

**A Miscarriage of Justice?
The Molly Maguire Trial in Bloomsburg**

Hal Smith

In 2005, Pennsylvania's House unanimously passed Noncontroversial Resolution No.527, introduced by Perzel (Speaker-R) and Deweese (Majority Leader-D):

WHEREAS alleged Molly Maguires in Columbia County were tried and hanged; employees of the Reading Railroad investigated, arrested, and prosecuted them; jury selection ensured ethnic bigotry and antibias; judges were connected with companies instigating the trial, witnesses were intimidated to perjury; to say due process and constitutional rights lacked in the trial would be an understatement; As a result Patrick Hester, Peter McHugh, and Patrick Tully hanged in 1878; RESOLVED, That the House of Representatives recognize the lack of Due Process in the trial.

Pennsylvania's Senate unanimously passed a matching resolution. Resolutions are discussed and approved in Committees, then voted on in the General Assembly. Resolutions are announced on the General Assembly's website and in newspapers to invite constituents' input instead of holding hearings.

Historians too have the duty and power to reevaluate our past. History will give a judgment of fairness and understanding where none was shown. So what is the evidence that the trial involved "a lack of Due Process"?

In 1866 attorney Frank Gowen persuaded Pennsylvania's Supreme Court to give the Reading Railroad vital tracks. Gowen became the Reading's president, created a private "Coal&Iron" police force, and fixed shipping prices to acquire 125,000 anthracite coal acres, more than any company in the world.

From 1860-1880, coal miners received under \$2 a day, and paid above-market prices to shop in company stores and to rent company homes. Companies blacklisted strikers, but miners struck anyway. Judge William Elwell of the judicial district including Columbia County, arbitrating the 1871 strike, decided: companies shouldn't fire miners for unionizing, but miners couldn't strike to oppose firings.

In 1874 Gowen lowered wages 54%. Miners struck again. Children died starving in Schuylkill County. Gowen's police reported that Northumberland County fared worse. In 1875 Judge Elwell ruled that unions were illegal conspiracies. Gowen crushed them.

Miners formed the "Molly Maguire" gang and sabotaged mines, including the Centralia Colliery in 1866. Companies blamed Molly sabotage on the "Ancient Order of Hibernians," a fraternal association which offered life insurance to Irish-Americans because companies wouldn't. The AOH was popular in the coal region: Locust Gap and Mount Carmel's AOH president, former miner Patrick Hester, was elected Township Commissioner and Tax Assessor, empowered to tax companies.

In October 1868 someone fatally shot Alexander Rea, superintendent of Centralia, a company town; the robbery-murder occurred in Columbia County and was prosecuted there. In November C&I police shot and jailed James Finnely. While in jail Finnely supposedly accused Ashland's AOH president Tom Donohue of shooting Rea, and implicated Hester, J. Duffy, and M. Prior. Finnely died in prison a week later. Hester was charged, held in jail past two quarterly court sessions, and released untried. Thomas Dooley testified that Donohue, Duffy, and Prior were "Mollies" who asked him to help rob Rea, but he couldn't identify them. They were acquitted.

From 1871-1875, ten mines in Hester's Division burned in a wave of alleged arsons. After crushing the union, Gowen turned on the Mollies. From 1876-1879, the Reading Railroad

supported executions of twenty AOH members for crimes in its region. Most held top AOH positions.

In 1876 C&I officers Linden and Alderson visited an illiterate homeless accused rapist expelled from the Mollies, Manus Kull, in jail for countless armed robberies. Kull agreed to testify that he, Hester, and seven other AOH members planned the robbery in which Rea was killed. Kull was given whisky, cigars, clothes, \$1000, and a pardon for the robbery sentence he was serving to qualify him to testify.

Self-reform hardly motivated Kull's decision: he later tried to cut young prison worker Mary Faux's throat. Due Process forbids imprisoning anyone without charges. During the trial, Kull remained in jail uncharged, which forced him to testify to avoid being tried himself.

Next, C&I police arrested Hester, AOH Delegate Peter McHugh, and Patrick Tully, and claimed the other suspects couldn't be found. In 1879 those others weren't on the C&I police's advertised wanted list. Had all nine been arrested, it's unlikely they all would've hanged for one man's death, particularly Hester, who Kull claimed wasn't at the murder.

Tully and McHugh stated they wanted to have their "Habeus Corpus Pretrial-Hearing" with Hester. So since they were arrested after his hearing, they received no hearing before their trial.

