

Lore of the Corps

The Trial by Military Commission of “Mother Jones”

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In March 1913, Mary Harris Jones, better known as “Mother Jones,” and forty-seven other civilians were tried by a military commission in West Virginia. Governor William E. Glasscock had declared martial law in the aftermath of violent and bloody strikes by coal miners in the Paint and Cabin Creek areas of Kanawha County, and the Judge Advocate of the West Virginia National Guard was now prosecuting Jones and other civilians for murder and conspiracy to commit murder. Why and how “Mother Jones” came to be prosecuted by this military tribunal almost 100 years ago is an unusual story that is worth telling.

Labor unrest during the Progressive Era of the early 20th century was common and soldiers were repeatedly called upon to suppress violence between striking workers and their employers. While Federal troops were sometimes called out to intervene in labor disputes, state National Guard forces usually were sufficient to quell violence between management and labor.¹ This explains why, when armed clashes between guards employed by coal mine operators and striking miners occurred in the Paint Creek district of West Virginia in April 1912, the state National Guard was sent in to restore order.

The Paint Creek strike resulted when the United Mine Workers of America (UMWA) demanded higher wages for the coal miners it was representing in contract negotiations with the Kanawha Coal Operators Association (KCOA). Union labor had been used in KCOA mines since 1904, and so it was neither unusual nor unexpected for the UMWA to press for increased pay. But the negotiations between the two sides broke down in April 1912. Some KCOA members hired armed guards, evicted strikers from company-owned houses, and hired non-union workers to mine coal. The displaced strikers responded by attacking both guards and replacement workers.

The violence only increased when Mother Jones, who joined the striking mineworkers in the Paint Creek area in July, persuaded the workers at nearby Cabin Creek to join the strike. Although she was over eighty years old, Jones was a powerful and dynamic speaker who organized both rallies and marches. By August, she had not only convinced the Cabin Creek miners to join their brothers on Paint Creek,

but also got many of the non-union Cabin Creek workers to join the UMWA.

As historian Edward M. Steel explains, mine operators in the Paint and Cabin Creek districts and Charleston businessmen with a financial interest in the coal mines initially looked to the civilian courts to control the violence, but local Kanawha County officials “insisted that they could not rely on either grand or petit jurors to be fair in cases arising out of the strike.”² This distrust of civilian law enforcement was well-founded. In the early weeks of the strike, a group of guards and miners opened fire on each other; one striker was killed and another wounded. But, when the guards asked the local grand jury to return an indictment for assault against the strikers, the grand jury instead indicted the guards. While the county prosecutor declined to pursue the case, the message was clear: the civilian courts were unlikely to punish the strikers and this meant labor violence would continue.

As for Mother Jones, she was either a dangerous radical whose fiery revolutionary rhetoric threatened to turn the world upside down or a grandmotherly “miners’ angel” who simply sought a decent wage for working men. Born in Ireland in August 1837, Mary Harris Jones immigrated with her family to Canada before settling in the United States. She married and was living in Tennessee with her husband and four children (all under the age of five) when tragedy struck in 1867: a yellow fever epidemic killed her entire family, leaving her alone. She never remarried.

Jones now moved to Chicago and opened a dressmaking business. Four years later, she lost her shop and all her possessions in the Great Chicago Fire of 1871. The hardship she suffered in this second loss was apparently a catalyst for her to join the Knights of Labor, an early union organization. In the 1890s, Jones also joined the Populist and Socialist Labor Parties and participated in a variety of political activities. When the Knights of Labor disbanded, Jones joined the UMWA. In 1900, that union hired her as an organizer, the only woman to be so employed. Over the next few years, “Mother Jones” (she adopted the moniker in the late 1890s) organized thousands of coal and copper miners in Colorado, Montana, and Pennsylvania. She also assisted

¹ For an excellent discussion of military intervention in labor disputes in the early years of the 20th century, see CLAYTON D. LURIE & RONALD H. COLE, *THE ROLE OF FEDERAL MILITARY FORCES IN DOMESTIC DISORDERS, 1877–1945* (1996); see also *Use of Military Force in Domestic Disturbances*, 45 *YALE L.J.* 879 (1936).

