

The Crusader from Pittsburgh: Michael Musmanno and the Sacco/Vanzetti Case

(Originally titled: To Erase a Stain on this Nation's Character: Michael Musmanno's Fight to Vindicate Sacco and Vanzetti)

Introduction

It is a truism to say that this nation is polarized along ideological lines, with each side retreating into their respective echo chambers, interested only in their version of the truth. Argument ceases in this environment, as each side proclaims its own specific narrative with its own set of facts. While this is unsettling and has been exacerbated by an explosion of media outlets and platforms, this phenomenon is nothing new in our national experience. Other issues have divided America in the past and divided her bitterly. Good cases in point include racial issues, ranging from slavery to civil rights, immigration, and national security, as well as freedom of speech and association.

One such case that involved two of these categories was Sacco and Vanzetti: two immigrant Italian anarchists who were arrested, tried, convicted, and eventually executed for a robbery/homicide that took place on the morning of April 15, 1920 in South Braintree, Massachusetts.

In many ways, this case stands out as an ideological ink blot test where what you see is determined largely by who and what you are. For conservatives, the two men were dangerous revolutionaries who were part of a larger movement seeking to overthrow the American Government by force and violence. For liberals, they were two philosophical anarchists caught in a Kafkaesque charade that was a direct outgrowth of national hysteria over the Bolshevik revolution. Writing about the case in 1960, William F. Buckley expressed the conservative point

of view, asserting that doubts about the two men's guilt represented an attack upon American justice as well as this nation's way of life. ¹ This attitude was echoed by Senator H. Styles Bridges of Vermont in a letter he wrote to Associate Justice of the Pennsylvania State Supreme Court Michael A. Musmanno. Specifically, Bridges complained that a two-part NBC docudrama about the case that starred Martin Balsam was one-sided in how it presented the case. Musmanno had served as a historical advisor for the show. ² With this, Bridges opined the two men had received a fair trial, and that the case had been thoroughly reviewed by a special commission of three distinguished Americans, chaired by Dr. Abbott Lawrence Lowell, President of Harvard University. Therefore, according to Bridges, did not continued criticism represent an attack upon American Justice? ³

The Senator was in no way prepared for the response he received. Although Musmanno was polite, he nevertheless was incensed by Bridges' commentary, indignantly lecturing the Senator on the myriad ways he was mistaken and concluding with this final statement: "I will add, that if you should want to debate this matter further, by writing, radio, platform appearance, or television, I shall be glad to be at your service." ⁴ The Senator was so taken aback by Musmanno's response that he forwarded the letter to FBI Director J. Edgar Hoover for his

¹ William F Buckley, Jr., "Sacco and Vanzetti Again: *The American Legion Magazine*, October 1960, pp. 14-15; 47-50. It should be noted that on page 49 of this article, Buckley makes a pointed reference to a two-part NBC docudrama entitled "The Sacco and Vanzetti Story" that aired in June of 1960. Musmanno was credited as a historical advisor for the show. Buckley claims the show misrepresented the case. With this, Musmanno's correspondence with Senator H. Styles Bridges of Vermont cited below also arises out of Bridges' complaint that the show misrepresented the case.

² Letter from Senator H. Styles Bridges to Justice Michael A. Musmanno, June 13, 1960, FBI File 94-HQ-50551 (Hereafter referred to as Musmanno FBI File, Vol, 2. This file was secured by the author through the Freedom of Information Act.

³ Ibid.

⁴ Letter from Michael A. Musmanno to Senator H. Styles Bridges, June 16, 1960, Ibid.

information, hinting that Musmanno was a fanatic.⁵ Ironically, a mutual acquaintance of both Musmanno and the Senator could have warned the Senator not to write Musmanno about this subject -- John L. Lewis. Bridges had once served as neutral trustee for the UMWA Welfare and Retirement Fund, which Lewis had created. Whereas Musmanno and Lewis had been friends for years, with Lewis supporting Musmanno's possible appointment to the Third Circuit Court of Appeals back in 1938. Had Lewis known what Bridges was planning to say, Lewis could have told Bridges to leave it alone, since he would be treading upon holy ground.

Although Bridges' whining to Hoover is amusing in retrospect, he was correct in his assessment that Musmanno was fanatical on this subject. As it was, Musmanno had served as one of their defense attorneys late in the case and was devoted to the cause. In the same letter cited above, he wrote the following: "I believe that Sacco and Vanzetti were innocent. . . . In this belief I do not cast aspersions on our system of justice which I have upheld and defended as a judge for 28 years. I do find fault with those who perverted the pure stream of American justice in the Sacco-Vanzetti case and I am willing to be counted anywhere, any time on that subject."⁶ For Musmanno, who personified the liberal view of the case, what happened to Sacco and Vanzetti was a stain upon American Jurisprudence.⁷ A stain that he originally attempted to keep from happening, and which he later attempted to wash away. This paper looks at the case, Musmanno's role in it in 1927, and his efforts in the late 1950s and early 1960s to win a

⁵ Letter from Senator H. Styles Bridges to J. Edgar Hoover, June 21, 1960, Ibid.

⁶ Letter from Michael A. Musmanno to Senator H. Styles Bridges, June 16, 1960, Musmanno FBI File, vol. 2.

⁷ "Address by Pennsylvania Supreme Court Justice Michael A. Musmanno" *Record of public Hearing Before Joint Committee of the Judiciary of the Massachusetts Legislature of the Resolution of Representative Alexander J. Cellar Recommending a Posthumous Pardon for Nicola Sacco and Bartolomeo Vanzetti Gardener Auditorium, Massachusetts State House, April 2, 1959*, p. 31. Hereafter referred to as Massachusetts Legislative Report.

posthumous exoneration for the two men. In a tumultuous public career marked by great successes as well as great failures, this above all was the great touchstone of Musmanno's life. To understand Michael Musmanno in the Sacco and Vanzetti case is to thereby understand Michael Musmanno as a lawyer, Jurist, and human being.

The Crime

According to Sarah Stevenson, Michael Musmanno was a Serevadra in search of a crusade. There was no better description for him, since the crusading mentality pervaded his entire professional career and fit with a personality that tended to see issues in black and white, good versus evil. Included under this heading were his fight to end Pennsylvania's Coal and Iron Police system, which he claimed was manned by ex-convicts and the dregs of society, his efforts to combat drunk driving, and his sympathy for organized labor, particularly the United Mine Workers of America (UMWA). With this he considered the union's leaders, notably Phil Murray and John L. Lewis, as close personal friends. It also accounted for his life-long aversion to Communism and his efforts to combat it. This included his prosecution of Pittsburgh Communist leader Steve Nelson and his support for Matt Cvetic's attack upon composer Roy E. Harris, on the specious claim that Harris was a Soviet sympathizer.⁸

However, the Sacco-Vanzetti case was Musmanno's greatest crusade, occupying a central place in a professional career that began in 1927 and ended with his death in 1968. How he viewed the case can be summed up in a statement he made in 1959, when speaking to the Massachusetts legislature in favor of a resolution that had been introduced pardoning the two men. In that statement, Musmanno asserted that Sacco and Vanzetti were the victims of a corrupt

⁸ Richard P. Mulcahy, "The Justice, the Informer, and the Composer: The Roy Harris Case and the Dynamics of Anti-Communism in Pittsburgh in the Early 1950s," *Pennsylvania History: A Journal of Mid-Atlantic Studies*, Vol 82, No 4, pp. 404-405.

