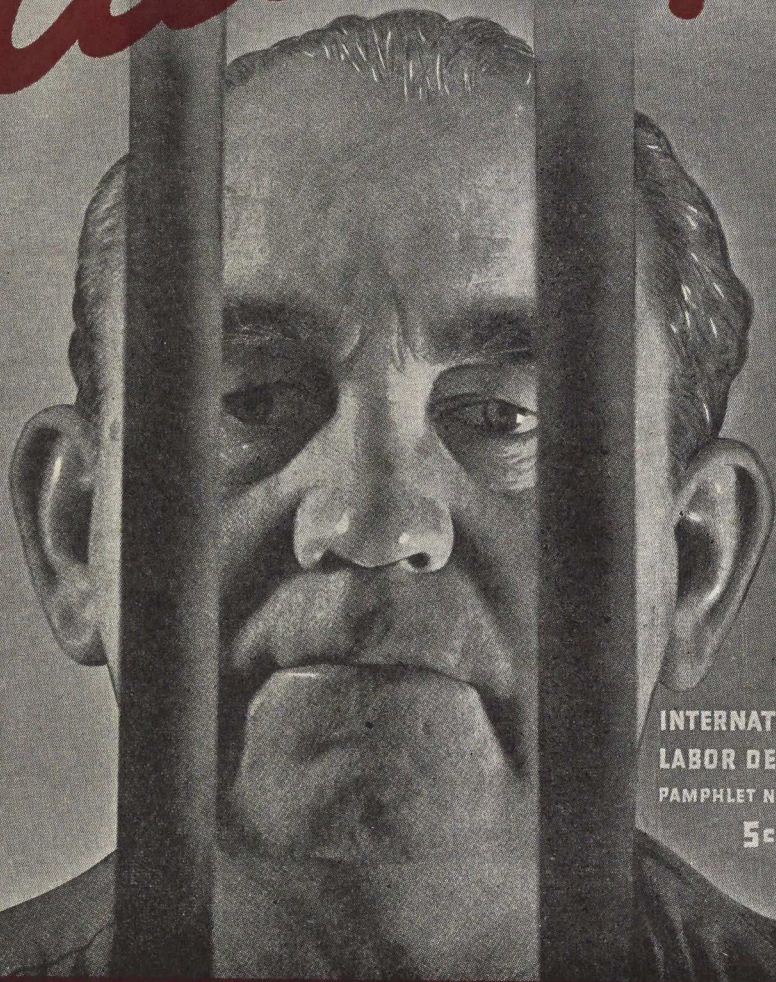


# *We Accuse!*



INTERNATIONAL  
LABOR DEFENSE  
PAMPHLET NO.1-1938

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*by* **VITO MARCANTONIO**

WE ACCUSE!  
THE STORY OF TOM MOONEY

*By Vito Marcantonio*

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Pamphlet No. 1, 1938 series

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# We Accuse!

## THE STORY OF TOM MOONEY

By VITO MARCANTONIO

*President, International Labor Defense*

**B**ACK in 1916, Tom Mooney became the living symbol of what was in store for any victim of reaction and terror in the United States when he won by his courage, his honesty, his self-sacrificing determination to organize the workers of America into a powerful united trade union movement, the bitter hatred of the Tom Girdlers and Liberty Leaguers of that day.

Today, in 1938, he has become a greater symbol. He has become the symbol of the unity of labor, and we here and now, in this final drive that will bring to him and to Warren K. Billings their long overdue liberty and freedom, give notice to all reactionaries—those responsible for the original frame-up and those responsible for its savage, illegal perpetuation for 21 long years to this very day—that an injury to Tom Mooney is an injury to all labor and that the Supreme Court of the American people is determined that now at last justice will be done in the Mooney case.

This is not 1916—it is 1938! Labor is on the march!

The Mooney case has aptly been called the American Dreyfus case. In many respects the same shameless connivance between the courts and the representatives of greed and corruption can be traced through both cases; the same drive to send innocent men to their doom to save the faces of those in the judicial machine who listened to the bidding

of powerful would-be masters of the destiny of whole peoples; the same willingness to sacrifice innocent lives to preserve the false front of judicial dignity behind which lurk the dastardly and cowardly forces of reaction.

But powerful voices raised a cry for Dreyfus that was heard around the world. Two words stood out above the rest—"I accuse"—words spoken by the great and fearless artist Emile Zola. The whole rotten frame-up structure tumbled under this roar of protest—and justice was done. Dreyfus after twelve years was released from his prison hell on Devil's Island and restored to his freedom and his native land.

We have a more difficult job on our hands. But we too cry: "We accuse!"

The same people who framed Mooney, the same war-makers, the same traitors to the American people, are just as active today as they were in 1916. The fact that Tom Mooney is still in jail proves that reaction is still strong. But the fact that the American people have not forgotten Tom Mooney, the fact that the movement for his freedom is steadily broadening and growing more powerful, demonstrate that the forces of democracy are ready to do battle with the forces of reaction and are ready to beat them to a standstill, today, right now!

## 21 YEARS TOO LONG

Twenty-one years have passed, and a great deal has changed in these twenty-one years. In fact, a rapid change has taken place in the life of America during the last two years. Everything is in flux, everything is on the move. That means that the reactionaries who were defeated at the polls in November, 1936, are still active and they want to take advantage of this change. The final crisis in the case of Tom Mooney comes at a time when his freedom or incarceration depends on whether or not organized reaction today is triumphant or defeated.

I say all this, because during the last 21 years a hard



battle has been waged for the freedom of Mooney and Billings in this country. There have been Mooney congresses and Mooney meetings and Mooney demonstrations in every corner of the land. There have been more petitions signed protesting their frame-up and demanding their freedom than anyone can count. Beginning with the heroic action of the Russian workers in 1917 before the American Embassy in what was still called Petrograd—action which saved Tom Mooney from death on the gallows—there have been many heroic deeds, moral and material sacrifices on the part of working people to carry on the fight—but they were not crowned with success. Why?

