

Sacco - Vanzetti

Property of Fred H. Murra

At Worcester, Massachusetts

March 30 1923

CONFERENCE BEFORE JUDGE THAYER

In Re: NICOLA SACCO

Present:

For Commonwealth: Harold P. Williams, Esq., Dist. Atty., Norfolk County

For Defendant: Arthur D. Hill, Esq.; Fred H. Moore, Wm. J. Callahan;

Thos. P. McNarny, for defendant Vanzetti.

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MR. HILL: May it please the Court: There are two matters which I want to call to the Court's attention on behalf of the defendants, the first which I shall take up a little later, our desire to have an opportunity in the near future to examine the exhibits in the case; the second is the situation in regard to the defendant Sacco.

We have received a copy of the report of Dr. Campbell of the Psychopathic Hospital dated I think 26th March, of which Your Honor has the original. We wrote Your Honor under date of March 27th in which we stated to Your Honor the situation in which we then found ourselves placed by that report of Dr. Campbell's; owing to what was no doubt a misunderstanding, Dr. Myerson, the expert of the defendants was unable to obtain access to Sacco during the week, so we had no direct medical knowledge of our own as to his condition; and the report was naturally a good deal of a surprise to us. Less than ten days, I think, before, three eminent experts, Dr. Calhoun, Dr. Thomas and Dr. Myerson, all pronounced the man to be mentally diseased. In the face of that, to receive a report intimating, not only that he was not diseased but that there was no evidence of any mental trouble, was a surprise to us.

Further, the situation is complicated by the fact that Sacco has made one attempt to commit suicide while in the hospital at least; and, as stated, I am informed by Mr. Moore that it is his purpose to make further attempts. He has repeated that statement today to Dr. Myerson and Dr. Myerson informed Mr. Moore of the fact

over the telephone, Dr. Myersen having today obtained access to him.

Now, that raises a very serious question, - as to the expediency of returning a man in that condition to the Dedham Jail where the facilities for preventing suicide or attempted suicide and causing injury to one's self recklessly are very much less, and I think that condition of mind, coupled with the opinion of the alienists given at Dedham by Dr. Calhoun and the others, raises the same question, whether we are yet in a condition to enable the Court to decide finally as to the man's mental state. Of course, I have, as we all have, the greatest confidence in Dr. Campbell's knowledge and impartiality and it was, as Your Honor will remember, at the suggestion and the urgent solicitation of the defendants, that Mr. Sacco was committed to that institution; nevertheless in view of the difference of opinion among the doctors, we cannot quite feel that the question ought fairly to be regarded as settled, and we do feel very deeply the responsibility involved for the life of this man, in a correct decision being reached, as should be done.

In taking the course which we are taking (and I speak on behalf of not only Mr. McAnarney and Mr. Moore but my associate Mr. Thompson as well), in taking the course which we are taking, we are doing so without any instructions from either Mr. Sacco or Mr. Vanzetti or from any one entitled to speak for them or either of them. We are acting from a sense of our responsibility as counsel, as officers of this Court, and as men, because we feel it our duty, if possible, to protect, first, the life of this man, and, second, the reputation of the Court for absolute fairness of dealing in the matter; and, of course, the Court cannot deal fairly unless it has the facts before it. For that reason we have felt that we were under the obligation to call those facts to the attention of the Court and to press the view which we, as individuals, had reached, upon the Court, in the exercise of our personal sense of responsibility and without regard to the fact that we were not instructed, and that it is quite possible that our action might not meet the approval of our client or of those whom he represents. We conceive it to be our duty to them and our duty to the Court to take the course which we believe will protect the life of Sacco and will

best insure the absolutely fair and orderly conduct of the trial.

Now, what we respectfully suggest is this: that the order of the Court under which Mr. Sacco is at the Psychopathic Hospital should be continued for a brief period of time, to allow Dr. Campbell to further observe the case and to allow the case also to be observed by Dr. Myerson, and, if the Court sees fit, by the other two gentlemen, Dr. Calhoun and Dr. Thomas, who have examined Mr. Sacco before.

That will enable the Court to have something which it cannot have now, - the concurrent opinion of the four eminent experts who have seen and examined this case. And I think the Court must have been impressed by the fairness and judicial quality of the attitude of the three gentlemen who examined the case at Dedham. Those gentlemen, your Honor will remember, substantially agreed, and altho one member from the side of the defense and the other from the Government, they treated the case not as a partisan but as a medical matter and it would have been impossible to have done so on a higher plane.

I do not question that if those gentlemen have further opportunity to examine Mr. Sacco, that it is probable at least that the agreement between them and Dr. Campbell will be as complete as the agreement of the three among each other. At any rate, you will certainly have an opinion which is far more satisfactory as a basis for action than any which Your Honor could have today, basing your judgment purely on Dr. Campbell's report. I imagine Dr. Calhoun himself would be the first to concur with the justice of what I have said in this particular.