The Reading's lawyers, its Pinkerton detectives, and newspapers from Bloomsburg to Chicago published sensationalized stories attacking Hester and the Mollies. Although Rea's was the only alleged Molly murder in Hester's Division, the media screamed Hester "waded in blood for years."

At the trial in Columbia County Court House on February 8 1877, Gowen employed the court stenographers. Francis Hughes, the Reading's corporate counsel, served as "special prosecutor." Judge Elwell, the strike arbitrator, chose a jury with no Irish Catholics or residents of Columbia County's coal towns. Only 3 jurors denied hearing of the case before the trial. Jurors Isaac A. Dewitt, and Abram White were selected after openly admitting they already formed an opinion on the defendants' guilt. This is a straightforward example of jurors "pre-judging" defendants.

Kull testified Hester told him in a bar that Rea would carry \$18,000 Saturday October 17, 1868. Kull claimed Donohue wasn't involved, and that Hester wasn't at the murder, but lent him a gun. Kull said McHugh, Tully, Kull, and 3 others ambushed Rea on a highway. Kull said "murder had not been talked of" before the ambush itself. But they were drinking whisky and Kull said he or Tully shot Rea once. That made Rea dash, so they killed him. Rea only carried \$60, a pocketbook, and a watch. Kull said the robbers gave him an extra share of the loot and "didn't keep any for Hester." Kull said when Donohue was arrested in 1868 Kull was at Hester's, and Hester listened to Mollies telling him to leave town.

Kull's story had flaws. Prosecutors claimed Hester planned the robbery and charged him as an accessory. But Hester collected companies' taxes, so he knew Rea only paid wages Fridays. Kull probably planned it, since he got the largest share. Kull was probably the first shooter too-he once "accidentally" shot at a man for heckling. The Pinkerton novel claimed Kull "shot first." Hester did leave town around the time of Donohue's 1868 arrest, but surrendered himself when he discovered he was charged with murder.

Twenty-five Defense witnesses, including a former state senator, testified that Kull couldn't be believed under oath. Kull lied that guilt feelings motivated his testimony and he received no incentives. He said Tully shot Rea's ear point-blank and they left Rea face-down. Rea's ear lacked powder burns and he was found face-up. Kull claimed he didn't know Rea. But Kull's ex-landlord testified Kull talked with Rea after Rea pulled a woman from her shack and dismantled it for trespassing on company land. The landlord evicted Kull for coming "for a revolver to shoot a woman."

C&I officer Parr testified that in 1869 Hester visited Donohue's cell and said "if I had to get Rea shot again I would never do it." But M.C.Woodward, then Columbia County's warden, testified they stayed in separate cells and "Parr claimed he allowed no one to see Hester." Parr's testimony contradicts Kull's claim that Hester didn't talk about killing Rea.

No other corroboration of Kull's story directly connected defendants to the murder. Other testimony claimed Hester was at the bar the day it was supposedly planned, and left town around Donohue's arrest.

Judge Elwell instructed jurors to disregard Kull's whole testimony if he lied about anything. Elwell also instructed that Pennsylvania's Accomplice and "Felony Murder" Rules said that accessories to unintentionally deadly robberies, although personally absent, were guilty of First Degree Murder.

Special prosecutor Hughes ended the trial with a nine-hour harangue on Molly "terrorism." Elwell instructed Hughes against proving specific acts of other Molly members before or after Rea's robbery. Yet Hughes described: another alleged Molly robbery and conviction in Sunbury; an alleged Molly murder and attempted murders in Ireland. Defense lawyers objected that Hughes "argued upon matters outside of the testimony... to excite the fears and prejudice" jurors. Elwell overruled them.

Hughes warned jurors "mountaineer robbers may come down upon you... and burn your homes and destroy the lives of yourselves, your wives, and your children." He told jurors to repeat the Schuylkill and Carbon County trials, and send Hester to hell so Mollies wouldn't spread across Columbia County. This shows that the trial's main purpose was not to punish the true planner of Rea's murder and likely first shooter—Kull, still a deadly threat to young girls. The trial's purpose was to hang Hester as an absent accessory, crush the Mollies and the AOH.

Jurors convicted Hester, McHugh, and Tully in under two hours. Gowen remarked: "The name of Molly Maguire being attached to a man's name is sufficient to hang him."

