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THE CASE OF THOMAS J. MOONEY AND WARREN K. BILLINGS: ABSTRACT
AND ANALYSIS OF RECORD BEFORE GOVERNOR YOUNG OF CALIFORNIA. By
Henry T. Hunt. (New York: Published by National Mooney-Billings
Committee, 1929. Pp. xxvii 444.) \$2.50.

The charge of "frame-up" has become so common an incident of criminal prosecutions today that it is not surprising many people pay little if any attention to it. Such a charge is apt to be regarded merely as the last resort of shifty criminal lawyers when the technicalities of our outworn criminal procedure and various stratagems corrupt and otherwise have failed to save their clients from the just consequences of unlawful action. Nevertheless it would be foolish to deny that such "frame-ups" have occurred. It cannot be gainsaid that the criminal law has in times past been made the instrument of selfish interests (too often masking themselves under the guise of law and order) to pull their chestnuts out of the fire. Still, unless we are prepared to admit that our present system of criminal procedure is altogether untrustworthy and inadequate as a method for the determination of guilt or innocence, every legitimate presumption must be indulged in favor of a jury verdict of guilty in a criminal prosecution wherein the forms of law and the procedural requirements of due process have been observed. Consequently, when the friends of Messrs. Mooney and Billings charge that their conviction was the result of a "frame-up," it is just and proper to demand that they assume the burden of maintaining their charge by at least a clear preponderance of the evidence.

It was with this attitude of mind that the reviewer began his study of Mr. Hunt's abstract of the voluminous record in this famous case. This abstract was prepared by Hunt at the request of members of the Mooney-Billings Committee who desired to assist Governor Young in his study of the record submitted to him in support of Mooney's application for a pardon. It covers all the testimony taken at the trials of Billings and Mooney, the testimony offered before the Grand Jury, and a portion of the testimony at the trials of Rena Mooney and Weinberg. These four, along with one Nolan, were charged with setting a bomb on the occasion of the San Francisco Preparedness Parade on July 22nd, 1916, the explosion of which resulted in the death of a number of persons and injuries to many others. All testimony is set out which in the judgment of Mr. Hunt is material on the issue of the guilt or innocence of the defendants. In addition, there appear extracts from the testimony at the trial of the prosecution's star witness, Oxman, for perjury, copies of the proceedings taken to secure a new trial for Mooney and the proceedings and decision upon his appeal to the Supreme Court of California; excerpts from lawyers' briefs; pamphlets published by the Chamber of Com-

merce of San Francisco and by labor organizations there presenting the economic and social situation at the time; letters and statements of persons connected with the prosecution and of judges, jurors, and witnesses; excerpts from publications contemporaneous with the events involved; and Mr. Hunt's own analysis of the evidence. The author is careful to point out that much of the material he presents is not evidence. He makes it available to afford to reader a fair picture of the setting and atmosphere of the trials and to throw light upon related events which might otherwise be quite obscure. A complete chronological outline of the case is attached for the reader's convenience, and also a map of Market Street and that portion of the city in which the events involved in the case occurred.

Mr. Hunt is an attorney of standing and varied experience, including a number of years as a prosecuting officer. His abstract is a real tribute to his thoroughness, industry, and powers of analysis. One less able than himself might well have become confused or lost in the endeavor to reduce so large a mass of evidence and other materials to clarity and order. Assuming as we do that the Governor of California was sincere in his expressed desire to make an exhaustive analysis of the record, Mr. Hunt's work cannot fail to be of inestimable assistance to him in his labors.

There is nothing in the abstract to indicate that its author has permitted any possible personal bias to color or distort his condensation of the record. When a particular statement is Mr. Hunt's own inference from testimony rather than the declaration of a witness, he is scrupulously careful so to indicate. Material aliunde the record is carefully identified as such and its antecedents given. The author's analysis is presented for what it is worth. He examines one by one, in the light of the testimony in the record, the six propositions upon which the state's case was built and points out wherein, in the author's judgment, those propositions were not maintained. The reader already has before him the whole history of the case. The cards are all face up upon the table. He need not be misled if the author's conclusions are not warranted by the record.

