

THERE IS JUSTICE



A SUMMARY OF THE SACCO-VANZETTI CASE

SACCO-VANZETTI NATIONAL LEAGUE

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PROGRAM

- I. To establish the innocence of Sacco and Vanzetti.
- II. To publish the complete record of the Sacco-Vanzetti case.
- III. To publish an examination of the Lowell report, and the stenographic account of proceedings before the advisory committee.
- IV. To publish the letters and utterances of Sacco and Vanzetti with an introduction.
- V. To further judicial reform in the several states in order to insure justice for the individual.

There Is Justice

THE average American does not yet understand the significance of the world-wide demonstrations in the Sacco-Vanzetti case. Satisfied with the verdict of the Massachusetts court, supported by the opinion of four eminent men, he views the outcry in behalf of the two Italians either as misplaced sympathy for criminals or as radical propaganda against the institutions of our country. His endeavor, therefore, is the enactment of laws to prevent delay in executing dangerous men in future.

Foreigners of all classes, however, and liberals in this country suspect a conscious or unconscious conspiracy to suppress labor agitators and anarchists, untouchable under the law, by condemning them to death for a capital offense of which they were innocent. This is a charge so serious that the crime of individual murder fades into insignificance compared to it. Surely every American must see the necessity of clearing our judicial system of this taint, or, if the suspicion proves well grounded, of setting our house in order to prevent a repetition of so flagrant a miscarriage of justice.

This pamphlet presents a brief summary of the facts surrounding the Sacco-Vanzetti case from which a conclusion may be reached concerning the fairness of the trial and the sufficiency of evidence. The complete testimony is now being printed from the stenographic notes, requiring a tome of about 6,000 pages, and will be available for all.

The sponsors of this summary are not Socialists, Communists or Anarchists. They are not in sympathy with the political theories of Sacco and Vanzetti. They favor the enforcement of laws against criminals. Nevertheless, they are confident that these men did not receive a fair trial in 1921 and were prevented by legal technicalities during the succeeding six years from obtaining a new trial.

THE CLUE

On April 15, 1920, a paymaster and his guard were murdered at South Braintree, Massachusetts, by a gang of about five bandits who escaped with a pay roll of over \$15,000. The police were searching for the perpetrators of this brutal crime and came upon their clue in connection with the deportation of a radical named Coacci.

An Immigration officer from Boston requested the police of Bridgewater to accompany him to Coacci's house on April 16 to secure Coacci who had failed to appear as arranged. They found him dressed ready to go and took him away from his family, deporting him on April 18. His trunk was not taken on the same steamer.

On April 17 a Buick car was found abandoned in Manley Woods, about two miles from Coacci's house. The right curtain was flapping and the glass was missing from the rear curtain as in the bandit car. There was a bullet hole through the upholstery. The newspapers the day after the crime had reported the bandit car as a green Buick, based upon statements by Swartz, Buckley, Holland and others; the car found in the woods was blue. The bandit car was reported as being dilapidated and dirty; the blue Buick was almost new in appearance. On account of these similarities and discrepancies two newspapers suggested that the car found in the woods might have been planted there.

The track of a smaller car was reported near the abandoned Buick. A tire mark similar to the tire on the blue Buick was said to have been seen in the shed in which an Overland car was kept on Coacci's place. This evidence, after having been presented to the jury and commented upon, was withdrawn from their consideration because it was not established that it in any way had anything to do with either Sacco or Vanzetti. The trunk packed by Coacci was supposed to contain the stolen money. When the police opened the trunk in Italy, after it had been

sent by express, no money was in it, but the Bridgewater police continued their reliance upon the clues of the trunk and tire marks and laid a trap for the men they wished to capture.

The Overland car kept in Coacci's shed belonged to Boda, another radical. On April 19 it was towed to Johnson's garage for repairs. The police notified Johnson to let them know when anyone came for the car.

On May 5 Boda, Orciani, Sacco and Vanzetti went to the garage to get the car in order to transport a mass of radical literature which they feared would bring about their deportation. Mr. Johnson told them that the license numbers were not on the car and they left without it, Sacco and Vanzetti taking the trolley, Boda and Orciani leaving on a motorcycle. The police were notified and arrested Sacco and Vanzetti as they arrived in Brockton. Orciani was arrested the next day. Boda went to Italy, and while the authorities hinted that he was one of the bandits they never made any effort to secure his return, although they discovered his address after the verdict. In fact Boda offered to return if requested.