Further, what I propose will have the enormous advantage that it will secure us all against the very regrettable possibility of a successful attempt by Mr. Sacco to kill himself. I can conceive few things that would be more unfortunate not only for him and for his wife and child, but for the Commonwealth, than to have such an attempt succeed. It is deeply for the interest of the Commonwealth. I am not going to expatiate on the point of view of Mrs. Sacco and the man's son, because Your Honor's own humanity needs no words from me to lead you to think of that. But I do want to emphasize the enormous importance from the point of view of the Commonwealth to have this trial reach, whatever the result, whether it results in an acquittal

or in a decision adverse to these defendants, or either of them, the enormous importance to the Commonwealth of having the trial proceed, as I believe Your Honor is eager to have it proceed as any one could be, on the highest possible plane, with the most absolute certainty of every right of the defendants being preserved and with the defendant Sacco himself there, able to receive either an acquittal if he deserves it or if he is entitled to it on the law of the facts, or a conviction, if that is what justice requires. We want to hold that up as the standard of Massachusetts to the world.

Now, if this man kills himself, our chance of doing that is gone. If he kills himself, it will give him a specious atmosphere of martyrdom which it is not well that he should have. If he kills himself as the result of a disordered mind (and the mere fact that he is trying to kill himself under the existing circumstances is some evidence of mental disorder) if that is done just after he has left the place where he can be cared for, on the decision of a single doctor or group of doctors, after a period of confinement during which, unfortunately and undoubtedly thru some misunderstanding, he has been deprived of the attendance of his own physicians, the expert selected by himself and his advisors to deal with the mental aspects of his case, there inevitably will be a feeling (and I say it with all deference) I think the justifiable feeling that he has not been quite fairly dealt with.

For these reasons, I urge upon Your Honor that his commitment to the Psychopathic should be continued, say, for a period of two weeks, or until the matter is called to the attention of the Court by either the District Attorney or counsel upon the other side. What I urge is not for the purpose of delay, nor will it or can it have any effect in delaying the progress of this case. Both Mr. Thompson and I, who are to argue the next motion which the Court has indicated it would take up, are prepared to do so at any time, as we intimated to Your Honor the other day, and we were prepared to do so at the last hearing in Dedham; and the only reason it was not done was because we felt (and, I think Your Honor felt with us) that in the condition -- your action certainly indicated that you felt with us -- that the condition of the defendant Sacco was such as to preclude proceeding with the

argument at that time. We remain prepared to go ahead at any time, with due regard to such other arrangements as Your Honor *has*

I do not think it will be possible, considering those engagements, for us to argue the matter next week, tho what I am suggesting means merely Mr. Sacco should stay in the Psychopathic rather than to be transferred to the Dedham Jail, for a period which must necessarily elapse in any event without action.

There is a further reason besides the engagements of counsel why there will have to be a short interval; that is, our desire to examine the exhibits in this case. We feel that it is of great importance to the interests of the defense that an opportunity should be given for us to go over those exhibits thoroly and carefully. Of course, Your Honor will realize, from your wide experience, how important such examination must necessarily be, in ~~any~~ event, and how peculiarly important it is to new counsel who come into the case for the first time.

THE COURT: I cannot see why my order is not broad enough now to allow you to do that without any further order. If I recall it correctly, my order was, counsel should have the opportunity of examining these exhibits at any time in the presence of the sheriff. That applied to counsel on both sides.

MR. HILL: May I say I am not asking for any order at the present time? I did not know that Your Honor had made a formal order.

THE COURT: That is my order, as I recall it.

MR. HILL: But I took the matter up with the District Attorney immediately after the hearing in Dedham and his attitude was so entirely amicable and he was so entirely willing to allow me an opportunity to examine, that I deemed it unnecessary to ask for any order. I have been pressing him (I am afraid he thinks a little strenuously) for the opportunity to examine those exhibits. In the pressure of his other duties, he has informed me, I think, on three separate occasions, he was unable to make an appointment to allow us to see them. I did not understand that it would be necessary for Your Honor to be present, and therefore, he told me yesterday that he would let me know on Monday when I could see them, and I expect to do

as soon after that as we are able to make an appointment. We want to submit certain of the exhibits to the scrutiny of an expert whom we have and to that I am sure there will be no objection; indeed, none has been made; so that no order is required.

The only reason I am bringing the point to Your Honor's attention is, I wanted to emphasize what I propose in regard to the defendant Sacco will not involve any delay other than that which is inevitable from the circumstances of the case. Your Honor would certainly not, I think, want to force Mr. Thompson to a hearing next week in view of what he says as to his engagements. Your Honor would certainly not want us to argue that motion until we had had an opportunity to examine the exhibits and reasonable time to consider the results of the examination. Those things would certainly carry us over one week, and I had rather anticipated it would be perhaps the end of the following week before the motion could be set down.

What I would like to ask Your Honor is, to leave Mr. Sacco where he is at least until that time, and during that time to make it clear Dr. Myerson should have full opportunity and access to him. I ask this because it seems to me the responsibility for the man's life, after we call the facts to Your Honor's attention, is inevitably on Your Honor's shoulders. As far as we can, we want to lighten that burden by sharing the responsibility, but the last word is necessarily with you, and when I have called the facts and made my suggestions to Your Honor, I have done all that counsel for the defense can.

THE COURT: As I follow you, this is your position; - that if I order him re-committed to the Boston Psychopathic Hospital, you are perfectly satisfied to go ahead with these motions for new trials? Am I right?

