

DECISION
OF
GOV. ALVAN T. FULLER
IN THE MATTER OF
THE APPEAL OF BARTOLOMEO VANZETTI
AND NICOLA SACCO
FROM SENTENCE OF DEATH IMPOSED UNDER
THE LAWS OF THE COMMONWEALTH

Reprinted by
THE SACCO-VANZETTI DEFENSE COMMITTEE
P. O. Box 93 Hanover Street Station
Boston, Mass.



INSTRUMENTS OF DEATH

The Governor's decision and the President Lowell report in the Sacco-Vanzetti case as here reprinted are an exact copy of the documents printed by the Commonwealth of Massachusetts and distributed in limited numbers by the Governor's Secretary to a selected list of applicants for them. Many of the friends of the Sacco-Vanzetti cause who applied were denied them. A few of such friends received one or two apiece. The call for these documents has been great and continues to be so.

A Federal Judge in Maine wrote a friend of the Defense Committee soon after the decision was issued that the best proof of the innocence of Sacco and Vanzetti is in these very documents themselves. He said that no honest mind can read the Lowell report without revolting at the blatant evidence of absolute special pleading therein contained. He said that this will be true even if the mind encountering it has never before heard of the Sacco-Vanzetti case. He advised the Defense Committee to print the Governor's decision and the Lowell report and spread them broadcast without comment and let their own bias proclaim the tragic injustice of Sacco's and Vanzetti's execution.

So, in answer to the large number of requests for copies of the documents, the Sacco-Vanzetti Defense Committee has reprinted them. The Defense Committee asks those who read these documents to do so with a mind freed from whatever respect for A. Lawrence Lowell the position as President of Harvard University might give him. Only by approaching such an instrument of death as his report with an open mind can the full force of its discouraging iniquity be appreciated. We further call upon those who read these documents to take the trouble to compare their conclusions with the complete record of the case which is now being published and which should be completed by the fall of this year (1928). Such a comparison will show what the minds of President Lowell, President Stratton, Judge Grant and Governor Fuller did in this case in order to execute Sacco and Vanzetti. It is a vital comparison to make even though Sacco and Vanzetti are dead. In fact, it is perhaps more vital because they are dead.

We firmly believe that these two death-dealing documents will stand in history as the beginning of a serious assault upon the courts of America, unless the perpetrators of the documents and the authorities generally confess their cruel errors and renounce them. The chances of the latter course are so remote as not to merit mention.

These documents are weapons fashioned by a brutal and stupid plutocracy. They cut away the shams and hypocrisies and lay bare the motives of courts and the legal process in a fundamental case like this not as desire for truth and justice but as pride, greed and self-perpetuation.

BOSTON, MASSACHUSETTS, AUGUST 3, 1927.

On April 15th, 1920, a paymaster and his guard were held up, robbed and brutally murdered at South Braintree, Massachusetts. On May 5th, 1920, Nicola Sacco and Bartolomeo Vanzetti were arrested; they were later tried and found guilty of the murder. The verdict was followed by seven motions for a new trial and two appeals to the Supreme Court for the Commonwealth, all of which were heard and later denied. Prior to the trial of the two men in this case, Vanzetti had been arrested, tried and convicted of an attempted holdup on December 24, 1919, at Bridgewater, Massachusetts, and sentenced to fifteen years imprisonment.

The appeal to the Governor was presented by counsel for the accused on May 3rd of the present year. It was my first official connection with the case.

This appeal, presented to me in accordance with the provision in the Constitution of our Commonwealth, has been considered without intent on my part to sustain the courts if I became convinced that an error had been committed or that the trial had been unfair to the accused.

I realized at the outset that there were many sober-minded and conscientious men and women who were genuinely troubled about the guilt or innocence of the accused and the fairness of their trial. It seemed to me I ought to attempt to set the minds of such people at rest, if it could be done, but I realized that with all I could do personally to find out the truth, some people might well in the end doubt the correctness of any conclusion that I, or in fact any other one man, might reach. I believed that I could best reassure these honest doubters by having a committee conduct an investigation entirely independent of my own, their report to be made to me and to be of help in reaching correct conclusions. I felt that if after such a committee had conducted its investigation independently we were not in substantial agreement, then the course of Massachusetts justice did not flow in as clear a channel as I believed it should. The final decision and responsibility was, of course, mine. For this committee I desired men who were not only well and favorably known for their achievements in their own lines, but men whose

reputations for intelligence, open-mindedness, intellectual honesty and good judgment were above reproach. I asked to serve on that committee President Abbott Lawrence Lowell of Harvard University, former Judge Robert Grant, and President Samuel W. Stratton of Massachusetts Institute of Technology. No one of them hesitated when asked to serve. They began work as soon as their other affairs could be arranged, labored continuously during much of June and through July, holding their sessions independently, and arrived unanimously at a conclusion which is wholly in accord with mine. The public owes these gentlemen its gratitude for their highminded, unselfish service on this disagreeable and extremely important problem.

The court proceedings in this case may be divided into two parts: first, the trial before the jury with Judge Thayer presiding; second, the hearings on the succession of motions for a new trial which were addressed to the judge and passed upon by him. All those proceedings have been attacked by some of the friends of the accused men and their counsel.

The attacks on the jury trial take two forms:—first, it is asserted that the men are innocent and that there was not sufficient evidence before the jury to justify a finding of guilty; second, it is asserted that the trial itself was unfair. The attacks on the proceedings and on the motions for a new trial are in substance that the judge was biased and unable to give the motions fair and impartial consideration.

The inquiry that I have conducted has had to do with the following questions:—

Was the jury trial fair?

Were the accused entitled to a new trial?

Are they guilty or not guilty?