Orciani, supposed to be one of the bandits, was released later when it was found that he had worked in a foundry on the day of the South Braintree crime and also on December 24, 1919, when an attempt was made to hold up a pay roll truck in Bridgewater. Sacco's time card also showed employment on December 24, but on April 15 he had been absent from the factory. Vanzetti peddled fish and had no employer to furnish an alibi. He was therefore charged with both crimes while Sacco was held only for the South Braintree murder.

No proof has been produced to connect Orciani, Boda or Coacci with any crimes. They were not accustomed to seize by force what they wanted for themselves, but were striving, wisely or foolishly, to improve conditions for the workers. Sacco and Vanzetti were suspected because found in company with these men. None of the five had ever been seen in the bandit car prior to the murder, nor had the Overland car been connected with any crime. In fact, this car had not been operated that year.

The suspicion that fell upon Sacco and Vanzetti was because of their acquaintance with radicals, not criminals.

In 1920 the Department of Justice was rounding up the Gallieni group of anarchists to which Sacco and Vanzetti belonged and had detained one of them, Salsedo, for eight weeks without a warrant in the New York Municipal Building, putting him through the third degree until he jumped or was thrown from the fourteenth story window and was killed. Vanzetti protested against the treatment of Salsedo and arranged a meeting in Massachusetts where he was to speak against the Department. Before the meeting took place he and Sacco were arrested.

THE ACCUSATION

The three arrested suspects were not charged immediately with the hold-up or the murder. They were grilled about the revolvers which each had on his person and concerning their radical views and associates. Vanzetti denied that he knew Boda; both he and Sacco told several lies concerning their movements on the day of arrest, (not the day of the crime) and about their radical friends. After being charged with the murder they made no further misstatements. Sacco had in his pocket a handbill advertising the meeting of protest against deportation. Vanzetti had three shot gun loaded shells and Sacco several revolver cartridges. Both said they carried guns for self protection, Sacco having acquired the habit when a night watchman.

Sacco and Vanzetti had continued to live in the neighborhood where they were known, not changing their mode of living since the murder. Both men were earning a fair income, working steadily. Sacco sometimes earned \$75 per week, and had \$1,500 in the savings bank, and had paid a Federal income tax. None of the stolen money was ever traced to them or their friends. The police claim that both men attempted to draw their guns when arrested. Sacco and Vanzetti denied this. The bandits had used guns freely to effect their "get-away". Sacco and Vanzetti did not draw their guns when arrested by a single policeman. They submitted quietly to arrest, though they knew they were guilty of the charge for

which they *supposed* they were arrested (that of radicalism) and about which the police interrogated them for some hours.

THE BRIDGEWATER TRIAL

Contrary to the usual procedure Vanzetti was tried first for the lesser offense of attempting a hold-up in Bridgewater while the charge of murder was hanging over him. Sacco was kept in prison for a year awaiting trial.

The identification of Vanzetti was by witnesses whose testimony differed radically from what they told a Pinkerton detective on the afternoon of the crime, December 24, 1919. Part of the evidence given at the trial was: "I think he is the man", "I feel so but I may be mistaken." One witness described the criminal as having a "cropped" or "trimmed" or "Charlie Chaplin" mustache, and there sat Vanzetti with an enormous flowing mustache which he had always worn. The witness most certain of his identification was a twelve-year-old boy who caught "a glimpse" of the man running away and he "knew by the way he ran that he was a foreigner."

Twenty witnesses testified that they had seen Vanzetti in Plymouth on the day of the hold-up in Bridgewater, nine of them having bought eels from him. They fixed the date by the fact that the day before Christmas is a fast day so they had bought eels as is customary among Italians. Vanzetti was dissuaded by his counsel, John Vahey, from taking the stand in his own defense, being told that he would be questioned about his radical views. His counsel refused to call the Chief of Police and others who could have testified to Vanzetti's good character. (The Chief of Police and another officer did take the stand at the later trial but their testimony as well as evidence of Sacco's good reputation, was eliminated after Judge Thayer stated he would allow the Commonwealth to meet it with evidence revealing Vanzetti's prior conviction.) Mr. Vahey took no exceptions so no appeal was possible. Vanzetti accused Vahey of disloyalty to

him. Vahey later became a partner of the prosecuting attorney Katzmann.

Vanzetti was convicted without any credible testimony against him and was sentenced to twelve to fifteen years in prison. The conviction was known to the jury in the second trial and bore heavily against him and his friend Sacco.