MR. HILL: Certainly, Your Honor. Whatever Your Honor orders, I should consider we were obliged to take your directions.

THE COURT: I am trying to find out just what counsel had in mind; there is a good deal of force in your suggestion. Of course, here is a report of Dr. Campbell. It is within my power of course, if I wanted to, to find he was sane and these hearings should proceed. If you are willing to admit that these motions shall continue to be heard during the month of April or as early in April as possible,

without hearing from the District Attorney, I might be somewhat inclined to do that. You see, it is going to leave us -- if we cannot dispose of it in the month of April, if I go to May with other very important cases (I just got thru one first-degree murder case in Springfield where we worked a great deal, up all night to get a verdict, and I am going back to that section the first Monday in May.

MR. HILL: The only difficulty I feel in acceding immediately and unequivocally to Your Honor's suggestion is this: I am not yet convinced quite, that Mr. Sacco is sane. If at the end of the further period of observation, the doctors should conclude that he was not, I might be in a very embarrassing position. Subject to that, subject to his being found sane, on that further examination, we are all entirely prepared to go ahead, ~~except~~ for the purpose of meeting the conditions raised by his possible mental condition; there is no disposition on the part of Mr. Thompson or myself to delay the arguments on those motions; and I do not have the slightest doubt they can be heard in April. It will certainly be possible to determine to the satisfaction of every one, within two weeks, whether Mr. Sacco is sane or insane. There is no indication of any likelihood of difference of opinion among the experts. It could be determined today but for the unfortunate fact of Dr. Myerson having been precluded from the hospital. That was an accident for which I blame no one which has resulted in a situation which it seems to me to require a little further delay, to preserve that absolute balance of fairness which it is Your Honor's object to achieve in this case, and we are so fortunate that these other things are going to hold us up on arguments of the motion anyway, so that it does not make any difference. I have no doubt whatever we can argue the motions in April. I do not want to make any promise to do it that might be nullified by something outside of my own control, but Your Honor can be assured that as far as my personal effort goes (and I feel certain I can say the same for Mr. Thompson) that there will be every attempt made to dispose of these motions in April. I have been working on them, and I know he has been working on them, constantly. We have a strong sense of the responsibilities we owe to the Court in the matter, and that we have no right to fight for delay merely for the

sake of delay. We are not here for that purpose and we are not going to do it. I can give your Honor absolute assurance on that.

THE COURT: Has anything been done during the last two weeks with reference to exceptions? I do not suppose you are interested in those, now.

MR. HILL: The only thing I have had the hurrying of was an opportunity to examine those exhibits. I am quite sure my friend Mr. Williams will bear me out when I say I have made every effort to see them for the past week. It is not my fault I have not seen them already. The fault is his. I know how busy he is; I quite realize he should want to be present himself; I make no criticism of Mr. Williams. It is only the fact that for the past seven days I have been trying to see those exhibits and that, more than anything else, has been delaying my preparation of the case. It is one of those things that are unavoidable from the fact that the District Attorney is always terribly overworked and terribly undermanned in the matter of assistants. I know it to be so in Suffolk and I have no doubt it is equally so in Norfolk. Mr. Williams has been very courteous in the matter. It has been purely one of those things that are unavoidable. I mention it only as showing what the reason is, as far as we are concerned.

THE COURT: Let me ask you, Mr. Moore, has anything been done with reference to exceptions since the last adjournment?

MR. MOORE: I have heard nothing from the District Attorney's Office. I do happen to know, ex parte, they are working on the bill of exceptions but we have had nothing from them; we have had no communication, nothing has developed, in connection with the bill of exceptions since the last hearing. Your Honor realizes the next step in the matter must come from their office.

MR. HILL: I think I stated, Your Honor, that if Mr. Sacco is once determined finally to be sane, there is no doubt we can argue these motions. I cannot make a promise to argue a motion on behalf of an insane man. I made that clear; I do not think I need to reiterate that.

THE COURT: I think so. I think you have made it clear now. I

thought at one time that was your purpose, and I am satisfied now it is not. I might have asked you the question, Suppose he was insane and it was determined later, then it might be a very interesting question with reference to proceeding on those motions for new trials.

MR. HILL: Well, I think I have made my position clear in the matter.

DISTRICT ATTY. WILLIAMS: I do not quite know, Your Honor, what you wish to hear from me, with reference to the matter. I have already indicated to Mr. Hill that he will have an opportunity to examine them with an expert. I have been physically unable to get the exhibits from the Trust Company where they have been held, to bring them to Dedham and afford him the opportunity. I will, the first of the week. I have the interesting situation of my assistants trying cases against each other in Plymouth, and I have not had the assistance of either one.

THE COURT: Has anybody been working on these Exceptions?

MR. WILLIAMS: I have not been able personally to do a thing, since last Friday.

THE COURT: Has Mr. Katzman been able to ?

MR. WILLIAMS: As I have stated, they have been trying against each other in Plymouth all the week. Personally I have been busy on other matters and have not done anything since last Friday.

THE COURT: Why I refer to the Exceptions: you will notice the Chief Justice wrote that was what he desired, that everything should be cleaned up during the month of April, and he mentioned the motions, all motions for new trials and exceptions, and Mr. Moore agreed they would take those motions up and go over them with counsel, the exceptions, and agree on all matters possible.