Because they were not welded into one mighty united effort combining all the forces of labor, all the forces of progress, all the liberty-loving people of this land of ours. The time for such disunited efforts is past. The American people have learned the value of unity on other fronts—in the battle for the unemployed, for the right to organize, for the preservation of our democratic and civil rights.

Because a whole new generation has grown up during the 21 years that Mooney and Billings have been locked away behind prison walls, we feel that it is necessary right now, as a prelude to victory, to record in its entirety the whole sordid story of the frame-up of Tom Mooney and Warren K. Billings. We want everyone, especially the young people, who hold the future in their hands, to know the truth, the whole truth, and nothing but the truth.

\* \* \*

Everybody knows about the great earthquake in San Francisco. What everybody doesn't know is the ugly, brutal story of those vultures who tried to reap profits out of this great disaster.

Among them was a group in control of the utilities and transportation facilities of the city—the United Railroads Company, interlocked and working hand in glove with the Pacific Gas and Electric Corporation. Leading spirit of this outfit was a man named Patrick Calhoun.

Profiteering required street cars run with overhead trolleys instead of underground cables, which San Francisco had always had. To fulfil this wish a corruption fund of more than \$200,000 was raised by Calhoun and distributed among public officials who were amenable to such methods. Prosecutions followed discovery of this plot and Francis J. Heney, Special Assistant District Attorney, was ready to uncover the whole mess in a special graft investigation. During the trial of one of the small fry grafters, Mr. Heney was shot through the head in open court. His assailant was found dead the next day in the prison cell to which he had been committed.

Despite these mighty efforts the \$200,000 fund was traced to Calhoun and he was indicted. One City Supervisor, named James Gallagher, was expected to give important testimony against him. The night before he was to take the witness stand, Gallagher's house was dynamited.

*This is the first dynamite to appear in the Mooney case.*

The jury in the Calhoun case disagreed. Before he could be brought to trial again new elections had to be held for the office of district attorney. Heney was defeated by a man named Charles M. Fickert, the man for the utilities. "Boob" Fickert he was called at Stanford University where he played on the football team—the only way he could get through college. His first job after graduation was scabbing during the great teamsters' strike in 1901. Similar "work" called him to the attention of Mr. Calhoun. He had by that time somehow managed to become a lawyer.

## THE FRAME-UP STARTS

Fickert rewarded his friends of the traction and utilities gang for their efforts and expenses in his behalf. His first act on taking office was dismissal of all the graft prosecution cases!

Soon after this empty illegal triumph, a wave of strikes hit the industrial strongholds of the utilities, and emerging as a leader of some of these strikes of the underpaid, over-



worked employees was a young man named Tom Mooney, member of the International Molders Union.

So effective was his work that the frame-up machinery was immediately applied. Both Mooney and Billings were arrested, Mooney in Richmond, and tried in Martinez, the county seat of Contra Costa County in which Richmond is located; Billings in Sacramento. Mooney was tried and ultimately vindicated, Billings convicted, because of their activities in the electrical strike called by the California Light and Power Council. Unable to fasten anything legitimate on them, the Pinkertons resorted to frame-up, in which they were outstanding experts. They were charged with carrying dynamite and other explosives. The only testimony was provided by private detectives employed by the public service corporation. The regular police testified there were no explosives found at all.

In 1914, these same forces of terror and reaction, this time the Merchants, Manufacturers and Employers Association of Stockton, attempted to frame three labor leaders. Their plan was deliberately set out to frame Anton Johanssen, Olaf Tvietmoe and Tom Mooney. Anton Johanssen was organizer for the California State Building Trades Council and a member of the Brotherhood of Carpenters and Joiners. Olaf Tvietmoe was Secretary-Treasurer of the California Building Trades Council. Tom Mooney and Ed Nolan of the International Machinists Union succeeded in exposing the frame-up during the trial of the agent-provocateur who was to do the trick.

Tom Mooney in 1916 became the organizer for the Amalgamated Association of Street and Electric Railway Employees of America. His work was so effective that notices were soon posted warning all employees of the United Railroads that *"any man found to be affiliated with Mooney or any union would promptly be discharged."*

On June 10, 1916, Mooney held a meeting with the street-car men despite the notices. That same night two steel towers in the San Bruno mountains owned by the utilities interests were blown up. Mooney was named as the dyna-

miter, but he was seen by too many people in San Francisco at the time necessary for a successful frame-up and the whole thing fell flat.

On July 13, Tom Mooney led an unsuccessful strike of the streetcar men of San Francisco.

At this time a person named Martin Swanson, an ex-Pinkerton, employed as a private detective for the utilities corporations, who had been a chief actor in the Martinez case, reentered the picture.

On July 16, Swanson boarded a jitney bus owned by Israel Weinberg whose son took music lessons from Rena Mooney and who had on occasions given Mooney and Rena a lift in his bus. Swanson offered Weinberg \$5,000 to swear that Mooney had blown up the San Bruno towers.

On July 17, he made the same offer to Warren K. Billings, age 22, a good trade unionist. He had been president of the Shoe Workers, and delegate to the San Francisco Labor Council. Swanson met Billings outside the office of the Pacific Gas and Electric Company. Upstairs in the presence of two company officials he repeated the \$5,000 bribe offer. The next day he tried Weinberg again and left with the threat, "I'll get you yet."

### PREPAREDNESS DAY, 1916

Then came July 22, 1916, the day on which the jingo patriots of San Francisco organized the militaristic Preparedness Parade.

What actually happened at the Preparedness Day Parade on July 22, 1916, is well known throughout the world. At precisely 2:06 p.m. a bomb exploded at the corner of Steuart and Market Streets, killing ten persons outright and wounding scores of others.

When District Attorney Fickert reached the scene of the tragedy, while the victims were being picked up and put into ambulances, he found a small hole in the sidewalk. Accompanying him was Mr. Fred B. Colburn, an official of the Chamber of Commerce, who, with Fickert, promptly



got to work with a pickaxe until the sidewalk looked as if a whole ton of explosives had hit the spot.