Both trials were held when war prejudices were rabid. The men accused of murder at South Braintree were questioned about their love for the United States and their trip to Mexico to avoid the draft. As Italian citizens they were not constitutionally liable for the American draft but our courts had held that our conscription act superseded treaties pledging us not to conscript aliens, and many foreigners had been drafted. So Sacco and Vanzetti had reason to fear conscription in 1917 as well as deportation in 1920. They admitted that they had run away because they hated war—damaging evidence before a jury instructed by the judge to do its duty like soldiers after responding to the call for jury duty "in the spirit of supreme American loyalty."

THE MURDER TRIAL

Apart from the consciousness of guilt displayed by the men when arrested, which was due to their fear of deportation, the evidence connecting Sacco and Vanzetti with the crime at South Braintree was furnished by eye-witnesses and by experts. The trial began May 31, 1921, at Dedham, and lasted nearly seven weeks. The judge was Webster Thayer who had also presided at the Bridgewater trial.

Five witnesses definitely identified Sacco as one of the bandits. Mary E. Splaine was working in a factory when she heard a shot. She ran to a window, over 60 feet from the scene of the crime, and saw a man previously unknown to her for less than three seconds in a car travelling over 15 miles an hour. She testified as to Sacco's appearance: "He weighed possibly from 140 to 145 pounds. He was muscular, an active looking man. His left hand was a

good sized hand, a hand that denoted strength . . . the forehead was high. The hair was brushed back and it was between, I should think, two inches and two and one-half inches in length and had dark eyebrows, but the complexion was a white, peculiar white that looked greenish." This was the description she gave at the trial, after having been shown Sacco alone. She was not made to pick him out from a line-up in the customary manner. At the preliminary hearing, about three weeks after the commission of the crime, when the event was fresh in her mind, she had testified that she could not identify the man she had seen in the car, saying: "I don't think my opportunity afforded me the right to say he is the man." In fact she is said to have identified another man as the bandit until it developed that he was in jail on the day the crime was committed. During the year, in which period she was given the opportunity of seeing and studying Sacco several times, she had learned further details, but nevertheless was in error about Sacco's hand which was smaller than the average.

Frances Devlin looked out of the same window as Mary Splaine. She thought Sacco was the man in the car but was not sure at the preliminary hearing. At the trial a year later she had no doubts.

Pelser saw the bandit car from another window. He admitted on May 6 or 7 that he was unable to make any identification, saying, "I did not see enough to be able to identify anybody." At the trial in June, 1921, he said that the man in the car was "the dead image" of Sacco. Mr. Katzmann, the District Attorney, explained the discrepancy as follows: "He was frank enough here, gentlemen, to own that he had twice falsified before to both sides, treating them equally and alike, and he gave you his reason."

Lola Andrews testified that she had spoken several hours prior to the murder to a man near a car standing outside the Slater & Morrill factory before the murder. After Sacco's arrest she identified him as the man. Mrs. Campbell who was with her said that the man they had spoken to was a different man. Harry Kurlansky testified

that Lola Andrews said to him about ten months after the crime, "The Government took me down and want me to recognize those men and I don't know a thing about them. I have never seen them and I can't recognize them." Judge Thayer asked Kurlansky why he had not made an effort to find out who represented the Government, implying that it was the duty of this small shopkeeper to ferret out intimations of police improprieties. George W. Fay, a Quincy policeman said that Lola Andrews told him that she had not seen the faces of the Braintree men. Alfred Labrecque, secretary of the Quincy Chamber of Commerce, also testified that Lola Andrews had told him she could not identify any of the Braintree bandits. In spite of these contradictions the District Attorney addressed the jury: "I have been in this office, gentlemen, for now more than eleven years. I cannot recall in that too long service for the Commonwealth that ever before have I laid eye or given ear to so convincing a witness as Lola Andrews."

Carlos E. Goodridge (who after the trial was discovered to be a fugitive from justice in another State with four aliases and a criminal record which embraced bigamy, perjury, larceny and horse-thieving) said that he saw the automobile and that Sacco was in it. Goodridge's employer, Andrew Manganaro, testified that Goodridge had told him that he was so scared that he could not remember the faces. Three others contradicted Goodridge.