MR. MOORE: I am ready. Of course, the minute there is any objection presented, we are ready. I will not attempt to fix an exact date, but my impression is we filed our bill approximately between eight and nine months ago; there has been nothing filed as against it or any question raised as against it, since that date.

THE COURT: They will answer that by saying you kept them pretty busy by motions for new trials ever since. Somebody told me one motion

included 160 pages.

MR. HILL: If Your Honor should decide in favor of the defendant on the motion for new trial, the exceptions would become unimportant.

THE COURT: That is true.

MR. WILLIAMS: If Your Honor please, I may go further in reference to the exceptions and say that it may well be I will not be able physically to take up the matter of the bill of exceptions before the expiration of April. Starting in, Monday, we have a busy term in Norfolk. I have personally to deal with those exceptions, with an assistant. Excepting for what work I can do at night, I will not have an opportunity to deal with them. I want no misunderstanding at the present time with reference to that. I am doing the best I can in the time that is available to me.

In reference to the motion which Mr. Hill has made as to the further disposition of the defendant Sacco, I am not in a position, or do not wish to take a position of objecting to anything Your Honor may decide to do in reference to him. This seems to me to be the situation: Your Honor proceeded under Chapter 123 of the General Laws, Section 100, and on a statement or statements by three experts, two appointed by the Court, and a third, Dr. Myerson, joined at the request of the defendant, Your Honor found --I am quoting from the statute -- "the defendant was in such mental condition that his commitment to an institution for the insane was necessary for his proper care or observation." And, of course, he was committed to an institution acceptable to and requested by the defense. He has been found by the officials of that institution to be sane. I asked Dr. Campbell, the superintendent of the Psychopathic Hospital, to come up here, to answer any questions Your Honor might wish to put to him, to supplement his written report. The only conversation I had with Dr. Campbell was in the taxi on the way from the Worcester Station, and the only question I put to him was: "Do you need any further time for the examination of Mr. Sacco?" If I am correctly quoting the Doctor, he said, "No". That being true, that institution has found him sane, and I conceive it becomes

the duty of the Superintendent and Trustees of the Psychopathic Hospital, under Section 105 of the same Chapter of the General Laws, to return him to the Dedham Jail, the term of commitment having expired Saturday night. I, of course, assumed that Your Honor is not concluded by the report of any one institution, by any one physician, or by any group of physicians, and Your Honor may say at the present time that you from this report are not satisfied as to the sanity or insanity of this man Sacco. If that be true, I suppose the thing which must be done, if Your Honor at your discretion will do so, is to recommit him somewhere. A committal under Section 100 is, to some institution, for the officials of that particular institution or State Hospital to determine his sanity. If Your Honor is not satisfied with the Psychopathic Hospital, you can commit him elsewhere. As I understand it, the Psychopathic Hospital is not in a position, and I am sure the Department of Mental Diseases does not wish the Hospital to be used merely as a place for custody of a prisoner and for the purpose of allowing outside physicians to examine him and furnish a subsequent report. If he is to be committed for further examination or held for further examination, it seems to me the proper thing to do is either to keep him in the House of Correction where certain facilities for seeing that he does not do away with himself are as good, if not better than any private hospital, or to some other State Hospital, where other physicians may examine him and report to Your Honor, and then, on all the reports of various physicians, Your Honor can make a final decision.

In making these statements I have nothing further to do nor any objections to make.

MR. HILL: May I say I find this difficulty in dealing with Brother Williams, - he always begins by saying he does not oppose what we suggest, and then goes on and makes the most strenuous possible arguments against it. It is difficult to know where to have it, whether to know whether I may accept his very courteous statement that he does not offer any objection or his subsequent suggestion of every possible objection, substantial or technical, to the course which we propose.

Now, let us deal with this situation as practical men. What is the fair and reasonable thing to do, as we have got it here, - to send a sick man, who is just being nursed back by the doctors onto his feet (and Mr. Sacco is that, whatever else he maybe) from one hospital to another, to take him from a place where he has been brought out of the very valley of the shadow of death and gotten into at least some sort of recovery, to a different place? To take him from a place acceptable to his own advisors and to people who represent his point of view and put him somewhere else? The rules of the Psychopathic Hospital are not so inelastic as that, we do not believe. I quite appreciate it is not desired to have it made under ordinary circumstances a place of detention for accused prisoners whose cases are awaiting decision. But we have a situation here which is not an ordinary case. We have a man in an abnormal and unusual mental condition. We have a case here which has excited a great deal of public interest and where it is extraordinarily important, not only that the defendant should have everything he is fairly entitled to, but that it should be absolutely apparent to everybody in the world that he is having everything he is fairly entitled to. Under those circumstances, and in the absence of the slightest indication that it is going to delay proceedings, what possible harm is there in letting him stay where he is, in letting well-enough alone, in letting the people who are going a good job now go on and finish it? We are perfectly prepared to stand, today, where we stood ten days ago in all we say about our belief that the Psychopathic Hospital is the best possible place to which this man can be committed. We are not quarreling with Dr. Campbell because his first opinion was different from the opinion of the other experts who examined the case. Even lawyers sometimes differ in opinion, and with the obscure phenomena that surround the human brain it is only natural doctors should differ.

