

LOUIS JOUGHIN
EDMUND M. MORGAN

The Legacy of Sacco and Vanzetti



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by Louis Joughin *and* Edmund M. Morgan

Introduction by ARTHUR M. SCHLESINGER

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P R E F A C E

THIS BOOK is a study of the impact of the Sacco-Vanzetti case upon American law, society, and literature.

The inquiry began in a recognition of the fact that much verse, drama, and fiction has drawn its substance from the Sacco-Vanzetti case. It seemed probable that a criticism of this literature would throw light on the manner in which artistic writing emerges from periods of social stress. As the study progressed it soon became obvious that the disturbance within the social framework was so complicated and far-reaching as to demand full-scale consideration. Finally it was apparent that the social history in its turn would have to be based upon an understanding of the legal issues.

In short, it was evident that a proper treatment of the Sacco-Vanzetti material could be accomplished only by a thorough review of all the elements in the case. A fresh start was made.

As the study neared completion a new significance became attached to both the substance and the method of the investigation. Important conclusions about the law, society, and literature had been arrived at separately; now, in addition, larger implications were suggested by a view of the whole situation. The total meaning was larger than the sum of the parts. This integrated consideration is presented, in the last chapter, as the beginnings of historical judgment.

The law section has been written from the point of view of legal scholarship, and with full awareness of the special difficulties which arise from the study of an exclusively written record. Here is the statement of the position taken by the author of the law chapters:

Chapters II through VI are by a lawyer, who spent some seven years in active trial practice and who has been teaching procedural subjects for a third of a century. It is written from the standpoint of a lawyer who accepts the rules of evidence as they existed at the time of the trials of these defendants. Chapters III and IV were first typed in 1929. At that time the writer had not read either Professor Frankfurter's book, *The Case of Sacco and Vanzetti*, or his article in the *Atlantic Monthly* of which the book is an expansion. Nor had he read the bill of exceptions or the record of either appeal to the Supreme Judicial Court of Massachusetts. He had seen that page of the bill of exceptions dealing with the offer of proof in connection with the attempted impeachment of the witness Goodridge on cross-examination, and had heard the arguments before the Supreme Judicial Court by Mr. Thompson for the defendants and Mr. Ranney for the Commonwealth on appeal from the

order of the trial judge denying the so-called Medeiros motion for a new trial. His subsequent reading has not caused him to change any part of the original text, which stands substantially as first written. It has, however, been checked and a few minor inaccuracies have been discovered and corrected. Not until recently did the writer carefully read the record of Vanzetti's trial at Plymouth or make any attempt to summarize or comment upon it.

Our system does not guarantee either the conviction of the guilty or the acquittal of the innocent. Certain safeguards are erected which make it much more difficult to convict the innocent than to acquit the guilty, but all that our system guarantees is a fair trial. It is a price which every member of a civilized community must pay for the erection and maintenance of machinery for administering justice, that he may become the victim of its imperfect functioning. Consequently if these defendants got a fair trial, neither they nor their friends have any complaint against the Commonwealth of Massachusetts. Whether they were actually guilty no one but the perpetrators of the crime can know. Whether they got a fair trial or not can be only a matter of opinion; and as to that, no one can have an intelligent opinion who has not read the record of these cases.

Part II of this volume presents the social history of the Sacco-Vanzetti case. The reader may be helped by knowing how these chapters were written. The procedure was to assemble all the pertinent data for each major chronological period, and then to allow the natural emphases of the material to determine the pattern for the chapter outline. This method resulted in differences in the organization of the several chapters and to minor deviations from a strictly logical development. On the other hand, the writer was freed from temptation to tailor or distort the historical substance with a view to maintaining a dominant hypothesis.

The chapters on the literary material of the case, which comprise Part III, offer two kinds of criticism: (1) a discussion of the several writings as pertinent elements of evidence in the social history, and (2) a detailed evaluation of those documents which have significant artistic worth.

The spirit which has dominated the writing of this book has been that of scientific inquiry. At times we have perhaps fallen short of our ideal sense of detachment, because we are dealing with human values in a situation of intense conflict. Nevertheless our aim has been to write objectively, with a dispassionate view of our material and a keenly critical attitude toward our procedure. This does not mean that we deny the necessity or value of the partisan spirit in a controversy like the Sacco-Vanzetti case; we merely say that it is not our intent—and perhaps not our aptitude—to engage in dispute in this study. Here are facts and judgments; other persons may use them as they see fit.

On the other hand, we have not been blind to the part which

personal feelings necessarily have in every judgment of human action—and all the more so in a bitterly fought issue of this kind. We have, we believe, been generally successful in gathering our material by accepted scientific methods. In arriving at opinions about that material, we have of course sensed a higher degree of involvement with antecedent biases derived from our cultural heritage; but at the very least we have tried to be reasonable in our judgments. Finally, in the expression of those judgments, we have spoken frankly; we have praised some men and condemned others. The standard by which we have judged conduct has been a simple one, essentially moral in nature. We believe that a man's social worth is directly related to his capacity for effective social life and to his realization of that capacity. If he is stupid it will suffice to enumerate him as one among other human animals. If he is of sound body and mind and has had some education he is under a moral obligation to live intelligently with his fellow creatures. To the degree that he uses his powers, he is worthy of praise; and to the degree that he fails, he should be condemned.

Were Sacco and Vanzetti guilty of murder? Since our purpose is to lead the reader through the whole complicated history of the case, and since in doing so we have deliberately avoided easy simplifications and colorful summaries, it will be wise to dispose at once of this too simple question. We do not know—and we do not believe that human judgment will ever be in a position to arrive at absolute certainty in this case. The social order angrily swept the men from the board without establishing a valid checkmate. Nor do we believe that the question should be pressed; insistence upon a final answer will only serve to obscure the chief significance of the case. In the Sacco-Vanzetti affair American justice was tragically inept. And since justice failed we consider it inevitable that both literary tradition and historical judgment will continue to support the presumption that Sacco and Vanzetti were innocent of the crime for which they were executed.

LOUIS JOUGHIN
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CHIEF PERIODS OF THE SACCO-VANZETTI CASE

First Period

November 23, 1919, to May 5, 1920 (5 months, 13 days). Preparations for the crimes; the Bridgewater assault; the South Braintree holdup and murders; the arrest of Sacco and Vanzetti.

Second Period

May 6, 1920, to July 14, 1921 (1 year, 2 months, 8 days). Preliminary hearings; the indictment, trial, and conviction of Vanzetti for the Bridgewater assault; the indictment, trial, and conviction of Sacco and Vanzetti for the South Braintree holdup and murders.

Third Period

July 15, 1921, to October 1, 1924 (3 years, 2 months, 16 days). Motion for a new trial on the ground that the verdict was against the weight of the evidence, argued and denied; five supplementary motions, based chiefly upon new evidence, argued and denied.

Fourth Period

October 2, 1924, to April 8, 1927 (2 years, 6 months, 6 days). The preparation, argument, and denial of appeals based on the conviction and on three of the supplementary motions; the motion for a new trial based on a confession by Medeiros, argued before and denied by the trial judge and the supreme court; the significance of the records of the Department of Justice.

Fifth Period

April 9, 1927, to August 23, 1927 (4 months, 14 days). Sentence imposed by the trial judge; the petition for executive clemency, the hearings and decision of the Advisory Committee, and the denial of clemency; the motion based on the trial judge's prejudice, argued before the trial judge and denied; unsuccessful attempt to bring the question of the trial judge's prejudice before the supreme court; unsuccessful attempts to enter the federal courts; the executions.

CONTENTS

<i>Preface</i>	v
<i>Chief Periods of the Sacco-Vanzetti Case</i>	viii
<i>Introduction</i>	xi
PART I. THE LEGACY TO THE LAW: DOUBT	
Chapter I. What Happened	3
Chapter II. The Bridgewater Assault, the South Braintree Murders, and the Plymouth Trial	26
Chapter III. The Dedham Trial	58
Chapter IV. Legal Controversy, July, 1921-August, 1927	114
Chapter V. An Unpublished Chapter in the Record	158
Chapter VI. The Legacy of Doubt	177
PART II. THE LEGACY TO THE PEOPLE: CONFLICT	
Chapter VII. "Men of Norfolk"	201
Chapter VIII. Two Nations	221
Chapter IX. Two Nations (<i>Continued</i>)	253
Chapter X. August, 1927	272
Chapter XI. The Governor and His Committee	298
Chapter XII. The Aftermath: 1927-1929	310
Chapter XIII. The Legacy of Conflict	347
PART III. THE LEGACY TO LITERATURE: FAITH.	
THE BEGINNINGS OF HISTORICAL JUDGMENT	373
Chapter XIV. The Literature of the Record and the Verse	375
Chapter XV. The Plays	393
Chapter XVI. The Novels	421

Chapter XVII. The Murderers	455
Chapter XVIII. The Mind and Thought of Vanzetti	479
Chapter XIX. The Legacy to Literature: Faith. The Begin- nings of Historical Judgment	501
<i>Acknowledgments</i>	517
<i>Chapter References</i>	519
<i>Bibliography</i>	557
<i>Index</i>	581

INTRODUCTION

THE POSTWAR twenties afford the time setting of the drama. A triangular bit of Massachusetts soil, with its corners at Plymouth, Bridgewater, and Boston, provides the stage. Two obscure aliens are the central figures, though the whole cast includes many others of both high and low degree. The general public compose the audience and, in a sense, the jury. History stands silently by in the wings.

This combination of circumstances created an atmosphere of popular tension, dread and crisis without parallel in Massachusetts annals since the exiling of Roger Williams and Anne Hutchinson and the witch persecutions of the seventeenth century. To duplicate its national repercussions one would have to go back to the trial of the Chicago anarchists for the Haymarket bombing in the 1880's, and for its world effects to the Dreyfus case in France near the turn of the century. How this situation arose the present volume graphically sets forth, as well as the reasons interest in the case has persisted to the present day, exciting a continuing stream of books and articles by both lawyers and laymen.

Probably most Americans following the case at the time can remember where they were and just what they were doing when the word first reached them that Sacco and Vanzetti had lost their last chance of escaping death. So indelible was the impression that it is common testimony that only two other occurrences in recent years have made a comparable impact on the public mind: the assault on Pearl Harbor and the sudden death of President Franklin Roosevelt. Yet the latter two incidents directly involved the fortunes of the country as a whole, while the fate of the two lowly Italians might seem to have been unrelated to the national welfare, and, in any event, the questions at issue had divided the public into bitterly contending camps. This book, an arresting and cogent evaluation of the legal, social, and literary aspects of the case, will make clear to a generation fresh to the facts why the interest was so intense, as well as why historical scholars and textbook writers have deemed the affair sufficiently important to include it in general works on American history.

Professor Morgan, one of America's foremost authorities on the law of evidence, carefully examines the legal record, including the repeated attempts through six years to secure a retrial or executive clemency. With all the relevant matter presented to the reader in language which

laymen can easily grasp, it is difficult to resist Professor Morgan's conclusion that Sacco and Vanzetti were "the victims of a tragic miscarriage of justice." The action of the Massachusetts legislature in 1939 in reforming the state's appellate procedure in such a way as would have enabled the two men to get their case reheard in the light of new evidence, constitutes at least an implied admission at an official level that they did not receive full justice.

Professor Joughin, a student of literature and its social implications, then shows how society—in Massachusetts, in the country at large, in other lands—rendered its own verdict on the case. This rich and revealing record he finds in documentary sources, in newspapers, pamphlets, and magazines, in poems, plays, and novels. He shows, moreover, how "Throughout the world men and groups of men were forced to define their position on a large variety of ethical, economic, and political problems." Finally, he assesses Sacco and Vanzetti as human beings and as thinkers. Twenty years after the electrocution, in 1947, a group of distinguished citizens, including Mrs. Franklin D. Roosevelt, Albert Einstein, Herbert H. Lehman, Dean Wesley A. Sturges of the Yale Law School, and Provost Paul H. Buck of Harvard University, offered to the Commonwealth of Massachusetts a bas-relief plaque of the two Italians—the work of Gutzon Borglum—for erection on Boston Common, but the Governor to whom fell the decision considered that public opinion in the state was still too divided to justify acceptance. *Meanwhile, the statue of Anne Hutchinson in the State House grounds seems an assurance that some later Governor will decide differently.*

This book is based upon a recognition, ~~myths~~ to the contrary notwithstanding, that judicial processes do not take place in a social void; that judges are men, not gods; that strict observance of legal forms does not necessarily assure the accused of a fair trial; and that judges and court systems are themselves judged by the society they are designed to serve. To treat the Sacco-Vanzetti affair from this all-encompassing point of view, two scholars, representing branches of learning commonly regarded as remote from each other, have joined forces in a collaboration of a most unusual kind. Specialization, the revered instrument of modern scholarship, entails the ever-present danger of concealing the whole truth by disclosing only a part. Even specialists working together may not do better than a patchwork job. Fruitful collaboration involves a genuine meeting of minds, a constant awareness of the interrelationship of each part to the whole. That Professors Morgan and Joughin have achieved notably in this respect no reader can have any doubt. Quite apart from the conclusions they reach, their method has significance. The success they have attained should light the way for all future ventures in co-operative scholarship.