process, marred by a prejudiced judge and an a-moral prosecutorial team that was "diabolic in its cleverness".⁹ As it was, the basis for the arrest and eventual prosecution of Sacco and Vanzetti was their alleged involvement in two crimes. The first was a botched robbery attempt on December 24, 1919 at Bridgewater, Massachusetts. Vanzetti was accused of participating in this event, tried, and convicted. The prosecutor in the case was Frederick Katzmann and the presiding judge was Webster Thayer, who sentenced Vanzetti from twelve to fifteen years.¹⁰ The second crime was of a more profound nature. It took place at 3:00 pm on April 15, 1920 in South Braintree, just outside of Boston. Here, a gang of thieves, in broad daylight, stole the Slater and Morrill shoe company's payroll, murdering the company's paymaster, Frederick Parmenter and a guard named Alessandro Berardelli in the process. The amount taken totaled \$15,725.51.¹¹ The thieves managed to get away in a large, dark colored car, but instead of going directly out of town, they eluded the police by doubling back. Once out of town, they changed cars in a local wood. Sacco and Vanzetti were arrested three weeks later, on May 5th, while riding on a streetcar.¹²

When they were arrested, both men were found to be armed -- Vanzetti with a .38 and Sacco with a .32 Colt automatic. Worse, when questioned by the police, both men lied to their captors. This matter proved crucial, since in Judge Thayer's opinion it proved consciousness of guilt on the parts of the two men and was a fundamental point in their eventual condemnation. As damning as this evidence may have appeared at first blush, it was easily explained by the

⁹ Massachusetts Legislative Report, pp. 32-33.

¹⁰ *The Sacco-Vanzetti Case: Transcript of the Record of the Trial of Nicola Sacco and Bartolomeo Vanzetti in the Courts of Massachusetts and Subsequent Proceedings 1920-7*, Supplemental Volume (New York: Henry Holt & Co., 1928), p. 337. (Hereafter referred to as "Trial Transcript").

¹¹ Michael A. Musmanno, *After Twelve Years* (New York: Alfred A. Knopf, 1939), p. 4.

fact that both men were frightened, and not because they had participated in any robbery. Their apprehension was a direct outgrowth of the political climate in place at the time -- the "Red Scare". This event took place between 1919 and 1921 and was marked by the Justice Department's effort to suspend the Bill of Rights, flagrantly violating civil liberties and constitutional guarantees in the name of national security. This was in response to a set of terror bombings that happened in June of 1919 seen in major cities, including Cleveland, Pittsburgh, and New York. The interesting thing about these events, however, was the fact that the Bureau of Investigation (forerunner of the FBI) had infiltrated radical organizations around the country a few years earlier with agents posing as ordinary members.¹³ Their mission was to keep tabs on these organizations and their members, as well as to promote factionalism and self-defeating direct-action tactics, that would discredit these organizations in the eyes of the general public and thereby cost them middle class support.¹⁴ This method had originally been employed by John McParland in the so-called Molly Maguire case in eastern Pennsylvania's anthracite coal field in the 1870s. The effort was spearheaded by a newly minted lawyer who headed the BI's antiradical division, John Edgar Hoover.¹⁵ In addition, these methods were borrowed from the various private detective agencies used to fight unions, including the Pinkerton and William Barnes organizations. Known as the Palmer raids, they were named for Attorney General A. Mitchell Palmer

Basically, Palmer declared war on all dissent, especially dissent that was radical in nature

¹² Ibid. p. 40.

¹³ *To the American People: Report Upon the Illegal Practices of the United States Department of Justice* (Washington, DC: National Popular Government League, 1920), pp. 5-6

¹⁴ Ibid; see also, Charles H. McCormick, *Seeing Reds: Federal Surveillance of Radicals in the Pittsburgh Mill District, 1917-1921* (Pittsburgh: University of Pittsburgh Press, 1997), pp. 1-6.

and had active immigrant support. To achieve his goal of suppressing these activities, he employed the BI and its antiradical division as his shock troops. This was something that Hoover was more than happy to do since his politics were very right-wing and because he was Palmer's protégé. The methods used were warrantless searches and seizures, mass arrests and holding people incommunicado and forced confessions using torture. When questioned about this by a sub-committee of the Senate Committee on the Judiciary a few days before his term was to end in 1921, Palmer had this to say: "I apologize for nothing that the Department of Justice has done in this matter. I glory in it. I point with pride and enthusiasm to the result of that work; and if, as I said before, some of my agents out in the field . . . were a little rough . . . with these alien agitators whom they observed seeking to destroy their homes, their religions, and their country, I think it might well be overlooked in the general good to the country which has come from it." ¹⁶

The Attorney-General's stridence in this matter was certainly reflected by the actions taken by the BI and other agencies with whom it worked in the field, including local police forces, who were combating the immigrant groups that Mr. Palmer derided in his statement. Known immigrant radicals were arrested and detained, political offices were raided and ransacked, as were print shops, resulting in the seizure of a mountain of literature. ¹⁷ Although the crackdown was nationwide, Boston and its surrounding satellite communities appears to have been the primary target. ¹⁸ Added to this, an Italian printer named Andrea Salsedo, who was

¹⁵ McCormick, pp. 24-26.

¹⁶ Statement of Attorney-General A. Mitchell Palmer in Charges of Illegal Practices of the Department of Justice : hearings before the United States Senate Committee on the Judiciary, Sixty-Sixth Congress, third session, on Jan. 19, 25, 27, Feb. 1, Mar. 3, 1921. United States, Washington: U.S. G.P.O., 1921, p. 582.

¹⁷ *The American Labor Yearbook: 1921-1922* (New York: Rand School of Social Science), p. 38.

¹⁸ Felix Frankfurter, *The Case of Sacco and Vanzetti: A Critical Analysis for Lawyers and Laymen* (Boston: Little, Brown & Company, 1927), pp. 43-44

Vanzetti's friend, had been picked up in one of the raids and was being held by the BI at New York's Federal building. The reason for his arrest was that a copy of a circular entitled "Plain Words" had been found near New York's bombing sight and was traced back to his printing shop. Salsedo died while still in Federal custody when, on May 3, 1919, he fell out one of the windows located on the building's fifth story.¹⁹ In addition, under Attorney-General Palmer, the Justice Department had created a propaganda machine, whose purpose was to stoke anti-immigrant xenophobia, as well as fear of all radicals.²⁰

This was the context in which Nicola Sacco and Bartolomeo Vanzetti found themselves when they were arrested. Considering who and what they were, lying to the police, while wrong-headed, was understandable.²¹ Sacco, who worked as an edger for one of the local shoe companies, and Vanzetti who sold fish from a pushcart, had not only supported a revolutionary newspaper that had been published by friend who had been deported, but has also fled to Mexico to avoid being drafted for service in the First World War.²² Ironically, the move had not been necessary, since neither man was a citizen and thereby not draft eligible. Viewed in this light, their behavior was less consciousness of guilt and more fear of persecution and deportation. Again, considering who and what they were, their apprehension was reasonable.

This, in fact, was borne out by the circumstances of their arrest. In both the Bridgewater and South Braintree crimes, none of the witnesses were able to give a clear description of the Italian or Polish.²³ This led Bridgewater's Chief of Police Michael Stewart to focus his

¹⁹ Arthur Garfield Hays, *Let Freedom Ring*, (New York: Horace Liveright, Inc., 1928), pp. 184-185.

²⁰ *The American Labor Yearbook: 1921-1922*, pp. 34-39; Hays, 284.

²¹ Hays, pp. 287-288.

