



Nicola Sacco and Bartolomeo Vanzetti, accused of committing a payroll robbery of the Slater and Morrill Shoe Company in South Braintree, Massachusetts. When police asked witnesses to identify the two men, instead of using a lineup, officers made Sacco and Vanzetti stand alone in the middle of a room and pose as bandits.

walked to a nearby streetcar stop. Apparently nervous, they moved on to another stop a half mile away. There they boarded the trolley for Brockton. As the trolley car moved down Main Street, Police Officer Michael Connolly climbed on. Having spotted the two foreigners, he arrested them. When they asked why, he replied curtly, "suspicious characters."

Thus began the epic story of Nicola Sacco and Bartolomeo Vanzetti, two obscure Italian aliens who became the focal point of one of the most controversial episodes in American history. Within little more than a year after their arrest a jury deliberated for just five hours before convicting both men of robbery and murder. Such a quick decision came as a surprise, particularly in a trial that had lasted seven weeks, heard more than 160 witnesses, and gained national attention.

Nor did the controversy end with the jury's decision. Six years of appeals turned a small-town incident of robbery and murder into a major international uproar. The Italian government indicated that it was following the case with interest. Thousands of liberals, criminal lawyers, legal scholars, civil libertarians, radicals, labor leaders, prominent socialites, and spokespersons for

CHAPTER I I

Sacco and Vanzetti

In the years after World War I, crime statistics curved sharply upward. Armed robberies rose at an alarming rate, and anyone handling large sums of money had reason to exercise caution. On most paydays Frederick Parmenter, paymaster for the Slater and Morrill Shoe Company of South Braintree, Massachusetts, would have used a truck to deliver his money boxes to the lower factory building. Only a few months earlier, in December 1919, a brazen gang of bandits had attempted a daylight payroll heist in nearby Bridgewater. The bandits had fled empty-handed, and no one was hurt in the gunfight. Still, area businesses were uneasy. On the morning of April 15, 1920, however, the robbery attempt must have been far from Parmenter's mind. It was a mild spring day, and he set out on foot for the lower factory building with his assistant, Alessandro Berardelli, walking ahead.

Halfway to their destination, a man approached Berardelli from the side of the road, spoke to him briefly, and then suddenly shot him dead. As Parmenter turned to flee, the bandits fired again, mortally wounding him. A blue Buick pulled from its parking place. The two assailants and their lookout jumped into the car and fled toward Bridgewater. To discourage pursuers, the bandits threw tacks onto the streets. Two miles from Braintree they abandoned the Buick and escaped in another car.

Bridgewater Police Chief Michael Stewart thought he recognized a partner in the Braintree crime. The same foreigners who bungled the December heist, he guessed, had probably pulled off the Braintree job. Stewart's investigation put him on the trail of Mike Boda, an Italian anarchist. Unable to locate Boda, Stewart kept watch on a car Boda had left at Simon Johnson's garage for repairs. Whoever came to get the car would, according to Stewart's theory, become a prime suspect in both crimes.

His expectations were soon rewarded. On May 5, 1920, Boda and three other Italians called for the car. Mrs. Johnson immediately slipped next door to alert the police, but the four men did not wait for her return. Boda and one friend, Riccardo Orciani, left on a motorcycle while their companions

immigrant groups rallied to Sacco and Vanzetti's cause. Arrayed against them was an equally imposing collection of the nation's legal, social, academic, and political elite.

The case climaxed on April 9, 1927. Having denied some eight appeals, trial judge Webster Thayer sentenced Sacco and Vanzetti to die in the electric chair. His action triggered months of protests and political activities. Around Charlestown Prison (where the two men were held) and the State House in Boston, Sacco and Vanzetti's supporters marched, collected petitions, and walked picket lines. Occasionally violence erupted between protesters and authorities, as mounted police attacked crowds in Boston and clubbed them off the streets in New York. On August 22, the morning before Sacco and Vanzetti were scheduled to die, Charlestown Prison appeared like an embattled fortress. Ropes circled the prison grounds to keep protesters at bay as eight hundred armed guards walked the walls. In New York's Union Square, 15,000 people gathered to stand in silent vigil. Similar crowds congregated in major European cities. All awaited the news of the fate of "a good shoemaker and a poor fish peddler."

The historian confronting that extraordinary event faces some perplexing questions. How did a case of robbery and murder become an international cause célèbre? How was it that two Italian immigrants living on the fringe of American society had become the focus of a debate that brought the nation's cherished legal institutions under attack? Or as one eminent law professor rhetorically posed the question:

Why all this fuss over a couple of "wops," who after years in this country had not even made application to become citizens; who had not learned to use our language even modestly well; who did not believe in our form of government; . . . who were confessed slackers and claimed to be pacifists but went armed with deadly weapons for the professed purpose of defending their individual personal property in violation of all the principles they preached?

THE QUESTION OF LEGAL EVIDENCE

Lawyers reviewing events might answer those questions by arguing that the Sacco and Vanzetti case raised serious doubts about the tradition of Anglo-Saxon justice so venerated in the United States. More specifically, many legal scholars then and since have asserted that the trial and appeals process failed to meet minimum standards of fairness, particularly for a criminal case in which the defendants' lives hung in the balance.