The reviewer is conscious of how misleading the mere perusal of the record in a case may be. Testimony which on the face of the record may seem to be of great weight and almost conclusive of guilt or innocence may have been disregarded by the jury (and properly so) because the witness who gave it, by his demeanor upon the stand, convinced the jury his story was not worthy of belief. In order to guard against any such error, we have deliberately given little or no weight to the evidence for the defense, except such parts of it as could not be impeached because not dependent for its value upon the credibility of a witness. Our own conclusions are based upon an examination of the testimony of the prosecution's witnesses plus evidence of the sort indicated above plus new and very strong evidence uncovered since the trial throwing light upon the truthfulness of the chief witnesses for the state.

We find it quite impossible to escape the conviction that Mooney and Billings have been the victims of a miscarriage of justice as shocking, in its way, as the horrible crime of which they were convicted. They have proved beyond reasonable doubt to any mind which is open to conviction that they were the subjects of as ruthless and conscienceless a "frame-up" as the history of criminal prosecutions in the United States affords. The criminal law of the sovereign state of California was made the catspaw of unscrupu-

lous private interests in the San Francisco region, determined to preserve the open shop even at the price of sending the leading labor organizer to the gallows for a crime which there was no honest evidence to show that he ever committed.

Chief of these interests was the United Railways of San Francisco, a corporation whose infamy and venality had a few years before been exposed to the public view in the courageous prosecution of Schmidt and Ruef by Francis J. Heney and Hiram Johnson. That corporation and its allies found efficient instruments at hand for the accomplishment of their purposes in the persons of one Martin Swanson, a detective whose one principle of conduct seems to have been the protection of his employer's interests by whatsoever means his cunning could devise, and the district attorney, Charles M. Fickert. The latter had defeated Mr. Heney for the office of district attorney largely by reason of the support of those interests most insistent upon depriving Mooney and his friends of their power and influence. One of his first official acts had been to put an end to the graft prosecutions which Heney had initiated. His conduct in the prosecution of Billings, Mooney, et al., was such as forever to forfeit the respect of lovers of fairplay. He resorted to the columns of the newspapers, in advance of the trials to inflame public sentiment to a white heat against the accused, charging them with being anarchists and with being ringleaders in a revolutionary conspiracy. The jury in the Mooney case were told by his underling that the prosecution would prove the defendant to be a party to a plot to overthrow the government and destroy peace and order. Had there been a shred of evidence worthy of credence in support of such a charge there can be no doubt that Fickert would have used it; yet the record contains no evidence whatever to prove this allegation, save the single circumstance that copies of *The Blast*, a radical paper published by Alexander Berkman, were found (supposedly) among Billings' belongings by police detectives. The only reasonable inference from this is that the prosecution made this charge without expectation of proving it, simply in order to prejudice Mooney in the eyes of the Jury and so blind them to the many weaknesses in the prosecution's case.

The constitutional rights of the defendants were ruthlessly violated. Their homes were invaded and their property seized without search warrants; they themselves were held incommunicado for days without benefit even of counsel. Mr. Fickert and his agents, posing as the champions of law and order, are shown by their conduct to have had singularly little respect either for law or the dictates of ordinary fairness. The identification of the defendants in jail by the state's chief witnesses can be described as nothing more than a farce staged by a prosecutor determined that nothing should stand in the way of conviction of men prejudged by himself.

It is difficult to believe that, under normal conditions, juries could have convicted Billings and Mooney upon the case made by the prosecution. This is particularly true of the Mooney trial. In the light of their subsequent conduct neither dishonesty nor bad faith can fairly be attributed to the members of the Mooney jury. Nothing so crude was attempted by Mr. Fickert. The crime with which the defendants were charged was one of peculiar horror. Public feeling, fanned by the newspapers, was running high. A conviction could be assured by making Mooney and his friends the butt of this public anger and outraged patriotism. This the district attorney and Swan-