² EDWARD M. STEEL, JR., *THE COURT-MARTIAL OF MOTHER JONES* 6 (1995). Note that while the title of Steel’s book refers to Jones’s trial as a court-martial, this is a misnomer as she was in fact tried by a military commission. Steel’s book includes the complete trial transcript, *id.* at 99–306, omitting only the verdict and sentence. As he explains, the record of trial does not contain this information. *Id.* at 55, 306.

striking workers in the textile, telegraph, garment, and railroad sectors.³ Jones was famous for her speaking skills and for turning a phrase; she once exhorted her followers to “pray for the dead and fight like hell for the living.”⁴

Mother Jones’s arrival in Kanawha County in July 1912 and the resulting increase in violence, coupled with the inability of civilian law enforcement to preserve the peace, ultimately caused Governor Glasscock to declare that a “state of war” existed in the Paint Creek and Cabin Creek districts and that he was imposing martial law.⁵ No governor had previously made such a declaration, and Glasscock apparently did so reluctantly. West Virginia National Guard troops quickly moved into the military zone and confiscated all weapons (from both guards and strikers). Glasscock then “set up a military commission to try offenders in the martial law zone,” with Lieutenant Colonel (LTC) George S. Wallace, the Judge Advocate of the National Guard, as the prosecutor.⁶

Born in Albemarle County, Virginia, in September 1871, George Selden Wallace graduated from the University of Virginia’s law school in 1897 and then moved to Huntington, West Virginia, where he established a thriving private practice. He served as a second lieutenant in the 2d West Virginia Volunteers in the Spanish American War and then joined the West Virginia National Guard. His service as a prosecuting attorney in Cabell County from 1904 to 1908 and his military status in the Guard made Wallace the ideal choice to serve as prosecutor.⁷ While Wallace tried most of the more than 200 civilians prosecuted by military commission over the next seven months, his most celebrated case involved Mother Jones.⁸

Jones and her fellow defendants were charged with conspiracy “to inflict bodily injury . . . with intent to maim, disfigure, disable and kill,” and with the murder of Fred Bobbitt and W. R. Vance. Both victims were non-union “scabs” hired by coal operators to replace the striking coal miners. All forty-eight defendants also were charged with being accessories after the fact in that they had helped those who had murdered Bobbitt and Vance to escape.⁹

The charges arose out of a 9–10 February 1913 incident in which about fifty armed strikers clashed with a detachment of guards and non-union workers manning a machine gun near the town of Mucklow. The strikers attempted to steal the weapon and, in the course of this attempt, killed Bobbitt and Vance. As many as 150 strikers and guards had participated in what was being called the “battle of Mucklow” and, although Mary Jones was not present at the fight, she was charged as a conspirator because her inflammatory speeches had incited the miners to violence. She had, for example, urged the strikers “to get their guns and shoot them [the guards] to hell.”¹⁰

The military commission proceedings began in the Odd Fellows Hall in Pratt, West Virginia, on Friday, 7 March 1913. From the beginning, the trial was acrimonious. Some accused refused to enter pleas, arguing that the military commission had no jurisdiction over them and that any trial must be in a civilian court. As for Mary Jones, she immediately proclaimed that she had “no defense to make” and that her activities in and around Paint and Cabin Creek were simply one battle in a long campaign. Said Jones: “Whatever I have done in West Virginia, I have done it all over the United States, and when I get out, I will do it again.”¹¹

The military commission followed the procedure and rules of evidence then in use in West Virginia’s state courts, although the members themselves ruled on all objections made by any party to the trial.¹² Some of the defendants hired civilian counsel to represent them, and the commission appointed two military officers, Captains Edward B. Carskadon and Charles R. Morgan, to represent those accused who did not hire attorneys. Both captains were lawyers.¹³

The trial of Mother Jones lasted a week, and LTC Wallace presented mostly testimony from coal mine guards and National Guard troopers about the Mucklow battle. Most of the witnesses proved nearly useless to the prosecution, admitting that they heard shooting but not

³ *Id.* at 3–5. See also MARY HARRIS JONES, THE AUTOBIOGRAPHY OF MOTHER JONES (1925), available at <http://www.marxists.org/subject/women/authors/jones/index.html> (last visited Feb. 25, 2012); DALE FETHERLING, MOTHER JONES, THE MINERS’ ANGEL: A PORTRAIT (1974).

⁴ U.S. Department of Labor, Workers Memorial Day Poster (28 Apr. 2010).

⁵ *Ex parte* Jones, 77 S. E. 1029, 1030 (W. Va. 1913).

⁶ STEEL, *supra* note 2, at 7.