As to the first question, complaint has been made that the defendants were prosecuted and convicted because they were anarchists. As a matter of fact, the issue of anarchy was brought in by them as an explanation of their suspicious conduct. Their counsel, against the advice of Judge Thayer, decided to attribute their actions and conduct to the fact that they were anarchists, suggesting that they were armed to protect themselves, that they were about to start out, at ten o'clock at night, to collect radical literature, and that the reason they lied was to save their friends.

I have consulted with every member of the jury now alive, eleven in number. They considered the judge fair; that he gave them no indication of his own opinion of the case. Affidavits have been presented claiming that the judge was prejudiced. I see no evidence of prejudice in his conduct of the trial. That he had an opinion as to the guilt or innocence of the accused after hearing the evidence is natural and inevitable.

The allegation has been made that conditions in the court room were prejudicial to the accused. After careful inquiry of the jury and others I find no evidence to support this allegation. I find the jurors were thoroughly honest men and that they were reluctant to find these men guilty but were forced to do so by the evidence. I can see no warrant for the assertion that the jury trial was unfair.

The charge of the judge was satisfactory to the counsel for the accused and no exceptions were taken to it. The Supreme Judicial Court for the Commonwealth has considered such of the more than 250 exceptions taken during the course of the trial as counsel for the accused chose to argue and over-ruled them all, thus establishing that the proceedings were without legal flaw.

I have read the record and examined many witnesses and the jurymen to see from a layman's standpoint whether the trial was fairly conducted. I am convinced that it was.

The next question is whether newly discovered evidence was of sufficient merit to warrant a new trial.

After the verdict against these men, their counsel filed and argued before Judge Thayer seven distinct supplementary motions for a new trial six of them on the ground of newly discovered evidence, all of which were denied. I have examined all of these motions and read the affidavits in support of them to see whether they presented any valid reason for granting the accused men a new trial. I am convinced that they do not and I am further convinced that the presiding judge gave no evidence of bias in denying them all and refusing a new trial. The Supreme Judicial Court for the Commonwealth, which had before it appeals on four of the motions and had the opportunity to read the same affidavits which were submitted to Judge Thayer, declined to sustain the contentions of counsel for the accused. In my own investigations on the question of guilt, I have given these motions and their supporting affidavits and the witnesses every consideration.

I give no weight to the Madeiros confession. It is popularly supposed he confessed to committing this crime. In his testimony to me he could not recall the details or describe the neighborhood. He furthermore stated that the Government had doublecrossed him and he proposes to doublecross the Government. He feels that the District Attorney's office has treated him unfairly because his two confederates who were associated with him in the commission of the murder for which he was convicted were given life sentences, whereas he was sentenced to death. He confessed the crime for which he was convicted. I am not impressed with his knowledge of the South Braintree murders.

It has been a difficult task to look back six years through other people's eyes. Many of the witnesses told me their story in a way I felt was more a matter of repetition than the product of their memory. Some witnesses replied that during the six years they had forgotten; they could not remember; that it was a disagreeable experience and they had tried to forget it. I could not hope to put myself in the position of a jurymen and have the advantage of seeing the witness on the stand and listening to the evidence and judging the spoken word. The motions for a new trial, however, were all made from affidavits and therefore they could be reviewed under the same circumstances as prevailed when the Judge heard them.

The next question, and the most vital question of all, is that of the guilt or innocence of the accused. In this connection I reviewed the Bridgewater attempted holdup for which Vanzetti had previously been tried before another jury and found guilty. At this trial Vanzetti did not take the witness stand in his own defense. He waived the privilege of telling his own story to the jury, and did not subject himself to cross examination. Investigating this case, I talked to the counsel for Vanzetti at the Plymouth trial, the jurymen, the trial witnesses, new witnesses, present counsel and Vanzetti. I have talked with the government witnesses who saw the Bridgewater holdup and who identified Vanzetti, and I believe their testimony to be substantially correct. I believe with the jury that Vanzetti was guilty and that his trial was fair. I found nothing unusual about this case except, as noted above, that Vanzetti did not testify.

In the Bridgewater case, practically everyone who witnessed the attempted holdup and who could have identified the bandits identified Vanzetti.

The South Braintree crime was particularly brutal. The murder of the paymaster (Parmenter) and the guard (Berardelli) was not necessary to the robbery. The murders were accomplished first, the robbery afterward. The first shot laid Berardelli low in the roadway, and after Parmenter was shot, he dropped the money box in the road and ran across the street. The money could then have been taken but the murders pursued Parmenter across the road and shot him again, and then returned and fired three more shots into Berardelli, four in all, leaving his lifeless form in the roadway. The plan was evidently to kill the witnesses and terrorize the bystanders. The murderers escaped in an automobile driven by one of their confederates, the automobile being afterward located in the woods at Bridgewater, 18 miles distant.

Vanzetti when arrested on May 5th had in his hip pocket a fully loaded revolver. Sacco had a loaded pistol tucked into the front of his trousers and 20 loose cartridges which fitted his pistol. Upon being questioned by the police, both men told what they afterward admitted was a tissue of lies. Sacco claimed to have been working at Kelly's shoe factory on April 15th, the date of the South Braintree crime. Upon investigation, it was proven that he was not at work on that day. He then claimed to have been at the Italian Consulate in Boston on that date but the only confirmation of this claim is the memory of a former employee of the Consulate who made a deposition in Italy that Sacco among forty others was in the office that day. This employee had no memorandum to assist his memory.

As the result of my study of the record and my personal investigation of the case, including my interviews with a large number of witnesses, I believe, with the jury, that Sacco and Vanzetti were guilty and that the trial was fair.

This crime was committed seven years ago. For six years, through dilatory methods, one appeal after another, every possibility for delay has been utilized, all of which lends itself to attempts to frighten and coerce witnesses, to influence changes in testimony, to multiply by the very years of time elapsed the possibilities of error and confusion.