Under the circumstances, why isn't the reasonable and fair thing, the thing which was suggested by counsel for the defense? I am at loss to see anything in the argument of the District Attorney that in any way touches that substantial fact, which is the thing which is going to move Your Honor in deciding. There isn't

any question as to your legal power to re-commit this man to the Psycopathic Hospital. It is true Section 105 provides, as the District Attorney read, that where a man has been determined sane after examination, he should, in the ordinary course, be returned to the jail from which he came, assuming he was sent, in the first instance, from a jail. But that doesnot mean your Honor's power to order or suggest a further detention is not entirely clear;(that is decided in Commonwealth v. Spencer.) It is so plain and self-evident that I should not expect to find any decisions the other way, and I think it is astonishing to me and shows how irritating counsel can be, even our most well-poised District Attorney, that he should oppose what I am asking. I can only impute his position to something irritating I have unintentionally done which has swayed him from the natural poise and good judgment he usually has.

THE COURT: This is quite an unusual situation. I did not understand Mr. Williams to oppose it. What he did say was, he felt that it was the ^{who} feeling of those ~~he~~ represented the Psycopathic Hospital with reference to having a man sent there, as Mr. Sacco has been sent, and kept there. I thought he indicated the feeling of the institution, rather than any direct opposition on the part of the District Attorney. Here is a pretty unusual situation; it is somewhat difficult for me to understand it. Two weeks ago tomorrow, three experts came into court and testified that this man was mentally diseased, one of them went so far as to say that he saw symptoms of paranoia, and I had always supposed that was one of the incurable diseases. They all testified, upon questions put by the Court, that there was no malingering, no feinting, on the part of the defendant Sacco; they also testified that the mental disease was the cause of his starving himself. Now, he was taken over to the Psycopathic Hospital; they started in, if the papers were true, with barley gruel and orange juice and he began to improve, and has been improving right straight along, mentally and physically. That would seem, perhaps, to be a new discovery

as a remedy for paranoia, -barley broth and orange juice. I rather think the great difference between those physicians, if it had not been for one expression of Dr. Campbell's report, would be that the starving had so weakened him physically that it also weakened him mentally; in other words, it may be true that the starving was the cause of the mental trouble that especially two of the experts observed when they examined him, altho that they were clear and positive that there was a mental disease, and that was the cause of his starving himself. I have an idea that is probably the cause of the difference between their testimony. But Dr. Campbell goes further than that. He says that he never was insane, and that is a direct conflict between the opinion of himself and those of the three experts who examined him. I may have put that a little stronger than was in the report, but I got it that the report from the Psycopathic Hospital did not discover any signs of insanity at any time. Isn't that right?

MR. WILLIAMS: Dr. Campbell is looking at his report, to see if that is true.

THE COURT: I may have gotten it a little too strong. Do you find that, Doctor?

DR. CAMPBELL: I do not know exactly what you refer to, Sir. I should have hesitated to have put such a dogmatic statement as to the condition of the patient previous to my observation of him. Perhaps you were referring to the last sentiment, where I gave the patient's statement as to forces which underlay his behavior when in the jail.

THE COURT: There is your formulated proof that he had not been insane.

DR. CAMPBELL: His behavior was more or less intelligent, along the lines of normal psychology.

THE COURT: You say, in your report, that at the Psycopathic Hospital you have found no evidence of insanity of any type.

MR. HILL: I gave that just the same construction Your Honor did, and I submit it is the natural construction, stating, as it does, if I may borrow the Doctor's own words, somewhat dogmatically, that it would indicate there was a difference of

opinion between him and these other gentlemen to the extent that he thought they were wrong not only when they found him insane but when they found any evidence of it whatever.

THE COURT: Haven't we got enough here, of a professional situation where there may be some pride of opinion? I am not sure. If I should adopt your recommendation, why not select a man outside, from some other institution, who has had nothing to do with it and have him go and see this man. There is a man here in Worcester at the State Asylum. Without quoting him, Judge Forbes, told me this morning that out of a thousand cases of mental troubles he had dealt with, this man was the best he had seen.

MR. HILL: Could Your Honor tell us the name?

THE COURT: Dr. William Bryan.

MR. HILL: We have Your Honor's suggestion that Mr. Sacco should remain at the Psychopathic and there be examined by Dr. Bryan?

THE COURT: Yes.

MR. HILL: I should have no objection to that, whatever. I will confer with the others.

THE COURT: I think we have got this into a sort of medical controversy.

MR. HILL: That would not, I understand, exclude Dr. Myerson?

THE COURT: No.

MR. HILL: I am entirely content, and always have been, that he should be examined by any alienist appointed by the State and as far as we are concerned, we have no fear of Dr. Campbell's pride of opinion. We know he is doing the very best he can.

THE COURT: Here are two physicians, experts; it was a pretty hasty examination for them; they are entitled to a good deal of consideration before they are criticized too severely; they were hastily put into that position by the Court, because it was an extraordinary situation that confronted us, a position where physicians said this man probably would not live more than four or five days unless relief was given. Therefore, the case went over from Friday until Saturday and

the two experts examined him Friday night, I think, and, after they had seen him once, they reported; they probably relied to a certain extent on what may have been told them, what may have been told them by Dr. Myerson who had seen him; I think he is the doctor who testified, five times prior to the day of the hearing. So that we have now what might possibly be said to be a controversy which might result in professional pride of opinion, because it is a subject of comment that this man's mental disease left him pretty quickly after he got a little barley broth!