The defendants appealed to Pennsylvania's Supreme Court in 1877. Gowen joined Hughes to argue against them. The Supreme Court met in Pittsburgh that summer because the National Guard there killed forty strikers, whereupon crowds burned trains for three miles. The Court made Pittsburgh pay railroads and merchants \$2,772,350 because Pittsburgh's militia didn't suppress the strike.

According to Hester's lawyers, Pennsylvania's "Two Term Act" protected defendants from being re-charged after two court terms passed after they were charged and jailed. Otherwise, they could be forever re-charged, imprisoned, and untried for the same offense.

Pennsylvania Supreme Court Justice Woodward, formerly a Reading city judge, wrote the Court's opinion. Woodward set new legal precedent that the Two Term Act didn't automatically protect prisoners. In 1869 Hester was jailed past two terms untried, but didn't explicitly ask for the Two Term Act's protection before the prosecution released him. So Woodward decided Hester could be re-charged with Rea's murder.

Next Hester's lawyers showed PA Constitution Article 4: "no pardon shall be granted except after full hearing, upon due public notice and in open session." Subpoenaed papers showed the Pardon Board didn't meet on the hearing date when Kull announced he'd apply. It approved the pardon unannounced the next day. Further, Kull's pardon didn't fully restate the penalty to be repealed. Hester's lawyers claimed Kull's pardon was void, so Kull couldn't testify.

Woodward decided: "Upon irregularities and omissions of form such as these," county judges couldn't "annul the deliberate execution of the governor of a constitutional power expressly conferred. There was no allegation that the pardon was obtained by fraud." Rephrased: the

Constitution allowed the governor to pardon Kull, so Columbia County judges couldn't void Kull's pardon for being granted in an unconstitutional way.

Hester's lawyers argued, "At the trial a strong prejudice existed in this community against the AOH. Molly trials in Schuylkill County had just been concluded and it was impossible to obtain an unprejudiced jury. All that seemed necessary was to find that a prisoner was a Molly and conviction followed."

Woodward responded that Elwell's "instructions upon legal questions were so intelligent and clear as to make their application by the jury free from the chance of mistake. In relation to the general features of the case, there is nothing, therefore, that requires remark."

Woodward was wrong. Clear instructions do not prevent prejudiced juries from making mistakes.

Pennsylvania's Supreme Court denied Hester's appeal, so his wife, Bloomsburg's sheriff, and a priest presented 2,600 signatures to Secretary Quay's Pardon Board.

After Pittsburgh's strike, lobbyist William Kemble was convicted of unsuccessfully bribing legislators to pay railroads \$4,000,000 for strike damage. Quay pardoned Kemble immediately. Kemble told a legislative committee that bribery was "common aid" and "I know the Constitution has got a lot of stuff that none of you live up to."

Meanwhile C&I police controlled Bloomsburg and its jail. The prisoners ate only bread and some days lunch-soup. A new D.A. was elected and charged Kull with Rea's murder, but Gowen told him not to prosecute. After two sessions Kull was specifically released under the Two Term Act's permanent immunity.

C&I police tried persuading Tully to confess beginning January 24 1878, but he said he wanted to wait for the Pardon Board's decision. On March 12, C&I police told Tully's lawyer to see Tully. When he arrived, Tully repeated he wanted to wait until the decision. Quay delayed the Board's scheduled March 14 decision. On March 18 Tully gave C&I police a signed confession saying Hester gave Kull a gun and gave McHugh permission to murder Rea. On March 19 Quay denied Hester's pardon petition. Tully's lawyer, unaware of the previous confession, announced that night Tully "placed in my hands" a signed confession.

The confession, which claimed to be transcribed by the lawyer, said whisky, not McHugh or Hester, made Tully "do the deed," that Hester gave Kull a gun, and were responsible insofar as they didn't stop the robbery. This contradicts Tully's previous confession that McHugh and Hester intended Rea's death, since either Tully or Kull shot first. Tully and Kull's confessions agree that Donohue, Prior, and Duffy were innocent, so Finnely's confession was likely forced, and the 1868 trial was political. Tully's confession said Kull lied about warning Hester of Donohue's arrest, so Hester might not have intentionally escaped in November 1868. Instead, he likely surrendered himself because he wasn't responsible for Rea's murder. Tully's confession said Tully didn't confess before March 19 because he stayed in Hester and McHugh's cell, but this is wrong—he was isolated since January.