No one claimed to have seen Vanzetti do the shooting, but he was placed in the bandit car by two witnesses. Dolbeare said he saw him hours before the murder. LeVangie, the gate tender at the railroad crossing, identified Vanzetti as the driver of the bandit car, but McCarthy, a fireman of the New Haven, testified that LeVangie told him he could not identify the occupants of the car. The District Attorney admitted that Vanzetti could not have been driving the car but suggested to the jury that Vanzetti was behind the driver.

Thirty-one witnesses testified that no one of the men they saw in the bandit car was Vanzetti. Thirteen witnesses testified that they had seen Vanzetti in Plymouth

selling fish on the day of the crime, or corroborated such evidence. Five witnesses testified that they had seen Sacco in Boston on April 15, one of them being an employee of the Italian consulate in Boston who remembered the event because Sacco had produced a large framed picture of himself when applying for his passport instead of the usual passport photograph, causing merriment in the office.

This was the case of the prosecution so far as identification was concerned. After the conviction even Judge Thayer abandoned the identification by eyewitnesses as the ground upon which the jury's verdict rested, denying a new trial when a new witness was discovered. He said: "These verdicts did not rest, in my judgment, upon the testimony of eyewitnesses. . . . The evidence that convicted these defendants was circumstantial and was evidence that is known in law as 'consciousness of guilt.'"

Most of the witnesses for the prosecution were at some distance from the crime, whereas Roy E. Gould, Harry Swartz and Frank J. Burke were within ten feet of the bandit car, two of them having been fired at. They reported to the police that Sacco and Vanzetti were not among the bandits. They were not called by the prosecution. The defense was not notified of their existence but found Burke in time for the trial. He had called at the jail soon after the arrest of the three Italians and looked them over carefully. When he told Marshall Ryan that the men arrested were not in the bandit automobile, a man in civilian clothes whom he had never before seen said, "Your evidence would be of no value."

Two expert witnesses, Van Amburgh and Proctor, testified for the prosecution regarding one bullet found in the dead man's body. Judge Thayer charged the jury that these experts had sworn that the bullet had passed through Sacco's revolver, whereas Captain Proctor had merely said that "it is consistent with being fired from that pistol." Experts for the defense denied that the bullet came from Sacco's gun. The prosecution failed to show where the other five bullets found had come from.

Both Sacco and Vanzetti took the stand and explained

that their apparent consciousness of guilt was due to fear of trouble on account of their radical views. They were found guilty and sentenced to death.

THE APPEALS

Judge Thayer refused the application for a new trial based upon the exceptions taken to rulings at the trial. He denied a new trial after it was discovered that foreman Ripley had carried into the jury room several cartridges like those put in evidence. He denied a motion for a new trial when an affidavit was obtained from Daly, a friend of Ripley, declaring that before the trial he had expressed belief in the innocence of Sacco and Vanzetti, to which Ripley had replied, "Damn them, they ought to hang anyway." He denied the right to a new trial when Hamilton claimed to have discovered evidence that the bullet had not come from Sacco's gun. He denied a new trial when it was discovered that Gould had been within five feet of the car as the shots were fired, receiving a hole through his coat, and had told the police that Sacco and Vanzetti were not there. He denied a new trial when Captain Proctor, a witness for the prosecution, made affidavit that he had informed the District Attorney that the bullet had not come from Sacco's gun, but had been instructed by the District Attorney to testify in such a manner as to give the impression he was of the opinion the fatal bullet had come from Sacco's gun. He denied a new trial when Madeiros confessed that it was he, and not Sacco and Vanzetti, who was implicated in the crime. He denied a new trial when his own prejudice was disclosed by the people to whom he had talked during the trial. He was appointed by a court, to pass upon his own prejudice.

No other court or judge ruled upon the facts brought out at the trial concerning the guilt or innocence of the convicted men. They merely reviewed the legal technicalities, deciding that Judge Thayer had committed no error. The Massachusetts court could not even inquire, as would a New York court, whether the facts as set forth in the printed record justified the verdict.

The State Supreme Court upheld Judge Thayer, ren-

dering the following decision discriminating between law and justice: "It is not imperative that a new trial be granted, even though the evidence is newly discovered and if presented to a jury would justify a different verdict."

Sacco and Vanzetti were sentenced to death by electrocution during the week of July 10, 1927. Public outcry redoubled. Governor Fuller reprieved the convicts for one month and agreed to make an investigation of the case assisted by President Lowell of Harvard, President Stratton of the Institute of Technology and ex-Judge Grant. The country breathed again. No one doubted that the decision of these illustrious men would be fair. Their intelligence was so preeminent, their honesty so well established that everyone expected an impartial examination of the evidence. When they unanimously decided that the two Italians must die, conservatives were satisfied. Men of standing had examined the case; therefore they themselves need give the matter no further thought.