MR. WILLIAMS: May I interrupt? Did you understand that the three physicians who testified at Dedham reported, or intended, as far as you could judge, to go farther than to say that the defendant was in such mental condition in their opinion that his commitment for observation was necessary? That is the way I understand their testimony.

THE COURT: Somebody used this language: that he was showing paranoiac symptoms, and that he thought he first displayed them three or four months after his committal.

MR. HILL: That is almost word for word with page 35 of the stenographic report, which I was about to call Your Honor's attention to, and he is one of the two experts selected by my brother Williams.

MR. WILLIAMS: No; not selected by me; employed by the Court.

MR. HILL: I thought it was Dr. Thomas. Page 34 begins Dr. Thomas.

MR. WILLIAMS: Yes; Dr. Thomas. Page 34 begins Dr. Thomas: "that he was suffering from a type of mental disease, whether it would ordinarily be called paranoia, and we feel he ought to be committed for further examination and further treatment."

MR. HILL: Well, that is precisely what the Court has said. Of course, the only question before the Court then was whether he ought to be committed.

MR. WILLIAMS: Yes, and I did not understand the physicians went any further than to say whether he ought to be committed.

MR. HILL: The language of the physicians ought to speak for themselves.

THE COURT: Certainly. "Paranoiac symptoms": we ought to know what they mean.

MR. HILL: We are entirely content to acquiesce that Mr. Sacco should remain at the Psychopathic Hospital and should be examined by the doctor whose name you suggested or by any other responsible alienist in the employ of the State or selected from those outside, provided Dr. Myerson should have access to him. I should also be content to have him stay and have Dr. Campbell make further examination with the other doctor. I only want what seems to me to be reasonable. I should regret with great regret and a very heavy sense of responsibility to see him transferred to any other institution.

THE COURT: I think he is where he ought to be. I think so. I sent him there because he was beyond the possibility of escape, and I said at the time that fact was a matter I must take into consideration, where he could get the best mental treatment and where he could be put where he was beyond all possibility of escape. I am informed by a representative of the State Police Department that he is where he will be beyond any possibility of escape because that would be the most unfortunate thing that possibly could happen. There would be no end of criticism if that ever happened. I am a little bit afraid of this feeling here between physicians. That has been naturally brought about. From their testimony, it was so strong, with reference to a mental disease that it does raise somewhat of a question in my mind whether that disease could be cured with this remedy; and it is is no expression of want of confidence in that institution at all. I have the greatest confidence in it. Many times there would be no excuse for the Court not acting upon it because Dr. Campbell has had that man very nearly two weeks under daily, constant observation, and the only man who has had that, and nobody has had an opportunity of giving a wise decision but Dr. Campbell, and his assistants. Nobody could complain if under those circumstances the Court, having adopted or having sent him to the place sought by the counsel for the defendant, if I adopted it and acted on

that report. I suppose you are well acquainted with Dr. Bryan? (to Dr. Campbell).

DR. CAMPBELL: Yes.

THE COURT: You call him an excellent man?

DR. CAMPBELL: Yes.

THE COURT: And he is perfectly satisfactory to you?

DR. CAMPBELL: Yes.

THE COURT: I want to eliminate all possibility of any professional feeling because this man, according to what I hear, recovered pretty quickly. I wish somebody will see -- will you, Doctor, -- see if you can get in touch with Dr. Bryan?

DR. CAMPBELL: What do you wish me to do?

THE COURT: Ask him about his engagements, etc. and about coming down there and making a thoro, careful, and painstaking examination, so that when he comes in to Court he is absolutely fortified, from his own experience and observation, to testify.

DR. CAMPBELL: You wish me to call him and ask if he will come to the Psycopathic, and if so, when?

THE COURT: See if his engagements are such as can be arranged.

MR. HILL: Would Your Honor entertain the thought that the three gentlemen who were at Dedham should also confer with Dr. Bryan? I merely want to have all the light we can have. We have four gentlemen, with Dr. Campbell.

THE COURT: The trouble with that is, it is a sort of reflection on the Psycopathic Hospital.

MR. HILL: I do not think so, Your Honor. It is not so intended in any way.

THE COURT: I think you had better cut men out who have already expressed an opinion. It was a hasty opinion, without a thoro preparation; they have a little pride in that, as well as we have in our professional opinion, when we give it.

MR. HILL: Well, Your Honor, I am sure, would be very ready to reconsider your opinion on a question of law, if, on later examination you found yourself convinced you were wrong. I think any one of these four gentlemen would be equally ready to reconsider.

THE COURT: Some of my opponents say I am a little bit tenacious!

MR. HILL: I suppose there is as much danger from the point of view of the defense from Dr. Campbell as there is the other way from these other gentlemen.

THE COURT: There ought not to be, from the defence, because you suggested that institution.

