

January 1941

A Criminal Case with a Moral

Frank Swancara

Follow this and additional works at: <https://digitalcommons.du.edu/dlr>

Recommended Citation

Frank Swancara, A Criminal Case with a Moral, 18 Dicta 72 (1941).

This Article is brought to you for free and open access by the Denver Law Review at Digital Commons @ DU. It has been accepted for inclusion in Denver Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.

A Criminal Case With a Moral*

By FRANK SWANCARA †

Fortunate is he who can maintain a low order of intelligence and keep his moral sense undeveloped. He will become no Socrates compelled to drink judicial hemlock or suffer the penalties imposed for "free" speech. One who is both a thinker and a humanitarian feels driven to defend his opinions, if they are unpopular, and in so doing he may unexpectedly collide with the law. He who is disposed to protest against legalized injustice is also in danger of being persecuted and penalized.

The foregoing is the moral which may be drawn from the cause and the history of *U. S. v. Warren*.¹

Fred D. Warren mailed envelopes on the outside of which appeared these words:

"\$1,000 will be paid to any person who kidnaps Ex-Gov. Taylor and returns him to Kentucky authorities."

He thereby violated a federal statute which makes it an offense to deposit for mailing any matter on the outside of which is printed "any language obviously intended to reflect injuriously upon the character or conduct of another."² This statement is made with reluctance, without belief in its accuracy, but is expressed because the U. S. Circuit Court of Appeals said:

"The common understanding of men has its place in law as in other affairs of life, and according to it the accused plainly asserted that Mr. Taylor was charged with crime, and was a fugitive from the justice of the state of Kentucky. * * * An injurious reflection on the character and conduct of Mr. Taylor naturally and necessarily follows from the endorsement on the envelope."

When the envelopes were mailed, Mr. Taylor had already been indicted as an accessory to the murder of Senator Goebel, and had

*A redraft of an article by same author in *The Lawyer* (Brooklyn).

†Of the Denver Bar.

¹183 Fed. 718. Comment in 41 Lit. Digest 1221 (Dec. 31, 1910).

²Sec. 335, Title 18, U. S. C.

departed for Indiana. No one claimed that Mr. Warren's statement regarding a politician still living was either libelous or untruthful. Still it was a crime to print it on an envelope or wrapper, which fact reminds that it is likewise *malum prohibitum* to mail "any postal card" on which is announced the conviction of some notorious murderer for that, too, reflects "injuriously upon the character or conduct of another."

It was common knowledge that Warren was not participating in any controversy or propaganda concerning the assassination of Goebel, nor did he impute any guilt to Taylor. The offer of the \$1,000 was only one of the ways in which Warren protested against what he regarded as "kidnapping" of labor leaders in Colorado. From an opinion of Mr. Justice McKenna, of the U. S. Supreme Court, it seems that such men insisted that the facts included the following:³ An officer from Idaho arrived in Denver Thursday, February 16, 1906, to arrest or extradite Moyer, Heywood and Pettibone for the murder of Frank Steunenberg at Caldwell, Idaho, on December 30, 1905. The governor of Colorado honored the requisition by the governor of Idaho. The accused men had not been in Idaho on that date. They claimed that they were not fugitives and, therefore, not subject to extradition.⁴ They had no opportunity to secure a judicial determination of that question, in time, because they were arrested suddenly on the night of February 18 (a Saturday) and quickly transported to Idaho without opportunity to communicate with counsel.

As a protest against the seizure of Colorado "workingmen," Warren desired to point out that Taylor, a "capitalist," who was actually a fugitive was neither extradited nor kidnapped. If, as a court recently said, "consideration must be given to the purpose" of the matter charged to be unmailable,⁵ Warren did nothing wrong in itself. Taylor did not consider himself libeled. The postmaster at Girard, Kansas, to whom the envelopes were delivered, ruled that they were mailable.⁶ His decision should have ended the whole matter, but since it did not, the courts could have reached the same result, which would have been consistent with the rule that criminal statutes are to be strictly construed. The actual denouement in Warren's case illustrates the moral with which this paper began.

³*Pettibone v. Nichols*, 203 U. S. 192, 217.

⁴25 C. J. 257.

⁵*McKnight v. U. S.*, 78 Fed. (2d) 931.

⁶Reginald Wright Kauffman in 92 *The Nation* 36 (Jan., 1911).