²² Trial Transcript, Vol 2, p. 1727, p. 1864

²³ Musmanno, *After Twelve Years*, pp. 27-28.

attention upon the local Italian community. Plus, the woods where the first getaway car was found was near the small town of Cochesset.²⁴ So, for Stewart it became a matter of finding an Italian residing in Cockesett who owned a car. As things turned out, there was such an individual, Mike Boda who owned a small, broken-down Overland that had been garaged for the previous five months.²⁵ At the same time, Boda had been residing with a radical named Furricio Coaccio, who was in the process of being deported. In fact, Chief Stewart had sent an agent to call on Coaccio on April 16, 1919, at the Justice Department's behest to find out why he had not reported for his deportation hearing. Arriving at Coaccio's residence, the agent found the man packing his belongings to return to Italy.²⁶ Stewart put two and two together until when it was announced that the second getaway car in the South Braintree case was a smaller vehicle, based on the tracks found in the woods. It was this point that convinced Stewart that Boda's car was involved, and thereby ordered the garage's owner, Amon E. Johnson, to report anyone checking on that vehicle. At the same time, Stewart believed that Coaccio was absconding with the loot. However, when his luggage was seized, nothing was found.²⁷

For their parts, Sacco and Vanzetti did not act like guilty men during this period.²⁸ They went about their business but were concerned when Salcedo was arrested. Vanzetti had even gone so far as to go to New York and discuss the matter with Walter Nelles of the American Civil Liberties Union.²⁹ News of Salsedo's death broke shortly thereafter. It was then that Sacco,

²⁴ Ibid, pp.28-31.

²⁵ Ibid. pp. 30-31.

²⁶ Ibid, pp. 28-29.

²⁷ Ibid , p. 29.

²⁸ Frankfurter, pp. 35-36.

²⁹ Hays, p. 284.

Vanzetti, Boda, and a fourth man named Ricardo Crone would try to get Boda's car to collect their friend's radical literature for safe keeping until things quieted down. It was on May 5th, that Sacco and Vanzetti went by streetcar over to the garage and met with Boda and with Cercroni, who had arrived on a motorcycle.³⁰ The garage was closed, so the men went to Johnson's residence, which was nearby. The mechanic told them that the car needed a new license plate and was thereby not ready. Meanwhile, Mrs. Johnson phoned the police who intercepted the streetcar the men were riding to return home,³¹

It goes beyond the scope of this essay to go into every detail about either the Bridgewater or South Braintree trials., However, a basic outline of the facts is in order. As things turned out, Vanzetti was tried for the Bridgewater crime first. Taking place on December 24, 1919, the robbery was a horribly botched affair and did not at all compare with the South Braintree crime. In fact, the head of the Massachusetts state police was convinced that the South Braintree crime was the work of professionals. Moreover, the evidence the prosecution presented at trial was questionable. First, it was based primarily on eyewitness testimony. By itself, such testimony was of little value. In addition, one eyewitness testified that one of the thieves had a closely cropped mustache and black hair. Not only was Vanzetti's mustache long, it was asserted that Vanzetti never had black hair.³²

On the other hand, Vanzetti's defense produced a myriad of witnesses who attested that he sold them fish and eels the day of the crime. Christmas Eve was a total abstinence day for Italian Catholics. As a fish seller, Vanzetti understood that this would be one of the busiest days

³⁰ Trial Transcript, Supplemental Volume, pp. 41-42

³¹ Musmanno, *After Twelve Years*, p. 40.

³² Trial Transcript, Supplemental Volume, p. 340.

of the year for him.³³ Vanzetti's defense counsel, however, made what would eventually prove to be a significant tactical error. He decided not to allow Vanzetti to testify in his own defense. In one respect, this may have been a prudent decision since Vanzetti's command of English was minimal at the time. Unfortunately, it only convinced Massachusetts's Governor Alvin T. Fuller that Vanzetti had something to hide and was thereby guilty of the crime.³⁴

Another problem for the defense was prosecutor Frederick Katzmann. While Katzmann was unethical in some ways, he nevertheless was spirited and effective in how he presented his evidence.³⁵ He was also given to invoking patriotism and subtly engaging anti-radical, anti-immigrant dog-whistling. This was plainly evident in his concluding statement to the jury in the South Braintree robbery trial. Here, he absolved the jury of any responsibility for putting the two men to death if they found them guilty by invoking a sense of duty and identity. His last statement went as follows: "You [the jury] are the consultants here gentlemen, the twelve of you, and the parties come to you and ask you to find the truth is on the two issues of guilt or innocence. Gentlemen of the jury do your duty. Do it like men. Stand together your men of Norfolk."³⁶ Speaking about Katzmann years later, Musmanno characterized him as diabolic in his cleverness.³⁷

³³ Musmanno, *After Twelve Years*, p. 73.

³⁴ *Ibid.*, pp. 228-230.

³⁵ A good case in point was his summation in the South Braintree robbery trial. It runs for 58 pages, from 2179 to 2237, of the transcript's second volume, where he effectively outlined the case against the two men. Trial Transcript, Vol. 2, pp. 2179 – 2237.

³⁶ *Ibid.* p. 2237.

³⁷ "Address by Pennsylvania Supreme Court Justice Michael A. Musmanno" p. 31, Massachusetts Legislative Report

Far worse, however, was the fact that the presiding judge in both cases, Webster T. Thayer, harbored a considerable animus against the defendants as well as their principal lawyer, Fred Moore. In relation to Moore, Thayer exclaimed "I'll show them that no long-haired anarchist from California can run this court!" Going further, the Judge railed that the defense lawyers were damned fools, promising "Just wait until you hear my charge!"³⁸ Despite whatever else could be said about him, Thayer had no use for radicals of any kind. Bristling with hatred for the two defendants, Thayer expressed his true feelings about the case to Loring Coes and others at the Worcester Golf Club. According to Coes, Thayer stated that he regarded Sacco and Vanzetti as a pair of Bolsheviks who were trying to intimidate him, saying he "would get them, good and proper".³⁹ Thayer went on to say that he viewed the defense team as a collection of "parlor radicals . . . trying to get these guys off" and that he planned to show them "and would get those guys [Sacco and Vanzetti] hanged."⁴⁰ Moreover, these statements were not isolated incidents, but were part of a larger pattern of indiscrete commentary that Thayer made about the case to anyone who would listen to him.⁴¹ His conduct and character were best summarized by Boston lawyer William G. Thompson, who took over as lead defense during the appeals process:

I have known Judge Thayer all my life. . . . and I could not honestly say that I think Judge Thayer is all the time a bad man or that he is a confirmed wicked man. Not at all. . . . But I say he is a narrow[-] minded man, he is a half educated man, he is an unintelligent man, he is full of prejudice, he is carried away with this fear of reds, which captured about 90 per cent of the American people. Unfortunately[,] all the half educated, uncultivated class joined in that propaganda. His categories of thought are few and simple-reds and conservatives, and "soldier boys". No margin between them. No intermediate ground where people cannot be placed in the

³⁸ Trial Transcript, Volume Five, p. 4924

³⁹ Ibid. p. 4928.

⁴⁰ Ibid.

