsequent conviction as a way to remain in office, he highly underestimated his constituents and Jake Ehrlich. In a resolute move to unseat Brady, Ehrlich resigned from his law firm and devoted himself to defeat Brady by campaigning for Edmund G. (Pat) Brown. Brady lost the election, and Brown would go on to become governor of California.

A number of preposterous ideas have filtered in and out of this story, including the notion concocted by Anita O'Day that John Pateakos was a "juvenile delinquent and a possible police plant,"<sup>47</sup> or the rumor that Krupa had been "set up" by an angry band member.<sup>48</sup> Neither of these is true.

What is true is that Gene Krupa's name would be forever connected with drugs and, by some, he would always be considered an addict. Later in life he would speak openly about marijuana and warn others against its use in lectures and interviews. Furthermore, whether on purpose or by coincidence, whenever an article about Krupa appeared in a trade magazine after this event, a drug-related story was frequently placed on the same page.

There remains one piece of unfinished business. During Krupa's trial, Assistant District Attorney Gillen unsuccessfully requested continuances in order to "obtain additional evidence of Krupa's guilt." It is quite possible that the information Gillen planned to bring into court was verification that Gene Krupa had purchased a large quantity of marijuana when he was in Los Angeles before going to San Francisco. The following appeared in the *San Francisco Examiner* five days before Krupa was freed:

In repercussion of the Gene Krupa case, John Russo, 26, yesterday was sentenced to a term of from one to six years in San Quentin on a charge of using a minor to transport narcotics. . . .



Russo was apprehended in San Francisco after reports had been received by the district attorney's office [t]here that he had been suspected of furnishing narcotics to Gene Krupa in Los Angeles.<sup>49</sup>

Was John Russo the source of "additional evidence" against Gene Krupa? It appears he was, but his testimony would not have been detrimental to Krupa's case. Krupa admitted in court that he owned the marijuana cigarettes found in Pateakos's possession and that he had smoked marijuana. It seems Assistant District Attorney Gillen simply wanted the threat of possible further incriminating evidence to weigh heavily on the defense since Russo was never called to testify.

Several conclusions may be drawn from the events of 1943-44, including the fact that John Pateakos was most likely coerced or misled into making a false statement to federal narcotics agents. It is also probable that without that statement there simply was no case against Gene Krupa. His arrest, \$500 fine, 90-day jail term, and felony sentence would not have happened.

Within a month of the Appellate Court decision Krupa began rehearsing what is generally called his second band ("The Band that Swings with Strings"), which opened at the RKO Theater in Boston, July 6, 1944. This group, which would later abandon the string section, would become a proving ground for several seminal bop musicians, including baritone saxophonist/arranger Gerry Mulligan, trumpeter Red Rodney, trumpeter Don Fagerquist, and vocalist Dave Lambert. The dissolution of the big bands by the 1950s found Krupa touring with Jazz at the Philharmonic, fronting his own small groups, and occasionally staging drum battles with Buddy Rich. Although declining health forced him into semiretirement in the 1960s, he occasionally played reunion concerts with the Benny Goodman Quartet. Ironically Gene Krupa made his last recording in April 1972 with fellow Chicagoan Eddie Condon, with whom he had made his first record 44 years earlier. Years after the San Francisco incident Krupa and Pateakos met after a concert. There was no animosity between the two men; Pateakos still revered Krupa, and the famous drummer had learned to accept the facts of his past. After Gene Krupa died in 1973, John Pateakos began a tradition that continues to this day; each year a Mass is said in honor of America's Ace Drummerman in his local Catholic Church.

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