MR. HILL: We are prepared to take the consequences of our own action. We are making no criticism of it and are entirely content a new man should be joined. What we do suggest is, and what we have in mind, is, that Dr. Myerson might be able, by conferring with whoever else acts, to give them facts as to the history of the case which would be of real value to a doctor in forming his opinion, and that whoever acts in the case ought to have the advantage of consultation with the men who had previously been in it.

THE COURT: I am not going to limit the experts at all, whether they shall take the statement of Dr. Myerson or anybody else; they are appointed to make an investigation, in their own way, so that when they come into court they can speak from their own knowledge, observation and experience. For me to say these two experts shall take what Dr. Myerson has said, I would not suggest that at all.

MR. HILL: I do not suggest that they should take it without critical examination, but that they should receive it. I have no doubt anybody Your Honor suggests will do so. I think a suggestion from Your Honor might not do any harm.

THE COURT: I am going to leave that entirely with them, to use every means in the world at their command to ascertain the real condition of this man. If they want to go to Dr. Myerson, if they desire to get his knowledge or information, they will do it. I am going to leave that to them.

MR. HILL: Well, Your Honor, I do not want to press unfairly on the matter, but I should feel that those of us who are interested in the defendant would be better satisfied, perhaps ----

THE COURT: That may be.

MR. HILL: --- if we could get the opinion of all the medical men in the case agreeing.

THE COURT: I am not going to give any order that these two men shall go and consult with an expert who is employed and paid for by the defense.

MR. HILL: I am not proposing he should treat him on any different basis from the two experts employed and paid by the Commonwealth. I want to have the new man coming into the case have all possible light on it. I should want them to confer with Dr. Calhoun, and Dr. Thomas, as well as Dr. Myerson.

THE COURT: They might not desire it.

MR. HILL: I cannot conceive of any man of good judgment and sound discretion who would not desire it. If you and I were called in as lawyers to a case and found some other lawyers of character and position had been dealing with that case for months, the first thing we would want to do would be naturally to confer with those men, to know what facts they had ascertained from their observation, to get their view of the law and questions of judgment involved. Now, I should assume that any medical man of sound judgment, if he understood ^{fully} what was expected of him would want to do just that. I am only suggesting that your Honor's judgment and experience should indicate to those gentlemen, and Your Honor must remember I have never seen or heard of this man until this morning.

THE COURT: Neither have I. I got my information from Judge Forbes coming in on the train, this morning.

MR. HILL: All the more reason why you should indicate to him the main line of his investigation. I may seem over-anxious, but I am anxious to put behind the professional skill of the gentleman who is to be selected the wisdom and practical knowledge of how the investigation should normally be conducted, which a few words from Your Honor will bring.

THE COURT: What is your report, Dr.Campbell:

DR.CAMPBELL: I am informed Dr.Campbell is in Porto Rico and will be away the entire week.

THE COURT: I thought I had solved the situation. I am not going to make any order (to Dr.Campbell) that you shall go and see anybody, Dr. Campbell. If you want to see the doctors, you are at liberty to. Use your own judgment. I can see where a man may well say, that from his own examination and investigation, he may not care to see a physicians who has been employed by the other side. If he wants to see the other physicians, who have testified, I have no objection. There is no limit fixed. They have all the power in the world to make as thoro, as careful, and as painstaking investigation as they possibly can, with a view of determining this man's mental state. I am not going to say you shall go to this man or that man or any other man. You are going to have the broadest authority, if you want, to consult with Dr.Myerson, or Dr.Calhoun or Dr. Thomas. I have no objection. But I am going to give him every authority in the world to make as full and complete an investigation as is possible.

MR.HILL: I want to have Your Honor make one point quite clear. I am quite sure you do not intend to leave it in any doubt. Dr.Campbell is in here for the first time. He did not have the advantage of seeing Dr.Myerson or hearing his testimony at Dedham. I want to have it clear that Your Honor does not intend any slight on Dr.Myerson ----

THE COURT: Not the slightest.

MR.HILL: It seems to me we are justified in asking your Honor to believe, from the appearance of this Doctor on the witness stand, from the fairness of his testimony both in examination by the District Attorney and by Mr.Thompson and in his answers to questions from the Court itself, that he acted as judicially as was possible for an expert in a case to act; and I want to have that point of view brought out so that Dr. Campbell might, coming in as a new man into the case, have inferred from certain of the

language which Your Honor used, have been detrimental in your words or sense or choice of words to Dr. Myerson, which I am quite sure Your Honor did not intend.

THE COURT: I intended only one thing. I did not have any idea of casting any reflection upon anybody. I simply say I am not going to make any order for any physician coming into the case to go to any particular persons for information, but that he shall have the broadest possible authority to make as full and as complete and painstaking an examination as is possible. If they want to sit down and talk, all of them together, I have no objection; they can talk with Dr. Myerson alone or without him if they want to. I have no objection. But I am not going to give any instructions that they shall go and talk with anybody.

MR. HILL: As long as the matter lies in Dr. Campbell's mind, I do not believe any suggestions whatever will be necessary.

THE COURT: I do not think so.

MR. HILL: I was dealing with a gentleman who to me was a mere name, and I felt somewhat different.

THE COURT: He might want to talk with you. I am not going to tell him he cannot, or that he should.