⁴¹ Ibid., pp. 4924ff

one class or the other. He knows only a few simple things; the country, the war, the reds. That is the way I size him up. Not that he intended to be wicked, or that he intended to be bad. I think he thought that he was rendering a great public service. As he said to [journalist Robert] Benchley: "I will protect the citizens against the reds", and all that. I won't stop to read his exact words. That is the type of man you are to think about, violent, vain, and egotistical. ⁴²

His feelings notwithstanding, Thayer was careful not to say anything prejudicial from the bench. However, there is no question that his opinions colored his conduct of the South Braintree trial. ⁴³ In terms of the witnesses, several of the people the prosecution presented were not very credible. Notable here was "Carlos Goodridge", which was an assumed name, whose testimony placed Sacco at the scene of the crime, but which was secured by Katzman in return for a plea-bargain for a previous offense. ⁴⁴ Goodridge's real name was Erastus Whitney and had a considerable criminal record, primarily for crimes of dishonesty, including bigamy and perjury. ⁴⁵ Another was Lola Andrews, who had a well-earned reputation for being a mentally unstable fantasist, with a limited grasp on reality. ⁴⁶ Moreover, there was the matter that when Sacco was identified by at least one of the witnesses prior to the trial, it was done by viewing him individually and not in a line-up. ⁴⁷

These problems were magnified, however, by the relative effectiveness of Katzman as opposed to the relative ineffectiveness of Moore. Essentially, Katzman excelled at brow-beating defense witnesses who alibied Sacco and Vanzetti for the day of the crime by asking them where

⁴² Ibid., p. 5273

⁴³ Musmanno, *After Twelve Years*, pp. 146-149.

⁴⁴ Trial Transcript, Volume Four, p. 4038 b

⁴⁵ Ibid., pp. 3733ff

⁴⁶ Trial Transcript, Volume 5, pp. 5156-5158.

⁴⁷ Frankfurter, p. 12.

they were, and what they were doing the day before the crime, as well as the days after, thus calling their recall into serious question.⁴⁸ Moore, on the other hand, decided not so much to impeach the prosecution's case by demonstrating its inconsistencies, but by emphasizing that the defendants were being persecuted for their political views. To that end, he had them admit they were anarchists. In retrospect, this tactic was a terrible mistake since the Palmer raids were still fresh in the public's mind when the trial took place.

While all of this made for sensationalist headlines, what should have been the determining piece of evidence were the ballistics. However, the waters in this were very muddy. A total of six slugs were taken as evidence, five were traced to one pistol. Another slug, bullet number three (exhibit number 18), which was a fatal bullet, had been traced to a .32 Colt automatic, like Sacco's weapon. However, the prosecution's principal ballistics expert, Captain William Proctor of the State Police, while believing it had been fired by a .32 Colt automatic, did not believe that it had been fired specifically by Sacco's weapon, and so informed District Attorney Katzmann.⁴⁹ To address this problem, Katzmann prearranged that he and the captain would have the following exchange when Proctor testified: "Q. Have you an opinion as to whether bullet No. 3 (Exhibit 18) was fired from the Colt automatic, which is in evidence? A. I have. Q. And what is your opinion? A. My opinion is that it is consistent with being fired from that pistol."⁵⁰ The significance here is that Proctor testified that the recovered slug was consistent with having been fired through a .32 Colt automatic, but not necessarily Sacco's weapon, while giving the impression that it was. This issue became a pivotal matter in the case

⁴⁸ Musmanno, *After Twelve Years*, pp. 153-156.

⁴⁹ Trial Transcript, Volume Four, p. 4122.

⁵⁰ *Ibid.*, 4120.

since Thayer gave it considerable weight in his charge to the jury.⁵¹ Proctor later stated to Albert Hamilton, an analytical chemist working on the case, that he had perjured himself.⁵²

As unsettling as all of this was, a more disturbing issue came to light after the two men were convicted – specifically an accusation that Katzman colluded with the Justice Department and the BI with regards to evidence: that the BI knew the two men and was of the opinion that they hadn't committed the crime, but wanted them out of the way anyhow, either through conviction or deportation.⁵³ This accusation came from two former BI agents involved in the case – Fred Weygand and Fred Leatherman. The BI, for its part, denied the charge and denied it vociferously, hinting that Leatherman and Weygand as disgruntled ex-employees.⁵⁴ The agents had been let go in 1924, when J. Edgar Hoover took over as BI Director. This was part of a general house cleaning done when Hoover assumed the directorship and reflected his desire to professionalize the Bureau by improving its entry standards. Weygand and Leatherman did not fit the Bureau's new profile of seeking educated professional men, with one having been a former postal inspector and the other a private detective before joining the Bureau.⁵⁵

This matter would bedevil the Bureau for years to come and would result in at least one

⁵¹ Trial Transcript, Volume Two, p. 2254, p. 2258.

⁵² Trial Transcript, Volume Five, p. 5007.

⁵³ Letter to John G. Sargent, Attorney General of the United States, From William G. Thompson, dated July 3, 1926, Sacco/Vanzetti Case, Part 8 of 14, File Number 61-126; FBI File: Sacco and Vanzetti, PDF 2 of 2, Reposted by Altgov2. This file was originally released under the Freedom of Information Act and had been available from the FBI. However, it was apparently taken down and was later reposted by www.altgov2.org. The file is available there still under "deleted FBI Files".

⁵⁴ "Summary of Files Relating to Nicola Sacco and Bartolomeo Vanzetti" undated, but possibly written in 1927, pp. 18-24, Ibid.

⁵⁵ Letter to Director, BI, From John A. Dowd, Special Agent in Charge, Boston Office, dated July 17, 1926, Ibid.

review of Bureau files done in 1951.⁵⁶ It was a thorny question, since, as mentioned above, the radical left was targeted for disruption, which was spearheaded by J. Edgar Hoover, who joined the Bureau shortly after he graduated from George Washington University's School of Law. An example of this effort was an agent the BI placed in Pittsburgh branch of the Industrial Workers of the World (IWW). This agent's task was to pose as an ultra-radical and promote factionalism. This he did with great success.⁵⁷

Regardless of these facts, the Bureau insisted that it had never heard of Sacco and Vanzetti until after the South Braintree robbery. However, the point-man in all these denials, and who oversaw both record reviews, was a fellow named William J. West.⁵⁸ A BI man who not only survived Hoover's purge, but who also eventually rose to the rank of Special Agent in Charge for Boston. West had figured prominently in the Palmer raids in the Boston area, and presumably shared both Hoover's and Palmer's attitudes about the necessity of the raids as well as a disdain for immigrant radicals.⁵⁹ As it is, West's denials of any Bureau wrongdoing in this matter should be taken with a grain of salt. However, he did admit that the Bureau's records from this period were in poor shape and thereby unreliable.⁶⁰

Regardless of whatever the Justice Department may have done or may have not done in the case, there was another disturbing issue with the trial that also indicated the two men were

⁵⁶ Letter to Director, FBI, From J.E. Thornton, SAC Boston, dated January 20, 1951; Office Memo to Clyde Tolson From L.B. Nichols, Dated January 23, 1951; Office Memo to Nichols, From M.A. Jones, March 10, 1951, File Number 61-126; FBI File: Sacco and Vanzetti, PDF 2 of 2.

⁵⁷ McCormick, pp. 46-63

⁵⁸ Office Memo to Nichols, From M.A. Jones, March 10, 1951, , File Number 61-126; FBI File: Sacco and Vanzetti, PDF 2 of 2.

⁵⁹ *To the American People*, pp 48-54.

⁶⁰ Office Memo to Nichols, From M.A. Jones, March 10, 1951, , File Number 61-126; FBI File: Sacco and Vanzetti, PDF 2 of 2.

denied justice – the behavior and attitudes of the Jury’s Foreman, Walter Ripley. A former policeman, Ripley had brought in a set of .38 caliber shells, similar to the shells taken from Vanzetti’s gun, possibly for purposes of comparison, during the jury’s deliberation without the knowledge of any of the parties in the case. He was also on record as making the following statement about the two defendants “Damn them, they ought to hand them anyway” regardless of guilt or innocence.⁶¹ It is little wonder that the jury convicted the two men and did with minimal deliberation

The guilty verdict was handed down on July 14, 1921. Over the next six years, a total of nine motions for a new trial were presented.⁶² However, owing to the legal procedure at the time, these motions had to be made to Judge Thayer as the trial judge of record, and each time they were refused.⁶³ What must be understood is that motions for a new trial in any case are based upon errors of Law (judicial errors, prejudice and the like) or errors of fact (such as new evidence has come to light). In the Sacco and Vanzetti case, both sorts of motions were used. In the matter of errors of law, Judge Thayer was evaluating his own judicial conduct and therefore found nothing questionable in his actions. Turning to errors of fact, Professor Felix Frankfurter pointed out that in other jurisdictions, if new evidence needs to be considered, a higher court could order a new trial. But this was not the case in Massachusetts. Here too, Thayer's say-so was paramount, and again, such motions to Thayer were met with a flat refusal.⁶⁴ Nevertheless, the Sacco and Vanzetti defense committee kept trying. Over the years, the lawyers working on

⁶¹ Trial Transcript, Volume Four, pp. 4349-4352; Frankfurter, p. 74.