ARTHUR M. SCHLESINGER

PART I

THE LEGACY TO THE LAW: DOUBT

Chapter I

WHAT HAPPENED

THE CHIEF events of the Sacco-Vanzetti case—from their simple beginning with the theft of a car, to the grim day of execution—occurred within a triangular area which has Boston at the northern point, Bridgewater to the south, and Plymouth to the southeast. Five places are important: an unsuccessful holdup was attempted at Bridgewater, and Vanzetti was convicted of this crime at Plymouth; a payroll was seized and two men were killed in South Braintree, and both Sacco and Vanzetti were found guilty of this murder in a Dedham courtroom; subsequent appeals and hearings were held in Boston. Bridgewater and South Braintree suffered the acts of violence; Plymouth and Dedham assessed the penalties. Boston, capital city of Massachusetts and of New England, witnessed the appeals and arguments before the Supreme Judicial Court, the Governor's Advisory Committee, and the Governor. Although the interest of investigators took them to Providence, New York, Atlanta, and Leavenworth, the Sacco-Vanzetti case was essentially the problem and the responsibility of eastern Massachusetts.

The commonplace stealing of an automobile on November 23, 1919, is the first happening of undisputed relevance to the case. Seven years and nine months later, on August 23, 1927, Sacco and Vanzetti were electrocuted. This long period of time saw the growth of a long and very complicated legal record; the transcript of the Plymouth and Dedham trials, the numerous briefs on appeal, and other official documents total more than six thousand pages.¹ Fortunately, it is possible to divide this mass of material into five major sections, each of which has unity in both chronology and substance. These are:

First Period. November 23, 1919, to May 5, 1920 (5 months, 13 days). Preparations for the crimes; the Bridgewater assault; the South Braintree holdup and murders; the arrest of Sacco and Vanzetti.

¹ Reference notes will be found in the CHAPTER REFERENCES section, pages 519-556 of this volume. For a description of the transcript of the record see page 519.

Second Period. May 6, 1920, to July 14, 1921 (1 year, 2 months, 8 days). Preliminary hearings; the indictment, trial, and conviction of Vanzetti for the Bridgewater assault; the indictment, trial, and conviction of Sacco and Vanzetti for the South Braintree holdup and murders.

Third Period. July 15, 1921, to October 1, 1924 (3 years, 2 months, 16 days). Motion for a new trial on the ground that the verdict was against the weight of the evidence, argued and denied; five supplementary motions, based chiefly upon new evidence, argued and denied.

Fourth Period. October 2, 1924, to April 8, 1927 (2 years, 6 months, 6 days). The preparation, argument, and denial of appeals based on the conviction and on three of the supplementary motions; the motion for a new trial based on a confession by Medeiros, argued before and denied by the trial judge and the supreme court; the significance of the records of the Department of Justice.

Fifth Period. April 9, 1927, to August 23, 1927 (4 months, 14 days). Sentence imposed by the trial judge; the petition for executive clemency, the hearings and decision of the Advisory Committee, and the denial of clemency; the motion based on the trial judge's prejudice, argued before the trial judge and denied; unsuccessful attempt to bring the question of the trial judge's prejudice before the supreme court; unsuccessful attempts to enter the federal courts; the executions.

The general question arises whether it was necessary that Sacco and Vanzetti spend seven years in jail or prison awaiting the outcome of their bitter struggle. During those years and later, the charge of long-drawn-out and sadistic prosecution was often hurled at the Commonwealth. This is an accusation which simply cannot stand. The docket of the Norfolk Superior Court, in which Sacco and Vanzetti were tried, tells an entirely different story. There was perhaps an unnecessary delay in bringing the men to trial, but the more than three hundred entries indicate clearly that responsibility for the length of the controversy rests chiefly upon the defense attorneys; they chose to fight vigorously, and to present every discoverable additional fact and argument; if they had not done so, the end would have come much sooner. They saw their duty, and it is to their credit that they did not grow weary as the case grew infinitely complex. But this is a very different matter from charging the prosecution or the court with deliberate cruelty. Sacco and Vanzetti may have suffered under a cumber-

some or inadequate code, but they themselves prolonged their day in court. They chose to try to live.

It will now be helpful to examine the events which fall within each of the five main periods. An acquaintance with the story of the case will make it easier to grasp the nature of the legal controversy.

FIRST PERIOD. NOVEMBER 23, 1919, TO MAY 5, 1920

Preparations for the Crimes. A Buick car belonging to Francis J. Murphy was stolen on November 23, 1919. This automobile may or may not have been the one used by a group of bandits who failed in an attempted holdup at Bridgewater one month later; its identification is much less certain in the early stages of the investigation than in the courtroom, and even at the trial there is considerable doubt. On April 17, 1920, two days after the South Braintree murders, it is found abandoned some fifteen miles from the scene of the crime; the car was probably the one actually used by the bandits at the scene of this crime, and it was certainly driven by them at some stage in their flight.

The license plates used at the Bridgewater holdup were stolen from a garage on December 22, 1919; those used in South Braintree were taken from a private car between January 6 and January 9, 1920; neither set appears ever to have been recovered.

The stealing of the Murphy car and the two sets of license plates furnishes the only indisputable evidence of the preparations made by the bandits who operated in Bridgewater and South Braintree. Whether these thefts were committed by the same persons, and the degree to which such preparations suggest the work of professional criminals, are questions which later assume great importance.

The Bridgewater Assault. The attempted payroll robbery in Bridgewater took place on December 24, 1919, at about seven-thirty in the morning. Two men, one carrying a shotgun and the other a revolver, attacked a truck in which was the payroll of the L. Q. White Shoe Company. The guard on the truck shot back at the bandits. Within a few seconds the episode came to an end; the truck ran into a telegraph pole; the attackers entered a large passenger car which was probably in charge of two confederates, and at once left the scene. No one was struck by shot or bullets.

Officials of the shoe company immediately engaged the Pinkerton Detective Agency, and the agency operatives made reports from December 24, 1919, through January 8, 1920. These reports were not available to the defense until the spring of 1927; they do not form part of any court record, but they were placed before the Governor and the Advisory Committee.²

The South Braintree Holdup and Murders. The major crime in the Sacco-Vanzetti case was committed on the afternoon of April 15, 1920, in the industrial town of South Braintree, twelve miles south of Boston. The payroll envelopes for the Slater and Morrill shoe factories had been made up in the western or "Number 1" factory building; nearly \$16,000 was to be taken to the eastern or "Number 2" building, some two hundred yards off. The envelopes were placed in two large boxes and entrusted to Frederick A. Parmenter, a paymaster, who was accompanied by Alessandro Berardelli, a guard. As they neared their destination, Parmenter and Berardelli were shot at by two men who had been leaning against a fence. Both victims died. The exact sequence of events, the point from which the bullets were fired, and the possible participation of a third bandit in the shooting, are the subject of confusing and partially contradictory testimony.

Immediately after the shooting a large dark-colored car moved up the street from east to west; the two murderers picked up the payroll boxes and with a third man got into the automobile. In all probability there were now five persons in the bandit car. As it left the scene of the shooting and passed through neighboring areas the occupants of the car were observed by several persons who later gave identification testimony in court. At one place a railroad-crossing tender was cursed at by a bandit who sat on the front seat. Shortly afterward the car was lost sight of.

Most of the circumstances of the fatal robbery in South Braintree were used by the state to form a basis in evidence for the case brought against Sacco and Vanzetti: there was identification testimony, a detailed consideration of bullets and shells and guns, a disputed cap, and so forth. Two very conspicuous elements, however, formed no part of the prosecution's case. The Commonwealth never in any way connected the stolen money or any other large sum with either defendant. Furthermore, no information was presented to the jury about the other three bandits. In the record these two circumstances play no important part, but they

later become important to the logic of the essential issue, guilty or not guilty.

The Arrests. Sacco and Vanzetti were seized by police officers on May 5, 1920, twenty days after the murders at South Braintree and more than four months after the Bridgewater assault. The circumstances leading up to and including the actual arrest constitute a controversial phase of the case, the subject of contradictory testimony and conflicting interpretations. The prosecution offered the relatively simple picture of police investigators who had no certain knowledge of the identity of the criminals they sought, but who knew that suspicion might reasonably be directed toward any Italians of the southern metropolitan area who might attempt to get the use of a car, especially if their conduct was in any way surreptitious. Sacco and Vanzetti met this condition on May 5 when they accompanied a friend seeking his car. Their conduct was reported by the wife of the repair man who held this car. Sacco and Vanzetti were arrested immediately thereafter.

And the general suspicion of the police must have been tremendously strengthened when it was found that both men carried guns. Vanzetti had a fully loaded five-chamber revolver and also had either three or four shotgun shells. Sacco bore a loaded automatic and twenty-three additional cartridges. In other words, "suspicious characters" turned out to be heavily armed.

The explanatory story which the defense developed had a two-fold purpose; it was intended to account for the actions of Sacco and Vanzetti and it was also directed toward discrediting the motivation and procedure of the police.

The defendants in their direct examination at their joint trial in Dedham gave as their reason for trying to get hold of an automobile on May 5 the fact that they were nervous about the possibility of arrest as radicals and were seeking a car in order to dispose of incriminating radical literature.³ Vanzetti supported this contention by showing that he had been in New York from April 26 through April 29 finding out about the mysterious detention of a fellow radical, one Salsedo. And on May 4 the ominous news had reached Boston that Salsedo was dead from an unexplained fourteen-story fall.

Sacco said that he had owned his gun for some years,⁴ and excused his carrying of it on May 5 by stating that he intended to shoot off all the cartridges in a deserted spot before his imminent

departure for Italy. The need of getting the car interrupted this plan, and consequently he was found with the weapon and cartridges on his person. Vanzetti claimed that his revolver was for protection against robbery; sometimes his business as a fish-peddler led him to carry as much as a hundred dollars for the purchase of fish from the wholesalers. The shotgun shells found on Vanzetti were Sacco's and the avowed intent was to sell them for a small sum which could be given to a radical defense fund.

Subsequent to the murder trial the defense advanced the general argument that many police officers and prosecuting attorneys were in the early months of 1920 eager to assist the federal authorities in rounding up radicals. Sacco and Vanzetti, as professed anarchists, were good prospects for deportation. But almost immediately after their arrest it became apparent that the two Italians might, by a skillful use of the evidence and an effective appeal to current prejudices, be convicted on a capital charge.⁵

In summary, then, the defense held at the trial that Sacco and Vanzetti were nervously seeking a car to dispose of radical literature, and that they were carrying guns for innocent reasons; afterward it was maintained that the police and prosecution had belatedly and accidentally unearthed a couple of appropriate victims.

SECOND PERIOD. MAY 6, 1920, TO JULY 14, 1921

Preliminary Hearings. Immediately upon their arrest Sacco and Vanzetti were questioned by Michael E. Stewart, Chief of Police of Bridgewater. They were asked about their movements on that day, whether they were anarchists or communists, and whether they believed in the overthrow of the United States government by force. On the following day, May 6, District Attorney Frederick G. Katzmann questioned Sacco about his knowledge of Berardelli, his gun, his experience in "car riding," his awareness of the South Braintree crime, his doings on April 15, and his movements on May 5. Katzmann asked Vanzetti about the events of May 5, his gun, and his activities in mid-April.

These interrogations were, in large part, introduced as testimony in the trials. It was made clear by cross-examination, and often by admission of the defendants, that they had given inexact, incorrect, and deliberately false answers to Stewart and Katzmann. They explained their lies by saying that they were afraid of expos-

ing their friends and themselves to persecution as radicals; the prosecution attacked this excuse as inadequate to explain all of the lies; the further defense was offered that those lies which did not relate to the issue of radicalism were in fact innocent errors, and that those errors arose through indifference to the events of April 15, the day of the murders. The answers and manner of Sacco and Vanzetti at these preliminary questionings furnish important evidence as to their consciousness of guilt. Were they afraid, and if so of what?

The time had now come for the District Attorney to decide upon the order of the two prosecutions which he was to undertake, the indictments he would request, and the dates of the trial proceedings.

Katzmann elected to try Vanzetti first, for the Bridgewater hold-up, and then to try Sacco for the South Braintree murders. He explained his choice, before the Advisory Committee, in 1927, by pointing out that the Plymouth Court was in session and available for the trial of the lesser crime, while the murder indictment could not be returned to the Norfolk Court before September. He also insisted that the evidence against Vanzetti as a party to the South Braintree crime was not sufficient to warrant charging him with murder until after his trial in Plymouth. Finally, he said that the long delay in getting to the murder trial was "because the defense insisted upon postponement after postponement after postponement." ⁶

The defense, in 1927, took a different view. It charged the prosecution with having deliberately arranged matters so that Vanzetti would come to trial for his life with a previous conviction hanging over his head; and Sacco, who had no police record, would find himself co-defendant with a convicted felon. It was pointed out that the Commonwealth had available from the beginning witnesses who could connect Vanzetti with the South Braintree affair. ⁷

The Indictment, Trial, and Conviction of Vanzetti for the Bridgewater Assault. Two indictments, assault with intent to rob and assault with intent to murder, were returned against Vanzetti by the grand jury on June 11, 1920. His trial opened in the Superior Court at Plymouth on June 22 before Judge Webster Thayer. A verdict of guilty was brought in on July 1, and on August 16 Vanzetti was sentenced to from twelve to fifteen years.

