

A 1916 BOMBING AND “AMERICA’S MOST FAMOUS PRISONER”

By John S. Caragozian

Courts have often protected Californians’ civil rights and liberties in the face of popular opposition. But not always.

The 1916-1917 wrongful murder convictions of labor union activists Tom Mooney and Warren Billings were the subject of multiple state and federal court proceedings, none of which granted relief. Instead, a governor finally freed Mooney and Billings after 22 years of imprisonment.

In the early 1900s, San Francisco was America’s most unionized city. At the same time, however, powerful businesses were anti-union, and conflicts between the sides were violent.

Tom Mooney became a central player in this conflict. He was born in 1882 and worked in an Illinois iron factory until being blacklisted at age 15 for union organizing. In 1908, he hopped a freight train to California, where he worked and resumed his union activities. He also joined the socialist party and campaigned for its presidential candidate Eugene Debs. See Curt Gentry, “Frame-Up: The Incredible Case of Tom Mooney and Warren Billings,” 33-37 (1967).

The following year, Mooney joined the militant International Workers of the World. He was further radicalized by attending Copenhagen’s International Socialist Congress, which Lenin also attended. In 1911, Mooney was elected as a delegate to the powerful San Francisco Labor Council, but he clashed repeatedly with conservative labor leaders and was not re-elected.

The other central player was a fellow labor activist, Warren Billings. He was born in 1893 and met Mooney while spying for the IWW in a violent 1913 strike against a San Francisco shoe manufacturer.

The same year, Mooney and Billings also worked together in a strike against Pacific Gas & Electric. Billings was convicted of conspiracy to dynamite PG&E equipment in Sacramento and sentenced to two years imprisonment. Mooney was tried for transporting dynamite, but was finally acquitted after two earlier juries had hung. See *id* at 58; Richard Frost, “The Mooney Case,” 20-25 (1968).

In 1916, Mooney unsuccessfully tried to organize a strike against non-union United Railroads, which had San Francisco’s streetcar franchise. Only a handful of URR employees struck; even the dynamiting of power lines – in which Mooney was uninvolved – failed to affect streetcar service, because URR had arranged for alternate power sources.

The same year saw a violent longshore strike in San Francisco. In response to the rise in union activity, local businesses organized a Chamber of Commerce “to rid San Francisco of anarchistic elements.” The business community considered Mooney and Billings to be dangerous subversives and surveilled and tried to frame them by offering money for concocted testimony. See, e.g., Gentry, *supra* at 70, 78; Frost, *supra*, at 76-77.

On July 22, 1916, San Francisco's business community held a "Preparedness Day" parade, ostensibly as a patriotic display. It was also seen as anti-labor, and unions decried it.

The parade began at the Ferry Building at 1:30 p.m. and marched up Market Street. At 2:06, a bomb exploded on a Market Street sidewalk one block from the Ferry Building, killing 10 and injuring 40. The San Francisco Police Department lacked forensic expertise and could never determine whether the bomb was thrown from above or detonated with a timer. The police also destroyed evidence by, for example, immediately hosing down the sidewalk without preserving debris. *E.g.*, Richard Frost, *supra*, at 86-87.

The District Attorney hired a former private investigator who had been affiliated with the URR. The investigator proposed Mooney and Billings as the bombing suspects, despite the lack of direct evidence. Eyewitnesses gave conflicting descriptions of men at the bomb's location. *E.g.*, Curt Gentry, *supra*, at 95-98.

The D.A. showed witnesses photos of Mooney and Billings; however, instead of asking witnesses to choose among several photos, the D.A. merely asked witnesses to confirm that they saw Mooney and Billings at the scene.

The police arrested Mooney and Billings and seized evidence, all without warrants. The procedural violations continued with Mooney held incommunicado 11 days, despite Mooney's repeated requests to speak with his lawyer. *Id.*, at 105, 113.

Billings was tried first. Witnesses were inconsistent regarding Mooney's location and description, and much of the physical evidence was either inconclusive or even exculpatory. For example, ball bearings seized from Billings differed from those found at the bomb site. Still, in October 1916, the jury found Billings guilty of murder, and he was sentenced to life imprisonment.

