The Mooney-Billings Case

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REVIEWS

THE MOONEY-BILLINGS CASE*

The publication is interesting to lawyer and layman alike, but particularly to the former. It can hardly be called a book in the ordinary meaning of the term, but is really an abstract and compilation not only of the proceedings had in the cases against Thomas J. Mooney, his wife, Rena Mooney, Warren K. Billings and Israel Weinberg, but also of events occurring before the commission of the crime for which these persons were tried and of developments, disclosures, repudiations and retractions made after the trials.

In spite of the evident intent to condense the material wherever possible, it covers almost 450 pages. Its obvious purpose is to enable the Governor of California to acquaint himself with everything material to the application for pardon presented to him. In case of doubt on any matter, the Governor has in his possession the complete record to which he can refer, but the study of which would require many months, whereas Mr. Hunt's book can be read in that many hours.

The book is well worth reading. The facts are assembled in chronological order and are so presented as to maintain the interest of the reader throughout. One hesitates to lay it aside but feels a desire to read on. In many respects it is as fascinating as fiction.

The book squarely brings to the mind of the lawyer the question of whether it is incumbent upon a prosecuting attorney to present all the evidence within his knowledge or merely that favorable to his side of the case. Lawyers reading this review may recall that some months ago both sides of this question were well presented by able lawyers through the medium of the Journal published by the American Bar Association.

James F. Brennan, who as assistant district attorney, conducted the prosecution of Warren K. Billings, said, among other things, several years after the conclusion of this case, "Like all prosecutors, I was blind to all but the pursuit—the chase which would end with the conviction of my quarry.

"I was cursed with the psychology of prosecution. I never again shall be a prosecutor. To my mind, and it is in the mind of every district attorney and his assistants, conviction is the only goal."

Mr. Brennan has since the trial recommended an unconditional pardon for Billings. The reading of the book under review has convinced me that it is the duty of a prosecutor not to suppress any evidence. He is a public official charged with the duty of enforcing the laws, and in my estimation is as much

bound to protect the innocent as to secure conviction of the guilty. While it may not be incumbent upon him to actually present in court any evidence favorable to the defense, I believe that he is obligated to inform the defense of any such evidence as he may have discovered during his investigation and permit the defense to make proper use of it. In the cases covered by the book under review one extremely significant fact was in the possession of the district attorney at the time of the Billings trial and was not known to the defense. The explosion occurred at 2:06 P. M. Mooney and his wife were photographed on the roof of a building over a mile distant from the scene of the explosion at 1:58 P. M., 2:01 P. M., and 2:04 P. M. The time was fixed by a clock showing in these photographs. The photographs were in the possession of the district attorney without the knowledge of the defense and were not produced at the trial. The photographs were taken without the knowledge of any of the defendants.

The book graphically summarized how even those connected with the prosecution became convinced that a miscarriage of justice had taken place. These include the judge of the court who presided at the trial of Mooney, nine of the ten living jurors (the tenth juror taking the position that it would be improper on his part to make a statement to the governor, but that he believed Mooney should be released), the assistant district attorney who prosecuted Billings, a number of police officials who participated in the prosecution, and likewise the present district attorney who reviewed all the evidence and in a letter to the governor stated, “If a new trial were granted, there would be no possibility of convicting Mooney or Billings.” Apparently the only one who has not changed his opinion about the guilt of the defendants is the district attorney who had charge of this prosecution, whose motives the author impugns on the ground that he was indebted for his election to those responsible for the prosecution.

The author successfully proves that the witnesses who actually brought about conviction, perjured themselves. The most important of these, who claimed to be an eye-witness to the placing of the bomb, was later found not to have been in San Francisco at the time of the explosion, but arrived there some hours later. This witness was apparently also guilty of attempting to persuade others to perjure themselves. Lawyers can profit much from the experience of the defense in connection with this witness. The attorneys were taken completely by surprise and apparently were relying entirely upon a perfect alibi which even to date has not been broken down. The surprise witness made a splendid impression even upon counsel for the defense, apparently had no interest in the outcome of the trial and gave his evidence in a manner completely convincing. The trial judge has repeatedly stated that without this evidence no conviction
could have been obtained. It seems to me that with the confidence which the attorneys for the defense had in their own proof of an alibi, it should have been natural for them to suspect such a witness in spite of the impression which he created. The logical thing in these circumstances was to delve into his past and particularly into his activities and his whereabouts immediately preceding the occurrences about which he testified. In all probability such cross-examination would have developed facts which could have been investigated even while the trial was going on and might have resulted in the breaking down of this testimony. After the trial was over and after a motion for a new trial had been overruled, counsel for the defense evidently made this investigation and ascertained the fact that this witness had not been telling the truth. The lesson to be learned by lawyers from this occurrence is that if they have confidence in their own case they should not be frustrated over the appearance of a surprise witness, no matter how impressive his testimony might be, but should immediately seek the background which would enable them to break down that testimony. The evidence of so-called surprise witnesses should always be doubted for the reason that as a rule all the real evidence is as available to one side as the other.

To the layman the book is both interesting and instructive because it clearly demonstrates that testimony in cases in which great public interest has been aroused cannot always be believed, in fact, in many instances is utterly untruthful. It must be recalled that at the time of the conviction of these men the intervention of President Woodrow Wilson secured the commutation of the death sentence imposed on Mooney to life imprisonment. It is also significant that two of the defendants, viz., Mrs. Mooney and Weinberg were acquitted, and a fifth one was never brought to trial. All of these persons had previously been identified by the same witnesses who brought about the conviction of Billings and Mooney.

While the book is naturally partisan because it was written for the purpose of securing an unconditional pardon, it nevertheless appears to be fair because the author quotes verbatim most of the damaging testimony presented by the prosecution. A careful reading results in the almost inevitable conclusion that the convicted men are innocent.

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