Despite reinforced police guards stationed at the building in front of which the bomb had landed, still another "job" was done with a crowbar. One brick had been displaced by the original explosion. The crowbar "fixed" that until there was a great dent in the side of the building which was then carefully photographed by the police. These photographs of the mutilated "evidence" were introduced against Mooney at his trial. Fortunately, some reporters had also taken pictures of the scene as it actually looked immediately after the bombing.

The question always arises—why were Tom Mooney, Mrs. Mooney, Warren K. Billings, Israel Weinberg and Ed Nolan the only people arrested after such a major disaster as the Preparedness Day bombing? The streets of San Francisco were jammed. Thousands of visitors thronged the city. Why these five people and no others?

Martin Swanson is the answer.

On the night of July 22, he attended a meeting at the Palace Hotel. Those present were Charles M. Fickert and Thornwell Mullally, assistant to the president of the United Railroads. A short time later Swanson walked out of Fickert's office, a "special deputy" appointed by Fickert to take care of the Mooney case. This, less than two days after he had tried to bribe Weinberg and Billings with \$5,000 each to help frame Mooney (an offer they indignantly rejected.)

On July 26, Warren K. Billings and Ed Nolan, president of the International Association of Machinists, Lodge 68, were arrested without warrants. Nolan had just returned from a convention in Baltimore, where he was at the time he is supposed to have been making the bomb. On July 27, Rena and Tom Mooney were arrested on a train that was carrying them back to San Francisco from a vacation in Montesano, Calif. They had wired San Francisco's Chief of Police, White, that they were returning. They had read of the accusations against them and the arrest of their friends in the newspapers. The papers heralded the "cap-

ture" of Tom and Rena Mooney, taken off a train at 4 a.m.! Captain Matheson testified under oath that *he had no evidence* against them when they were arrested. Weinberg, too, was arrested on July 27.

Of course, all the homes were searched. At the Mooney's home the police found nothing startling except what they described as "*anarchistic literature*"—actually the notes taken by Rena Mooney at the Stockton dynamite trial in 1914.

At Weinberg's home they found nothing. Billings' belongings disclosed a rifle and cartridge bought for a hunting trip he had taken. Nolan's cellar disclosed a cardboard box containing Epsom salts—seized as "dangerous explosives" by the police. The salts were the only evidence presented against him to the Grand Jury which indicted him.

But surely there were eye-witnesses to the bombing. Surely they offered their assistance to the police! There were and they did. But their services were never invited, their testimony was given only during the Mooney trial where they appeared as witnesses for the defense.

On August 2, the Grand Jury brought in an indictment for murder against all five prisoners—held incommunicado for eight days.

### THE "WITNESSES"

In September, 1916, Warren K. Billings was brought to trial. The two most important witnesses arrayed against Billings were John McDonald and Estelle Smith.

It is essential to point out how Mooney and Billings were "identified" by the witnesses later used against them. This weird procession of derelicts picked up from the brothels and the dens of the underworld were taken into the city prison where the men were held. The procedure was as follows: a police officer would bawl out, "*Hey, Mooney, here's someone who wants to see you.*" Mooney's and Billings' cells were completely open with a barred grating at the end. The police officer would repeat, "Mooney . . .



Billings, stand up. There is some one here to see you." When they stood, the witnesses would nod—yes.

John McDonald, sick, decrepit, unemployed, stated that he had seen two men (whom he had at first described minutely and under no stretch of the imagination could his original descriptions be made to fit either Mooney or Billings) at the scene of the crime. After learning by heart a "description" written out by police officers McCullough and Hughes he "identified" them on the stand as Mooney and Billings.\* His story was that he had seen Billings with a suitcase at the corner of Steuart and Market at about 2 o'clock. Mooney suddenly appeared, spoke to Billings and disappeared into the crowd. Thereupon Billings placed the suitcase at the scene of the crime. At 2:06 p.m. it exploded. By that time McDonald had reached the Alameda Cafe, eighty feet distant, walking at a "snail's pace." That's how he determined the exact time of the bombing. This lie was completely exploded by the famous Eilers Roof photos showing Mooney one and a quarter miles from this spot.

Estelle Smith, on the other hand, had "seen" Billings at 721 Market Street (4,066 feet from the scene of the explosion) just as the parade started at 1:30 p.m. He asked her permission to go up on the roof with his suitcase which he said contained a camera. She said yes. He stayed there a little while, then went away. As Bourke Cockran, Mooney's first defense attorney, pointed out:

"No reason or purpose was assigned for his going on the roof, nor can any be conceived unless it could be supposed that he went there for the express purpose of affording this woman full opportunity to identify him after the crime, he was then contemplating, had been committed."

Her "testimony" was confirmed by two ladies named Edeau, mother and daughter, who said they had seen Bil-

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\* This police document describing Mooney and Billings was not made known to the defense until it was filed with the Supreme Court of California in 1930 when Billings' application for executive clemency was pending before that body. It was concealed by the police and buried for fourteen years in their files.

lings on the roof of 721, and that he had leaned over and spoken to Mooney who was on the sidewalk.

The defense presented eye-witnesses of the explosion, chief among them Dr. Mora Moss. He had already informed the police that he had seen a cylindrical object falling from the roof of the building in front of which the explosion occurred. This was confirmed by four other eye-witnesses, one of whom, Mrs. Masterson, was knocked down in the panic which followed.

The now world-famous photographs showing Tom Mooney and Mrs. Mooney on the roof of the Eilers Building (one and one-quarter miles from the scene of the crime) at 2:04 p.m., two minutes before the bomb exploded, were not allowed in evidence. These pictures were taken by a man hostile to the defense and Mooney was unaware of their existence. They were in the possession of the police as they are to the present day. It was only after Billings was convicted and sentenced to life imprisonment that the court ordered them turned over to the defense.\*

### MOONEY'S TRIAL

Tom Mooney's trial opened on January 3, 1917.

District Attorney Fickert, in addressing the jury for the prosecution, charged that the explosion was the result of an anarchistic plot which had for its aim the overthrow of the entire political system of the United States, federal and state, assassination of the President of the United States, the governor of California and hosts of public officials. The indictment, be it remembered, was for murder!