Billings appealed. The District Court of Appeal summarily affirmed his conviction, ruling that a witness's inconsistencies or contradictions are within the province of the jury. *People v. Billings*, 34 Cal.App. 549, 551 (1917).

At Mooney's trial, witness statements were again inconsistent. The strongest eyewitness against Mooney, Oregon cattleman Frank Oxman, claimed to have seen Mooney at the site; but, after trial, (1) new evidence raised questions as to whether Oxman was even in San Francisco at the time, and (2) the defense discovered a letter Oxman wrote that attempted to suborn perjury from a friend against Mooney. Another eyewitness, when confronted after trial with inconsistencies in her various statements, explained that she was in one location "in the flesh," while her "astral body" was elsewhere. See Richard Frost, *supra* at 210.

Moreover, the D.A. withheld key material evidence from the defense. Although a key photograph showed Mooney and his wife 10 blocks away from the bomb, the D.A. gave only blurry prints to the defense, such that a clock in the background could not be read. A clear view

of the clock taken from the negative showed that Mooney could not have been when and where the prosecution's witnesses had placed him. *See, e.g., id.* at 185.

At closing, the D.A. compared Mooney to John Wilkes Booth and argued that Mooney and other anarchists were attempting to destroy the government. The jury found Mooney guilty of murder and sentenced him to death.

Mooney appealed, too. Before his appeal could be heard on the merits, the trial judge – upon learning of Oxman's letter – requested a new trial, but the judge no longer had jurisdiction. Similarly, the D.A.'s stipulation to a new trial was rejected as procedurally improper. *See* Richard Frost, *supra* at 216; *People v. Mooney*, 175 Cal. 666 (1917).

Seven months later, the California Supreme Court affirmed Mooney's conviction, citing the long-standing rule that the jury is to resolve evidentiary contradictions. *People v. Mooney*, 177 Cal. 642, 649-51 (1918).

With direct appeals exhausted, Mooney and Billings sought support from elected officials. In January 1918, a Federal Mediation Commission – appointed to investigate management-labor conflicts across the nation – reported on the unfairness of the Mooney and Billings convictions and recommended new trials. U.S. President Woodrow Wilson requested that California's governor commute Mooney's death sentence. Further, the U.S. Department of Labor wiretapped the San Francisco D.A.'s office and uncovered evidence of misconduct, some of which may have related to the Mooney and Billings prosecutions. In November 1918, the governor commuted Mooney's death sentence to life imprisonment. *See* Curt Gentry, *supra* at 237, 241, 254-59, 260-61.

Mooney and Billings remained imprisoned despite various efforts to seek gubernatorial pardon or, at least, clemency. Mooney also became an international political and economic symbol.

In 1932, U.S. President Herbert Hoover established the federal Wickersham Commission to investigate law enforcement in the U.S. The commission decried California's criminal procedure as "shocking to one's sense of justice" and separately described the Mooney prosecution as based on deliberately concealed information and on perjured testimony. *E.g.*, Richard Frost, *supra*, at 415-16.

In 1934, Mooney filed a habeas corpus petition in federal court, alleging a 14th Amendment due process denial. The district and circuit courts found no federal question. However, the U.S. Supreme Court held for the first time that a federal due process claim could be based on a state prosecutor's "deliberate deception of court and jury by presentation of testimony known to be perjured." The court then denied Mooney's petition without prejudice, pending state judicial review of the record. *Mooney v. Holohan*, 294 U.S. 103, 111-12, 115 (1935).

The California Supreme Court appointed a referee to hold a habeas hearing, which eventually stretched to almost two years of testimony and related proceedings. The court then reviewed the record and found no deliberate deception. For example, the court acknowledged that

Oxman had attempted to suborn perjury, but disregarded the attempt, because that particular testimony had not been offered. *Ex Parte Mooney*, 10 Cal.2d 1, 44-46 (1937). With the California Supreme Court finding no deliberate deception, the U.S. Supreme Court took no further action.

By 1938, *Life* magazine described Mooney as “America’s most famous prisoner.”

Finally, in January 1939, newly elected governor Culbert Olson pardoned Mooney and, later that year, commuted Billings’s sentence to time served. Tragically, Mooney’s health had suffered in prison, and he died in 1942 at age 58. Billings lived until 1972.

Who actually bombed the 1916 parade was never determined.

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