⁶² *After Twelve Years*, pp. 168-169.

⁶³ *Ibid*, p. 168

⁶⁴ Frankfurter, pp. 87-91

the case read like a Who's who of the finest legal minds and talent in the country at the time. In addition to Felix Frankfurter, who eventually rose to the US Supreme Court; Arthur Garfield Hays, one of the founders of the American Civil Liberties Union; Francis Fischer Kane; noted labor lawyer Frank T. Walsh; and prominent Boston attorney William Thompson.⁶⁵

Musmanno Joins the Defense

Michael Musmanno joined Sacco and Vanzetti defense in 1927, during the case's latter stage. Writing about him in *Boston*, Upton Sinclair characterized Musmanno as warm hearted, Catholic, and conservative.⁶⁶ He also stated that once Musmanno joined the defense, he became a slave to the cause.⁶⁷ When Musmanno joined the legal team, they were working on two things -- winning certification from at least one justice of the US Supreme Court so that an appeal could be argued before the entire court, or at least, a stay of execution from Governor Fuller, thereby buying time. Judge Thayer, when passing sentence on the two men after the guilty verdict had been returned, sentenced them to death. By 1927, the defense had exhausted their motions for a new trial. As for Fuller, he was convinced the two men were guilty and acted accordingly. While the Governor had appointed the Lowell Commission to investigate the case, the commission did its work in an odd sort of way. First, it was not impartial, since one of its members, Judge Robert Grant, was prejudiced against the defendants. The other two member were President Samuel Stratton of MIT, and President A. Lawrence Lowell, of Harvard. Secondly, the proceedings were

⁶⁵ Hays, *Let Freedom Ring*, p. 279ff

⁶⁶ Upton Sinclair, *Boston* (Pasadena: Upton Sinclair, 1928), p. 621.

⁶⁷ *Ibid.*, p. 659

done in secret.⁶⁸ At the same time, the Commission's role was advisory in nature, and did not concern itself with the issue of guilt or innocence, but whether the two men received a fair trial.⁶⁹ Along with this the defense barred from cross-examining the prosecution's witnesses, as well as being disallowed from seeing any evidence allegedly in the hands of the Justice Department. Thus, the outcome of the Commission's finding that the two men had received a fair trial appeared to be foreordained. An example of the Commission's thinking here is seen in its commentary about Judge Thayer's behavior and statements. The Commission stated unequivocally that Thayer's behavior in this matter constituted a grave breach of official decorum; however, the Commission went on to say that some of the statements about Thayer's behavior appeared to be exaggerated and that there was no evidence that his feelings impacted upon how he conducted the trial.⁷⁰

Once the commission issued its report, the only move left to the defense was the Supreme Court's direct intervention via a stay of execution for the court to consider new evidence. Since the court was out of session, the lawyers needed to track down the individual justices and make the defense's case face-to-face, or over the phone. Since the execution was scheduled for one week after the commission handed down its findings, time was of the essence. However, if one justice did issue a stay of execution, the presumption was that nothing would be done until the matter was adjudicated before the entire court when it reconvened. This was a small courtesy that the Justice Department afforded the court in capital cases. As it was, Musmanno took on the task of contacting Chief Justice William Howard Taft. This was no easy task, and perhaps even

⁶⁸ Trial Transcript, Volume Five, p. 4849.

⁶⁹ Ibid.

⁷⁰ Ibid, p. 5378, 1

dangerous since the Chief Justice had gone a hunting/camping trip to the Canadian wilderness. In his efforts, Musmanno both telegraphed and phoned Taft to see if he was willing to come to the Canadian border to discuss the case.⁷¹ To that end, Musmanno had hired a private plane and was willing to fly wherever Taft wanted thereby risking life and limb.⁷² Unfortunately for Musmanno, when the Chief Justice finally telegraphed back, he claimed that he could not make it to the Canadian border. He added that because he was in a foreign country, he was precluded from exercising any judicial prerogatives in this or any other case.⁷³

Writing about this incident in 1968, Musmanno expressed a profound disdain for Taft. Not because he had refused to hear Musmanno's argument, but because Taft was lying.⁷⁴ While assuming a mantle of judicial impartiality and using a weak procedural issue for cover, the fact was that Taft had already made up his mind that the defendants were guilty.⁷⁵ He, therefore, was not interested in hearing any arguments to the contrary and was willing to hide behind the law for that purpose.⁷⁶ The same attitude was reflected by Governor Fuller's actions. Despite an avalanche of pleas for clemency, the execution went on as scheduled. In tearful statement to the *New York Times* Musmanno stated that he had been barred from seeing the two men before they

⁷¹ Telegram from Musmanno to Chief Justice Taft, dated August 21, 1927, Musmanno Taft Correspondence, Other Musmanno Correspondence, Musmanno-Sinclair, Michael A. Musmanno Papers, Duquesne University, Pittsburgh, PA. Hereafter referred to as Musmanno Papers. The Musmanno Papers are open to researchers without restrictions.

⁷² Ibid.

⁷³ Telegram from Chief Justice Taft to Musmanno, dated August 22, 1927, Ibid.

⁷⁴ Letter from Musmanno to Alden Whitman, dated April 4, 1968, Alden Whitman, Ibid.

⁷⁵ Ibid.

⁷⁶ Ibid.

were executed.⁷⁷ This was especially heart-rending for him since earlier that day, Vanzetti attempted to give him a book as a farewell gift. Musmanno refused, however, saying that Vanzetti could give it to him once they were freed.⁷⁸ That moment never came, and it was an emotional trauma for Musmanno from which he never fully recovered.

The Drive for Vindication

When Musmanno returned home to Stowe Township from Boston, he was broken-hearted believing he was a failure.⁷⁹ Convinced both Sacco and Vanzetti were innocent, he would spend the rest of his life seeking their vindication. During this early period, he settled down and practiced law, working as a people's lawyer.⁸⁰ It was at this time that Musmanno was approached by Upton Sinclair, who came to Stowe Township to discuss the case. What Sinclair wanted was Musmanno's assistance with a new novel he was planning.⁸¹ Eventually entitled *Boston*, Musmanno served as Sinclair's historical, legal, and editorial advisor on the project and worked on several of the book's chapters when it was serialized in the literary magazine *The Bookman*.⁸² Although Sinclair won the Pulitzer in 1943 for *Dynamo*, *Boston* was a standout among his various works for the innovative way it related its story. Long before *In Cold Blood*,

⁷⁷ "Walk to Death Calmly: Sacco Cried 'Long Live Anarchy'; Vanzetti Insists on his Innocence", *The New York Times*, August 23, 1927.

⁷⁸ Ibid.

⁷⁹ Michael A. Musmanno, *VERDICT! The Adventures of the Young Lawyer in the Brown Suit* (Garden City: Doubleday & Company, 1958), p. 324.