McDonald repeated his little piece with one important

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\* During the recent habeas corpus hearing, the Supreme Court and the Attorney General agreed that the pictures were a true representation of what the defense has always said they were. This was a complete reversal of the State of California's position on these photographs. In 1930, the Supreme Court hired surveyors, architects and astronomers in an attempt to discredit these pictures. But these very experts reported that the pictures were accurate according to all astronomical, surveying and other mathematical tests to which they had subjected them.



change. The exact time when he had first "seen" Mooney and Billings had now become twenty minutes earlier. Estelle Smith was not called at all. It had been disclosed that her mother, who corroborated her testimony in the Billings trial, had been promised by Fickert that her husband, serving time in San Quentin, would be released for her troubles and she had been indiscreet enough to break the good news to him in a letter.

The Edeau ladies were called again. They now "saw" not only Mooney talking to Billings from the sidewalk at 721 but also Weinberg and Mrs. Mooney, who was sitting on a suitcase.

Why these changes? Because Fickert had produced a new witness, one Frank Oxman, described as an "honest cattleman," who told the most complete story of all.

The beaming Mr. Oxman, a picture of honesty and integrity, related the following tale: He, too, had seen two men at twenty minutes to two, following the McDonald pattern, on the corner of Steuart and Market. In addition he "saw" a jitney bus drive up with five people in it. The parade had started and they were driving against the stream. Billings jumped out with a suitcase, conferred with Mooney and placed the suitcase at the scene of the crime. Moreover, Mr. Oxman had had the presence of mind to take down the license number of the car, a Ford, No. 5187, on the back of a telegraph envelope and even the date, "July 22, 1916."

How he got this number was later disclosed. Policeman-perjurer-coach Draper Hand had taken him to the police garage where Weinberg's jitney was impounded to "identify" the car and coach the number.

All traffic had been closed off Market Street when the parade started. There was, moreover, a newspaper photograph of the famous corner just at the exact time of Oxman's revelation showing only one car, a press car.

The defense produced, in addition to this picture, the Eilers Roof photos. During the course of the Mooney trial, the prosecution claimed to know nothing about the exact

location of the films of the Eilers Roof. They furnished blurred copies which completely obliterated all of the finer details in the pictures, including the time on the clock-dial across the street. Strenuous protests demanding that the original films be produced for the purpose of making enlargements were finally met by the judge. The films were brought in; turned over to two police officers, who, accompanied by a defense attorney, went to an expert photographer and had them enlarged. The defense produced, in addition, eye-witnesses not called by the police; they produced evidence of Swanson's attempted bribery of Weinberg and Billings (which Swanson, present in the court, made no effort to contradict); they produced the surgeon who conducted the autopsies of those killed. He testified that the wounds indicated a bomb falling through the air rather than one exploding from a suitcase on the ground. Under cross-examination he changed his mind, but admitted from the witness stand that this change resulted from a consultation with the Assistant District Attorney, Ed Cunha—Fickert's right-hand man. But to no avail.

On February 9 the jury found Tom Mooney guilty. On February 24 he was sentenced to death on the gallows and a motion for a new trial denied by Judge Franklin A. Griffin.

#### THE FRAME-UP BREAKS

On April 6, however, a citizen of Grayville, Illinois, named Frank E. Rigall, made an affidavit which included three letters received by him from Oxman. It was submitted to Rena Mooney's lawyers, who were then preparing her trial.

These letters asked Ed Rigall to "*cum to San Frisco as a Expurt Witnes un a very importan case. . . . You will get milegaga and all that a witness can draw. Probly 100 in the clear*" (spelling Oxman's). The second letter gave more specific details on the route, the date of the opening of the trial, also the advice that "*You know that the silent Road is the one and say nuthig to any Body the fewer People no it the Better.*"



The third letter, dated December 25, was addressed to Rigall's mother asking her to stand ready: "*can probly use a Extry witness.*"

These letters were called to Judge Griffin's attention April 22. On April 25, he addressed an appeal to U. S. Webb, attorney general for the state of California (he's still in office), requesting a new trial for Tom Mooney on the basis of the Oxman letters:

"In my opinion the testimony of this witness was by far the most important adduced by the People at the trial of Mooney. . . ."

He concluded:

"I fully appreciate the unusual character of such request coming from the trial court in any case and I know of no precedent thereof. In the circumstances of this case, I believe that all of us who were participants in the trial concur that right and justice demand that a new trial of Mooney should be had in order that no possible mistake shall be made in a case where a human life is at stake."

Attorney General Webb agreed to this request and transmitted it to the Supreme Court of the State of California, to which the verdict had been taken on appeal.

On July 26, 1917, Rena Mooney was brought to trial. Estelle Smith (though by this time she had confessed to the fact that Oxman had offered her a bribe in "five figures" to change her testimony\*) was used as a witness against her. So was John McDonald, but not the Edeaus.

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\* When Estelle Smith was dropped as a witness in the trial of Tom Mooney, because of the exposure of her previous police record, she became desperate and swore to an affidavit in April, 1917, that Oxman offered her a sum in "five figures" if she would identify Weinberg as the driver of the jitney bus that arrived in front of and departed from the dental office at 721 Market Street. Immediately she made this affidavit, her uncle's sentence (his freedom on a second degree murder conviction was the price offered for her original perjury) was commuted to time served provided he left California never to return. Estelle Smith thereupon reversed herself, denied the affidavit and stood pat on her original story as told in the Billings trial.

Their story was smashed by two police officers from Oakland who testified as witnesses for the defense. Chief of Police Peterson stated that Mrs. Mellie Edeau had come to him on July 27, 1916—after a reward was posted—with a story that she had seen two men with a suitcase at Steuart and Market Streets just before the bombing. Inspector of Police Smith testified that he had taken her to San Francisco the next day and shown her Mooney and Billings (without their knowing it). She told him: "I never saw either of those men in my life."

Frank Oxman was not called as a witness against Rena Mooney or Israel Weinberg, either. For he had been arrested on a charge of attempted subornation of perjury, after the exposure of the Rigall letters. The Grand Jury, instead of indicting him, however, whitewashed Fickert and passed a resolution congratulating District Attorney Fickert for his "courage" in framing Mooney and Billings.