Tully's widow said at his funeral "if he did confess it was forced on him." C&I police likely showed Quay Tully's confession. In return they possibly promised Tully a last-minute pardon like they promised James McDonnell, and required Tully to confess to his lawyers and priests. (McDonnell hanged 30 seconds before his pardon arrived, stopped by C&I police)

Told that Tully and McHugh had confessed, Hester wrote they lied and: "I am not guilty and both of you know this. I never got up that job or plot."

Not only did the Reading Railroad arrest, prosecute, and guard the defendants: it

executed the trial's sentence. Pinkerton chief Franklin had held a secret meeting with Judge Elwell on March 22, and supervised the execution.

On the date set for the execution of the three men, March 25, 1878, thirty C&I police guarded Bloomsburg's jail. Hester comforted his wife and 4 shrieking daughters. An Illinois miner read Hester's story and telegraphed Quay an affidavit that Cull told him in Girardville in 1871: "Hester was asked by the group to help and he said he wanted that thing stopped." It didn't reach Bloomsburg in time.

At the gallows, each forgave his enemies and asked complete forgiveness. Hester threw his chest forward, head back, saying: "I did not plot the murder of Rea."

C&I police strapped Hester, McHugh, and Tully's legs. The "Standard Drop" used to break necks was 5". C&I police had experience elsewhere. But Hester dropped only 3'3" and their necks didn't break. Horrified spectators turned away as Hester breathed heavily, convulsing, drawing up his legs. Three hearts took 9-12 minutes to stop. Since the standard drop was not used, the execution was cruel and unusual, in violation of Pennsylvania Constitution Article 1, Section 13.

130 years later reasonable doubt remains of Hester's guilt. Kull lived by robbery, so Hester could hardly stop him from robbing Rea. Even if the three men were guilty the executions were unjust: desperate poverty drove them to rob, they didn't plan to shoot Rea, whisky lowered premeditation, Kull shot first and made Rea run, if guilty all three prisoners were sincerely repentant, and one person's quick shooting mismatched the severity of three people's imprisonment and public strangulation. The "Felony Murder Rule" came from Seventeenth-century Britain, where children hanged for stealing bread. Rich men wrote it knowing poverty would never drive them to rob.

Pennsylvania's 1874 Constitution Article 1 Section 9 requires defendants in jury trials be tried by "an impartial jury... of his peers." Pennsylvania's Supreme Court ruled in 1853: "It is essential to the due administration of justice, that the minds of jurors should be free from prejudice or bias." And Pennsylvania's Supreme Court stated in 1838: "A very slight probability of bias is sufficient to exclude" jurors. If Hester, McHugh, and Tully were given Due Process, unprejudiced jurors would have followed Elwell's instructions and disregarded Kull's testimony for lying, and found reasonable doubt of guilt.

Bibliography

- Barret, Tom. *The Mollies Were Men*. 1969.
- Columbia County Court Papers, Pennsylvania State Archives, Harrisburg, Rolls 16076-16077
- Commonwealth versus Patrick Hester, Patrick Tully, and Peter McHugh : argument of Hon. F.W. Hughes, Philadelphia : G.V. Town & Son, 1877
- Commonwealth v. Joliffe, 7 Watts 585 (1838)
- Hester v. Commonwealth, 85 Pa 139 (1878).
- Jaeger, Katherine. *The Molly Maguires of Northumberland County, Pennsylvania*. 2001.
- Kenny, Kevin. *Making Sense of the Molly Maguires*. 1998.
- Knott, Kenneth. *Molly Maguires: A Social Movement*. 1972.
- Marotta, Chris, *Discovering the Past*, The Spirifir, Vol. 8, No. 9, 2001.
- Molly Maguires Group. Yahoo Inc., 2001-2007.
- Patrick Hester, Patrick Tully, and Peter McHugh, Plaintiffs in Error, vs. The Commonwealth of Pennsylvania, Defendant in Error*. Sunbury, Pa. : J.E. Eicholtz, 1877.
- Pennsylvania Constitution Article I
- Schlegel, Marvin Wilson. *Ruler of the Reading: The Life of Franklin B. Gowen*. 1947.
- Smith v. Wagenseller, 21 Pa. 491 (1853).
- Special Collections, Bloomsburg University: Chicago Tribune, Columbian and Democrat,

Columbia County Republican, New York Times, Philadelphia Evening Bulletin, Pottsville Miners' Journal, Williamsport Sun and Lycoming Democrat. 1868-1878.