⁷ *Id.* Wallace remained in the West Virginia National Guard after completing his duties as prosecutor. Shortly before the United States entry in World War I, he was commissioned as a major in the Judge Advocate General’s Reserve Corps and, when hostilities ended in November 1918, Wallace had spent six months in France and achieved the rank of lieutenant colonel in the National Army.

⁸ *Id.* at xi.

⁹ *Id.* at 100–02.

¹⁰ *Id.* at 40. Steel cites a newspaper report for this statement. It is unclear whether evidence of this statement came up at trial; none of the witnesses mentioned it. At one point five of Mother Jones’s speeches were introduced as exhibits, but these are not included in Steel’s book. *Id.* at 142–43.

¹¹ *Id.* at 100.

¹² Colonel Charles F. Jollette, the president of the five-member commission, was a lawyer and his opinion almost certainly carried great weight with his fellow commission members. *Id.* at 38, 76.

¹³ *Id.* at 25, 51. This compares favorably with the due process available in true courts-martial of the same era, where the accused were typically represented by non-lawyers, and a court of non-lawyers got all its legal advice from the prosecuting Judge Advocate. See Fred L. Borch, III, “The Largest Murder Trial in the History of the United States”: The Houston Riots Courts-Martial of 1917, ARMY LAW., Feb. 2011, at 1, 2; see also Fred L. Borch, III, *Anatomy of a Court-Martial: The Trial and Execution of Private William Buckner in World War I*, ARMY LAW., Oct. 2011, at 1, 2 & n.10.

which side shot first, and being unable to identify specific individuals with any particularity. Lieutenant Colonel Wallace often found himself cross-questioning his own witnesses about the answers they had given in pretrial interviews.¹⁴ However, he was able to get substantive testimony from Frank Smith, a detective from the J. W. Burns agency. Mr. Smith had come to the area posing as a UMWA member on the day of the incident, and was able to identify several accused as planning to attack arriving National Guard troops. He also testified about a speech given by Mother Jones, but the worst he reported her saying was

that every time the guards beat them up they came to her crying and she said if she was a guard she would beat them up because they stand for it; that they didn't have to fight and she told them they have a yellow streak; that it was their own fault what they did. . . . they ought to get their members in Colorado and get some nerve injected into them. . . .¹⁵

The trial was briefly interrupted when Mary Jones and two other defendants, assisted by UMWA attorneys, petitioned West Virginia's highest court for a writ of habeas corpus. Jones argued that the military commission was depriving her of the right to a trial by jury and that, as the civilian courts were open and functioning, the military tribunal had no jurisdiction over them as civilians. On 21 March 1913, however, the Supreme Court of West Virginia ruled that, as Governor Glasscock had lawfully proclaimed a state of war because of the insurrection occurring in the Paint and Cabin Creek districts, Jones and her fellow accused were "technically enemies of the state," and consequently could be prosecuted at a military tribunal.¹⁶ With this favorable ruling in hand, the military commission reconvened and Wallace completed his case in chief. The defense then presented a very brief case and both sides argued to the military commission. Wallace called upon the panel members to "do [their] duty" and convict the accused.¹⁷ As for Mother Jones, however, LTC Wallace conceded that while she had "largely contributed to this trouble" in that her speeches had incited the strikers,

"whether or not this evidence will connect her up with this conspiracy, it is more difficult to say." Wallace concluded by saying that he left it up to the commission members to reach the appropriate verdict, but added: "I do not think the evidence is very strong against her."¹⁸

Exactly what verdicts were reached by the commission is not known; the members determined their findings and sentences in secret and then submitted a sealed report to Governor Henry D. Hatfield, who had recently replaced Glasscock as governor and consequently was the new convening authority. But results were not long in coming. On 20 March 1913, Hatfield released ten of the accused from the military guard house where they had been jailed; another fifteen were released the following day. On 22 March, still more defendants were freed, but Jones and eleven other defendants remained incarcerated. All were transferred to the state penitentiary except for Jones, who remained confined in the guard house in Pratt. They were not released until Governor Hatfield had worked out a settlement of the strike that restored coal production.¹⁹

Mother Jones was released on 7 May 1913. The bad publicity from the strike, which reached a national audience as a U.S. Senate subcommittee held hearings on the labor unrest in West Virginia, caused Governor Hatfield to realize that the continued imprisonment of an elderly woman was ill-advised and was not helping West Virginia's image. Mother Jones was now eighty-one years old, and it also would not be good if she were to die while confined in the military guard house in Pratt.²⁰

After her release, Jones immediately resumed her UMWA activities. Unrepentant and undeterred by her ordeal, she travelled to Colorado a few months later, where she called upon coal miners to strike. Jones was arrested and imprisoned by the Colorado National Guard after a melee between strikers and company guards in Ludlow, Colorado. While she spent some weeks in jail, Colorado authorities did not prosecute her.²¹

Of all the participants in this unusual trial, only Mary Harris Jones is widely remembered. She has been the subject

¹⁴ See, e.g., STEEL, *supra* note 2, at 104–05, 112, 116.