⁸⁰ Sally (Sarah) Stevenson, "Michael A. Musmanno: A Symbolic Leader" Unpublished DA Dissertation, Carnegie-Mellon University, 1981, p. 52.

⁸¹ Letter from Musmanno to Alden Whitman, dated April 4, 1968, Alden Whitman, Other Musmanno Correspondence, Musmanno-Sinclair, Musmanno Papers.

⁸² Letter from Musmanno to Upton Sinclair, dated June 18, 1928, 1927-July 1928, Musmanno-Sinclair Correspondence, Musmanno Papers; Comments on "Boston", Musmanno Edits for "Boston", Ibid.

Boston heralded the coming of the documentary or non-fiction novel. Working together on the book, Sinclair and Musmanno established an enduring friendship, which included their corresponding over the years. With this, Sinclair's respect for Musmanno's literary ability as well as his knowledge of the case was evidenced by the fact that he had Musmanno write the introduction of another book he wrote on the case, *August 22nd*, when it was republished in paperback.

For his part, while Musmanno went forward with his legal and public careers, the case was never too far away from his mind. Winning election to the Pennsylvania State Assembly in 1928, and to the Allegheny County court system in 1931, Musmanno always found time to lecture or write about the case. Knowing the matter backwards and forwards, he never wavered in his assertion that Sacco and Vanzetti both were innocent and the victims of a gross miscarriage of justice. This he was unusually well-qualified to do since he had worked as a criminal defense attorney before entering public office. As a result, he not only knew how to assemble his facts, but the far more important matter of poking holes in a prosecutor's case. This he would do in his first commercially published book that came out in 1939. Entitled *After Twelve Years*, and published by Alfred A. Knopf, the book was part examination of the case and part memoir. While his writing resembled his overly ornate 19th century oratorical style, Musmanno nevertheless did a fine job arguing that both men were railroaded. This not only included the prejudicial statements uttered by Judge Thayer, but also procedural flaws as well. For example, during the trial, both men sat in the courtroom in a dock that resembled a cage. Although this was part of Massachusetts's legal procedure at the time, Musmanno believed this created the impression that men were guilty.⁸³ He wrote every state attorney-general in the

⁸³ Musmanno, *After Twelve Years*, pp. 85-88

United States for their opinions. The overwhelming response he received was that such a practice would be prejudicial and thereby not allowed.⁸⁴ In addition, as mentioned earlier, the defense was stymied in terms of seeking an appeal since Massachusetts legal procedure required the assent of the presiding judge in the case being appealed for the matter to go forward. This Thayer refused to do. Add in such issues as witness credibility, the mishandling of evidence, Governor Fuller's attitudes, the manner in which the Lowell Commission handled its investigation, and the overheated political atmosphere in which the trial took place, there was no question but that the defendants' rights were violated.

However, Musmanno was not interested in an acquittal in the court of public opinion, where the litany of procedural and constitutional abuses in the case would be listed. He was absolutely convinced that the two men were innocent and would settle for nothing less than their complete exoneration.⁸⁵ From Musmanno's perspective, the two men not only suffered from a legal and court system that had gone off the rails during a time of crisis, they were the victims of ethnic bigotry. Growing up, Musmanno himself had been taunted with ethnic slurs. For him, the idea of recent immigrants being dehumanized in this manner figured prominently in his last book, a novel entitled *Black Fury*, which he published in 1966.⁸⁶ In addition, the Sacco-Vanzetti case figured in two of his other books: *Across the Street from the Courthouse* and *Verdict! The Adventures of the Young Lawyer in the Brown Suit*, which was a memoir of his early career and

⁸⁴ Ibid. p. 87.

⁸⁵ Massachusetts Legislative Report, p. 40

⁸⁶ See Michael A. Musmanno, *Black Fury* (New York: Fountainhead Publishers, 1966)

published by Doubleday in 1958.⁸⁷

The odd thing about Musmanno's devotion to the case was his also being a vehement anti-Communist. Overall, his politics were enigmatic in many ways. As mentioned above, Sinclair characterized him as a conservative; yet, years later, Raymond Block, publisher of the *Pittsburgh Post-Gazette*, characterized Musmanno as having once been "an extreme left-winger" in a conversation with J. Edgar Hoover.⁸⁸ Unfortunately, Musmanno's politics cannot be so easily pigeon-holed. Based upon the on-going correspondence Musmanno had with Sinclair, as well as his support for organized labor, it is reasonable to assume that Musmanno's political views were along the lines of a democratic socialism, which dovetailed with Catholic social teachings, particularly Pope Leo XIII's encyclical *Rerum Novarum*.⁸⁹ Thus, Musmanno had no problem defending Sacco and Vanzetti on the one hand, yet prosecuting Pittsburgh Communist leader Steve Nelson for sedition in 1950 on the other.

In fact, Musmanno's anti-Communism may have enhanced his drive to exonerate the two men. Andrea Friedman, in her book *McCarthyism and the Possibilities of Dissent*, asserts that various American reform efforts, such as the Civil Rights movement, were boosted by the logic

⁸⁷ See Michael A. Musmanno, *VERDICT! The Adventures of the Young Lawyer in the Brown Suit* (Garden City: Doubleday & Company, 1958); Michael A. Musmanno, *Across the Street from the Courthouse* (Philadelphia: Dorrance, 1954)

⁸⁸ Memo from J. Edgar Hoover, for Mr. Tolson, Mr. Ladd, and Mr. Nichols, dated February 5, 1953, summarizing a conversation with William Block, publisher of the *Pittsburgh Post-Gazette*, in "Cvetic, Matt HQ-4.pdf. Matt Cvetic was a paid informant for the FBI from Pittsburgh, who once posed as a member of Pittsburgh branch of the CPUSA. The document cited here is from his file that was release through the Freedom of Information Act. The files are available for download at the "Internet archive.org" website.

⁸⁹ Richard P. Mulcahy, "Musmanno's Fury" *Western Pennsylvania History*, Winter 2012-2013, p. 46.

of the Cold War.⁹⁰ Jim Crow threatened to delegitimize America's status as leader of the free world.⁹¹ Therefore, ending racial discrimination was not only a moral stance, but a practical one relative to improving this nation's image abroad by demonstrating that its commitment to equality and justice was not merely lip-service. This mentality was clear in the review mentioned above. At one point in the piece Musmanno makes the following statement: ". . . for this was not merely a trial in contest nor even a sociological phenomenon in the history of the United States. It was a spiritual experience and set back which only a fundamentally healthy America could have endured."⁹²

Musmanno stewed about this for over thirty years: however, by 1959, it appeared that the Massachusetts state government was ready to issue a pardon. Musmanno was one of several witnesses, including Arthur Schlesinger, Jr., who testified in favor of the measure. However, there was considerable push-back from various interested parties, including Governor Fuller's son, resulted in the effort's being shelved.⁹³ Nevertheless, interest in the case had resurged and a year later, NBC aired the docudrama on the case mentioned in the introduction. Thus, by 1960, Musmanno had emerged as a principal keeper of the eternal flame that both men were innocent. However, it was at this time when a discordant note was sounded, first by Max Eastman in the pages of William F. Buckley's *National Review*. According to the article, Eastman had been speaking with Anarchist leader Carlo Tresca about the case immediately prior to Tresca's death in 1944. During this conversation, Tresca claimed that while Vanzetti was innocent, Sacco had

⁹⁰ Andrea Friedman, *Citizenship in Cold War America: The National Security State and the Possibilities of Dissent* (Boston: The University of Massachusetts Press, 2014), p. 193

⁹¹ *Ibid*, p. 118.