And so with only the testimony of Estelle Smith and John McDonald against her, Rena Mooney was acquitted.

On October 27, 1917, Israel Weinberg was brought to trial. Eighteen San Francisco policemen testified to the fact that no jitney busses could possibly have been on the street at the time of the parade, because they were stationed there to keep all traffic off. The Oakland police repeated their testimony regarding the Edeaus, and it took the jury three minutes to acquit him. Ed Nolan was dismissed without any trial.

### THE WILSON COMMITTEE REPORTS

On January 16, 1918, President Woodrow Wilson's Mediation Commission, appointed in July, 1917, when the case had assumed national and international significance, made its report. It was signed by seven distinguished Americans headed by William B. Wilson, Secretary of Labor, and Felix Frankfurter. It states specifically that Mooney and Billings are innocent victims of a frame-up and the crooked workings of a corrupt administration. A few short excerpts will make this clear:



"The utilities against which Mooney directed his agitation or who suspected him of mischievous activities, undoubtedly sought to get Mooney. . . . An attitude of passion as stimulated by all the arts of modern journalism . . . the evidence leaves the mind in the greatest uncertainty as to the complicity of the accused and must shake confidence in the justice of the conviction. This is due to the dubious character of the witnesses . . . subsequent revelations concerning them, and the conflict in the testimony of the same witnesses as the need for change in the testimony developed to fit new theories of the prosecution or new evidence by the defense."

Following the receipt of this report on January 22, 1918, President Wilson wrote to Governor Stephens of California:

"Will you permit a suggestion from me in these troubled times which perhaps I should feel hardly justified in other circumstances.

"The suggestion is this: Would it not be possible to postpone the execution of the sentence of Mooney until he can be tried upon one of the other indictments against him, in order to give full weight and consideration to the important changes which I understand have taken place in the evidence against him?

"I urge this very respectfully, indeed, but very earnestly, because the case has assumed international importance, and I feel free to make the suggestion because I am sure that you are as anxious as anyone can be to have no doubts or occasion of criticism attach itself to the case.

"Cordially and sincerely yours,  
"WOODROW WILSON."

But the Supreme Court of California did not agree with the President. On March 1, 1918, with Mooney still under sentence of death on the gallows it ruled that a new trial was impossible.

But the forces behind the defense of Mooney and Billings were not ready to accept the blindness of justice. Their pressure increased and in September, 1918, President Wilson appointed a second investigating commission, this time one which operated in secret. It was in charge of J. B. Densmore, U. S. Director General of Employment for the Department of Labor. The Densmore Commission worked for two months, planted dictaphones in Fickert's office and

proceeded to uncover the true events behind the Mooney frame-up. By this time Fickert, who had originally agreed to a new trial for Mooney on the basis of the Oxman perjury letters, had apparently received word from the forces behind him to do nothing of the sort. He was engaged in hatching a new plot for a retrial of Rena Mooney, who had been acquitted.

Densmore presented his report on November 1, 1918. It is voluminous and affords a vivid description of the lowest depths to which human beings, corrupted by greed and the promise of power (Fickert had dreams of becoming governor of California on his record in the Mooney case) can descend.

One quotation from the dictaphone report will suffice. It took place on September 18, 1918, between Fickert and his assistant, Ed Cunha:

"CUNHA: Chief, if you can get a witness who will put Mrs. Mooney at Steuart and Market Street, I don't give a damn if you put her there in a balloon.

"FICKERT: I think I can put her there in a taxicab. It looks as though we have a witness.

"CUNHA: If you have, Chief, I will put that s— of a b— Mrs. Mooney on trial again and I will convict her by every rule of the game.

"FICKERT: I am going to keep everything quiet, so there won't be any leaks."

But let the official report speak:

"Fickert is in constant association with men and interests of such a nature as to render it incredible that he should be either impartial or honest in the conduct of a case of this nature. . . . Practically the whole of Fickert's case against Mooney, Billings and Mrs. Mooney was made to order. . . .

"Fickert is seen throughout this report to be prostituting his office in other cases precisely as he prostituted it in the bomb case. . . . Fickert's daily desperate attempts to bolster up a cause which cannot for a moment stand an unprejudiced examination . . . his passionate personal hatred of the various defendants and his determination to ruin them despite the fact that he, better



than anyone else, knows that they are innocent . . . his total disregard for law . . . represent the chief business and ordinarily daily routine of the present district attorney of the city and county of San Francisco. . . . It would be well within the province and privilege of the federal government to devise some means . . . by which these several defendants would be assured of those rights before the law which are guaranteed by the federal Constitution."

But justice, which is blind because it does not wish to see, spoke again. The United States Supreme Court on November 18, 1918, refused to review the Mooney case.

### SENTENCE COMMUTED

On November 28, President Wilson sent two telegrams to the Governor of California urging at least commutation of Mooney's sentence. The governor was forced to grant this. The action of the Russian workers had saved Mooney's life.

Tom Mooney, now under sentence of life imprisonment, sat behind the grim walls of San Quentin prison while the exposure of the frame-up continued to unwind before the eyes of the entire world.

In February, 1920, McDonald, lost from sight after the trials, turned up in Trenton, New Jersey. He had sworn at the trials that he would accept no part of the rewards. Yet on February 8, 1920, he wrote a whining letter to Ed Cunha, crying that he was entitled to some of the reward money and wouldn't Cunha see what he could do about it.

On May 20, he sent a similar letter to Captain Matheson.

And then in February, 1921, a bombshell burst. John McDonald swore out an affidavit in the offices of Frank P. Walsh, Mooney's attorney, in New York City, telling the whole miserable story of how he had been coached to give lying testimony that was meant to send Mooney to the gallows.

And still the machinery of justice remained inert.

On May 28, 1921, another bombshell. So far Oxman had been exposed as a perjurer on the basis of the Rigall letters. But the complete tale of his perfidy was yet to be

told. A Mr. and Mrs. Earl Hatcher testified before the Grand Jury of San Francisco to the effect that Oxman had been nowhere near San Francisco at the time of the bombing at 2:06 P.M., July 22, 1916. They brought the register of their small hotel in Woodland, California, ninety miles from San Francisco, with Frank C. Oxman's name in his own handwriting, testifying to the fact that he was there at the time when he "saw" Mooney and Billings on a jitney bus.