It might be said that by undertaking this investigation I have contributed to the elaborate consideration accorded these men. My answer is that there was a feeling on the part of some people that the various delays that had dragged this case through

the courts for six years were evidence that a doubt existed as to the guilt of these two men. The feeling was not justified. The persistent, determined efforts of an attorney of extraordinary versatility and industry, the judge's illness, the election efforts of three District Attorneys, and dilatoriness on the part of most of those concerned are the principal causes of delay. The delays that have dragged this case out for six years are inexcusable.

This task of review has been a laborious one and I am proud to be associated in this public service with clear eyed witnesses, unafraid to tell the truth, and with jurors who discharged their obligations in accordance with their convictions and their oaths.

As a result of my investigation I find no sufficient justification for executive intervention.

I believe with the jury, that these men, Sacco and Vanzetti, were guilty, and that they had a fair trial. I furthermore believe that there was no justifiable reason for giving them a new trial.

(Signed) ALVAN T. FULLER

THE LOWELL COMMITTEE REPORT

JULY 27, 1927.

YOUR EXCELLENCY:

Starting on the investigation with which you have charged us, with almost no knowledge of the evidence in the case of the Commonwealth *vs.* Sacco and Vanzetti, we have felt that our first duty was to read the full stenographic report of the trial; then the various affidavits and documents bearing upon the motions for a new trial; and, thereafter, to seek and hear such information as might throw light upon the report to be made to you. In doing this we have felt that our investigation had better be wholly independent of yours; and, indeed throughout, the only communication we have had from you is the suggestion of one or two people it might be worth while to see.

In conducting the investigation we have been guided by a few general principles. One was that our meetings should not be public; that our duty was to form our own impartial opinion by ascertaining the truth. Having no power to require the attendance of witnesses, or compel them to answer questions, they would be much less likely to come before us and speak freely if they thought that what they said would be published in the newspapers. Many of the persons most able to throw light upon the murder dislike notoriety and criticism by partisans, for there has been in this case much propaganda by adherents of the Defense Committee to which neither the courts nor the prosecuting officers could properly reply in the public press.

On the other hand, it has seemed to us important to give the counsel for the defense and for the Commonwealth an opportunity to hear and question everyone who testified before the Committee, with the exception of Judge Thayer, Chief Justice Hall and the jurors, whom we did not think should be subjected to questions by counsel,—certainly in the absence of specific evidence of misconduct. The Committee had thought that this principle should be applied also to Mr. Katzmann, the District Attorney who tried the case, but after he had talked with the Committee he consented to be questioned by Mr. Thompson. With these exceptions, and what came incidentally in an inspection of the scene of the murder, and a visit to Sacco, Vanzetti and Madeiros in prison, all testimony has been submitted to the Committee in the presence of both counsel; nor has any member of the Committee received

evidence separately. Such a course has seemed to us desirable in order to give counsel an opportunity to meet and rebut any evidence presented to us. Moreover, the Committee have heard all evidence the counsel desired to present, and except as aforesaid have investigated in their presence any matters that seemed to bear on the questions before us.

The inquiry that you have asked the Committee to undertake seems to consist of answering the three following questions:

- (1) In their opinion, was the trial fairly conducted?
- (2) Was the subsequently discovered evidence such that in their opinion a new trial ought to have been granted?
- (3) Are they, or are they not, convinced beyond reasonable doubt that Sacco and Vanzetti were guilty of the murder?

To us the reading of the stenographic report of the trial gives the impression that the Judge tried to be scrupulously fair.

The cross-examination by Mr. Katzmann of the defendant Sacco on the subject of his political and social views seems at first unnecessarily harsh, and designed rather to prejudice the jury against him than for the legitimate purpose of testing the sincerity of his statements thereon; but it must be remembered that the position at that time was very different from what it is now. We have heard so much about the communistic or radical opinions of these two men that it is hard to put ourselves back into the position that they, and particularly Sacco, occupied at the time of the trial. There had been presented by the Government a certain amount of evidence of identification, and other circumstances tending to connect the prisoners with the murder, of such a character that—together with their being armed to the teeth and the falsehoods they stated when arrested—would in the case of New England Yankees, almost certainly have resulted in a verdict of murder in the first degree,—a result which the evidence for the alibis was not likely to overcome. Under these circumstances it seemed necessary to the defendants' counsel to meet the inferences to be drawn from these falsehoods by attributing them to a cause other than consciousness of guilt of the South Braintree murder.

From the statements before the Committee by the Judge and by one of the counsel for the defendants it appears that Judge Thayer suggested, out of the presence of the jury, that the counsel should think seriously before introducing evidence of radicalism which was liable to prejudice the jury; but at that stage of the

case the counsel thought the danger of conviction so great that they put Sacco and Vanzetti on the stand to explain that their behavior at and after their arrest was due to fear for themselves or their friends of deportation or prosecution on account of their radical ideas, conduct and associations, and not to consciousness of guilt of the murder at South Braintree. We have already remarked that at the present moment their views on these subjects are well known, but they were not so clear at the time. Save for his association with Vanzetti, and his own word on direct examination, there was, up to the time of his cross-examination, in the case of Sacco no certainty that he entertained any such sentiments. The United States authorities, who were hunting for Reds, had found nothing that would justify deportation or other proceedings against either of these men. Except the call for a meeting found in his pocket, there was no evidence that Sacco had taken a prominent part in public meetings, or belonged to any societies of that character; and although wholesale arrests of Reds—fortunately stopped by the decision of Judge Anderson of the United States Circuit Court—had recently been made in Southeastern Massachusetts, these men had not been among those arrested. At that time of abnormal fear and credulity on the subject little evidence was required to prove that anyone was a dangerous radical. Harmless professors and students in our colleges were accused of dangerous opinions, and it was almost inevitable that anyone who declared himself a radical, possessed of inflammatory literature, would be instantly believed. For these reasons Mr. Katzmann was justified in subjecting Mr. Sacco to a rigorous cross-examination to determine whether his profession that he and his friends were radicals liable to deportation was true, or was merely assumed for the purpose of the defense. The exceptions taken to his questions were not sustained by the Supreme Court.