⁹² Michael A. Musmanno, "They Shall Not Sleep," *The New Republic*, December 13, 1948, p. 25

participated in the South Braintree robbery and was thereby guilty.⁹⁴ Musmanno was incensed at what Eastman wrote, questioning Tresca's right to offer any information on the case since he was neither a witness of the crime, nor a student of it.⁹⁵

Over the years, the question of Sacco's possible guilt has become a point of contention among those who study the case, especially with the publication of Francis Russell's *Tragedy in Dedham*.⁹⁶ In it Russell puts forward Tresca's claim as the case's conclusive explanation. In addition, supporters of Russell's analysis claim vindication by the emergence of a letter Sinclair wrote about the case in 1929 to lawyer John Beardsley.⁹⁷

This letter surfaced in 2005 and some commentators have used this document to claim that Sinclair also believed Sacco was guilty. However, even a cursory reading, let alone a close one, does not support this analysis. Rather, Sinclair describes the intellectual odyssey involved with his writing *Boston*.⁹⁸ In it, Sinclair states that he came to the Sacco-Vanzetti story knowing little about it. He was inundated with information that pointed to the two men's innocence. He later received accounts that Sacco was guilty including such a statement from Fred Moore.⁹⁹

⁹³ Press Clippings in Sacco/Vanzetti Case, Part 14 of 14, File Number 61-126; FBI File: Sacco and Vanzetti, PDF 2 of 2, pp. 962-974.

⁹⁴ Letter from Michael A, Musmanno to Upton Sinclair, dated November 24, 1961, Musmanno-Sinclair, Musmanno-Sinclair Correspondence, Musmanno Papers.

⁹⁵ Ibid.

⁹⁶ See Francis Russell, *Tragedy in Dedham: The Story of the Sacco-Vanzetti Case* (New York: McGraw-Hill Book Company, Inc., 1962)

⁹⁷ Jean O. Pasco, "Sinclair Letter Turns Out to Be Another Expose" *Los Angeles Times*, December 24, 2005, on-line at the following web address: <https://www.latimes.com/archives/la-xpm-2005-dec-24-me-sinclair24-story.html>

⁹⁸ Letter from Upton Sinclair to John Beardsley, dated August 29, 1929. This letter can be downloaded from Internet archive.org

⁹⁹ Ibid

Upset by this, he spoke to other people on the matter, including Moore's ex-wife. She had worked on the case with Moore and knew it as intimately as he did. What she told Sinclair was that Moore had been dropped from the case as defense counsel and it had embittered him.¹⁰⁰ Moreover, Moore had descended into drug addiction. Because of this, Sinclair came away from the experience undecided about this issue and thereby decided to write the book from each side's point of view. Thus, it did not show him coming down on the side that Sacco was guilty.¹⁰¹ In fact, in his correspondence with Musmanno in the early 1960s, Sinclair clearly states the opposite, affirming his belief that Sacco was innocent.¹⁰² Moreover, he repeated what Moore's ex-wife had told him in 1929, adding that she believed his bitterness over being dropped from the defense had poisoned his mind.¹⁰³ It should also be pointed out that the material contained in Sinclair's letter about Moore's later claim that Sacco was guilty should have been no revelation, since Sinclair referenced it in an essay he published in 1953 in *The Bulletin of the Institute of Social Sciences*.¹⁰⁴

As it was, Francis Russell himself had originally believed that both Sacco and Vanzetti were innocent and published an article in *American Heritage* to that effect in October of 1958.¹⁰⁵ Moreover, he had corresponded with Musmanno on the subject. Thus, Musmanno reacted to Russell's change of heart with a vehemence usually reserved for cases of profound

¹⁰⁰ Ibid

¹⁰¹ Ibid

¹⁰² Letter from Upton Sinclair to Michael A. Musmanno, dated June 6, 1962, Musmanno-Sinclair, Musmanno-Sinclair Correspondence, 1962, Musmanno Papers.

¹⁰³ Ibid

¹⁰⁴ Ibid

¹⁰⁵ Francis Russell, "Tragedy in Dedham" *American Heritage*, October 1958, pp. 52-57, 109; Letter from Michael A. Musmanno to Upton Sinclair, dated July 7, 1962, Ibid

betrayal. Musmanno was especially incensed by the fact that the test was conducted “FORTY-ONE YEARS after the murder.”¹⁰⁶ Although Russell’s full narrative was published in his book, the nub of his argument was presented in another article he published in *American Heritage*.¹⁰⁷ In that article, Russell conducted a ballistics test using Sacco’s weapon and then compared the slugs with those recovered from the South Braintree robbery, particularly bullet number three.¹⁰⁸ By his own admission, however, Russell could not establish a clear chain of custody of the recovered slugs, since they had eventually been taken as souvenirs from the Massachusetts ballistics laboratory by Captain Van Charles Amburgh when he retired.¹⁰⁹ Van Amburgh had served as another ballistics expert for the prosecution.

Musmanno published his refutation in two places: first in a letter to the editor he wrote to *American Heritage* and later in his review of *Tragedy in Deadham* that was published in *The New Republic*.¹¹⁰ In these writings, Musmanno systematically deconstructed Russell’s argument. First, Musmanno pointed out that the ballistics experts that Russell employed (Jac Weller and Frank Jury) were not an impartial forensic scientist, having already asserted their belief in Sacco’s guilt.¹¹¹ Moreover, in an ironic twist of fate, Frank Jury had once worked as forensics expert for a Pittsburgh laboratory and mistakenly claimed a .32 caliber slug recovered in a murder case matched a test bullet he had fired. However, when the gun was tested again by the

¹⁰⁶ Letter from Michael A. Musmanno to Upton Sinclair, dated July 7, 1962, Ibid

¹⁰⁷ Francis Russel “Sacco Guilty, Vanzetti Innocent?” *American Heritage*, pp.4-9, 107-109.

¹⁰⁸ Ibid

¹⁰⁹ Ibid, p. 108.

¹¹⁰ Letter to the editor of *American Heritage* February 1963, Vol 14, No. 2; Michael A. Musmanno “Was Sacco Guilty?”, pp. 25-30

¹¹¹ Musmanno, “Was Sacco Guilty?” p. 26.

Pennsylvania State Police crime laboratory, the lab stated that the test shot did not match the recovered slug “even in general characteristics”¹¹² Second, there were problems with Sacco’s weapon as well as with bullet number three. During an experiment done in 1923, Sacco’s colt had been disassembled. When it was initially reassembled, the person doing the experiment installed the wrong barrel, necessitating a second disassembly/reassembly¹¹³ Another problem was that both the gun’s barrel and bullet number three had rusted. To allow for a comparison, Russell had bullet number three cleaned. Since soap and water would clear away rust, the missile had to have been washed in acid, thereby changing its composition. Hand in hand with this the very fact that the missile had corroded itself was a problem, since markings determining whether bullets match can be as small as one-half thousandth of an inch.¹¹⁴ As for Sacco’s weapon, it had rusted badly by 1923, meaning that was in far worse shape 38 years later. Russell’s forensics experts addressed this problem by firing two cleansing shots to clear the barrel. But by doing so, they altered the barrel, meaning that the gun of 1920 was not the gun of 1961.¹¹⁵ Plus, all of this was done without the involvement or supervision of a neutral third-party or court. From Musmanno's perspective the tests proved nothing and were thereby worthless, adding that “The “Weller-Jury test, if present in court, would be ruled out with a stern reproof from the presiding judge as a ludicrous attempt to submit *ex parte* guesswork as reliable evidence in so solemn a matter as a murder case.”¹¹⁶

¹¹² Ibid.