A critical examination of the reports published by the Governor and his Advisory Committee reveals surprising partiality. Not a sentence in the reports favored the defense. The investigators confined themselves to upholding the prosecution. Witnesses for the State were believed; those for the defendants were not.

Governor Fuller wrote regarding the confession of Madeiros: "It is popularly supposed he confessed to committing this crime." This wording gives the impression that Madeiros did not actually confess. The Advisory Committee took the same attitude, saying: "The impression has gone abroad that Madeiros confessed committing the murder at South Braintree. Strangely enough this is not really the case. He confesses to being present, but not to being guilty of the murder." These same investigators permitted Vanzetti to go to his death merely for being present at the crime, not for firing a shot! They did not give the public the wording of Madeiros' confession which was: "I hear by confess to being in the South Braintree shoe company crime and Sacco and Vanzetti was not in said crime." His confession was not considered of importance in clearing Sacco and Vanzetti be-

cause he could not remember the route taken by the bandit car seven years before and other details. Yet he did remember that the car had stopped at Mrs. Hewins' house to inquire the way, which fact was verified. The Committee, like Judge Thayer, either omitted or misstated many striking facts which corroborated the story of Madeiros.

Governor Fuller had been impressed with the evidence of his boyhood friend, paymaster Cox of the L. Q. White Shoe Company, who had been on the truck at Bridgewater when the attempted hold-up took place. At the trial Cox said that Vanzetti was the bandit and it was not until May, 1927, that Mr. Thompson of the defense discovered from the Pinkerton Detective Agency that Cox had said on the day of the attempt that the bandit had a closely cropped mustache, slightly grey. The Governor showed no interest in the discrepancy between this description and Vanzetti's brown flowing mustache.

Governor Fuller intimated to callers that he knew a great deal that had not come out at the trial but did not state what these things were. He did not sanction the publication of the complete proceedings before the Advisory Committee. He declined the official offer of the Department of Justice to open its files. The defense claimed that these files would show that Sacco and Vanzetti were being sought as members of the Gallieni band of Anarchists.

The Governor demanded proof that Vanzetti's customers had bought eels from him on the day of the Bridgewater crime. Seven of the alibi witnesses called upon him and requested that they be prosecuted as perjurers if not believed. The Governor then, on the eve of writing his decision, demanded proof that Vanzetti had received eels which his customers had claimed they purchased from him. The defense attorneys discovered an American Railway Express receipt for eels shipped to Vanzetti and rushed it to the Governor who made no comment.

Governor Fuller did not explain the doubt aroused by the failure of the police to trace the other bandits or any of the loot, or to show any motive for the crime. He

ignored many of the main issues, including the "consciousness of guilt". He appeared to think that Vanzetti had been arrested before Sacco which was not so, and stressed his failure to take the stand at the first trial, though the law does not hold this against a defendant and Vanzetti did testify at the second trial and wanted to at the first. The Governor saw no evidence of prejudice at the trial, though affidavits were furnished quoting Judge Thayer as calling the defendants "anarchistic bastards."

Governor Fuller said that he did not know and the jury did not know what an anarchist was so could not be prejudiced against anarchists. When in Congress, Alvan T. Fuller had made a violent attack against Reds of all sorts including anarchists.

Governor Fuller stated in his report concerning Sacco: "He then claimed to have been at the Italian Consulate in Boston on that date, but the only confirmation of this claim is the memory of a former employee who made a deposition in Italy that Sacco among forty others was in the office on that day. This employee had no memorandum to assist his memory." Governor Fuller makes no mention of the four witnesses who also testified that they had talked with Sacco in Boston on that date. The record is clear—five alibi witnesses—but the Governor gives the public the impression there was but one. He concludes by saying: "I am proud to be associated in this public service with clear-eyed witnesses, unafraid to tell the truth," meaning only the witnesses on one side, some of whom changed their testimony several times and had no written memorandums. If any one of the five alibi witnesses was telling the truth, Sacco could not have committed the crime.