It has been said that while the acts and language of the Judge, as they appear in the stenographic report, seem to be correct, yet his attitude and emphasis conveyed a different impression. But the jury do not think so. They state that the Judge tried the case fairly; that they perceived no bias; and indeed some of them went so far as to say that they did not know when they entered the jury room to consider their verdict whether he thought the defendants innocent or guilty. It may be added that the Committee talked with the ten available members of the jury—one, the foreman, being dead, and another

out of reach in Florida. To the Committee the jury seemed an unusually intelligent and independent body of men, and withal representative, seven of the twelve appearing to be wage-earners, one a farmer, two engaged in dealing in real estate, a grocer and a photographer. Each of them felt sure that the fact that the accused were foreigners and radicals had no effect upon his opinion, and that native Americans would have been equally certain to be convicted upon the same evidence.

Affidavits were presented to the Committee and witnesses were heard to the effect that the judge, during and after the trial, had expressed his opinion of guilt in vigorous terms. Prejudice means an opinion or sentiment before the trial. That a judge should form an opinion as the evidence comes in is inevitable, and not prejudicial if not in any way brought to the notice of the jury, as we are convinced was true in this case. Throughout this report the Committee have refrained from reviewing the evidence in detail and have stated only their conclusions with comments upon points that seemed of special significance. From all that has come to us we are forced to conclude that the Judge was indiscreet in conversation with outsiders during the trial. He ought not to have talked about the case off the bench, and doing so was a grave breach of official decorum. But we do not believe that he used some of the expressions attributed to him, and we think that there is exaggeration in what the persons to whom he spoke remember. Furthermore, we believe that such indiscretions in conversation did not affect his conduct at the trial or the opinions of the jury, who, indeed, so stated to the Committee.

In one of the motions for a new trial Mr. Thompson, now counsel for the defense, contended that between the District Attorney and officers of the United States Secret Service engaged in investigating radical movements there had been collusion for the purpose either of deporting these defendants as radicals or of convicting them of murder, and thus of getting them out of the way; that with this object Mr. Katzmann agreed to cross-examine them on the subject of their opinions, and that the files of the Federal Department of Justice contain material tending to show the innocence of Sacco and Vanzetti. In support of these charges he filed affidavits by Ruzzamenti, Weyand, Letherman and Weiss which declared that the files of the Federal Department of Justice would show the correspondence that took place in the preparation of the case; but none of these affidavits states or implies that there is anything in those files which would help

to show that the defendants are not guilty. For the Government to suppress evidence of innocence would be monstrous, and to make such a charge without evidence to support it is wrong. Mr. Katzmann in answer to a question by Mr. Thompson stated to the Committee that the Federal Department had nothing to do with the preparation of the case, and there is no reason to suppose that the Federal agents knew the evidence he possessed. He stated also that he made no agreement with them about the cross-examination. A spy named Carbone was, indeed placed in the cell next to that of Sacco, and it was stated in an agreement of subsequent counsel that this was to get from him information relating to the South Braintree murder; but Mr. Katzmann, in answer to a question by Mr. Thompson, informs us that that is a mistake; that the Federal authorities wanted to put a man there with the hope of getting information about the explosion on Wall Street. To this he and the sheriff consented, but no information was in fact obtained.

Before the Committee Mr. Thompson suggested that the fatal bullet shown at the trial as the one taken from Berardelli's body, and which caused his death, was not genuine; that the police had substituted it for another, in order by a false exhibit to convict these men; but in this case, again, he offered no credible evidence for the suspicion. Such an accusation, devoid of proof, may be dismissed without further comment, save that the case of the defendants must be rather desperate on its merits when counsel feel it necessary to resort to a charge of this kind.

The claim that the District Attorney failed to summon witnesses favorable to the defendants, or to give the names to their counsel, will be discussed when treating of the motions for a new trial.

Again it is alleged that the whole atmosphere of the courtroom and its surroundings, with the armed police and evident precautions, were such as to prejudice the jury at the outset; while the remark of the Judge to the talesmen that they must do their duty as the soldier boys did in the war was of a nature to incline them against the prisoners. The jury do not seem to have been conscious of any such influence, or of the presence of any unusual number of police. Nor do they appear to have entered upon the case with the slightest predisposition in favor of the prosecution, some of them at least very far from it. We do not think these allegations have a serious foundation.

To summarize, therefore, what has been said: The Committee have seen no evidence sufficient to make them believe that the trial was unfair. On the contrary, they are of opinion that the Judge endeavored, and endeavored successfully, to secure for the defendants a fair trial; that the District Attorney was not in any way guilty of unprofessional behavior, that he conducted the prosecution vigorously but not improperly; and that the jury, a capable, impartial and unprejudiced body, did, as they were instructed, "well and truly try and true deliverance make."

If the trial was fairly conducted, we are brought to the second point,—whether, on account of newly discovered evidence, any of the motions for a new trial should have been granted. So far as exceptions to the denial by the Judge of these motions have been taken to the Supreme Judicial Court of the Commonwealth, they have not been sustained there; but the counsel for the defendants contend that the Supreme Court decided only that these matters were properly within the discretion of the Judge, and that his discretion had not been abused. They urge, therefore, that while the Judge's discretion was not illegally, it was in fact wrongly exercised, because he was too prejudiced to be impartial; and that a wholly impartial exercise of discretion would have brought an order for a new trial.