And still Tom Mooney remained in San Quentin.

Another year rolled by and a Mrs. MacNevin sued her husband for a divorce. Mr. MacNevin had been the jury foreman in the Mooney case and in her affidavit stating her charges against him, Mrs. MacNevin disclosed the fact that Edward Cunha—during the entire Mooney trial—visited their home almost every night, discussed the evidence and the effect it was having on the jury. More, that MacNevin took the other jurors out to lunch, harangued them about Mooney's guilt and reported his progress to Cunha in the evenings.

In 1923 there was a new governor in California, Friend W. Richardson. In September of that year, two of the jurors at the original Mooney trial—William A. Jacobs and John Bazzine—wrote to Governor Richardson, telling him that their verdict had been based on Oxman's testimony alone and that they now felt Mooney must be pardoned.

In 1924, Duncan Matheson, captain of detectives, key figure in the case, publicly announced in a letter to Tom Mooney:

"Oxman and McDonald are exposed as perjurers. I am convinced beyond any question of doubt that your rights were violated because of legal limitations and your only available relief is Executive clemency, to which I am convinced you are fully entitled."

In March of that same year a third juror joined the ever-growing army of men involved in sending Mooney to his



doom who were now convinced that their verdict had been unjust. Juror L. W. Neustadter stated his opinion that Mooney had been framed and should be pardoned. One month later, Charles Goff, Captain of the Police of San Francisco, who had helped investigate the explosion, came out publicly in favor of a pardon for Mooney.

He was joined in September, 1924, by Jurors number 4 and 5, R. H. Stetton and H. J. Brener, and in October by Juror number 6, S. G. Mish, all of whom stated that an injustice had been done and that Mooney should be freed.

And still nothing was done.

In November, 1925, Juror number 7, John Forsyth, came forward with a plea for a pardon. In February, 1926, he was followed by Juror Thomas Kennedy.

Governor Richardson did nothing.

In September of the year 1926, ten years later—ten years which innocent men had spent in gray prison cells—Matt Brady, elected District Attorney after Charles Fickert, who was then and there thrown an outcast on the scrapheap of time, addressed the following communication to Governor Richardson:

"I believe no person that permits himself to analyze the testimony entertains any doubt that Mooney and Billings were convicted on false testimony."

He urged their pardon.

A few days later, on September 25, he was followed by James Brennan, who had prosecuted Billings at his original trial. Said Brennan:

"Since the conviction of Billings and Mooney, Captain of Detectives Matheson, who procured the evidence against them, the Judge who presided at the Mooney case, the Attorney General of the State of California, and all the jurors except one, now living, who found Mooney guilty, have recommended pardons for both Billings and Mooney. . . . Suspicions (have been cast) on said cases and tended to impeach the witnesses and show their unreliability. It is my opinion under all circumstances that the public interest would be best served by granting pardons to Billings and Mooney."

On October 23, Judge Griffin addressed himself to the second Governor to take office since Mooney and Billings were framed, demanding either a pardon or a new trial on the remaining indictment.

### THE WARDEN TESTIFIES

On October 22, 1926, Tom Mooney himself made a formal application for a pardon to Governor Richardson.

In 1927 there was a new governor, C. C. Young. After he had been in office almost a year Mooney applied to him for a pardon. Young was supposed to be more liberal than the rest. But by 1928 he had done nothing on the Mooney case.

In 1929 the chorus of official protest was joined by Mooney's keeper, Warden of San Quentin, Frank J. Smith:

"I believe unequivocally in Mooney's innocence. . . . History offers no meaner example of justice gone awry than this pathetic case. This is vengeance, not justice."

Still Governor Young did nothing.

Warren K. Billings, on November 7, 1929, applied to the California Supreme Court for permission to appeal to the governor for a pardon. According to California law, a second offender (Billings had been convicted as a result of labor activity before 1916) must get such permission from the court.

On November 21, Governor Young announced that he could not decide on what action to take in the Mooney case. He therefore turned it over to an Advisory Pardon Board.

It took the Supreme Court almost a year to decide on Billings' application. On July 2, 1930, this august body, with one dissent, denied his application. He had had a fair trial, they said, and as proof they offered the fact that nowhere in the trial record did the charge that he had been "framed" appear. The evidence they found—

"... sufficient . . . to create at least a strong possibility that Warren K. Billings was one of those who placed, prepared for



and finally perpetrated this unspeakably infamous and inhuman crime."

As the strongest proof for this finding they gave McDonald's testimony. They knew that McDonald had confessed his perjury, but chose to accept his original testimony as the truth and his confession as the lie.

Two of the justices felt so strongly on the subject that they submitted separate opinions, agreeing with the verdict and adding their own personal venom. The lone dissent came from Justice Langdon.

One week later the governor's Advisory Pardon Board reported on Mooney's application for pardon. This board was composed of Lieutenant Gov. Carnahan, Attorney General Webb, James A. Johnston, director of the State Department of Penology and Wardens Holohan and Smith of San Quentin and Folsom.

They announced that they were ready to discredit the testimony of Oxman and the Edeau women, but they, too, felt that McDonald was trustworthy! And they recommended no pardon.

### GOVERNOR YOUNG OBLIGES

The governor obliged on the very next day with the following decision:

"There has been no propaganda or pressure of any kind directed to the keeping of Mooney in prison. . . . Until the truth of the repudiation affidavits (McDonald's) can be definitely established . . . I manifestly must accept the conclusions of the Supreme Court and the Advisory Pardon Board and accordingly must at this time deny a pardon to Thomas J. Mooney."

On July 10, 1930, the Scripps-Howard newspapers all over the country announced a reward of \$500 for anyone who would find John McDonald. On the 12th he was found in Baltimore, Md., and immediately taken to San Francisco.