The Advisory Committee reported that, "The cross examination by Mr. Katzmann of the defendant Sacco on the subject of his political and social views seems at first unnecessarily harsh and designed rather to prejudice the jury against him than for the legitimate purpose of testing the sincerity of his statements thereon." Then follows a justification of this irrelevant and damaging examination on the ground that it was not known that Sacco

was a radical and it was necessary to find out if his radicalism was merely "assumed for the purpose of the defense." This was after District Attorney Katzmann had told the Committee: "It was a fact perfectly well known that these men were radicals."

The Lowell committee decided to credit the witnesses who identified Sacco and Vanzetti as the bandits rather than those who testified that the defendants were elsewhere at the time of the crime and were therefore innocent. Among the alibi witnesses were Mr. Bosco, editor of *La Notizia*, and Professor Guadagni. Both testified at the trial that they remembered the date, April 15, 1920, because they had talked with Sacco in Boston about a dinner that was to be given the same night to James Williams of the *Transcript*. When President Lowell called these two witnesses before the Committee they repeated the same reason previously testified to for remembering the date. Then President Lowell, who had been waiting for this chance for ten days and had viewed all other evidence with this idea of falsehood in mind, told the two witnesses that their evidence would be valuable if true but that the dinner was on May 13 and there could not have been two dinners to the same man within so short a time. Bosco and Guadagni insisted that their testimony was correct, and that they could establish with irrefutable evidence the fact that the banquet in question did take place on April 15th. President Lowell dismissed them with the attitude that he had definitely established them liars. That evening, however, they went to the files of *La Notizia*, the Boston Italian daily newspaper, and they found that the issue of April 15th carried a full account of the banquet given to Mr. Williams on that day. They took the file to President Lowell, who then apologized for having accused them of falsehood and requested Bosco not to make any mention of this incident in his newspaper and not to speak of it to the American newspapers. The witnesses in turn asked Mr. Lowell to inform Governor Fuller that their memories had been accurate. The Committee telephoned to Mr. Williams in Washington who confirmed the date of the dinner as April 15. Neither President Lowell nor Governor Fuller mentioned the ex-

istence of these alibi witnesses in their reports. The evidence that was admitted to be important if true was disregarded when found to be true.

This alibi was considered so important that it covered 32 pages of the record of the Committee, but when President Lowell was proved wrong not a word of the accusation against the witnesses and their vindication was included. The record merely states that at a certain point the Committee and the witnesses examined the files of a newspaper.

The Lowell Committee placed great stress on the eye-witnesses though Judge Thayer said the men were not convicted on that testimony. The Committee said that Gould had no opportunity to see Sacco and Vanzetti after their capture to say whether they were the bandits, whereas Gould had actually gone to Dedham jail on November 10, 1921, observed Sacco for ten minutes and then told Sacco's lawyer he was positive Sacco was not one of the hold-up men.

The Advisory Committee declared that the cap found near the crime fitted Sacco, though there was absolutely no testimony that it was Sacco's cap and when it was tried on in court it was so much too small that a laugh went up. The *Boston Post* carried a cartoon showing the misfit. Judge Thayer charged that the cap was important evidence against Sacco, part of the identification being the hole in the lining made by hanging the cap on the factory hook. Later Policeman Gallivan made affidavit and told the Committee that it was he who had torn the lining to search for identification marks.

The report stressed the point that Vanzetti's gun was probably taken from the murdered man, Berardelli, although there was no evidence that Berardelli's gun was at the scene of the crime. On the contrary, his wife said he did not have it with him. The Iver Johnson expert testified that "there are thousands of times more chances that it was not than that it was" Berardelli's gun. Vanzetti's gun had been traced back through three previous owners.

The presence in the jury room of extra bullets taken

there by foreman Ripley is admitted to be irregular but not sufficient grounds for a new trial in this case as it would be in others. The Committee did not believe that Ripley said, "Damn them, they ought to hang anyway," as testified, for if he had been so prejudiced "he had only to reveal what he had said to be excused." They did not consider that he might have welcomed the opportunity to rid the country of the anarchists.

At the trial one of the experts for the prosecution, Captain Proctor, when asked whether in his opinion a bullet found in Berardelli's body had been fired from Sacco's pistol, replied that "it is consistent with being fired from that pistol." Two years after the trial Proctor signed an affidavit stating that he did not mean that the bullet had passed through Sacco's pistol. The Committee decided that a new trial was unnecessary and here is their reason: "Counsel for the defendants claim that the form of the question and answer was devised to mislead the jury; but it must be assumed that the jury understood the meaning of plain English words." And yet Judge Thayer construed Proctor's answer to mean that the bullet was from Sacco's gun and so charged the jury, so why should not the jury have made the same mistake?