Some steps were taken toward an appeal but this action became submerged in the larger issue of the murder charge.

The case against Vanzetti was built on three kinds of evidence: he was linked to the stolen Murphy car and that automobile was placed at the scene of the crime, he was portrayed as having acted in a significantly guilty manner at the time of his arrest, and he was identified by witnesses as the bandit who carried the shotgun. The connection with the car was, as a matter of fact, very tenuous. The identification testimony was by no means overwhelming, and some of it "bordered on the frivolous."⁸ The consciousness-of-guilt charge was a more serious matter but the existing record does not suggest that it was made the chief argument of the prosecution.

Weak as the prosecution may have been, it succeeded in getting a conviction; it was opposed by an unconvincing defense. Vanzetti's lawyers offered an alibi intended to show that he was going about his usual routine of peddling fish. All sixteen of the witnesses called were Italians, and they spoke through an interpreter to a Yankee jury. Some were confused, others were abnormally exact and helpful. Counsel made no attempt to open up other reasonably useful avenues of defense. Vanzetti did not testify.

In 1928, after the executions, a confession to the crime of controversial value was obtained from a professional criminal.⁹

The Indictment, Trial, and Conviction of Sacco and Vanzetti for the South Braintree Holdup and Murders. Although Sacco and Vanzetti had been arrested on May 5, 1920, it was not until September that indictments were returned. The trial began in Norfolk County Superior Court, at Dedham, on May 31, 1921. Judge Webster Thayer, who had presided at Vanzetti's Plymouth trial, occupied the bench.

The facts relating to the selection of the jury are of considerable interest. A first panel of 500 talesmen was called; it yielded 7 jurors. The Court then directed the sheriff to bring in 200 more persons from among the bystanders or from the county at large. Of the 175 actually rounded up, 153 were examined before the 5 remaining places were filled. The manner of selecting the talesmen for the emergency panel was objected to by defense counsel; this issue, however, and the whole question of the constitution of the jury, is more of a social than a legal problem.¹⁰

The first body of testimony placed before the jury by the Dis-

strict Attorney identified Sacco and Vanzetti as two of the supposed five members of the gang which staged the holdup. Sacco, in addition, was designated as one of the men who did the actual shooting. This evidence was attacked by the defense both by cross-examination as to its substance and by testimony showing that some of the state's witnesses had at various times made fatally contradictory statements. Secondly, the prosecution claimed that the bullet which killed Berardelli, and a shell (the "Fraher shell") which was found at the scene of the murder, bore markings which established the fact that they had been discharged in the gun found upon Sacco at the time of his arrest. Most of the testimony in support of this view was by experts who compared the "fatal bullet" and the "Fraher shell" with test bullets and shells. The defense countered with tests and opposing judgments from its own experts. The third line of attack by the Commonwealth developed in great detail the consciousness-of-guilt issue, which had been less thoroughly explored at Vanzetti's Plymouth trial. On this point the defense replied by showing that the "guilty acts" were either not relevant to the crime in question, or were in fact innocent.

Sacco was also linked to the place of murder by a cap, and Vanzetti was charged with carrying at the time of his arrest the revolver which had presumably been taken from the murdered Berardelli. These were important corroborative elements but neither of them would probably have led to conviction on its individual merit. Furthermore, the defense had some success in questioning the validity and weight of these two lines of evidence. Sacco denied the ownership of the cap and Vanzetti established a different line of ownership for his revolver.

Counsel for the accused men, in addition to attacking the contentions of the Commonwealth, built up for them elaborate alibis: Sacco was shown to have been in Boston and Vanzetti in Plymouth at the time of the holdup. The state showed that these alibis were weak and also implied that much of the defense testimony on this issue was factitious.

A verdict of guilty was returned on July 14.

THIRD PERIOD. JULY 15, 1921, TO OCTOBER 1, 1924

In this period of more than three years, counsel for the convicted men placed before Judge Thayer numerous requests for a new trial. The motions which embodied these pleas reviewed the

Dedham trial and presented a large body of new evidence and argument. A brief statement of the content of these motions is essential to the story of the case.

The Motions for a New Trial on the Ground That the Verdict Was against the Weight of Evidence. Immediately after the verdicts, defense counsel undertook the conventional attack upon the evidence; the motions and the oral arguments have not been printed but their tenor can be gathered from the nature of Judge Thayer's adverse decision of December 24, 1921. Much emphasis is placed in this decision upon the unequaled opportunity of the jury to weigh the evidence, and the consequent strong disinclination which a judge should feel to interfere with the verdict. These general principles are applied to a discussion of the identification testimony, the fatal bullet, the bandit car and its connection with the defendants, Vanzetti's revolver, the cap said to belong to Sacco, the issue of consciousness of guilt, and the alibis. Consciousness of guilt is discussed much more thoroughly than the other elements. No important new line of controversy is suggested. However, Judge Thayer's concluding remarks suggest an emotional bias which is later to become a legal issue.¹¹

Under the law, no appeal was possible from the trial judge's decision on these motions.

First Supplementary Motion; the Ripley-Daly Motion. Defense counsel got from the foreman of the jury, Ripley, an affidavit to the effect that he had with him in the jury room three .38 caliber revolver cartridges generally similar to those in Vanzetti's revolver. He showed these cartridges to other jurors. None of this was denied by the prosecution; Ripley, himself, had died soon after making his statement. There was debatable evidence as to whether an attempt had been made to force these cartridges into Vanzetti's revolver, and the significance of certain ink markings was also argued. In substance, the defense claimed the presence of an improper exhibit in the jury room. On the basis of affidavits by the eleven surviving jurors, Judge Thayer held that:

. . . the mere production of the Ripley cartridges and the talk or discussion about them did not create such disturbing or prejudicial influence that might in any way affect the verdict or operate in any way whatsoever to the prejudice of the defendants, or either of them.¹²

In 1923, on the day that oral argument began on the supplementary motions, there was filed an affidavit by an acquaintance of Ripley's named Daly. At the time that the future foreman was on his way to answer the jury call from Dedham, Daly expressed the opinion that Sacco and Vanzetti were not guilty. Ripley, it was claimed, replied, "Damn them, they ought to hang them anyway."¹³

No comment was made by Judge Thayer on the Daly supplement to the Ripley motion.

An appeal was taken on the first supplementary motion.

Second Supplementary Motion; the Gould-Pelser Motion. Within a few seconds after the murders at South Braintree, as the escaping car moved up the street, the bandit in the right front seat fired a shot at a bystander named Gould. Only a few feet separated Gould from his would-be murderer, and the bullet actually passed through his overcoat. This witness gave his name and address to a policeman, and the information was turned over to the chief of the South Braintree police; Gould was not called as a witness by the prosecution and the defense was unaware of his importance. Now, a year after the trial, Gould made affidavit of his experience.

The judge denied the necessity of a new trial on the ground that Gould's testimony would have been no more than cumulative evidence. Interestingly enough, one page of the decision is devoted to Gould; thirteen additional pages review other evidence.

Apart from the substance of this motion, the denial raised two important issues which were later argued on appeal. Why, in the first place, did Thayer say that Gould "must have carried a correct mental photograph in his mind of Sacco for practically eighteen months, when he only had a glance in which to take this photograph on the day of the murder"?¹⁴ This is wrong. What Gould said was that when he looked at Sacco he knew that the defendant was not the man who had shot at him. And secondly, was the eyewitness whose sensitivity may well have been greater than that of all others, because he had barely escaped with his own life, properly characterized as "one more eye witness to the passing of the bandit automobile"?¹⁵

The second part of the second supplementary motion presented the affidavit of a witness named Pelser who at the trial identified

Sacco as the "dead image" of one of the bandits. Fred H. Moore, of the defense counsel, obtained a retraction, and an implication of forced testimony; Katzmänn got a retraction of the retraction and a countercharge of intimidation. The motion was denied, and appeal was taken only on the Gould affidavit.

Third Supplementary Motion; the Goodridge Motion. Through voluminous affidavits and records Moore impeached the character of one Goodridge, a witness who identified Sacco as one of the bandits. Goodridge, it appeared, had a multiple criminal record and a worthless reputation. Defense counsel contended that Goodridge was eager to please the prosecuting attorney in order to prevent further prosecution of pending charges against him, to which he had already pleaded guilty. If this situation had been brought out at the trial, the effect might have been not only to destroy him as a witness but also to discredit the prosecution. On the other hand it was clear that Moore himself had handled Goodridge very roughly. The numerous charges and countercharges reflect a bitter and unsavory struggle. Thayer, in denying the motion, exonerated Katzmänn and referred to Moore's "bold and cruel attempt to sandbag Goodridge by threatening actual arrest."¹⁶ No appeal was taken from the denial of the motion.

Fourth Supplementary Motion; the Andrews Motion. Another of the identification witnesses against Sacco was Mrs. Lola R. Andrews, and from her Moore obtained affidavits indicating that the prosecution had confused her, primed her testimony, and in some measure intimidated her. Almost at once, she took back these statements and charged Moore with high-pressure methods. In denying the motion, Thayer characterized the situation as one of alleged professional misconduct by counsel on both sides: he found Katzmänn guiltless and held that Moore's own admissions proved reprehensible behavior. Consequently, he held the affidavits by Mrs. Andrews worthy of no consideration. No appeal was taken on this motion.

Fifth Supplementary Motion; the Hamilton-Proctor Motion. The most complicated part of the Sacco-Vanzetti case is that which embraces the expert testimony on firearms, cartridges, shells, and bullets. At the time of the trial four experts testified: Proctor and

Van Amburgh for the Commonwealth, and Burns and Fitzgerald for the defense.

As one reads the record of the trial, the question naturally arises: How well did these men assist the jury to find the facts? It must, of course, be admitted that the jurors were able to use their hands and eyes, and that these aids are no longer possible to the reader of the printed page. Nevertheless, the conclusion is irresistible that the jury must have had only a vague understanding of the technical problems by which they were confronted. The evidence and the lines of reasoning offered by the experts on both sides were carelessly assembled, incompletely and confusedly presented, and perhaps—most important of all—beyond the comprehension or judgment of the ordinary intelligent layman.

Because of the obvious weakness of the trial record on the ballistics aspect of the case, the defense now offered in the Hamilton part of the fifth supplementary motion a further expert study and a review in minute detail of the whole accumulated technical evidence. Hamilton and Gill presented analyses and pictorial material for the defense; Van Amburgh and Robinson replied for the prosecution.

The affidavits, supporting arguments, and decision on the fifth supplementary motion cover 120 pages of the transcript and there are in addition 26 exceptionally fine photographic plates.

Unfortunately it is doubtful whether the dispassionate layman, after reading and studying this lengthy new analysis, can feel that he is in a better position to judge of the guilt of the defendants. It is true that some uncertainties are cleared up. But two major difficulties remain. Equally qualified experts are in disagreement. And the complexity of the problem is perhaps insuperable.

The last of the supplementary motions for a new trial on the ground of newly discovered evidence was the Proctor section of the fifth supplementary motion. It is really an entirely separate motion and was filed at the very time that the whole group was being argued. In effect it is an act of self-impeachment by one of the experts who testified for the prosecution at the Dedham trial. On October 23 Captain Proctor made an affidavit indicating that he had repeatedly told Katzmann that he would have to answer in the negative if he were asked whether he had found positive evidence that the fatal bullet had been fired from Sacco's pistol. The statement which Proctor made on the witness stand was: "My opinion is that it is consistent with being fired by that pistol." ¹⁷

In answering the implication of the Proctor affidavit, Katzmann confined himself to denying that the prosecution expert had "repeatedly" talked the matter over with him or that Proctor had "repeatedly" said that he would have to give a negative answer.

Judge Thayer did not examine Proctor before the latter's death, which took place shortly after the date of his affidavit. In his adverse ruling on the motion Thayer held that Proctor meant exactly what he had said, and that the witness must have been understood completely and accurately by the jury. The judge absolved Katzmann of any planned ambiguity which might have been harmful to the interest of defendants. Finally he pointed out that defense counsel did not even bother to cross-examine on this statement.

An appeal was taken on both the Hamilton and Proctor sections of the fifth supplementary motion.

The titanic efforts made by counsel for Sacco and Vanzetti in the preparation of the motions for a new trial in this three-year period, and the heavy burdens which fell upon the Commonwealth and the judge in meeting and deciding these pleas, had by the end of 1924 resulted in a controversy which, in its legal aspect alone, was of national significance.