The State Supreme Court reopened the Billings case. They not only heard McDonald's testimony in open court

but they went in person to Folsom Prison to conduct an examination of Warren K. Billings. They questioned him sharply regarding his political views, his economic theories and finally asked him where he had been on July 22, 1916. They refused to hear Tom Mooney who through his counsel made repeated requests to be produced as a witness at this hearing. The Supreme Court said that inasmuch as the Mooney case was not an issue before them, Mooney was in no way involved in this action and was not necessary as a witness.

Billings told the justices that as a member of the strike committee of the Machinists Union—at that time engaged in an auto strike—he had been carrying out his assignment—spraying cars with paint remover. He admitted that this was an act of sabotage to aid the strikers. He admitted that he had withheld this information at his trial because he felt it would have been used against him to further prejudice the jury. He also felt that since he was innocent of the bombing charge, he could rely on the justice of the courts to acquit him.

McDonald was also examined by the Advisory Pardon Board. His original story—what was left of it—was completely destroyed. Asked how he could have seen Mooney and Billings in such a huge crowd as was watching the parade, he had said at the trial that they were standing on a high step in front of a saloon and therefore their heads were above the crowd. The Advisory Pardon Board confronted him with a photograph of the saloon taken on July 22, 1916. It showed clearly that the saloon had no steps.

Nevertheless on December 1, 1930, the California State Supreme Court for the second time, in a 6-1 decision, refused to recommend a pardon for Warren K. Billings.

The lone dissenter was once more Justice William H. Langdon. He delivered himself of some sharp language:

"There has been failure of proof to such an extent that there is now not even the semblance of a case against him. . . . If Crow-



ley (one of Estelle Smith's 'corroborators') told the truth, McDonald lied; if McDonald told the truth, Crowley lied and if Oxman told the truth, both of the others lied."

Governor Young had announced he would render the same decision in the Mooney case as the court would arrive at in the Billings case. This after he had refused to hear Mooney's testimony!

January, 1931, brought California its fourth new governor since the beginning of the Mooney case, James Rolph, Jr., the man who, as Mayor of San Francisco, had led the Preparedness Day parade on July 22, 1916. In February, 1931, Mooney submitted a formal appeal for a pardon to Governor Rolph.

Eleven months later, Gov. Rolph agreed to a public hearing in the Mooney case, because Mayor James J. Walker of New York had flown to San Francisco to demand justice for Mooney. Mayor Walker filed a brief. It outlined the perjury of McDonald, Oxman, Estelle Smith. It reviewed all the evidence of the frame-up to that date.

The governor couldn't make up his own mind. He referred the appeal to a special committee of three (the style had been set by Governor Fuller of Massachusetts in the Sacco-Vanzetti case) headed by former Chief Justice Matt I. Sullivan of the State Supreme Court, Lewis F. Byington, former district attorney, and Daniel O'Brien, former chief of police.

It took these gentlemen until April 19 of 1932 to make up their minds, which they finally did in a 25,000 word report. On April 21, the governor made public their report together with his decision not to pardon Tom Mooney.

It was a vicious document, this report. Its essence was that Mooney was a dangerous man—keep him in jail. Proof?

"Mooney does not come before the governor as a penitent craving pardon for his offense, but he bases his plea on the ground that he is absolutely innocent. He asserts that he will accept from the governor naught but an unconditional pardon. We are satisfied that he is guilty and not entitled to pardon."

This committee of three did not entirely hide behind 25,000 ridiculous words devoted to weighing Oxman's lies against McDonald's and vice versa. They boasted their hatred and bigotry:

"Consider his antecedents, his character and that of his associates, his conduct as a citizen prior to the conviction, his connection with revolutionary organizations, his criminal activities in fomenting strife and discord among the people, his advocacy of direct action and the use of force and violence to bring about a change in the existing social and political conditions."

## THE SECOND TRIAL

Lies. But used in a successful effort to keep Tom Mooney within the walls of his living tomb.

1933 brought a new move in the Mooney case. The defense demanded a new trial for Tom Mooney on the basis of the one remaining indictment against him. After he had been convicted on one murder indictment in 1917, eight others were dismissed and only one was left, as a constant threat over his head.

Mooney chose to risk that threat.

On February 11, 1933, a hearing before Superior Judge Louis H. Ward resulted in trial date being set for April 26. The defense, to whose forces had been added Leo Gallagher, veteran International Labor Defense lawyer on the West Coast, insisted that the court must permit a complete review of the whole case so that the frame-up could finally be legally exposed.

District Attorney Matt Brady, in answer, announced that he would withdraw from the case, because:

"There is not at this time evidence available that would support a conviction, and further than that such a trial would be without benefit either to the state or to the defendant."

What he meant was that according to California law the original conviction stood and only such new evidence as the state could muster up for the new trial could be answered by the defense. And the state, he said, had no



evidence—this despite the fact that McDonald was still alive, the Edeau women were still alive, many of the policemen who were in charge of traffic on the day of the parade were still alive and available to testify.

When his ruse of withdrawal failed, Brady tried to get the indictment dismissed.

Mooney insisted on the trial. "If I am guilty, I should hang," he announced from his cell. He challenged Fickert, Cunha and Sullivan to prosecute him and prove their case.

April 26, 1933, arrived. Mooney was brought to San Francisco for the first time in seventeen years. But upon entering the court room the judge postponed the trial.

On his way to court he had been forced to drive through a huge demonstration which shouted: "*Free Tom Mooney.*" From the bench His Honor proclaimed:

"As I approached the Hall of Justice the streets were lined with men shouting *Free Tom Mooney*. I believe some of them were aware of my identity and they shouted their demands practically into my ears."

They certainly did. Even while he was postponing the trial to May 22, 1933, these same cries forced their way through the closed windows of the court house. Fearful that Mooney might really win his freedom through this trial the machinery of California justice got busy. Some "justice" mongers stated the trial couldn't take place because Mooney would be placing his life in "double jeopardy"—in violation of the Constitution! Some said it wasn't legal.

But the judge saved the day. He ruled that no testimony could be introduced giving proof of perjury or coaching of witnesses unless the state introduced the original fake testimony. The state answered that it would introduce no testimony at all. When the defense protested, the judge stated:

"I will not be a party to the weaving of a legal loophole through which the imprisoned man may obtain his freedom on his original conviction."