son, now a member of his staff of investigators, promptly set themselves to do. No attempt apparently was made to carry on investigations based upon any other hypothesis than the guilt of Mooney, though Mr. Hunt brings out facts strongly suggesting other possibilities which public officials, acting in good faith, would certainly have investigated. Large rewards offered for the apprehension and conviction of the guilty parties attracted perjured testimony. The control of the authorities over persons of the demi-monde and individuals with criminal connections or relations produced other witnesses. The result was a case having a sufficient amount of plausibility to extract from juries, no doubt infected by the prevailing public sentiment and prejudice, verdicts of guilty against Billings and Mooney. Mooney was saved from the gallows only by a commutation of sentence to life imprisonment by Governor Stephens, influenced in no small measure by the pleas of President Wilson. The President's action was based upon a report of federal investigators whose findings were that Mooney had been the victim of fraud and perjured testimony. After public excitement had abated, Mrs. Mooney and Weinberg were later tried and acquitted, by the aid of evidence discovered in the meantime by their counsel, which evidence was known to the district attorney at the time of Mooney's trial and covered up by him. Nolan was released without trial for lack of evidence. Oxman, the chief witness for the state at the Mooney trial, was later indicted for perjury, tried, and acquitted. The record and other facts amply show, however, that no honest effort was made to convict him. On the contrary, the district attorney did everything that he could to bring about his acquittal.

Space does not permit here any detailed account of the facts which it is believed fully warrant the strong statements which have been made. He who is interested will find them in Mr. Hunt's book. The following paragraphs taken from a letter¹ under date of November 19th, 1918, to Governor Stephens from the Honorable Franklin A. Griffin, the judge who presided at the Mooney trial, will indicate the situation:

"In the trial of Mooney and Billings there were four witnesses, and four only, who connected him with the explosion which occurred at Steuart and Market Streets. They were John McDonald, Frank C. Oxman, Mrs. Mellie Edeau and her daughter Sadie. Of these Oxman and McDonald placed Mooney at the scene of the crime, and the Edeaus testified to his presence at 721 Market Street, from which point, the prosecution avers, Billings, Weinberg, Mooney and his wife drove in Weinberg's jitney with an unidentified man to the place of the crime.

"Oxman was by far the most important of these witnesses. His testimony was unshaken on cross-examination, and his very appearance bore out his statement that he was a reputable and prosperous cattle dealer and landowner from the state of Oregon. There is no question but that he made a profound impression upon the jury and upon all who listened to his story upon the witness stand, and there is not the slightest doubt in my mind that the testimony of Oxman was the turning point in the Mooney case and that he is the pivot around which all the other evidence in the case revolves. It was because of the extreme importance of this witness and his naive simplicity on the witness stand that when the disclosure of the letters he had written to Rigall and his mother, which are before you, was made, I deemed it my duty to address the attorney general as I did" (this being a request to the attorney general to attempt to induce the Supreme Court to send back the case for a new trial,

¹ HUNT, THE CASE OF THOMAS J. MOONEY AND WARREN K. BILLINGS: ABSTRACT AND ANALYSIS OF RECORD BEFORE GOVERNOR YOUNG OF CALIFORNIA (1929) 17-21.

which request, being duly made, was denied by that court on the ground it had no jurisdiction to grant a new trial by reason of new evidence discovered after sentence).

"The testimony of Mrs. Mellie Edeau and her daughter, Sadie Edeau, was, that on the day of the Preparedness Parade, Mooney, Mrs. Mooney, Billings and Weinberg were together at 721 Market Street, from which point they drove away in Weinberg's automobile jitney. They were the only witnesses who claim to have seen the Mooneys at that point, and their testimony is important in that it corroborates Oxman's statement that the same four people arrived at Steuart and Market Streets in the same conveyance a short time after its departure from the Edeaus' observation.

"At the trial of Billings the Edeaus did not disclose in their testimony then given that they had seen Mooney and his wife. This in itself was a suspicious circumstance, but as it was developed at Mooney's trial and thus was before the jury for consideration, I do not comment upon it. But the testimony of the Edeaus has now been entirely discredited by Inspector Smith of the Oakland Police Department, Captain Peterson of the United States Army, Former Chief of Police of Oakland, and Lieutenant Goff of the San Francisco Police Department. The sworn testimony of these officials adduced at the trials of the defendants Rena Mooney and Israel Weinberg, _____ disclosed that immediately after the tragedy at Steuart and Market Streets the mother called on the Oakland police officials, claimed then that she and her daughter were not at 721 Market Street, but at the scene of the crime, and saw the perpetrators thereof, was brought by Inspector Smith to San Francisco, where she was shown the defendants, who were then under arrest, and in the presence of Smith and Goff was not only unable to identify any of them, but then stated that they were not the guilty parties. _____