The investigators mentioned the fact that the bullet taken from the body of the murdered man was of an obsolete type, similar to the bullets found in Sacco's pocket. This was a new claim, never before urged by the District Attorney or by Judge Thayer. The Committee did not mention it to counsel for the men and gave them no opportunity to meet it. It does not appear upon what evidence the Committee could have based such a positive statement. The incident of the Williams dinner and other gross errors by the Committee do not lend confidence to such an untested finding.

The Committee reported: "Affidavits were presented to the Committee and witnesses were heard to the effect that the judge, during and after the trial, had expressed his opinion of guilt in vigorous terms." No denial is made of Judge Thayer's biased remarks. Instead they say: "We are forced to conclude that the judge was in-

discreet in conversation with outsiders during the trial. He ought not to have talked about the case off the bench, and doing so was a grave breach of official decorum." They concluded, however, that the prejudice of the judge did not entitle the defendants to a new trial.

In July, 1926, affidavits were made by two former employees of the Department of Justice, one of whom had been a post office inspector for twenty-five years and both of whom are now honorably employed. Fred J. Weyand deposed: "These men had nothing whatever to do with the South Braintree murders . . . their conviction was the result of cooperation between the Boston agents of the Department of Justice and the District Attorney." Lawrence Letherman said: "It was the opinion of the Department agents here that a conviction of Sacco and Vanzetti for murder would be one way of disposing of the two men." Assistant District Attorney Ranney did not deny the truth of these affidavits when opposing the motion for a new trial, but claimed they constituted "a breach of loyalty."

Referring to these affidavits the Committee said: "For the Government to suppress evidence of innocence would be monstrous," but they suppressed many evidences of innocence themselves. It is admitted that the Federal Government placed a spy in the cell adjoining Sacco's but discovered nothing.

The Committee said in reference to Roy E. Gould that he was so close to the bandit car that one of the bullets went through his coat. Gould's affidavit repeated what he had said shortly after the murder that Sacco and Vanzetti were not among the five bandits. He was not a friend of either of the accused men and the Committee gave no reason for doubting his story. They reported: "He was certainly close to the car . . . he certainly had an unusually good position to observe the men in the car, but on the other hand his evidence is merely cumulative, the defendants having produced a large number of witnesses to swear to the same thing, and it is balanced by two new witnesses on the other side." They argued that the two Italians should be executed although a new witness

had appeared who testified definitely, as many others did, that Sacco and Vanzetti did not take part in the crime. Of the two witnesses for the prosecution known to the District Attorney, but not produced by him at the trial, they say that one who identified Sacco as driving the car "may have mistaken whether he was behind the wheel or in the other place on the front seat" and the other was "eccentric, not unimpeachable in conduct." They elected to believe the two witnesses whom they and the District Attorney had found unreliable in preference to the defense witness against whom they had found nothing wrong. Then they argued: "There seems to be no reason to think that the statement of Gould would have any effect in changing the mind of the jury."

The Committee admitted that Gould had told his story to the prosecution, as Burke did, and "was questioned within a few days of the murder, before the present defendants were thought of in connection with the crime," but they felt that the suppression of his evidence by failing to call him as a witness was "nothing in the nature of a concealment by the prosecution of evidence that is believed valuable for the defense."

About half an hour before the execution was to be carried out on August 10, after the trousers of the convicts had been slit to permit the attachment of the electric wires, Governor Fuller reprieved Sacco, Vanzetti and Madeiros until August 22 in order to permit the State Supreme Court to decide whether the case should be reopened. The Court did not examine the facts but denied a new trial on the ground that there had been no legal errors. The men were electrocuted on August 23, 1927, maintaining their innocence but forgiving their persecutors.

WILLIAM FLOYD.

BOOKS RECOMMENDED

The Case of Sacco and Vanzetti, by Felix Frankfurter.
Little, Brown & Co. \$1.

Facing the Chair, by John Dos Passos. Sacco-Vanzetti
Defense Committee, Boston. 50 cents.

The Life and Death of Sacco and Vanzetti, by Eugene
Lyons. International Publishers Co. \$1.50.

Complete record of the case, appeals and reports of com-
mittees. Soon to be published by the Sacco-Vanzetti
Defense Committee of Boston.

Copies of this pamphlet may be obtained for ten cents
each from

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