¹¹³ Musmanno, “Tragedy in Dedham: A Final Note, Michael Musmanno”, *American Heritage* February 1963, pp. 92-93

¹¹⁴ Musmanno, “Was Sacco Guilty?” p. 27.

¹¹⁵ Ibid,

¹¹⁶ Ibid.

Russell responded to Musmanno's criticisms first with a ritualized statement that he had great respect for Musmanno and the work he had done on the case. But he went to state his belief that Musmanno had become too emotionally involved in the matter to be objective.¹¹⁷ This was certainly true; however, Musmanno had been one of their defense attorneys and therefore was bound to think that way. With respect to Sacco's gun though, Russell attempted to defend his findings by arguing that Sacco's gun *was* Sacco's gun and thereby the same weapon both in 1920 and 1962.¹¹⁸ Sadly, for Russell, Musmanno had the better argument. Too much time had passed with Sacco's weapon having not been properly preserved for the tests he conducted to have any evidentiary or probative value. Thus, for Musmanno, nothing was proven and the fight for Sacco and Vanzetti's vindication continued.

Epilogue and Conclusions:

Musmanno soldiered on arguing for Sacco and Vanzetti's innocence practically until the day he died. He passed on Columbus Day, 1968, suffering a massive stroke in the morning just before he was to serve as an honorary marshal for the parade that was to be held that day. As it was, his two clients finally received the vindication he had long sought for them in 1977, when Massachusetts Governor Michael Dukakis exonerated the two men. This was due to a report that had been presented to him after a reexamination of the evidence in the case. With respect to the issue of whether the fatal bullet had passed through Sacco's weapon, the report cited Proctor's (identified as "the Prosecution's chief expert") belief that the fatal bullet had not actually passed through Sacco's pistol and that the prosecution knew it.¹¹⁹ The report also points out in a

¹¹⁷ "Tragedy in Dedham: A Final Note, Mr. Russell Responds", *American Heritage*, February 1963, p. 93.

¹¹⁸ Ibid

¹¹⁹ Commonwealth of Massachusetts, "Report to the Governor in the Matter of Sacco and Vanzetti," p. 9. This document can be downloaded from the Archive.org website.

footnote that based upon Francis Russell's own narrative in *Tragedy in Dedham*, no clear chain of custody with respect to the either the pistol or the bullets could be established.¹²⁰ It should also be added that when Russell finally located the gun and the bullets in question, Lieutenant John Collins of the Massachusetts State Police ballistics laboratory was angry over how the exhibits had been handled, stating: "I don't know whether you could prove anything with them now or not. I wouldn't touch them myself"¹²¹

As stated in the introduction, the Sacco and Vanzetti case continues to be an ideological and maybe even a sociological ink-blot test within American society. Russell made the same point himself in his original 1958 essay on the case.¹²² A consistent factor here appears to be the idea that certain people refuse to admit to the possibility that a miscarriage of justice took place and that the defendants were revolutionary troublemakers anyway. William F. Buckley, convinced the two men were guilty, blithely points out in the essay cited above that when they were arrested, both men were armed, and that Sacco not only had a revolver, but 23 bullets in his pocket. In addition, he stated that it is hard for some people to believe that sensitive men such as Sacco and Vanzetti could commit as horrific an act as murder and goes on to point out that Whittaker Chambers, himself a sensitive person, worked on behalf of violent revolutionary socialism.¹²³ He then concludes that the case is important to those who have argued for the two men's innocence, since it represents an opportunity for these people to tear down America and discredit American institutions, particularly Anglo-Saxon jurisprudence.¹²⁴

¹²⁰ Ibid

¹²¹ Russell, *Tragedy in Dedham*, p. 317.

¹²² Russell, "Tragedy in Dedham", *American Heritage*, October 1958, p. 53.

¹²³ Buckley, "Sacco and Vanzetti Again", p. 50.

¹²⁴ Ibid.

Considering Musmanno's take on the issue, Buckley's assertion was a little too sweeping and absolute. First, comparing Chamber's work on behalf of the Soviet Union with the South Braintree robbery amounted to a false equivalency. It is one thing to run a spy ring consisting of what Chambers considered as a collection of leftist dilettantes; it is another thing all together to plan and execute armed robbery in broad daylight. Secondly, Buckley concluded his essay with an off-handed appeal to commonsense: both men were armed, Sacco had 23 bullets in his pocket, they must have been mixed up in it somehow. But it is interesting to consider the following – if the two men were guilty, and were displaying a “consciousness of guilt” by their actions prior to their arrest, why didn't they get rid of their weapons and ammunition? As pointed out, the South Braintree robbery took place on April 15; Sacco and Vanzetti were arrested on May 5th. This was more than enough time for the men to dispose of anything linking them to the crime. Yet, what concerned them during this time was preventing the seizure of a collection of radical literature. That simply does not add up. There is no question if either man had been mixed up in the fatal robbery, that any evidence they had in their possession linking them to the crime would have been destroyed.

In a similar vein, when Sinclair's 1929 letter surfaced in 2005, there was a distinct smug sense of satisfaction on the parts of at least some on the American right that they had somehow been vindicated. This is obvious in the *Los Angeles Times* article cited above.¹²⁵ The attitude appears to be that despite the trial's various flaws, that justice had somehow been done and that the American left had been dishonest.¹²⁶ This is nonsense. Even conceding Sacco's guilt, which I do not, for the sake of argument, what about Vanzetti? Is he to be written off as collateral

¹²⁵ Jean O. Pasco, “Sinclair Letter Turns Out to Be Another Expose” *Los Angeles Times*, December 24, 2005

damage? The idea is ridiculous on its face, and remember, that Sinclair did not at any time assert that Sacco was guilty. In fact, as cited above, his correspondence with Musmanno clearly indicated his firm belief that both Sacco and Vanzetti were innocent.

Finally, with respect to the trial and the work of the Lowell Commission, two major points stand out. First, the South Braintree murder trial was a sham. While the Commonwealth of Massachusetts and its various representatives, notably Judge Thayer and Frederick Katzmann made a great show of following the canons of due process in the courtroom, the proceedings amounted to little more than judicial kabuki. Katzmann wanted a conviction, come what may and Thayer, based upon his statements to various third parties, wanted to condemn the two defendants, as did the jury's foreman, Walter Ripley. Second, while the Lowell Commission chided Thayer for his indiscretion, it went on to say, without a shred of evidence to substantiate the claim, that it considered the statements of some of the various affiants on this matter to be exaggerated. Thus, the commission in a soft-edged sort of way accused these witnesses of perjuring themselves, thereby allowing an unjust verdict to stand and an unwarranted execution to proceed.

Taking the measure, although Musmanno was to be commended for his efforts on behalf of the two men, and despite his desire to wash away the stain of injustice that had tainted American jurisprudence, the fact is that in some ways his efforts could be considered to be a fool's errand. No matter how many times the Commonwealth of Massachusetts admitted that miscarriage of justice had taken place, the fact remained that the men had been executed for something they did not do and nothing could bring them back. Also, while we would like to believe that we have moved on as a society since the early 1920s, the reality is that we have not.

¹²⁶ Ibid

The trial took place against a background of intense anxiety and fear over revolutionary terrorism, as well as xenophobia regarding recent immigrants. While we are no longer frightened about revolution, terrorism is another matter. Moreover, while European immigrants are no longer regarded with suspicion and derision, those from the Middle East and Latin America are. Given the current climate, as well as the right set of circumstances and actors, the same thing could happen all over again. In this respect, the Sacco-Vanzetti case is still with us and will remain so for years to come – it is the legacy of the eternal struggle for justice.

Richard P. Mulcahy
July 7, 2020
Titusville, Pennsylvania.