FOURTH PERIOD. OCTOBER 2, 1924, TO APRIL 8, 1927

Almost immediately after the denial of the motions for a new trial, William G. Thompson became chief counsel for both Sacco and Vanzetti; Moore and his colleagues, the McAnarney brothers, withdrew.

The Preparation, Argument, and Denial of the Appeal Based upon the Conviction and upon Three of the Supplementary Motions. The first document in the appeal to the Supreme Judicial Court (the highest court in the Commonwealth), was filed on September 13, 1924; numerous other records and briefs were presented at later dates, and the whole body of material was finally complete on November 10, 1925. The length of this period of time arose from the complexity of the case and the care with which the appellate record was being assembled; there is no evidence of willful delay on either side. Oral arguments were made on January 11, 12, and 13, 1926. On May 12, 1926, the Supreme Judicial Court held: "Exceptions overruled. Verdict to stand."

Under the Massachusetts judicial system the high court of appeal was empowered to review the "law" but not the "facts." However, "law" and "facts" can be variously defined; and there is a real problem raised by their relationship to each other.¹⁸

The court could review the law. In other words, the documents in the case and the procedure in the lower court could be reviewed in order to determine whether they conformed to the legal pattern for a fair trial as established by the federal and state constitutions and the state laws. There were in the Sacco-Vanzetti case a number of irregularities but the Supreme Judicial Court held that they had not been prejudicial to the defendants.

The court could not examine the facts. That is, in Massachusetts, the court of appeal could not try the case again by weighing the evidence with a view to determining whether Sacco and Vanzetti were guilty.

But the law and the facts are not always completely separable; the strenuous debate of the courtroom often creates a situation in which philosophic distinctions are broken down by the crude force of human feeling. It is then that the trial judge performs one of his most important functions; he sits as a judicial umpire, possessed of wide discretionary powers which carry with them great responsibility.

Discretion in this connection means sound judicial discretion, enlightened by intelligence and learning, controlled by sound principles of law, of firm courage combined with the calmness of a cool mind, free from partiality, not swayed by sympathy nor warped by prejudice nor moved by any kind of influence save alone the overwhelming passion to do that which is just. It may be assumed that conduct manifesting abuse of judicial discretion will be reviewed and some relief afforded.¹⁹

And it is directly on the issue of the trial judge's discretion that the defense based its appeal in this case; Judge Thayer was charged with having on many occasions put his discretionary power to incorrect or prejudicial use. The high court read the record and held otherwise. The great importance of this question rests upon the fact that the defense later claimed that the trial judge's abuse of discretion arose from his violent personal hostility to the defendants.

The defendants appealed from the denial of a new trial on the record of the original proceedings (motions on the ground that the verdict was against the weight of evidence), and on the denial of

the first, second (in part), and fifth supplementary motions (Ripley-Daly, Gould, and Hamilton-Proctor motions). In all, twenty-eight major points were raised. Assistant District Attorney Dudley P. Ranney replied for the Commonwealth. The opinion of the court was written by Henry H. Braley, Senior Associate Justice; it was concurred in by Chief Justice Rugg and by Associate Justices Carroll, Wait, and Sanderson. There was no dissent.

Justice Braley's opinion rejects the contentions of the defendants under thirty-three headings. Many points are adversely decided upon the principal rule that the matter lay within the discretionary power of the trial judge, and many more bring in the same rule as a partial or implied consideration. Of course, since the appeal in its entirety could be looked upon as a condemnation of Judge Thayer's rulings, it was inevitable that the opinion of the Supreme Judicial Court should take the form of a decision on his discretion.

The Motion for a New Trial Based on a Confession by Medeiros, Argued before and Denied by the Trial Judge and the Supreme Court. On November 10, 1925, counsel for the defense had completed their record for the appeal; presumably their last major effort in the courts would be the argument of the briefs accompanying this record. And then, on November 18, a whole new field of evidence and a completely different line of defense was opened up. This came about through the delivery to Sacco of a note from a fellow inmate of the Dedham jail. It read: "I hear by confess to being in the south Braintree shoe company crime and Sacco and Vanzetti was not in said crime. [Signed] Celestino F. Madeiros."

This extraordinary development involved the defense, the Commonwealth, the trial judge, and the Supreme Judicial Court in a continuance of the controversy for the next seventeen months. Furthermore, the Medeiros phase of the proceedings with ironic consistency aggravated the existing conflicts in law and personality; by April of 1927 the Sacco-Vanzetti case had come to be the most violently disputed issue of its day.

Celestino Medeiros,* at the time he sent his note to Sacco, stood convicted of murder in the first degree; he had, however, appealed and there was a chance that he might not be executed. He confessed, he said, because he was moved by sympathy for Mrs. Sacco

* Medeiros appears to be the preferred spelling. The man himself sometimes wrote Madeiros; both spellings appear in the court records and in the *Transcript*.

and her children. This statement, coming from a man of the worst possible sort of reputation and criminal record, was naturally suspect, even though it virtually assured his eventual execution.

Fortunately, it is not necessary to consider the motive back of this confession; a very complete investigation was made of all the relevant facts and the findings were presented to the court in the form of exhibits and affidavits. Unfortunately, evidence gathered in this way did not have the full force of testimony given before a jury at a trial; nor was it subject to development and criticism through examination and cross-examination.

Medeiros claimed ²⁰ that he was one of a group of six professional criminals who committed the South Braintree crime. Several individuals, all of bad reputation, stated that he had on several occasions between 1924 and 1926 tied himself to this particular criminal act. It is true that he could not recall many details of the events of the fatal day, supposedly because he was frightened, half-drunk, and prone to epilepsy. On the other hand, he made no substantial errors as far as his recollection did go. The total impression which can be got from Medeiros' own statements is one of a possible but by no means proved participation.

Therefore it became necessary for Mr. Thompson and his new associate, Herbert B. Ehrmann, to investigate the potential guilt of the whole gang of bandits of which Medeiros was in all likelihood the least important member. A difficulty arose through Medeiros' persistent silence on the identity of his alleged confederates; another hindrance lay in the refusal of the Commonwealth to participate in the investigation. Nevertheless a great deal was accomplished.²¹

The Morelli gang, of Providence, Rhode Island, was apparently the group involved. A number of them were free on April 15, 1920; they were in need of money to finance a pending defense on another serious charge; several of them fitted the descriptions given by identification witnesses; and one in particular bore a strong resemblance to Sacco; the gang was thoroughly familiar with the Slater and Morrill, and Rice and Hutchins shoe factories, having stolen shipments from these manufacturers. The importance of this mass of additional information is, as a matter of fact, much greater than the mere confession of Medeiros. It permits a reasonable hypothesis along the following lines: Mike Morelli, a less important member of the gang, was in charge of the car-exchange system and did not actually go into South Braintree;

"Steve the Pole" Benkoski was the driver of the bandit car; Medeiros was the rear-seat gunner to hold off the crowd; Frank Morelli stood on the north side of the street to cover his confederates; Joe Morelli, leader of the gang, put one shot into Berardelli from his .32 caliber Colt; Tony Mancini put two shots from his foreign gun into Parmenter and three into Berardelli. And it is on the fact that such a hypothesis could be constructed, whether it was provable or not, that the defense based its motion for a new trial. The hundreds of pages of affidavits which supported this hypothesis might or might not have emerged as proved "facts" after the searching review of the courtroom. But the inherent reasonableness of the argument which could now be developed was presented as a matter of law.

The reply of the Commonwealth exists only in the fragmentary portions quoted in the appeal record. There were, of course, counter-affidavits to those offered by the defense.

Judge Thayer's denial of the motion is incorporated in a decision of fifty-five pages in which he reviews and weighs all that the Medeiros motion embraced in order to determine a single question:

. . . this Court must find that the defendants have established, by a fair preponderance of the evidence, the truthfulness of the Madeiros Confession. But this Court, if his natural feelings of humanity were stretched to the limit, cannot find as a fact that Madeiros told the truth.²²

Consequently, the motion for a new trial was denied.

Once again the defendants appealed to the Supreme Judicial Court, and in doing so they labored under two severe handicaps. In the first place, the appeal was based upon a set of affidavits and not upon the record of a trial; such a foundation must necessarily have appeared less substantial to an appellate court. Secondly, it was now inevitable, in view of the nature of Judge Thayer's decision, that the appeal should embody an attack upon the competence and fairness of the trial judge. The controversy had become personal to a high degree and, rightly or wrongly, Judge Thayer was forced into the position of chief defendant.

The first question argued in the defendants' brief was this:

. . . whether the confession, affidavit, and deposition of Medeiros, and the large number of affidavits tending to corroborate the same, con-

stituted evidence so "weighty and of such nature as to its credibility, potency, and pertinency to fundamental issues in the case as to be worthy of careful consideration" and "as to afford a probability that it would be a real factor with the jury in reaching a decision" if the motion were granted—in other words, whether it was "important evidence of such a nature as presumably would have genuine effect."²³

And in support of a positive answer to this question a very impressive mustering of the facts is offered. Especially effective is a parallel presentation of the cases against Sacco and Vanzetti and against the Morelli gang as to character, motive, opportunity, confession, identification, alibi, guilty behavior, bullets, and so forth.

Equally important to the defense of Sacco and Vanzetti was the attack in the appeal brief on the competence and bias of Judge Thayer as these qualities are reflected in his denial of the motion.

The short answering brief of the Commonwealth reasserts the familiar argument that the motion raises questions of fact which lie entirely within the discretion of the trial judge:

The Commonwealth further urges that the broad question whether Madeiros participated with others in this crime was one of disputed fact, and that the finding of the Court is final, and that not one word of his decision betrays an unconscientious judge, misusing and abusing his broad discretion, but that on the contrary that decision clearly shows that the presiding judge possessed a high degree of intelligence and acumen and a keen, analytical mind, together with unlimited courage, legal learning, and a marked ability to discover the complete weakness and lack of probative value of this mass of entirely unconvincing affidavits.²⁴

It was by now apparent to all concerned that the defense of Sacco and Vanzetti was becoming hopelessly obscured by the violent discussion which centered around Judge Webster Thayer. Under these unfavorable and confusing auspices the Supreme Judicial Court once more rendered its decision in this capital case. The adverse opinion is not lengthy; it rests in large measure upon the established right of the trial judge to consider the new evidence as a matter of fact and to reject it if he is not convinced of "the credibility of those who furnished the newly discovered evidence."²⁵

As for the quality of Thayer's decision, the Supreme Judicial Court suggests that it would have been well to deny the motion without an accompanying memorandum.

The Significance of the Records of the Department of Justice. Along with the Medeiros confession and the hypothesis built on the activities of the Morelli gang, the defense submitted evidence that there had been an ominous and prejudicial alliance between the prosecutor and the Boston office of the Department of Justice. This contention was argued, denied, appealed, and again denied along with the Medeiros-Morelli material although there was no connection between the two elements.

Consequently, after more than two and a half years of strenuous appeal to the Supreme Judicial Court, after the opening up of an entirely new line of defense through the allegation that the Morelli gang were the real criminals, the record stood clear. Sacco and Vanzetti could offer no further substantial proof of their innocence by the submission of evidence or by the propounding of argument. Under the law of the Commonwealth of Massachusetts they were now required to be brought before the judge who had presided at their trial in order that sentence of death might be passed upon them.

FIFTH PERIOD. APRIL 9, 1927, TO AUGUST 23, 1927

During the last four and a half months of the Sacco-Vanzetti case, numerous judicial and executive authorities were asked to consider both the evidence against the defendants and the question of whether they had had a fair trial; in some instances complete or partial reviews were granted, and at other times they were denied. No review had an outcome favorable to the defendants.

In the course of the several hearings new evidence was offered by both the defense and the prosecution. Unfortunately this evidence did not have the impact which its potential significance demanded. No procedure was available for its trial as a matter of "fact." Furthermore, the defense found itself more and more frequently attacking the Massachusetts courts and the state system of criminal procedure, an unfortunate but inevitable conclusion to the long battle. And lastly, the state of world-wide unrest over the issue intensified the personal animosities of counsel on both sides. Under all these handicaps neither new nor old evidence was likely to have a satisfactory hearing.

Sentence Imposed by the Trial Judge. Sacco and Vanzetti were brought before Judge Thayer on April 9, 1927, and it was ordered

that they be executed in the week beginning July 10; this date was later advanced to August 10, and again to August 22, in order that the several special motions and petitions might be heard.

Prior to the imposition of sentence Sacco made a brief statement in which he denied his guilt. Vanzetti also addressed the court; he asserted his innocence, discussed several aspects of the evidence, and commented upon the judge's prejudice. He concluded with a statement of his political and personal philosophy. These speeches, particularly that of Vanzetti, are moving documents which throw light on the character of the defendants, but they add nothing substantial to the legal narrative.