There can be no doubt that the Judge has been subjected to a very severe strain. Apart from the responsibility that he has borne, the nature of the criticisms made upon him has had its effect; and the Committee are of opinion that while there is no sufficient evidence that his capacity to decide rightly the questions before him in this case has been impaired, nevertheless he has been in a distinctly nervous condition. The Committee have felt constrained, therefore, to examine the motions for a new trial and the evidence on which they are based, with a view of determining whether in their opinion the discretion of the Judge on each motion was in fact rightly exercised. We cannot put ourselves in the position of the jury at the trial, because we cannot see the witnesses upon the stand, and therefore have not the opportunities they possessed of judging the weight to be given to the testimony of each witness. Even if we were to see them all now, their appearance may be very different from what it was under cross-examination. But the motions for a new trial were all heard on affidavits or depositions, without oral evidence, and therefore the Committee are in the same position with regard to

their credibility and weight as was the Judge when he heard them.

The first of these motions for a new trial is that known by the name of Gould. He was a by-stander through the lapel of whose coat a bullet was fired by the bandits, and who was questioned by the police. He was not called as a witness by the prosecution, but he was certainly close to the car, and has since made an affidavit to the effect that the men he saw were not the defendants. Two questions arise in his case; first whether his evidence, discovered by the defendants since the trial, is sufficient to demand a new trial; and second whether it shows a suppression of evidence by the Commonwealth. In regard to the first, he certainly had an unusually good position to observe the men in the car; but on the other hand his evidence is merely cumulative, the defendants having produced a large number of witnesses to swear to the same thing, and it is balanced by two other new witnesses on the other side. One is Mrs. Hewins, who stated to Mr. Thompson, as appears in one of his affidavits, that the bandit car stopped to ask the way at her house and that Sacco was driving it. Sacco if guilty, may have been doing so at that moment, or she may have mistaken whether he was behind the wheel or in the other place on the front seat. The other witness is Mrs. Tattoni, formerly Lottie Packard, who claims to have known Sacco when he was working in the factory of Rice & Hutchins where she also worked, and to have seen him at South Braintree on the morning of April 15th on Pearl Street. The woman is eccentric, not unimpeachable in conduct; but the Committee believe that in this case her testimony is well worth consideration. There seems to be no reason to think that the statement of Gould would have any effect in changing the mind of the jury. The second question is whether the failure either to put Gould upon the stand or to give his name to the defendants amounts to a suppression of evidence. Gould was questioned within a few days of the murder, before the present defendants were thought of in connection with the crime, and apparently was not followed up because it was thought he could give valuable testimony whoever the criminals might turn out to be. By occupation he was itinerant, and there is no evidence that he had an opportunity to see Sacco and Vanzetti after they were captured, and hence to say whether they were or were not the men he had seen at South Braintree. There seems to the

Committee to be nothing in the nature of a concealment by the prosecution of evidence that it believed valuable for the defense.

Another motion for a new trial is based upon the fact that Walter Ripley, the foreman of the jury, happened to have in his pocket throughout the trial three 38-caliber revolver cartridges of the same kind as those found in the revolver of Vanzetti when arrested. The Supreme Court in the case of that motion, as of others, held that the refusal of a new trial was within the discretion of the Judge; but, as we have observed, this does not decide that his discretion was rightly exercised. There is no evidence that the presence of these cartridges did influence the opinion of the jury; but the question for us is whether it may reasonably have done so, and we do not see how it could have had any such effect. It was suggested by Albert H. Hamilton, who made an affidavit as an expert, that the jury might have derived from these cartridges an erroneous opinion as to the age of those found in Vanzetti's revolver. It is not easy to see how they could have formed any such opinion, or what material significance there was in the age of the Vanzetti cartridges. The presence of these objects in the jury room may have been irregular, but we do not see how it could have changed the result of the trial, and if so, the Judge ought not in justice to have ordered a new trial on that ground.

Under the same motion was introduced an affidavit by William H. Daly, wherein he says that Ripley, when summoned as a talesman, in answer to the question by him whether he was to be a juror in this case replied "Damn them, they ought to hang them anyway." Now it is extremely improbable that Ripley was so different from other men that he desired the disagreeable task of serving on this jury, and he had only to reveal what he had said to be excused. Yet in spite of a selective process in making up the jury, so rigorous that out of the first five hundred talesmen only seven were taken, he was one of these. He did not live to contradict the statement, and we believe that Daly must have misunderstood him, or that his recollection is at fault.

The fifth supplementary motion for a new trial is known by the name of Captain Proctor, the police officer who testified as an expert on the question whether the fatal bullet found in Bernardelli's body had been fired through Sacco's pistol. At the trial he was asked in regard to this matter as follows:

“Q. Have you an opinion as to whether bullet No. 3 was fired from the Colt automatic which is in evidence? A. I have.

“Q. What is your opinion? A. My opinion is that it is consistent with being fired by that pistol.”