¹⁵ *Id.* at 185. Some witnesses testified that Mother Jones had advised them not to give up their guns, and that if she had had money she would have bought them more guns. *Id.* at 114–15, 248–50, 252, 256. Others testified that she had denounced the governor, the mine guards, and the mine clerks. *Id.* at 156, 252. One said that she had expressed disdain at low-class militia "coming in to butcher up their people" and that "they ought to fight; they had a just cause." *Id.* at 252. On the other hand, a militia captain reported that he had heard her make only a "very reasonable speech," advising the miners to continue with the strike but not to "waste money on guns," as the National Guard was now present "and would protect them." *Id.* at 201.

¹⁶ *Ex parte Jones*, 77 S. E. 1029, 1045 (W. Va. 1913).

¹⁷ STEEL, *supra* note 2, at 306.

¹⁸ *Id.* at 302.

¹⁹ *Id.* at 74–75. While some diehard socialists felt this settlement was a sell-out, Mother Jones herself described it as the best the miners could get. *Id.* at 82. Interestingly, she described Governor Glasscock, who had imposed martial law and ordered the tribunal, as a "good, weak man," but described Governor Hatfield, who made the settlement and ordered the release of all the prisoners, as "dictatorial with the instincts of a brute." *Id.* at 81.

²⁰ See *id.* at 59–60. For more on the Senate hearings, see U.S. SENATE, CONDITIONS IN PAINT CREEK DISTRICT, WEST VIRGINIA (1913). This was the first congressional subcommittee to examine a labor dispute. For more on coal mine unrest in West Virginia, see DAVID CORBIN, LIFE, WORK, AND REBELLION IN THE COAL FIELDS: THE SOUTHERN WEST VIRGINIA COAL MINERS 1880–1922 (1981).

²¹ For more on the Ludlow massacre of 1914 and Jones's involvement, see Caleb Cain, *There Was Blood*, NEW YORKER, Jan. 19, 2009, at 76.

of a number of folk songs: Gene Autry, famous as “The Singing Cowboy” on radio and television from the 1930s to 1960s, recorded a song called “The Death of Mother Jones,” and “The Spirit of Mother Jones” was recorded by the Irish singer Andy Irvine in 2010.²² The magazine *Mother Jones* also is named after her. With a paid circulation of over 200,000, it publishes stories on topics that would have resonated with Jones, such as corporate corruption, workers’ rights, community service, and feminism.²³

The trial of Mother Jones was a highly unusual event in military legal history. It may even be unique as the only National Guard military commission to try an American woman for murder and conspiracy to commit murder.²⁴

More historical information can be found at

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²² *Death of Mother Jones*, MOTHER JONES MUSEUM, http://motherjonesmuseum.org/Death_of_Mother_Jones.htm (last visited Feb. 25, 2012); *Abocurragh*, ANDY IRVINE, www.andyirvine.com/albums/abocurragh.html (last visited Apr. 9, 2012).

²³ *About Us*, MOTHER JONES, <http://motherjones.com/about> (last visited Apr. 9, 2012).

²⁴ Governor Hatfield ultimately declined to approve the findings of the military commission convened in Pratt, West Virginia, and either released or pardoned all those who had been convicted. Hatfield’s actions meant that West Virginia avoided litigation in the federal courts. It also meant that the constitutionality of the military tribunal that convicted Mother Jones and others has never been examined by the federal courts. However, in other cases, the Supreme Court repudiated the central holding of *Ex parte Jones*—that the governor had plenary power to determine that a given area was in insurrection, and to declare martial law, without having his decision challenged in federal court. *Duncan v. Kahanamoku*, 327 U.S. 304, 321 n.18 (1946) (citing *Sterling v. Constantin*, 287 U.S. 378, 401 (1932)), cited in Anthony F. Rezzo, *Making a Burlesque of the Constitution: Military Trials of Civilians in the War against Terrorism*, 31 VT. L. REV. 447, 489 n.202 (2007)).