The Petition for Executive Clemency, the Hearings and Decision of the Advisory Committee, and the Denial of Clemency. On May 4, counsel presented Governor Alvan T. Fuller with a petition for executive clemency, signed only by Vanzetti. The language of the clemency petition was Vanzetti's, very slightly clarified and improved by his counsel.

Governor Fuller now undertook a study of the case. The degree to which his own investigation influenced his denial of clemency is unknown; it may have been very great or he may have been largely moved by the findings of an extraordinary Advisory Committee which he appointed on June 1.

This committee or commission—its members used both terms—consisted of A. Lawrence Lowell, President of Harvard University, Samuel W. Stratton, President of the Massachusetts Institute of Technology, and Robert Grant, a retired probate judge.²⁶ The Committee reported to the Governor on July 27. In its hearings the attention of the Committee was directed toward the record of the trial, the atmosphere surrounding and invading the Dedham courtroom, the new evidence of the supplementary motions, and the prejudice of Judge Thayer.

The formal decision of Governor Fuller in which he denied clemency was made public on August 3, four days before the public release of the Advisory Committee report. There are no statements of fact or opinion in the executive decision which throw new light on the situation.

Thus, on August 3, 1927, ended the last reasonable hope of a new trial. Perhaps, in fact, that hope should have been abandoned even earlier; Sacco may have had the clearest view when he refused to sign the petition for clemency.

The Motion on the Trial Judge's Prejudice, Argued before the Trial Judge and Denied; Unsuccessful Attempt to Bring the Question of the Trial Judge's Prejudice before the Supreme Court. Arthur D. Hill replaced William G. Thompson as chief defense counsel on August 6; Hill had long been associated with the case. Thompson must have thought that new counsel at the bar would prove less irritating; he may also have felt less sure of himself because of sheer exhaustion.

A series of last-minute efforts was made in the Massachusetts courts between August 6 and 19. One procedure was to ask for a revocation of sentence and permission for a new trial on the ground of the trial judge's prejudice. According to customary procedure this request was ordered to be heard by Judge Thayer. Counsel asked Thayer to allow another judge to hear the motion; he refused to do so, heard the argument himself, and denied the motion on the ground that he lacked jurisdiction because sentence had been passed and because more than a year had elapsed since the trial. An appeal was taken to the Supreme Judicial Court.

Simultaneously a writ of error was asked for from a single justice of the Supreme Judicial Court; the view was advanced that it was improper for a trial judge to rule on his own prejudice; reference was made to the state constitution and to the Fourteenth Amendment of the Constitution of the United States. Associate Justice Sanderson denied this petition, and an appeal was taken to the full bench of the high court.

The appeals from the Thayer and Sanderson rulings were merged and heard as one plea before the Supreme Judicial Court on August 16. That body held that Thayer had ruled correctly in denying his jurisdiction, and that the defendants were given adequate procedural opportunity through the provision that allowed them to present their petition for a writ of error to a single justice of the Supreme Judicial Court. They further held that a writ of error under common law, such as was now asked for, was obsolete. This unfavorable decision, announced on August 19, closed the Sacco-Vanzetti case in the courts of Massachusetts.

Unsuccessful Attempts to Enter the Federal Courts. While the last attempts were being made to save Sacco and Vanzetti through the courts of Massachusetts, generally similar pleas were placed before several federal judges. Three petitions for a writ of habeas

corpus were presented: to Associate Justice Holmes of the Supreme Court of the United States on August 10, to Judge Anderson of the First Circuit Court of Appeals on the same date, and to Judge Morton of the District Court for the District of Massachusetts on August 19. Justice Holmes denied the writ on the ground that it could be issued only if it were shown that the defendants had been convicted in a court which had not had the power to try them. Judges Anderson and Morton held the same view.

An ultimate step involved the seeking of a writ of certiorari; such a writ could be issued by any justice of the Supreme Court of the United States who thought there was a reasonable likelihood that the Supreme Court would hold that the case involved federal constitutional issues. Justice Brandeis refused to consider the application because members of his family had been active on behalf of the defendants. Justice Holmes denied the petition on August 19. There was no proof, he said, of a void proceeding, a sham trial. Rather, it was a question of the right of the Supreme Court to interfere with the verdict of a state court on the ground that the laws of Massachusetts were defective.

The essential fact of record that is relied upon is that the question of Judge Thayer's prejudice, raised and it is said discovered only after the trial and verdict, was left to Judge Thayer and not to another Judge. But as I put it to counsel if the Constitution of Massachusetts had provided that a trial before a single Judge should be final, without appeal, it would have been consistent with the Constitution of the United States. In such a case there would be no remedy for prejudice on the part of the Judge except Executive Clemency. Massachusetts has done more than that. I see nothing in the Constitution warranting a complaint that it has not done more still.²⁷

A similar request was laid before Justice Stone on August 22 and it was also denied; he expressed his concurrence with the view of Justice Holmes.

The Executions. All legal avenues were now closed. Shortly after midnight of August 22, 1927, Medeiros, Sacco, and Vanzetti were electrocuted. With the carrying out of the sentence of the court, there came to an end the most famous criminal trial in the history of the United States.

Chapter II

THE BRIDGEWATER ASSAULT, THE SOUTH BRAINTREE MURDERS, AND THE PLYMOUTH TRIAL

THE BRIDGEWATER ASSAULT

BETWEEN SEVEN and seven-thirty o'clock on the morning of December 24, 1919, Alfred E. Cox, paymaster of the L. Q. White Shoe Company, of Bridgewater, Massachusetts, received from the Bridgewater Trust Company in Bridgewater three metal boxes containing more than \$33,000. He carried them to a Ford truck, then standing on Summer Street in front of the Trust Company, and put them into a larger metal box fixed to the floor of the truck. The driver of the truck was Earl Graves, and on the seat beside him was Benjamin F. Bowles, a police officer, armed with a revolver. Cox locked the larger box, and sat on it with his back to the driver. The truck went along Summer Street and turned right (east) into Broad Street. A short distance ahead of the truck, on Broad Street, an electric streetcar was traveling in an easterly direction along a single track in the middle of the street between Summer Street and Hale Street, which leads into Broad Street from the right (north) about midway between Summer Street and the railway tracks and station. When the truck reached the vicinity of Hale Street, one man, armed with a revolver, and another, armed with a shotgun, fired at the occupants of the truck and Bowles returned the fire. There was also a third man with a weapon. The truck passed the streetcar on the left and later collided with a telephone pole. The men who had shot at the occupants of the truck got into an automobile and drove away. No one was injured and nothing was stolen.

On the same day the Pinkerton Agency was employed by the L. Q. White Company to apprehend the assailants. Operative J. J. Hayes arrived in Bridgewater on the 1:08 P.M. train from Boston. He made a report of his interviews with Earl Graves, Benjamin Bowles, Alfred E. Cox, Jr., Edward C. Danforth, Frank W.

Harding, Michael E. Stewart (Chief of Police of Bridgewater), and Helen Perkins; all of these persons, except Stewart, were eyewitnesses to the assault or saw the bandits. It was made under date of December 24, 1919, and is endorsed at the end, "Reported 12-26-19-M." The statements of Danforth and Perkins have little importance. Material excerpts ¹ from the other statements follow:

Graves:

"As we came down Broad Street I had the truck on the right side of the street and was following a street car bound for the depot. As the car reached Hale Street it seemed to stop and I saw a dark auto like a Hudson pull in front of it into Hale Street and stop at the corner of Hale and Broad Streets. I was then close to the rear of the car. I saw three men pile out of this Hudson car and walk toward us. One man had a shot gun and the other two had revolvers. I could see we were going to be held up and I pulled my truck across the track and shot by the electric car on the left of it. The man with the shot gun fired four times at us. I did not notice what the men with the revolvers did. . . . Ben Bowles got excited and caught hold of the wheel and we ran into a telegraph pole. . . . The man with the shot gun was 5' 6" tall, 145 lbs., age 35 years, dark complexion and black mustache and looked like a Greek. He wore no hat and had a white shirt on and no collar. He wore a dark suit and no overcoat. I cannot describe the men who had revolvers. . . . Ben Bowles fired two shots at the bandits about the time they fired on us. . . ."

Cox:

". . . As we came along Broad Street near Hale Street I heard a rifle shot. I turned around just as our auto was pulling to the left of a street car and saw a man with a shot gun ten or fifteen feet away ahead of us and aiming at us and also a man near him with a revolver in his hand. I saw only two men and noticed a big dark auto standing on Hale Street at the corner of Broad Street. After we got by the electric car the bandits fired after us. Ben Bowles fired two shots at them before we went around the car. The man with the shot gun was a Russian, Pole or Austrian, 5' 8", 150 lbs., dark complexion, 40 years of age, was without a hat and wore a long, dark overcoat with the collar up. He had a closely cropped mustache which might have been slightly gray.

"The man with the revolver was 5' 6" tall, nationality unknown, wore gray cap, complexion medium, clean shaven, 135 lbs., and wore a very dark overcoat. . . ."

Bowles:

" . . . On nearing Hale Street, I saw a black touring car in Hale Street at the corner of Broad Street and saw three men pile out of it and come toward us. One man remained in the car. He was the driver. We were about 20 yards away when the bandits approached toward us. One of the men had a shot gun another had an automatic gun, and I did not see what the third man had. The man with the shot gun opened fire on us at once and when he did I pulled out my revolver and fired twice at him. The fellow with the automatic also fired, and as he did Graves pulled our truck to the left of the street car and this blocked the bandits and saved us. . . . Graves lost control of the truck and I caught the wheel of the truck, and the truck ran into a telegraph pole. . . . I can positively identify two of the bandits. The man with the shot gun was 5' 7", 35 or 36 years, 150 lbs., had a black closely cropped mustache, red cheeks, slim face, black hair and was an Italian or a Portuguese. He had no hat on and had a black overcoat on with collar up. . . . The man with the automatic gun was short and thick set, 5' 2-3", 190 lbs., light complexioned, clean shaven, was pock marked and broad shouldered. I think he was a Russian Pole. He wore a gray cap like a police winter cap and a long brown ulster. . . ."

Harding:

" . . . At Hale Street near Broad Street I saw a black Hudson #6 auto standing with the front wheels on Hale Street and the rear wheels on Broad Street. The car was headed down Hale Street and the curtains were all drawn. It was a 7 passenger affair and bore the Mass. number 01173 C. An electric car was coming along Broad Street toward the depot. I then saw a man step out onto Broad Street from Hale Street as if to take the car. The electric car seemed to stop at Hale Street and I then observed the man drop down on one knee on Broad Street near Hale Street. He had a shot gun in his hands and he fired twice at the White Co. Ford truck as it came along in the rear of the electric car. The truck was then on the left of the car track. I then saw the man who stepped out as if to take the car with a blue Colt-revolver in his hand and he fired at the White truck several times. I also saw a third man in the street but saw no gun with him. He later got into the auto with the bandits after the shooting. Ben Bowles a police officer who was on the Ford truck with the paymaster fired twice at the bandits who also fired at the truck after it passed the electric car. The bandits then slowly got into their Hudson car and sped down Hale Street toward Plymouth Street. The man with the shot gun was slim, 5' 10", wore a long black overcoat and black derby hat. I did not get much of a look at his face but think he was a Pole. The shot gun was one of these pump guns. He dropped on his knee near a large elm

tree at the corner of the two streets. The man with the .38 calibre Colt revolver looked like an Italian. He was 5' 5½", 150 lbs., dark complexion, clean shaven, and wore a dark cap. The third man who did not seem to do any shooting wore a black soft hat, brown overcoat of rough cloth, was 5' 8", 160 lbs., stocky build, clean shaven black hair and eyes, hair nicely cut and wore a khaki shirt, soft turndown collar, and dark bow tie. I have seen him hanging around the streets here for four or five days and noticed him as a stranger. I think he is an Italian. Yesterday I saw him around here with the man with the Colt revolver in the holdup. I saw only three men get into this Hudson car. I did not notice anyone in the car. The electric car really saved the men on the White Co. truck and frustrated the plans of the bandits."

Stewart

"advised me [Operative Hayes] tonight in his office at the Bridgewater town hall that he believed that the holdup was the work of an out-of-town band of Russians with a possible confederate in the White Shoe shops. . . . He said he found that the number plates on bandit's car were stolen from a garage at Needham, Mass. one week ago. . . ."

The same operative reported, under date of December 26, that George Hassam, proprietor of the Needham Garage, stated:

"On Monday, December 22, 1919 between noon and 2.30 P.M. an Italian came into the garage and asked for a pair of number plates and said he bought a car in the next town without plates. I refused to give him any, I asked if he bought the car at Diehl's Place in Wellesley and he said 'Yes.' He was stockily built, 40 years old, five feet seven or eight inches tall, dark complexioned had a closely cropped mustache, dark eyes, and wore a black soft hat and dark overcoat. I think he was a Sicilien [*sic*]. . . . I noticed that he had on a flannel shirt and his complexion was sallow. He spoke broken English. . . . I did not learn that the number plates were missing until I heard of the hold-up on Wednesday although I have heard someone say that the plates were missed Saturday." [The plates bore number 01173 C Mass.]