In his affidavit of October 20, 1923, he says that while he was examining the bullet in preparation for the trial his attention was repeatedly called by the prosecuting attorneys to the question whether he could find any evidence that would justify the opinion that the bullet taken from the body of Berardelli — which came from a Colt automatic pistol — came from the particular pistol taken from Sacco, but at no time was able to find any evidence to convince him that it came from that pistol; that the District Attorney desired to ask him that question directly, but he repeatedly replied that if so, he would be obliged to answer in the negative. The two prosecuting attorneys in their affidavits denied that they had repeatedly asked him whether he had found evidence that the bullet was fired by Sacco's pistol; and Mr. Williams, who interrogated him, added that the form of the question was suggested by Proctor himself. It may be noted that Mr. Katzmann stated to the Committee, in answer to a question by counsel for the Commonwealth, that before Proctor made his affidavit he—Mr. Katzmann—had refused to approve Proctor's bill of \$500 for expert testimony. Counsel for the defendants claim that the form of the question and answer was devised to mislead the jury; but it must be assumed that the jury understood the meaning of plain English words, that if Captain Proctor was of opinion that the bullet had been fired through Sacco's pistol he would have said so, instead of using language which meant that it might have been fired through that pistol. In his charge the Judge referred to the expert evidence on the question whether the bullet had been fired from Sacco's pistol, saying “To this effect the Commonwealth introduced the testimony of two experts, Messrs. Proctor and Van Amburgh.” These two men did testify on the subject, the first saying that it might have gone through Sacco's pistol, the second that it did so; the experts for the defendants giving their opinion that it could not have gone through Sacco's pistol. It may be observed that the prosecuting attorney did not put the words into Captain Proctor's mouth, but asked him simply what his opinion was, and that Captain Proctor in answer used words that seem not unadapted to express

his meaning. It does not seem to us that there is good ground to suppose that his answer was designed to mislead the jury. We shall return to this subject in connection with new evidence brought to the Committee.

In connection with this motion, affidavits by the experts, Albert H. Hamilton and Augustus H. Gill, supported by enlarged photographs, were submitted to prove that the bullet could not have been fired through Sacco's pistol; while other experts, Charles Van Amburgh and Merton A. Robinson, using the same photographs, stated their opinion that the marks appearing thereon show that the bullet was fired through that pistol. An inspection of the photographs, following the reading of these affidavits for the defendants and for the Government, leads us to the conclusion that the latter presented the more convincing evidence. We are of opinion, therefore, that the Judge could not properly have ordered a new trial on the Proctor motion.

Another motion for a new trial, denied by the Judge, was never brought by exceptions before the Supreme Judicial Court. It was based upon an affidavit by Lola M. Andrews, stating that her evidence of identification at the trial was false. This is the witness who, on cross-examination at the trial, testified that Mr. Moore, then counsel for Sacco, at an interview with her suggested that she should take a vacation in Maine, and that if she lost her job in consequence he would find her as good or a better one, and who, after that interview, and after her identification of Sacco at the Dedham jail, was assaulted by a stranger at her home. Subsequent to the affidavit on which the motion was made, she swore to another in which she said that the former had been obtained by a threat of using discreditable events in her past life to the injury of her son; and the statements of Moore and another man employed by him show that they had hunted up, and told her they possessed, the information she claims they used. The Judge very properly refused to grant a new trial upon an affidavit procured in this way, and Mr. Moore let the matter drop.

We now come to the motion for a new trial, based upon the confession of Madeiros, and the affidavits that accompany it. The exceptions to the denial of this motion by Judge Thayer are those which in its recent decision the Supreme Judicial Court has not sustained. The question whether a new trial ought to have been granted in consequence of the confession of Madeiros depends upon the weight which can be attributed to it, and the importance of the evidence offered in corroboration. The im-

pression has gone abroad that Madeiros confessed committing the murder at South Braintree. Strangely enough, this is not really the case. He confesses to being present, but not to being guilty of the murder. That is, he says that he, as a youth of eighteen, was induced to go with the others without knowing where he was going, or what was to be done, save that there was to be a hold-up which would not involve killing; and that he took no part in what was done. In short, if he were tried, his own confession, if wholly believed, would not be sufficient for a verdict of murder in the first degree. His ignorance of what happened is extraordinary, and much of it cannot be attributed to a desire to shield his associates, for it had no connection therewith. This is true of his inability to recollect the position of the buildings, and whether one or more men were killed. In his deposition he says that he was so scared that he could remember nothing immediately after the shooting. To the Committee he said that the shooting brought on an epileptic fit which showed itself by a failure of memory; but that hardly explains the fact that he could not tell the Committee whether before the shooting the car reached its position in front of the Slater & Morrill factory by going down Pearl Street or by a circuit through a roundabout road. Indeed, in his whole testimony there is only one fact can be checked up as showing a personal knowledge of what really happened. and that was his statement that after the murder the car stopped to ask the way at the house of Mrs. Hewins at the corner of Oak and Orchard Streets in Randolph. As this house was not far from the place on a nearby road where Madeiros subsequently lived, he might very well have heard the fact mentioned. In short if the Government were to try to convict him of this offense, and he were to say that the whole thing was a fabrication to help Sacco and Vanzetti, he certainly could not be convicted on his own confession, and probably not even indicted.

How far do the other affidavits corroborate his statement? They state that Madeiros—who seems to have been rather prone to boast of his feats—had previously told Weeks that he had taken part with the Morelli gang in the South Braintree crime, and had talked with the Monterios also about it. The affidavits further state that he was acquainted with this gang, which consisted of a hardened set of criminals who had stolen shoes shipped from the Slater & Morrill and Rice & Hutchins factories, and were accustomed to spot the shipments when made at such factories; that on April 15th, 1920 a number of that gang were out on bail

for a different offense for which they were afterwards sentenced, and consequently could physically have been at South Braintree; that the photographs of Joe Morelli showed a distinct resemblance to Sacco and to whoever shot Berardelli, and that of Benkoski to the driver of the car—but identification by photograph is very uncertain; that Joe Morelli possessed a Colt automatic 32-caliber pistol. They state that one of the gang was seen in Providence late on the afternoon of April 15th in a Buick car which, by the officer who so reported, was seen no more. In regard to the last item, the great improbability may be noted that bandits who intended to hide the car in which they made their escape should have first shown it in the streets of Providence after all but one of the members of the gang had already returned in another car. Even without considering the contradictory evidence it does not seem to the Committee that these affidavits to corroborate a worthless confession are of such weight as to deserve serious attention.