MR. HILL: I have never seen Mr. Sacco, so I cannot be of any value to him.

DR. CAMPBELL: I was out of the room when you made some reference to giving an order to physicians to examine the patient.

THE COURT: No; I simply suggested possibly under the circumstances that there might be some little professional pride of opinion, because this report seems to be a little different from the statements which were made to the Court by these other doctors, that there might be a little professional pride of opinion. If there was, I thought we had better have a man disinterested, a man like Dr. Byran, whose name was first mentioned to me by Judge Forbes this morning; he certainly spoke very, very highly of him. (To Dr. Campbell): Have you anybody you would suggest, Dr. Campbell?

DR. CAMPBELL: I would be equally ready to consult with these three physicians, Dr. Calhoun, Dr. Thomas and Dr. Myerson. I should be glad to do so, and if in my opinion

I made no reference to their observations, if I have not already consulted with them, I considered the Court wished me to give an absolutely independent opinion on the condition of the man at the time I saw him and be absolutely sure of all my affirmations and not depend at all on hearsay; so that my opinion is really strictly limited to what I felt I can stand upon by my own observation. That is the condition of the opinion of the man since his admission to the Boston Psychopathic Hospital, where I have observed him practically daily for ten or eleven days at prolonged intervals.

THE COURT: I have a feeling that if I do not appoint somebody else or ask you to get somebody else, that there might be some division which may be the result of opinions professionally given.

MR. WILLIAMS: May I make one suggestion: I can conceive where it might be embarrassing for Dr. Campbell to make a suggestion himself. I think Dr. Cline whom Your Honor knows, is in his office today and might suggest, in view of Dr. Bryan's absence, that Your Honor speak with Dr. Cline who might be in position to recommend something, and perhaps the Court might be interested in that.

MR. HILL: I haven't any doubt if we are given a little time we could agree without any difficulty.

THE COURT: All right; is there anything further this morning?

MR. HILL: I was going to suggest, too, that it be made absolutely clear from now on Dr. Myerson is to have access without any difficulty to Mr. Sacco.

THE COURT: There is no objection to that.

MR. HILL: There was a misunderstanding about that. I do not want to have it continue.

DR. CAMPBELL: We felt our attitude was developed thru Dr. Kline; he said certain individuals mentioned by the Court were to have definite access to him, - his wife and counsel; no other person was mentioned.

MR. HILL: I am not in any way criticizing Dr. Campbell.

THE COURT: I went a little further.

MR. HILL: It was a misunderstanding entirely. I thought Dr. Myerson's name was in the order.

THE COURT: I do not think it was. I thought it was left in such a way that certain ones that were trying to be kept away would be kept away,-- not men like Dr. Myerson.

MR. MOORE: There is one matter, while Dr. Campbell is here I would like to speak of. There is a young Italian by name of Bianchi, whom I have personally known for approximately two and a half years. Mr. Bianchi has been a life-long friend of many years' standing of Mr. Sacco. He has been out of the city, well approximately for a year. He is back in the city, came day before yesterday. Mrs. Sacco came to my office yesterday, right after she had seen Mr. Sacco, where she had talked in great detail in reference to his suicidal idea. She asked me if I would make an effort to secure permission for Mr. Bianchi himself to be given an opportunity under the usual regulations to himself see if he could not speak a word to Mr. Sacco to supplement what she had already said. I make this suggestion; Mr. Bianchi is present here, and the thought I have in mind is solely that if there is any way of reaching this young man's mind, certainly we are all vitally concerned in reaching it.

THE COURT: I did not make any special order in reference to that. I will leave it to the head of that institution. It belongs to the head of that institution. Dr. Myerson was all right. I am not going to say that certain individuals can go there I know nothing about. I will leave that to them. If it is all right, you ought to convince Dr. Campbell that it is perfectly proper to let that man go in.

MR. HILL: If Dr. Campbell's understands he has discretion to let those additional persons in, that would be entirely satisfactory.

THE COURT: He does. He has discretion.

MR. HILL: (To Dr. Campbell) You do understand it?

DR. CAMPBELL: It is a very embarrassing discretion.

THE COURT: It is your institution.

DR. CAMPBELL: One feature of the condition was that he shall not escape, that is going against the very purpose for which that is founded; they are there for mental disorders.

THE COURT: I understand Col. Foote says he has no fear about any escape with the preparations he has made. What I say is this: I do not think I should interfere, Doctor. You are at the head of that institution; you are going to use your discretion and say who you want to come there.

DR. CAMPBELL: I judge all this comes from the point of view of what is good for a sick person. I shall have to pass upon these problems not looking out for the medical aspects but other aspects.

MR. HILL: Only medical.

THE COURT: For instance, if I should say you could have various people go there, I do not know anything about them. You are there on the spot. Use your judgment. Your judgment will be good. If you think they ought to be let in, you can let them in, but, one thing, I would not be very generous with my allowing people to come in there. I should know the men pretty well before I would let them in. I think we mentioned Mrs. Evans, and of course, counsel, and we have mentioned one or two other names. But at no time was it intended to prevent you from letting those you wanted to in, considering you had the discretionary authority.

MR. HILL: We are entirely content with that, and will do our best not to embarrass him.

Hearing Closed.

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