"I do not intend to state the testimony of John McDonald. _____ I do not hesitate to say, however, that in my judgment McDonald is unworthy of belief, and in view of two indisputable facts which are established beyond all peradventure of a doubt, his testimony is worthless. These are, first, the time of the explosion, 2:06 p. m. and second, the time Mooney is first shown on the roof of the Eilers Building," (at 926 Market Street over a mile from the scene of the explosion) "1:58 p. m. The first of these is established by Captain Duncan Matheson, in charge of the bomb case; the second, by the photograph, subsequently enlarged, taken by the young man employed by the Eilers Music Company. Bearing these facts in mind the testimony of McDonald demonstrates its own falsity and is itself unanswerable evidence that what he claimed to have seen could not have occurred." (McDonald in 1921 voluntarily made an affidavit in New York deposing that his testimony in these cases was false and was framed by District Attorney Pickert.)²

"Since the trial of Mooney, two other of the defendants have been tried in another department of this court and each has been acquitted of the charge. In these trials McDonald and Mrs. Edeau and her daughter have been witnesses. Oxman has never been produced. There has been submitted to each of these juries all the matters which have been developed since the trial of Thomas J. Mooney, except, of course, the Oxman letters, with the result above indicated."

Whatever substance the case for the prosecution may once have had, it has been demolished by the subsequent revelations to some of which Judge Griffin's letter refers, showing beyond reasonable doubt that the evidence upon which convictions were obtained was the result of perjury and fraud. The trial judge, ten of the eleven living members of the Mooney jury, Captain Duncan Matheson and other members of the San Francisco police force

² *Supra* note 1, at 430-444.

involved in the case, the deputy district attorney who prosecuted Billings, all have joined in support of Mooney's application to the Governor for a pardon. The Supreme Court of California has said that only he has power to release him, if he was unjustly and fraudulently convicted. Yet he still languishes in San Quentin Penitentiary twelve years after that conviction, spurning a parole or anything less than an absolute pardon as involving an implied confession of guilt. That the present Governor can refuse to intervene after a study of all the facts seems well nigh beyond belief. Such a refusal, after he has had a fair opportunity for a thorough study of the record and the new evidence could be explained only as a yielding to political pressure from the very interests which brought about this travesty upon justice or upon the ground the reviewer has heard advanced by some persons in California, to wit: that Mooney and Billings are labor agitators and therefore dangerous persons, and should be kept where they are on general principles. No better answer can be given to this latter contention—if answer be needed—than is found in a letter written by the Honorable Matthew Brady, successor to District Attorney Fickert, to Governor Richardson of California, under date of September 18th, 1926:³

"The situation is one that clearly comes within the purpose of the provision granting the Governor power to pardon. I believe no person that permits himself to analyze the situation entertains any doubt that Mooney and Billings were convicted on false testimony. The only reason for keeping them in prison is that they are undesirable citizens and, if they have not committed the offenses charged, they have been guilty of other activities that justly restraining them. I am convinced that such reasoning is most insidious and, ultimately, destructive of the very institutions that law-abiding people prize. It certainly should not be employed by the officials charged with enforcing the laws."

Mr. Hunt has rendered a real service to the cause of justice pure and undefiled. His book should be read by everyone who is interested in protecting the integrity of the administration of criminal justice in this country. We are confident that any such, however skeptical they may be at the beginning of their perusal of the record in this case, will at the end agree that Mr. W. Bourke Cochran spoke only the truth when he wrote to Mr. Mooney, his client, under date of February 11th, 1917, the following:⁴

"I think it can be shown to all reasonable men that we are in the presence of another Dreyfus case, the only difference being that the object of the French perversion of legal procedure to perpetration of the very crimes which the courts are organized to prevent was exclusion (by force and threats of force) of Jews from the army, while the object of your prosecution for a crime repugnant to every element of your nature, is to drive laborers from organizing by killing a man who has had the temerity to urge some of his fellows to form a union for their own protection."

ARTHUR H. KENT.

Chicago, Illinois.

A TREATISE ON THE LAW OF TRUSTS AND TRUSTEES. By Jairus Ware Perry. Seventh Edition. By Raymond C. Baldes. (Boston: Little, Brown, and Company. 1929. Vol. I, pp. clxxxix, 804; Vol. II, pp. xviii, 925.)

This is the seventh edition, of a standard American treatise on the Law of

³ *Supra* note 1, at 411-412.

⁴ *Supra* note 1, at 380.