The motion for a new trial based upon the confession of Madeiros includes the affidavits offered to show a combination between the District Attorney and the secret service officers of the Federal Government to convict these men of murder in order to get rid of them. These affidavits we have already discussed, and we agree wholly with the remark of Mr. Justice Wait in the opinion of the Supreme Judicial Court that "An impartial, intelligent and honest judge. . . would be compelled to find that no substantial evidence appeared that the department of justice of the United States had in its control any proof of the innocence of these defendants, or had conspired to secure their conviction by wrongful means."

After considering all the evidence given in support of the various motions for a new trial, we are of opinion that it is not "so grave, material and relevant as to afford a probability that it would be a real factor with the jury in reaching a decision."

There remains a reference to new evidence brought before the Committee, and not hereinbefore considered. The only two matters that seem to us significant are as follows: The counsel for the defendants produced Albert H. Hamilton and Elias Field, who informed the Committee that in an automobile ride Captain Proctor had told Hamilton that in his real opinion the fatal bullet had not been fired through Sacco's pistol. After the time

that a pistol that Berardelli had been in the habit of carrying, of this conversation Captain Proctor made the affidavit already referred to, and in that, after quoting his testimony at the trial—

“Q. What is your opinion? A. My opinion is that it is consistent with being fired by that pistol.” he says “That is still my opinion.” It seems to us improbable that Captain Proctor who has since died, should have stated both at the trial and in his affidavit that his opinion was consistent with the firing of the bullet from Sacco’s pistol, and in the meanwhile should have said in conversation that his opinion was exactly the opposite. One of the witnesses, Field, merely overheard Proctor’s conversation with Hamilton about a subject with which he was not familiar; and the latter stated also to the Committee that Proctor told him that he believed before the trial the bullet was not fired through the Sacco pistol, which would be an admission not of a misleading statement but of deliberate perjury. This charge is inconsistent with Proctor’s later affidavit, and we do not believe Hamilton’s testimony on this point.

The other significant new matter brought to the attention of the Committee by the counsel for the defense is the statement of Jeremiah F. Gallivan, former Chief of Police of Braintree, who said that in the cap found near the body of Berardelli, and claimed by the prosecuting counsel to be that of Sacco, the rent attributed by them to its hanging upon a nail in the factory, was in fact made by him in attempting to find a name under the lining before he delivered the cap to the officers investigating the case. This statement we believe to be true; but the rent in the lining of the cap is so trifling a matter in the evidence in the case that it seems to the Committee by no means a ground for a new trial.

Mr. James E. King brought to the attention of the Committee some calculations he has been making about the position at various times of the escaping bandit car, to the effect that if it travelled at the rate of speed the witnesses testified it would have taken much more time than elapsed between the moment of the murder and the arrival at the Matfield crossing. He suggested that the delay could be accounted for on the theory that the Morelli gang had committed the murder and spent some time in the Randolph woods three and a half miles from South Braintree while changing from a Buick to a Hudson, as described by Madeiros. To the Committee it seems that the calculations are based upon somewhat uncertain data, and that the delay is

apparently accounted for by the undisputed fact that the bandits turned by mistake into Orchard Street, which leads into a much-travelled highway and to the town of Randolph; that, discovering their mistake, they retraced their steps and inquired at the Hewins house the way to the old turnpike. It seems incredible that the bandits, as Mr. King supposes, should have spent something like twenty minutes in woods not far from the road and so short a distance from the scene of the murder.

Finally, there is the question whether in our opinion Sacco and Vanzetti are or are not guilty beyond reasonable doubt of the crime of which they have been convicted. Of the nature of the crime itself there is no question. Whoever committed it would be sentenced rightly for murder in the first degree.

In the discussion of what should be done about Sacco and Vanzetti, popular attention has been largely diverted by the belief that they hold unpopular views on political and social questions. Your Committee assume that this has nothing whatever to do with the question except so far as it may account for conduct that would otherwise be taken as evidence of consciousness of guilt. The fact that persons accused are or are not socialists or radicals of any type neither increases nor lessens the probability of their having committed the crime, and should be left wholly out of account except so far as in this instance it may explain their conduct at and shortly after their arrest.

The case has been popularly discussed as if it were one turning mainly upon identification by eye witnesses. That, of course, is a part, but only a part, of the evidence. As with the Bertillon measurements or with finger prints, no one measure or line has by itself much significance, yet together they may produce a perfect identification; so a number of circumstances—no one of them conclusive—may together make a proof clear beyond reasonable doubt. In the case of Sacco the chief circumstances are as follow: He looks so much like one of the gang who committed the murder that a number of witnesses are sure that he is the man. Others disagree; but at least his general appearance is admitted even by many of those who deny the identity to resemble one of the men who took part in the affair. Then a cap is found on the ground near the body of the man he is accused of killing, which bears a resemblance in color and general appearance to those he was in the habit of wearing; and when tried on in court it fitted,—that is, his head was the size of one of the men who did the shooting. Then there is the fact

