

5 Rapp no. 12 (1927)

SACCO V. MASSACHUSETTS

HEADNOTE

by Ira Brad Matetsky

Source: MICHAEL J. MUSMANNO, *AFTER TWELVE YEARS* 356-57 (1939); William Howard Taft Papers, Library of Congress, Manuscript Division, Reel 294.

Opinion by: William Howard Taft (noted in source).

Opinion date: August 22, 1927 (noted in source).

Citation: *Sacco v. Massachusetts*, 5 Rapp no. 12 (1927) (Taft, C.J., in chambers), 2 J. In-Chambers Practice 54 (2017).

Additional information: The Sacco-Vanzetti defense team also asked Chief Justice William Howard Taft to stay the impending executions. Taft was at his summer house in Canada, and everyone assumed that he would have to return to United States territory before he could take any judicial action. Defense lawyer Michael Musmanno (later a Pennsylvania Supreme Court Justice) telephoned and then telegraphed to Taft, asking him to travel to the border and grant relief. Taft's telegram in response, which is quoted and discussed in Musmanno's book about the case, is given below. We are treating it as an in-chambers opinion, although in deference to Taft's view that he could not act as a justice while outside the United States, perhaps it should be called an out-of-chambers opinion.

OPINION

Quebec, Canada
August 22, 1927

M. A. Musmanno
Attorney, Sacco-Vanzetti Case
Boston, Mass.

You advised me by telephone at nine last night that you wished to apply to me for a stay of execution upon a petition for a writ of certiorari filed in

the United States Supreme Court in the Sacco-Vanzetti Case. Communication was difficult and I requested you to submit what you had to say in a telegram. At 2 a.m. your telegram reached me as follows: "Would Your Honor consider crossing the border to pass upon question of stay of execution of Sacco and Vanzetti scheduled to be executed midnight August twenty-second. Please wire at what point you will hear presentation of case and I will meet Your Honor there." The authority to grant such stay is given to a justice of our court. Under the statute and our rules there is no specific authority giving the right to apply to more than one justice. By telephone you advised me that you had made such an application to Mr. Justice Holmes, to whom disposition of such matters in the first judicial circuit has been regularly assigned by the court and that Mr. Justice Holmes had refused your application but expressed no objection to your applying for a stay to any other member of our court. Mr. Justice Brandeis and Mr. Justice Stone are now within the First Judicial Circuit, yet you request me, who is not within the jurisdiction of the United States at all and could hardly order a stay from here, to proceed to the border and there hear your application. Compliance with your request would involve a day's journey by rail from here and I could not reach the border leaving here by first train in the morning until a short time before midnight when the present stay of execution expires. Were application to be presented to me under such circumstances I would feel constrained to defer to Justice Holmes' decision who is advised as to the whole case having heard two applications on it. The defendants have had the benefit of the fullest consideration according to Associated Press dispatch purporting to give the text of the decision of the Supreme Court of Massachusetts in this case handed down Friday last which reached me Saturday night. The absence of jurisdiction in our court to grant the writ of certiorari in this case seems to be apparent. The unusual character of your request justifies this reference to that decision as reported as added reason for my not going to the border.

W. H. Taft