On May 22, 1933, the trial began. A jury was chosen. The district attorney rose and said: "Your Honor, the People rest."

Mooney was muzzled. When the judge asked defense attorneys if they still wished to go on with the trial, he shouted: "We do." A brave attempt was made to present the case. The judge instructed the jury to bring in a verdict of not guilty. They did. And Tom Mooney — acquitted—was rushed back to San Quentin.

### APPEAL TO U. S. SUPREME COURT

In March, 1934, counsel for Mooney filed in the United States District Court for Northern California at San Francisco an original writ of habeas corpus. In due time this was denied. They immediately filed the same writ in the United States Circuit Court of Appeals for the Ninth Judicial District, which was also denied. Then they went to the United States Supreme Court for an original writ of habeas corpus. That court made its final decision on this writ of habeas corpus on January 21, 1935. He was turned down—but with this provision: that he must first seek such a writ from the State Supreme Court of California. If he failed there he could return. The court's decision contained significant words about a state which —

"... has contrived a conviction through the pretense of a trial which in truth is but used as a means of depriving a defendant of liberty through a deliberate deception of court and jury by the presentation of testimony known to be perjured."

Mooney went back. On August 5, 1935, the California court appointed A. E. Shaw, a notary public with no other power than that attached to his office, to open hearings in the case. These started on August 12, 1935, and ended on August 31, 1936. They covered 14,000 pages—5,000,000 words—of testimony. Mooney and Billings were brought from their prison cells to the County Jail in San Francisco. They attended the hearings, testified, and reviewed the whole case as we have attempted to do here.



On January 28, 1937, two years after the U. S. Supreme Court decision, Referee Shaw made public his decision: *that Mooney and Billings had had fair trials*; that there was no evidence of perjury; that the prosecution had in no way influenced the evidence.

One month later, progressives in the California state legislature introduced a bill granting Tom Mooney a legislative pardon. Despite noisy debate regarding the unconstitutionality of such a bill, it passed 45 to 28. It was railroaded through the State Senate six days later and defeated 34 to 5.

Undaunted, the progressive forces in the state legislature introduced a resolution memorializing Governor Merriam to free Tom Mooney. The resolution passed by a vote of 45 to 27. Two days later Congressman Jerry J. O'Connell of Montana introduced a similar resolution into the House of Representatives in Washington, memorializing President Roosevelt to intercede with Governor Merriam to pardon Tom Mooney. A few days later Senator James E. Murray of Montana introduced the same resolution into the United States Senate.

But the Senate of the State of California stuck to its reactionary guns. The state resolution was defeated by a vote of 30 to 8. Curiously enough, the number of citizens represented by the eight who voted for the resolution exceeded by about 500,000 the number of constituents represented by the thirty who voted against it.

While this legislative activity was in progress, Tom Mooney was stricken in the San Francisco county jail. He was rushed to a San Francisco hospital where his condition—bleeding ulcers—was considered extremely serious. Before he was anywhere near recovery he was ordered back to San Quentin Prison, where he was put through the grueling routine of a "new" prisoner, given only food which was dangerous to a man in his state of health, put to work in the broiling sun when he should have been in bed, and generally treated in such a fashion that labor all over the country had to act fast to save his life.

## U. S. SENATE ACTION STARTS

In September, 1937, the Senate Judiciary Committee appointed a sub-committee to start an investigation of the Mooney case on the basis of the Murray-O'Connell resolution. At about this time new evidence was discovered in official government documents proving beyond a shadow of doubt that the bomb which had caused the Preparedness Day disaster had been manufactured by German imperial agents in the United States from whom it was purchased by a local crook named C. C. Crowley, working simultaneously for the Germans and for Fickert. Moreover, the picture of the bomb which appeared in the early editions of William Randolph Hearst's *Examiner* on July 22, 1916, was a picture of that very bomb.

The U. S. Senate Committee set December 15, 1937, as the date for opening hearings in the case. The committee met on that day and was addressed by Frank P. Walsh, John Finerty and George T. Davis, Mooney's attorneys. The most urgent plea these men made was that Tom Mooney himself should be brought to Washington to testify in his own behalf as soon as the committee was ready to start the hearings. On February 28, 1938, a sub-committee, without hearing any further witnesses, recommended to the full Judiciary Committee that the Murray resolution be favorably recommended.

On December 24, 1937, a trade union delegation which represented every section of the American labor movement called on Governor Merriam in Sacramento demanding that he pardon Tom Mooney. The Governor said "No."

On January 27, 1938, Mooney's attorneys filed in the Supreme Court of the United States an appeal for review of the decision of the California Supreme Court, which had on October 30, 1937, ruled (5-1) that Mooney had had a fair trial and was not entitled to a writ of habeas corpus.

That's where the case stands now—before the United States Supreme Court.



We have gone into considerable detail on its every step so that there may be no question as to the sources of our information, so that there will be none who can say—oh, that's their version. We want the people of America to know California justice by its own deeds.

We all know what the United States Supreme Court is like by this time. Its decision in the Mooney case will depend upon the people of the United States. If the American people, the progressives, labor and all shades of liberal opinion, represented by them, are united, the Supreme Court will vote to free Tom Mooney.

The justices have shown that they are aware of and alert to public opinion. Now is the time for that public opinion to rally to the cause of two heroic men, veteran leaders of the American labor movement; men whose pioneer work planted the seeds of the harvest of progress that American labor is reaping today.

Tom Mooney and Warren K. Billings are innocent. They have been deprived of their freedom twenty-one years too long. They stand on the threshold of liberty and vindication; only mighty united effort can swing the jail doors open and restore them to the ranks of labor where they belong—where they are needed.

Let us make this effort, let us forge this unity, let us inform the justices of the Supreme Court, the United States Senate, the President of the United States how we feel about the Mooney case. We know that an injury to Mooney is an injury to all labor, to all progressives. We know that Mooney's freedom will deliver a staggering blow to the forces of reaction.

All together—united—*Free Tom Mooney, Free Warren K. Billings!*

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