The same report asserts that Chief of Police Norman MacKenzie of Needham said that the Newton police inspectors had notified him that the men in the Bridgewater holdup and the car involved fitted the description of the men and car involved in a store break in Newton a week or two earlier in which an officer was shot; he also said that on November 22 a seven-passenger Buick car, owned by Daniel H. Murphy, was stolen in Needham, and was seen in Dedham on the night it was stolen being driven

at a fast rate. "This car may be the one the bandits had." Under the same date operative H. H. reported that during the evening of Sunday, December 22, a Buick seven-passenger touring car belonging to Daniel H. [*sic, should read Francis J.*] Murphy was stolen from in front of 115 Fair Oaks Street, Needham. "It is thought that this car may have been used by the men last Wednesday as it was seen in Dedham on the night it was stolen." Both reports describe the car as having a black body with a light blue stripe around the body, with a full set of side curtains and an oval glass window in the rear. [Both reports are mistaken as to the date of the theft. It occurred on November 23, 1919.]

Another operative reported that on January 3, 1920, at 3:50 P.M. he met Frank W. Harding at Quincy, Mass.:

"Harding . . . stated that two men boarded the train at Quincy Adams, but the first time he paid any special attention to them was after they had seated themselves. He then noticed that the men were of the same build as the two gunmen who held up the L. Q. White truck. The shorter of the two wore a cap of the same color and in the same angle as did the short gunman. The tall man wore a black shiny overcoat exactly like the one worn by the tall gunman. Harding states these men were both Italian and both had tickets to Boston. He stated he was later able to get a good look at these men's faces but as he did not see them on the day of the holdup he was unable to say whether they were the gunmen or not. These two men he stated were both dark complexioned, the taller of the two having a small short cropped mustache.

"Between 4 P.M. and 6.30 P.M. we made the rounds of the four pool rooms and bowling alleys but saw no one who would answer the description of the men wanted. As Mr. Harding had to leave Quincy at 6.30 P.M. we discontinued at that time."

No definite results were achieved by the Pinkerton Agency, so far as is shown by the reports made available to the defense by the Agency.

A COLLATERAL CRIME: THE SOUTH BRAINTREE MURDERS

Shortly before 9:30 o'clock on the morning of April 15, 1920, an agent of the American Railway Express Company received in South Braintree, Massachusetts, from the baggage car of the train from Boston due at Braintree at 9:18, an iron box about twelve inches high by eighteen inches wide by twenty-four inches long,

containing a canvas bag weighing about twenty lbs. in which was the Slater and Morrill payroll. He took the box to his office, which was near the railway station in the Slater and Morrill Building Number 1 west of the railway tracks. There he took out the bag and carried it to the Slater and Morrill office. The paymistress had the sum of \$15,776.61 put into pay envelopes for the employees, and placed the envelopes in two wooden boxes, each of which was then enclosed in a steel box. At 2:55 P.M. the assistant paymaster, Frederick A. Parmenter, took the boxes, and, accompanied by Alessandro Berardelli, a special officer, left the office to carry them to the Slater and Morrill factory building, a short distance east on Pearl Street and beyond the railway tracks. About midway between the tracks and the factory building they were shot down, and the steel boxes were thrown into an automobile in which the shooters and their several confederates escaped. Berardelli died within a few minutes, and Parmenter lived for only about fifteen hours.

On April 17, 1920, an inquest was held at Quincy at which it was established that Berardelli was shot four times and Parmenter twice, and that each died as a result of the shooting.² Two physicians and twenty-three laymen testified. Their testimony revealed nothing which was not brought out at the trial of Vanzetti for the attempted holdup at Bridgewater and the trial of Sacco and Vanzetti for the murders at South Braintree, although there were some slight discrepancies. It may be worth noting that the witnesses disagreed as to the color of the bandit car, and a few described it as a Buick.

About 3:30 P.M. on the afternoon of the day when the inquest was being held at Quincy, Mr. Charles L. Fuller and Mr. Max E. Wind, both of Brockton, were riding horseback on a woods road which leads off Manley Street, West Bridgewater, and, at a place not visible from Manley Street, saw an apparently abandoned automobile, which was afterwards shown to be the stolen Murphy car. They immediately notified the police, and in a short time Policeman William S. Hill and City Marshal Ryan of Brockton arrived on the scene. The automobile was then driven to the Brockton police station.

On April 19, 1920, Simon E. Johnson, who was running a garage at Elm Square, West Bridgewater, went to the place where Mike Boda lived on the corner of South Elm and Lincoln Streets, and got Boda's 1914, five-passenger Overland automobile and

towed it to his garage at Elm Square for repairs. It was fully repaired within a week. On the evening of May 5, 1920, about 9:30 o'clock, Boda, Sacco, Vanzetti, and Orciani met in front of Simon Johnson's house, which was on North Elm Street about a quarter of a mile from his garage. Boda had come for his car but had no 1920 number plates for it, and Johnson advised him not to take it without number plates. Boda and Orciani left on a motorcycle, and Sacco and Vanzetti took a streetcar after walking about a mile. They were arrested while on the car, at about 10:00 P.M., and were taken by the arresting officers to the police station at Brockton. So far as appears in any of the published documents, Boda was never apprehended. The record indicates that Orciani was arrested but was never prosecuted. Both Sacco and Vanzetti were questioned by Chief Stewart on the night of May 5, and by District Attorney Katzmman on the following day.

INDICTMENT OF VANZETTI FOR THE BRIDGEWATER ASSAULT

On May 11, 1920, Chief Stewart filed a complaint against Vanzetti charging that he "being armed with a dangerous weapon did assault Alfred E. Cox with intent to rob him." On May 18, a preliminary hearing was held in Brockton before Police Court Judge Thorndike.⁸ Mr. John P. Vahey appeared for Vanzetti and cross-examined the witnesses produced by the prosecution, namely, Cox, Bowles, Harding, and Mrs. Georgina Frances Brooks. It appeared that Earl Graves had died in February.

Cox described the encounter in much the same way as in his reported statement to the Pinkerton operative. Concerning the appearance of the bandit with the shotgun, he testified: "He was slight build, not a heavy man, nor a tall one. He had a short croppy moustache. Well trimmed. Dark . . . a foreigner. . . . He had the appearance of high cheek bones. . . . The hair he had stook [*sic*] up. He had a scared expression." As to Vanzetti, he said: "I think he looks enough like the man to be the man." On cross-examination Mr. Vahey asked: "This minute, after looking at him this morning and after having seen him in the Police Station and after having seen him that morning, you are not now sure enough of it to swear positively he is the man you saw there on the 24th of December with a shotgun in his hand?" A. "No, I am not."

Bowles gave an account of the attempted holdup not varying

greatly from his statement to the Pinkerton agent. His description of the man with the shotgun was "about 5-8, dark complected, red cheeks, short croppy moustache. Dark. Prominent cheek bones, high, a stary look to his eyes, a glary look. Hair not very long, he did not have a hat on, hair just stuck up a little on top. . . . Black moustache." He pointed out Vanzetti as the man.

Harding's testimony as to the shooting was in general in accord with what he is reported to have told the Pinkerton man, but his description of the automobile and of the man with the shotgun and of his opportunity to observe him deserves notice: "He was a man of medium height, dark complected, a long black overcoat and no hat. Hair cut close in back. Moustache, dark. . . . It seemed to be croppy. Not little and small, but one trimmed up. High cheek bones. Swarthy, dark complected. His cheeks were red." On cross-examination he said that the bandit's mustache "was a moustache that had been cropped off, not short and croppy, but a moustache that had been trimmed up. Not long and flowing, but shorter. Did you ever see moustaches that are small but not Charlie Chaplins but an overgrown Charlie Chaplin, trimmed on the ends." He also testified that he got a "fairly good" look at him, "a very good look at him"; and that the automobile was a Buick. He identified Vanzetti as the man: "There is no question in my mind."

Mrs. Brooks on the morning of December 24th about 7:30 o'clock was walking on the southerly side of Broad Street toward the railroad station. Nearly opposite Hale Street on the southerly side of Broad Street an automobile was standing, and she crossed the street about two feet in front of it. There were four men in the automobile. Sitting at the wheel was a man whom she positively identified as Vanzetti. She proceeded to the railroad station, and while there heard two shots and saw the L. Q. White truck bump into a pole or a tree.

THE TRIAL OPENS AT PLYMOUTH

On May 25, Vanzetti was ordered held for action by the grand jury. On June 11, he was indicted for assault with intent to rob and assault with intent to murder. The petit jury was impaneled on June 22 and the hearing of testimony began on June 23. For the Commonwealth, District Attorney Frederick G. Katzmann and Assistant District Attorney William F. Kane appeared; for

Vanzetti, Mr. John P. Vahey and Mr. James M. Graham. Judge Webster Thayer presided. The place of trial was Plymouth.

The prosecution relied upon the testimony of four eyewitnesses of the shooting, of one witness who saw Vanzetti in the bandit car before the encounter, and upon circumstantial evidence tending to connect him with the bandit car and its occupants. Although there is no direct statement to that effect in the available record, it is clear from the testimony of Francis J. Murphy and Brouillard that the car referred to in the testimony of the other witnesses as having been seen "at Brockton" or "out here beside the court house" or "outside the court house" was the stolen Murphy car, found in the Manley woods. The cap identified in the testimony of Casey and Stewart as having been found in Vanzetti's room has no connection at all with the cap found at the scene of the later robbery and murders at South Braintree.

SUMMARY OF THE EVIDENCE AT THE PLYMOUTH TRIAL

In the foregoing and following summaries of the statements and testimony of witnesses, every effort has been made to omit nothing favorable to the prosecution's case and to be fair to defendant. It must be borne in mind, however, that any summary of a document is likely to reflect the opinion of the summarizer, and to include at least an unconscious comment by him.

One who forms his opinion from the reading of any record alone is prone to err, because the printed page fails to produce the impression or convey the idea which the spoken word produced or conveyed. The writer has read charges to the jury which he had previously heard delivered, and has been amazed to see an oral deliverance which indicated a strong bias appear on the printed page as an ideally impartial exposition. He has seen an appellate court solemnly declare the testimony of a witness to be especially clear and convincing which the trial judge had orally characterized as the most abject perjury. Consequently the review in this and subsequent chapters is submitted with a full realization that it is subject to all the imperfections of a comment upon the record ⁴ by one who has neither seen nor heard either the defendants or the witnesses.

Eyewitnesses of the Assault. 1. Benjamin F. Bowles, the guard, was sitting to the right of the driver of the payroll truck. He saw

a dark-colored automobile driving on the wrong side of Broad Street toward the truck. It stopped, two men got out, and the car then turned into Hale Street, when the truck was twenty-five to forty yards away. One of the men had a revolver, the other a shotgun. They ran toward the truck. The man with the revolver pointed it at the truck, which slowed up and then increased speed; he fired, and Bowles shot at him. The streetcar was near Hale Street and the driver turned to the left of it; and as the truck was swinging to the left, the man with the shotgun fired from a kneeling position about sixteen or eighteen yards⁵ from the truck. After the truck got past the streetcar, he fired again, and Bowles turned and shot at him. At that time Bowles did not know the make of the bandit car. He saw it later at Brockton, and at the trial he knew it was a Buick. The man with the shotgun was about five feet eight inches, twenty-eight to thirty years old, dark mustache trimmed on the ends or side, high forehead and high cheek bones, face red, forehead hair near an inch high, brushed back. He had no hat and wore a long black coat. Vanzetti was that man. The man with the revolver was short, wore a brown coat and a cap pulled down; he had a smooth face.

The cross-examination did not touch Bowles's description of the man with the shotgun at the preliminary hearing, where he had said that the man had a "short croppy moustache,"⁶ nor did it inquire as to the man with the revolver whom Bowles described at the preliminary hearing as having a round face, and wearing a gray flat-topped cap with a stiff visor.⁷

2. Alfred E. Cox heard an explosion which sounded like a blow-out or backfire when the truck was about midway between Summer Street and Hale Street. He turned and saw a "commotion" near Hale Street, an automobile, a heavy touring car with the front wheels on the crossing of Hale Street, and three or more people coming from the direction of the car. He then heard a second shot. When the truck got about twenty-five or thirty feet from Hale Street the third shot was fired, directly at the occupants of the truck by the man with the shotgun as the truck passed him about a dozen or fifteen feet away. This man was five feet eight, of slight build, medium complexion, prominent, rather high cheek bones, short, well-trimmed mustache, high, long forehead, hair not especially thick but standing up and back; a foreigner. Vanzetti was the man. The other man was somewhat, but not a

great deal, shorter, about thirty to thirty-five years old, one hundred forty pounds, wearing an overcoat and a dark cap.