and which there is no sufficient reason to suppose was not in his possession at the time of the murder, disappeared and a pistol of the same kind was found in the possession of Vanzetti when he and Sacco were arrested together, and of which no satisfactory explanation is given. It is difficult to suppose that Berardelli was not carrying his pistol at the time he was guarding the paymaster with the pay-roll, and no pistol was found upon his person after his death. It is natural also, if the bandits saw his pistol they should carry it off for fear of someone shooting at them as they escaped. Moreover, when Sacco was arrested he had a pistol which is admitted to be of the kind from which the fatal bullet was fired. In the controversy between the experts, one side striving to show that the bullet must have been, and the other that it could not have been, fired through that pistol, we are inclined from an inspection of the photographs to believe that the former are right; if they are, there could be little or no doubt—even if there were no other evidence—that the owner of the pistol fired the shot. But even if we assume that all expert evidence on such subjects is more or less unreliable, we can be sure that the shot was fired by the kind of pistol in the possession of Sacco. Then again, the fatal bullet found in Berardelli's body was of a type no longer manufactured and so obsolete that the defendants' expert witness, Burns, testified that with the help of two assistants, he was unable to find such bullets for purposes of experiment; yet the same obsolete type of cartridges was found in Sacco's pocket on his arrest. It is true that the expert Hamilton deposed that in these cartridges the knurls were true with the axis of the bullet, while in the fatal bullet they were at an angle of three degrees, which led him to believe that they must have been manufactured at different times. But the expert Robinson—himself ballistic engineer in the Winchester factory where these bullets were made—wholly refuted this statement by showing that the fatal bullet was so deformed that it was impossible to determine its original axis within three degrees, and that the Winchester Co. had never manufactured bullets with knurls not parallel to their axes. Such a coincidence of the fatal bullet and those found on Sacco would, if accidental, certainly be extraordinary.

Furthermore, there is the fact that when examined after their arrest they told what they afterwards admitted on the stand to be a series of lies. This they attempted to explain by saying that they were afraid of deportation or other punishment

for themselves or their friends, because they were conscious of having dodged the draft, of possessing socialistic literature, and in general of being of the type that the Federal Government was then persecuting. The difficulty with this excuse is that it by no means explains all their falsehoods, some of which had no connection whatever with their being Reds, but did have a very close connection with the crime at South Braintree. Such, for example, was Sacco's statement that he worked at the factory all day on the 15th. If he were innocent of the crime, and had been in Boston that day to get a passport, why should he not have said so when first questioned?

Finally there is the fact that both of them were armed for quick action when arrested. Sacco had a fully loaded automatic pistol under the front of the belt of his trousers and twenty-two spare cartridges in his pocket. Vanzetti had a fully loaded 38-calibre revolver. It is claimed that Italians, particularly those who get into criminal difficulties, commonly carry weapons; but carrying fully loaded firearms, where they can be most quickly drawn, can hardly be common among people whose views are pacifist and opposed to all violence. Such a condition cannot be explained by the fear of being arrested as Reds, nor did the defendants attempt to set up such an excuse. Indeed they could hardly have alleged that they went fully armed in order to be prepared to shoot officers who attempted to arrest them for that reason. Vanzetti declared that he carried a pistol because there were so many robberies and other crimes; Sacco that he put his pistol in the belt of his trousers to fire away the cartridges in the woods the day he was arrested, but that in conversation he was detained from doing so, had forgotten about his pistol, and was quite unconscious that he had it in the belt of his trousers. That statement seems incredible.

On these grounds the Committee are of opinion that Sacco was guilty beyond reasonable doubt of the murder at South Braintree. In reaching this conclusion they are aware that it involves a disbelief in the evidence of his alibi at Boston, but in view of all the evidence they do not believe he was there that day.

The evidence against Vanzetti is somewhat different. His association with Sacco tends to show that he belonged to the same group. His having a pistol resembling the one formerly possessed by Berardelli has some importance, and the fact that no cartridges for it were found in his possession, except those in it, is significant.

So also is his having cartridges loaded with buckshot, of which his account sounds improbable, and which might well have been used in the gun some witnesses saw sticking out of the back of the car. His falsehoods and his armed condition have a weight similar to that in the case of Sacco. In one way they are a little stronger because he virtually confirms the statement of officer Connolly that he tried to draw his pistol when arrested, for he testified that the officer pointed a revolver at him and said "You don't move, you dirty thing",—an admission that the officer thought he was making a movement towards his pistol. On the other hand, all these actions may be accounted for by consciousness of guilt of the attempted robbery and murder at Bridgewater, of which he has been convicted.

The alibi of Vanzetti is decidedly weak. One of the witnesses, Rosen, seems to the Committee to have been shown by the cross-examination to be lying at the trial; another, Mrs. Brini, had sworn to an alibi for him in the Bridgewater case, and two more of the witnesses did not seem certain of the date until they had talked it over. Under these circumstances, if he was with Sacco, or in the bandits' car, or indeed in South Braintree at all that day, he was undoubtedly guilty; for there is no reason why, if he were there for an innocent purpose, he should have sworn that he was in Plymouth all day. Now there are four persons who testified that they had seen him;—Dolbeare, who says he saw him in the morning in a car on the main street of South Braintree; Levangie, who said he saw him—erroneously at the wheel—as the car crossed the tracks after the shooting; and Austin T. Reed, who says that Vanzetti swore at him from the car at the Matfield railroad crossing. The fourth man was Faulkner, who testified that he was asked a question by Vanzetti in a smoking car on the way from Plymouth to South Braintree on the forenoon of the day of the murder, and that he saw him alight at that station. Faulkner's testimony is impeached on two grounds: First, that he said the car was a combination smoker and baggage car, and that there was no such car on that train; but his description of the interior is exactly that of a full smoking car; and, second, that no ticket that could be so used was sold that morning at any of the stations in or near Plymouth, and that no such cash fare was paid or mileage book punched, but that does not exhaust the possibilities. Otherwise no one claims to have seen him, or any man resembling him who was not Vanzetti. But it must be remembered that his face is

much more unusual, and more easily remembered, than that of Sacco. He was evidently not in the foreground. On the whole, we are of opinion that Vanzetti also was guilty beyond reasonable doubt.

It has been urged that a crime of this kind must have been committed by professionals, and it is for well-known criminal gangs that one must look; but to the Committee both this crime and the one at Bridgewater do not seem to bear the marks of professionals, but of men inexpert in such crimes.

ROBERT GRANT
A. LAWRENCE LOWELL
S. W. STRATTON

To His Excellency ALVAN T. FULLER,
Governor of Massachusetts.