On cross-examination he conceded that at the preliminary hearing he had testified that the man with the shotgun had a short, croppy mustache well trimmed, but said that he had discovered that he didn't know just what "croppy" meant. He also said that his identification of Vanzetti was no more positive than at the preliminary hearing: "I feel sure that he is the same man. . . . I can't say that I am positive that he is the same man."⁸

3. Frank W. Harding lived on Hale Street. On the morning of December 24, 1919, he was on his way to work as a salesman at Bassett's garage. He had gone on the left side of Hale Street toward Summer Street about sixty feet when he heard someone running a little back of him, and as he turned to cross Broad Street he saw a man running in the street some twelve or fifteen feet east of him. When this man got some three or four feet past Harding, the man shot at the White truck which was then about forty feet away. Just as the truck was passing the streetcar, he fired at it again, when it was only twelve or fifteen feet from him. He fired at it the third time after it had passed the streetcar and was about fifty yards away.

This man wore a long coat, but no hat; he was "dark complected," had a high forehead, short hair, high cheek bones, rather hard broad face, "more of a round head bullet shaped," a heavy dark mustache "that had been trimmed, the ends had been cut off, anyway . . . not what you would call a flowing mustache"; his face was red on the upper part at the cheek bones.⁹ There was another man with a revolver, who wore a brown coat and a gray cap with visor pulled down over his face so that Harding could see only a small portion of his face; he fired the revolver once at the truck and fired again when it was fifty yards down the street.

Then the men got into the automobile headed into Hale Street, a dark-blue or black, seven-passenger Buick. Harding ran back and took the number of the car, and later gave it to the Chief of Police. He saw this car "out here beside the Court House here. . . . Yesterday."¹⁰ ["Yesterday" was June 22.] Vanzetti was the man with the shotgun. He had seen Vanzetti at the Brockton police station in May. He was cross-examined about his testimony at the preliminary hearing at which he had described the man with the shotgun as "a man of medium height, dark complected, a long black overcoat and no hat. Hair cut close in back. Moustache,

dark. . . . Call it medium. It seemed to be croppy. Not little and small, but one trimmed up." ¹¹ High cheek bones, red cheeks. On cross-examination at Brockton he had said that he got a "fairly good" look at him, "a very good look at him." ¹² As to the moustache: "It was a moustache that had been cropped off, not short and croppy, but a moustache that had been trimmed up. Not long and flowing, but shorter. Did you ever see moustaches that are small but not Charlie Chaplins but an overgrown Charlie Chaplin, trimmed on the ends." ¹³

4. Maynard F. Shaw, a fourteen-year-old high-school student, was delivering newspapers on the morning of December 24, 1919. As he came out of a yard on Broad Street opposite Hale Street he saw a large touring car with curtains down drive into Hale Street and stop so that the back wheels were in the gutter of Broad Street. It was a Hudson or Buick or similar car, dark with greenish tint. Two men got out of the car; there was a third man there, but Shaw did not see him get out of the car. The first man had a gun, the other two had weapons. From a distance of one hundred forty-five or one hundred fifty feet he got a fleeting glance at the face of the man with the shotgun; he could tell from the way the man ran that he was a foreigner. This man was from five feet six to five feet eight or nine, wore a long, dark overcoat, had no hat on, hair not flowing, dark well-kept mustache, a foreign look in his face, complexion dark. He was rather knock-kneed when running. This man fired at the truck when it was about a hundred feet up ahead of him, and again when the truck was just going around behind the streetcar and was only eight or ten feet away from him. Later he ran down after the truck and leveled his gun, but Shaw heard no report. The second man wore a cap, "not black but sort of light," ¹⁴ and an overcoat; he fired his revolver at the truck at least once, maybe twice. Shaw could not be sure whether the third man fired. The men got into the automobile. The man with the mustache was Vanzetti.

Eyewitness before the Encounter. On December 24 Georgina F. Brooks walked down Broad Street toward the railroad station on the left-hand sidewalk. When she reached a point almost opposite Hale Street she saw a large Buick car standing at the curb on Broad Street and she stepped off the curb just in front of it to cross the street. She saw four men in the car, two in front and two in back. She noticed the man at the wheel watching her and heard

him speak to the man beside him in a foreign language. He looked at her severely. She took several looks at him, and he turned and watched her cross over and as she walked down. He was looking at her until she passed Hale Street. She kept "watching them" until she got to the entrance to the depot driveway. After she got to the depot, she heard two reports while looking out the window. She saw the L. Q. White truck coming down and saw two fires coming from a weapon. The man at the wheel of the car on Broad Street was a foreigner, had a dark medium-size mustache and dark complexion and had a dark soft hat on. She saw him again in Brockton. Vanzetti was that man.

The cross-examination attacked principally her account of what she had seen after reaching the station. She could not describe any of the other three men but said that the man beside the driver on the front seat also wore a dark soft hat.

Circumstantial Evidence. 1. Richard G. Casey, a student at Rhode Island State College, was starting out the back door of his home on the corner of Main and Pearl Streets, about 7:20 A.M. of December 24, 1919. He saw an automobile come down Pearl Street and stop on the opposite side of the street "right in front of the rear door of my house." ¹⁵ It stood there for three or four minutes. It was a large Buick, 1919 model; the curtains on the left were all down except the one over the front door; it was dark blue or black and had a rectangular beveled-edge plate-glass window in the rear. The Buick car outside the court house "seems a lot like" that car. Seated beside the driver was a man taller than the driver; this man wore a light-brown cap. He saw a cap of that description in Chief Stewart's office and he picked it out from among six others. He identified a cap then exhibited to him as the cap which he had picked out, and it was received in evidence. The driver of the Buick had dark hair and a short well-trimmed mustache, a little larger than a Charlie Chaplin mustache, was of rather swarthy complexion, and had a rather prominent nose. He wore a black velour or soft hat.

2. John H. King at about half past seven on the morning of December 24 was in an upstairs bedroom of his home on Grove Street and saw a dark-blue or black seven-passenger Buick going thirty-five or forty miles an hour along Grove Street. It was either new or newly painted, and the side curtains on the right side were

down. He had it in view while it traveled about four hundred feet.

3. Dr. John M. Murphy lived in the cottage opposite Hale Street. He heard sounds like two blowouts; he looked out, saw the streetcar going toward the station, and a large dark-colored automobile with curtains drawn on the right-hand side, standing on Hale Street. A man of medium height with a long-barreled weapon got into the car. Dr. Murphy went out and "about eight feet from the curb at the lower end of Hale Street" picked up "a paper shell, a common Winchester shell, twelve gauge that had been discharged."¹⁶ He identified a shell that was exhibited to him, and it was received in evidence.

4. Napoleon J. Ensher, who was acquainted with Mike Boda, saw him two or three times during the winter of 1919-20, once at his house, once when he was walking past Ensher's place, and once in the spring riding in a Buick automobile. This last was seven or eight weeks before June 25, when the roads were muddy. The Buick was a large, dark Buick. Boda at that time "just waived [*sic*] his head and gave the pass word the same as any person meeting when they pass each other."¹⁷

5. Michael J. Connolly, a police officer of Brockton, arrested Sacco and Vanzetti on a streetcar between 10:05 and 10:10 P.M., May 5, 1920. He searched Vanzetti and found four shotgun shells. He turned them over to Captain Connolly, night officer in charge. Four shells presented to him by counsel looked like the same shells; they were, he thought, all No. 12 gauge. The four shells were received in evidence.

6. Michael E. Stewart, Chief of Police of Bridgewater, questioned Vanzetti on the night of his arrest. In the absence of the jury he related to the court all the questions put to Vanzetti and the answers given, including those about his political views and about Sacco and Peppi, who, Vanzetti said, was his friend. According to the printed transcript the only material portion of the conversation which the witness was permitted to relate in the presence of the jury concerned Vanzetti's statements that (a) he went to Bridgewater to see his good friend, (b) he didn't know whether he had reached Bridgewater for he had never been there before, (c) he did not see a motorcycle in West Bridgewater, (d) he had never been in Hyde Park or Needham, and (e) he did not know Mike Boda.¹⁸

Chief Stewart described Boda, as he saw him on April 20, as

a clean-looking, slightly built man five feet four inches high, swarthy, with a long face, and a black mustache, not a Charlie Chaplin mustache, but a regular, small, neat one; he was wearing a green velour hat. He identified the cap, which was received in evidence in connection with Casey's testimony, as a cap taken from Vanzetti's room on May 11 and later picked out by Casey from a number of caps at the police station. He also stated that the number on the bandit car, as given to him by Harding, was 01173 C. The place where the Murphy car was found was thickly wooded so that the car could not have been seen from Manley Street.

7. Austin C. Cole was the conductor on the streetcar on which Vanzetti was arrested. He saw Vanzetti on his car also on the night of April 14 or 15 traveling from Bridgewater to Brockton. He was with Sacco, who paid the fares. Cole remembered Vanzetti because on that night he at first mistook Vanzetti for an acquaintance named Tony.

8. Ruth G. Johnson, the wife of Simon Johnson, answered a knock at the door of her residence, North Elm Street, West Bridgewater, about 9:15 or 9:20 on the night of May 5, 1920, and saw Mike Boda standing in the light of a lamp attached to a motorcycle which was on the street in the direction of Brockton. As she came out the door she heard Boda call out, "His wife." Two men were then coming over the bridge walking toward Brockton. She told Boda that her husband would be right out, and then went to the Bartlett house to telephone. The two men followed her. The Bartlett house was in the direction of Brockton. When she left the Bartlett house, where she remained for about ten minutes, the two men followed her back. In the light from the motorcycle, which had then been turned so as to point toward Brockton, she got a good look at one of the men, Sacco. The other man was taller and had a mustache. They stood by the motorcycle until one man called out something. Orciani was on the seat of the motorcycle and Boda was getting ready to get in. Then the motorcycle started off. She did not look to see where the two men went. [Her statement that she telephoned to a policeman was stricken.] She saw Sacco, Orciani, and another man at Brockton police station on the night of May 6.

9. Simon E. Johnson knew Mike Boda. On April 19 Simon and his brother towed Boda's Overland car from the Coacci house [where Boda lived], to Johnson's garage. About 9:35 P.M. on May 5

he saw Boda. Mrs. Johnson had gone to the door. She had told Johnson that Boda was there, and had then gone out. When Johnson went to the door he saw Boda and the motorcycle. Two men were coming from the direction of the Bartlett house. One wore a derby; the other was taller. Mrs. Johnson was also coming from the Bartlett house. After Johnson and Boda had talked for four or five minutes, Boda went to the motorcycle and got in the side-car; and all four men went away. The engine of the motorcycle was started just before Boda left Johnson. The light on the motorcycle was shining toward Brockton. The repair work on Boda's car had been done and it was ready for delivery. It was never called for.

Boda was "a man about five feet three or four, very slight, quite slight"; he had a dark complexion and a small black mustache; he was about thirty years old and would weigh 120 or 125 pounds; was usually well dressed; on the evening of April 19 he wore a dark suit and a dark velour hat, but on the night of May 5 he was shabbily dressed with old dark clothes and a slouch hat.

10. George H. Hassam ran a garage in Needham. He had five sets of automobile number plates, one of which was 01173 C. He last saw this set on the Sunday preceding December 24, 1919, and first missed it December 24 or later. Between the Sunday and Wednesday following, probably on Monday, a man had asked to borrow some number plates. The man was about five feet six or seven inches, dark hair and dark eyes, short croppy mustache, cut close as if clippers had run through it, rather swarthy complexion; he might have been a Sicilian or of Italian descent; he wore a suit of tweed mixture, a little the worse for wear, and a checkered cap; no overcoat. Hassam did not let the man have any number plates.

11. Francis J. Murphy owned a seven-passenger 1920 Buick, with blue body, black fenders, and blue wheels. It was stolen November 23, 1919. It is the car which he saw at Brockton police station on April 19, 1920, "yesterday here," "out on the street"; but two shock-absorbers and two front bumpers had been removed. The car had a black panel top with oblong plate glass in the back curtain. The number plates now on the car have "M.S.P." [Massachusetts State Police] on them.

12. Daniel M. Ryan, City Marshal of Brockton, found a 1919 or 1920 seven-passenger Buick in the woods about 150 yards in from Manley Street, West Bridgewater, and a hundred yards from a bypath. The rear glass was found in the car. Mr. Murphy identi-

fied this car as his at the police station. The car which the witness Bowles looked at was this same car.

When Mrs. Johnson was at the police station, she saw Orciani, Sacco, and Vanzetti. Orciani was quite a stout man, with a short mustache and hair lighter than that of Sacco or Vanzetti.

13. Albert L. Brouillard, a member of the State Police, saw Mr. Murphy identify his car; he saw Mr. Cox and Mr. Harding look at the car and heard them say it was similar to the bandit car. He knew Boda as "a man about five feet two or three, about probably one hundred twenty pounds, slight build, dark heavy beard, shaved and a small mustache."¹⁹

14. William H. Proctor, Captain, State Police, was tendered some shells which the prosecuting attorney said were those found on Vanzetti. He identified one as a Peters twelve gauge and two others as Winchester shells, twelve gauge. Such shells may be used in any twelve-gauge shotgun. He had had the exhibits in his possession. He had some things in his possession but he had no personal knowledge where they came from.²⁰ Nowhere does it appear what the "some things" were.

Defendant's Evidence. The defense met the prosecution's case by the testimony of twenty-one witnesses, most of whom were Italians. Of these, eleven testified positively that Vanzetti was in Plymouth on the morning of December 24. Three others gave corroborating evidence tending to support the alibi. Seven of the alibi witnesses also testified that Vanzetti always wore his mustache as it was at the trial, long and with the ends untrimmed and four others, including a barber who served Vanzetti, testified to the same effect. Many of the Italians testified through an interpreter, and the record makes it clear that he was unskillful and at times inaccurate.

Most of the alibi witnesses either bought eels from Vanzetti or saw him delivering them on the morning of December 24. They gave as their reasons for fixing the date that Italians used fish and particularly eels the day before Christmas, which is a fast day. On cross-examination they were asked about similar matters on other fast days preceding feast days, and about whom they had seen on other dates; and most of them were unable to give any effective answers. The witnesses concerning Vanzetti's mustache had to concede that they had not paid special attention to his mustache at or about Christmas time, and most of them could not say that

he had never had the ends trimmed. The most important and telling evidence of alibi was given by Beltrando Brini, a thirteen-year-old boy, corroborated by his father and mother and by Enrico Bastoni. But Mr. Katzmann induced him to say that he had told his story twice to Mr. Vahey and five times to his parents; that if he omitted anything, his papa would tell him and next time he would be sure to put it in: "Q. You learned it just like a piece at school? A. Sure." ²¹ He said also that his father had collected money for Vanzetti's defense; and that when he told the story to Mr. Vahey his parents and at least three other defense witnesses were present. In questioning Mrs. Brini there was insinuation that her story had been learned and rehearsed. Christophori, who had testified as to Vanzetti's mustache, said that a Mr. William M. Douglas whom he had seen frequently, the last time about four weeks previously, had a small light mustache. On rebuttal it was shown that Douglas had not worn a mustache at any time during the preceding eleven years.

Several witnesses were cross-examined as to whether they belonged to organizations with Vanzetti; one was asked whether he had discussed with him governmental theories, or supply and demand, or rich man versus poor man. These questions were all answered in the negative.

Vanzetti did not testify.

Before the arguments began it was stipulated that if Officer Connolly were recalled, he would testify that Vanzetti, when arrested, was carrying a loaded revolver of .38 caliber, with five chambers.

The jury on July 1 found Vanzetti guilty of assault with intent to rob and of assault with intent to murder.

COMMENT ON THE EVIDENCE

If the testimony given at the trial is to be credited, the witnesses Bowles, Cox, Harding, and Brooks had an excellent and adequate opportunity to observe the features and appearance of the shotgun bandit. Shaw was in a less advantageous position. Bowles and Cox were doubtless much excited, for the gun was pointed at them; but this very circumstance would justify the conclusion that the picture of the shooter would be stamped upon their memories. Harding had a close view from another angle. Mrs. Brooks certainly had the driver of the car under careful scrutiny in a situa-

tion which would cause her to remember his face. Shaw had only a fleeting glance. All of them had seen Vanzetti at the Brockton police station, and all but Shaw had identified him at the preliminary hearing as the shotgun bandit. There was available no recorded statement of any kind by any of them of the features of the bandit made before Vanzetti had been arrested and presented for possible identification. Even so, it is interesting to note that both Cox and Harding at the trial made modifications in the testimony which they had given at the preliminary hearing, and thereby caused their descriptions to conform more nearly to the features of Vanzetti. Cox gave every appearance of sincerity, but not so much can be said for Harding. Bowles was not asked about the preliminary hearing but in fact he changed his earlier "short croppy moustache" to "moustache was trimmed on the side," or "trimmed on the ends." And if the Pinkerton reports had been available to the defense, Cox would have had to explain why he had said the mustache was closely cropped and might have been slightly gray; and Harding, if he did not deny, would have been embarrassed to account for, his statements (a) that he did not get much of a look at the face of the man with the shotgun, who wore a derby hat, but thought that he was a Pole,²² and (b) that he could not identify as the bandits the two men whom he saw on a railway train on January 3, as he did not see the faces on the day of the holdup. Indeed the successive stories of Harding make it seem probable that his memory was being molded to fit the theory of the prosecution, but this was not so apparent at the trial. Mrs. Brooks was badly discredited as to a part of her testimony, and Shaw's identification was almost worthless. On the whole, however, this evidence by eyewitnesses, standing alone, was quite as satisfactory as is usual in cases of this sort, and was sufficient of itself to justify a verdict of guilty. It was in direct conflict with the alibi evidence but not with testimony of any witness of the encounter.

The circumstantial evidence consisted of several items tending to corroborate the direct evidence:

(1) The shell found by Dr. Murphy at the scene of the holdup and the four shells which Vanzetti had in his pocket when arrested. These were a basis for an inference that Vanzetti had available the weapon and ammunition used in the holdup.

(2) The testimony as to the similarity of the bandit car to the

stolen Buick automobile found in the Manley woods in April, 1920, had some tendency to prove that it was the bandit car.

(3) The testimony (a) of Casey describing an occupant of a car, which was probably the bandit car, in terms similar to the description of Boda as given by several other witnesses; (b) of Ensher that Boda was riding in or driving a similar Buick car shortly before the stolen car was discovered; (c) of Mr. and Mrs. Johnson concerning the conduct of Boda, Orciani, Sacco, and Vanzetti in the vicinity of the Johnson house; and (d) of Chief Stewart that Vanzetti denied his presence there and denied his acquaintance with Boda, and that Vanzetti when arrested shortly after he left the vicinity of the Johnson house, was armed with a fully loaded .38 caliber revolver. Possible inferences from this group of facts were that Boda was one of the bandits; that he had the use of the bandit car after the attempted holdup; and that Vanzetti lied about his relations with Boda and his suspicious conduct before the Johnson house because he was conscious that he was guilty.

The defense offered no evidence to controvert any of this evidence. Dr. Murphy, Chief Stewart, and Mr. and Mrs. Johnson were uncontradicted. The inference as to the identity of Boda as an occupant of the bandit car was woefully weak, and the inference of consciousness of guilt, necessarily built upon Boda's participation in the holdup, was still weaker. But the failure of the defense to put in any explanatory evidence gave these items unmerited weight. It also added considerable value to the testimony of Dr. Murphy and Chief Stewart.

The worth of the testimony for the defendant depended upon the credibility of the witnesses. Their statements as to buying eels from Vanzetti are convincing, but their reasons for fixing the date as the twenty-fourth rather than the twenty-third are in many instances not persuasive and were not then supported by any documentary evidence of purchases by Vanzetti. The testimony of Mrs. Fortini who was Vanzetti's landlady, of Di Carli the baker, and of the Brinis—father, mother, and son—has in print all the earmarks of reliability. The imputation against the landlady's testimony because she would not make a positive statement to the police officers about Vanzetti's whereabouts on Christmas Day was not serious. The cross-examination of the Brini boy, considered in connection with his own redirect examination and the testimony of his mother, does not destroy the worth of his statement.

It must be said, however, that this cross-examination, taken alone, tends strongly to show that a group of Italians had framed an alibi for Vanzetti and had coached this bright youngster to tell his story with details which would tie in with the incidents related by other witnesses. The evidence as to the condition of Vanzetti's mustache came almost exclusively from Italians, and was whittled down by admissions on cross-examination, so as to make the difference between the prosecution and the defense in this respect seem negligible. When it is remembered that much of the alibi testimony was given through an interpreter, who was unskillful, to say the least,²³ and much of it in English by persons who understood and spoke the language imperfectly, it is not surprising that the jury credited the eyewitnesses of the encounter and concluded that the defendant's witnesses were either mistaken or lying. And though the law commands that a jury shall draw no inference against a defendant from his failure to testify, no jury can obey this command in a case like this. Vanzetti was the one man in the courtroom who could not have been mistaken. He knew whether the answers he had given on the night of his arrest to Chief Stewart were true or false; he knew all about the shells found in his possession and why he was carrying a loaded revolver. He knew whether he could drive an automobile and where he was and what he was doing on December 24, 1919. But he remained silent, and left the jury to decide between the eyewitnesses and the alibi witnesses without his aid. In these circumstances a verdict of not guilty would have been very unusual.

CONDUCT OF THE TRIAL

There was nothing unusual in the opening speech of Assistant District Attorney Kane for the prosecution. He did overstress the importance of the case, but he was not allowed to continue on this point over objection. Included in his outline of the expected evidence was the finding of a Peters shell of 12 gauge near the stolen car in the Manley woods; but no evidence of this fact seems to have been admitted, although Mr. Katzmann's statement in argument to the Court outside the presence of the jury asserts that it was.²⁴ The examination of witnesses for the prosecution was done in the customary manner. District Attorney Katzmann's cross-examination of the defendant's witnesses was severe; it contained insinuations of their insincerity, and at times it seems to have been

somewhat insulting. It was on the whole, however, quite in keeping with the usual practice of prosecutors in this country, and could not with any show of reason be called misconduct.

His questions to Di Carli, Sassi, and Brini about Vanzetti's belonging to organizations with the witnesses and discussing with them political and economic questions may be justified as seeking information bearing upon credibility.

The opening by Mr. Graham fairly outlined the defendant's case, and his presentation of the evidence was an ordinary performance. Mr. Vahey's cross-examination was reasonably thorough, but no one could say that the case was closely tried or vigorously fought for defendant, though on a few occasions Mr. Vahey did exhibit impatience with Judge Thayer's attitude.

The record is full of notations of conferences at the bench, the proceedings at which were not stenographically taken. There is no way of telling whether they were beneficial or prejudicial to the defense. The recorded decisions of Judge Thayer on objections to evidence seem on the whole as favorable to the defense as to the prosecution. His stupid rulings as to the admissibility of conversations are about equally divided, and defendant's counsel caused the exclusion of a conversation between Boda and Johnson which might have been very helpful to defendant after the Court had brought out the fact that Boda's car had been repaired and was ready for delivery at the time of Boda's visit on May 5, 1920. Judge Thayer's refusal to permit Chief Stewart to relate to the jury what Vanzetti had said on the night of his arrest except in so far as it related to Vanzetti's experiences on that night and his denial of acquaintance with Boda was quite as favorable to the defendant as could be asked. His handling of defendant's expressed dissatisfaction with the interpreter is somewhat exasperating, but he was frequently as dense in dealing with some of Mr. Katzmann's points. In his charge to the jury he particularly told the jury that no inferences were to be drawn against witnesses because they were Italians and that "people are supposed to be honest, to be truthful, to be innocent." Counsel for the defense took no exception to any part of the charge.²⁵

SUBSEQUENT EVENTS

In the Superior Court. Counsel for defendant on August 16, 1920, filed a bill of exceptions in which they alleged as errors only

the court's ruling in admitting in evidence the shell picked up by Dr. Murphy, and the court's refusal to strike the testimony of Mr. and Mrs. Johnson.²⁶ The bill was never allowed, and no further proceedings were taken with respect to it.

Vanzetti's Version. After he had been in prison for six years Vanzetti published his version of the case. He complained that his counsel had failed to make proper preparation for the trial. They had not found or called available eyewitnesses. They had insisted that Sacco should not testify concerning Vanzetti's acquisition of the shotgun shells. They had by persistent argument succeeded in persuading him that if he went on the stand he would be cross-examined as to his political views and would be convicted because of them. He charged a deliberate betrayal by Mr. Vahey.²⁷ It is somewhat puzzling to account for the nonproduction of a single eyewitness for the defense. The reason for failing to call Sacco and Mrs. Sacco to explain how Vanzetti came to have the shotgun shells nowhere appears. Advice to a defendant to refrain from testifying and to rely solely on other witnesses requires strong supporting considerations, but its soundness cannot be judged without full knowledge of all pertinent factors. Where a defendant insists upon his innocence and expresses a strong desire to tell his whole story to the jury, counsel's efforts to dissuade him can be justified only by extraordinary circumstances. A final decision should not be made until all other available evidence for the defense has been introduced. Here the cross-examination of defendant's witnesses, with its accompanying insinuations, must have revealed the tenor of the attack upon these compatriots of Vanzetti, summarized thus as Vanzetti quotes it: "The dagoes stand together."²⁸ This must have suggested the practical certainty of a verdict of guilty in the absence of testimony by the defendant himself, and the high probability that Vanzetti as a witness could do himself no harm and might do himself much good. The record taken alone may indicate inadequate industry, inefficient preparation and performance, and bad judgment. If Vanzetti's statements are to be trusted Mr. Vahey's attitude toward him and his case was inexcusable. There is, however, nothing to justify the accusation of corruption against either Mr. Vahey or Mr. Graham. And it must be said that in this discussion Vanzetti makes statements concerning both this trial and the trial of himself and Sacco at Dedham which are not sustained by the printed