In the first flush of Sacco and Vanzetti's arrest, prosecutors seemed to have good reason to label the two men "suspicious characters." Both Sacco and Vanzetti were carrying loaded revolvers. Not only that, Sacco had twenty-three extra cartridges in his pockets, while Vanzetti carried several shotgun shells. When questioned, both men lied about their activities. They claimed not to know Mike Boda or to have been at the garage to pick up Boda's car. But suspicious behavior was one matter; proof that Sacco and Vanzetti had

committed the Braintree murders was another. As the police and prosecutors went about making their case, they followed distinctly irregular procedures.

To be sure, in 1920 the police were allowed to conduct an investigation with far greater latitude than the law permits today. The Supreme Court decisions in *Miranda* (1966) and *Escobedo* (1964) established that criminal suspects have the right to remain silent, to be informed of their rights, and to stand in an impartial lineup for identification. None of those guarantees existed in 1920. Even so, District Attorney Frederick Katzmann and Chief Stewart showed unusual zeal in constructing a case against Sacco and Vanzetti. At no time during the first two days of questioning did they tell either suspect why they had been arrested. Chief Stewart repeatedly asked them not about the robbery, but about their political beliefs and associates. The district attorney did obliquely inquire about their activities on April 15, though he never mentioned the Braintree crimes. Furthermore, when the police asked witnesses to identify the suspects, they did not use a lineup. Instead, they forced Sacco and Vanzetti to stand alone in the middle of a room posing as bandits.

As the investigation continued, the case came close to collapsing for lack of evidence. Of the five suspected gang members, all but Vanzetti could prove they had not been in Bridgewater during the December holdup attempt. Despite an intensive search of the suspects' belongings, including a trunk sent to Italy, Katzmann was never able to trace the money, even among radical political groups with whom the suspects were associated. Fingerprint experts found no matches between prints lifted from the abandoned Buick and those taken from the suspects.

Faced with those gaps in the evidence, Katzmann still decided, first, to prosecute Vanzetti for the December Bridgewater holdup and, second, to charge both Sacco and Vanzetti with the Braintree murders in April. Arguing the Bridgewater case in June 1920 before Judge Webster Thayer, Katzmann presented a weak case against Vanzetti on the charge of assault with intent to rob. Still, he did manage to make the jury aware of Vanzetti's anarchist views and persuade them to convict. Judge Thayer then meted out an unusually severe sentence (twelve to fifteen years) to a defendant with no criminal record for a crime in which no one was hurt and nothing was stolen.

That conviction allowed Katzmann to proceed with the second trial, to be held in the suburban town of Dedham. Since this trial would be a special session of the superior court, a judge had to be appointed to hear the case. Judge Thayer asked his old college friend, Chief Justice John Aiken, for the assignment, even though he had presided over Vanzetti's earlier trial and could scarcely consider himself impartial. Thus the second trial opened with a judge who already believed unequivocally in the defendants' guilt.

At Dedham, District Attorney Katzmann built his case around three major categories of evidence: (1) eyewitness identification of Sacco and Vanzetti at the scene, (2) expert ballistics testimony establishing Sacco's gun as the weapon that fired the fatal shot at Berardelli and Vanzetti's gun as one taken from Berardelli during the robbery, (3) the defendants' evasive behavior

both before and after arrest as evidence of what is legally termed “consciousness of guilt.”

The prosecution, however, had a difficult time making its case. Of the “eyewitnesses” claiming to place Sacco and Vanzetti at the scene, one, Mary Splaine, claimed to have observed the shooting from a window in the Slater and Morrill factory for no longer than three seconds at a distance of about 60 feet. In that time she watched an unknown man in a car traveling about 18 miles an hour. Immediately after the crime Splaine had difficulty describing any of the bandits, but one year later she picked out Sacco, vividly recalling such details as his “good-sized” left hand. She refused to recant her testimony even after the defense demonstrated that Sacco had relatively small hands.

Louis Pelzer testified for the prosecution that upon hearing shots, he had observed the crime from a window for at least a minute. He pointed to Sacco as the “dead image” of the man who shot Berardelli. Two defense witnesses, however, controverted Pelzer’s story. Upon hearing the shots, they recalled, the intrepid Pelzer had immediately hidden under his workbench—hardly a vantage point from which to make a clear identification.

Lola Andrews, a third witness, claimed that on the morning of the crime she had stopped near the factory to ask directions from a dark-haired man working under a car. She later identified Sacco as that man. But a companion, Julia Campbell, denied that Andrews had ever spoken to the man under the car. Instead, Campbell testified, Andrews had approached a pale, sickly young man who was standing nearby. Other witnesses had recalled the same pale person. A second friend swore that he had heard Andrews say after she returned from police headquarters that “the government took me down and wanted me to recognize those men and I don’t know a thing about them.” Nor did Andrews’s reputation as a streetwalker enhance her credibility. Yet in his summation, prosecutor Katzmann told the jury that in eleven years as district attorney he had not “ever before . . . laid eye or given ear to so convincing a witness as Lola Andrews.”

Against Katzmann’s dubious cast, the defense produced seventeen witnesses who provided the defendants with alibis for the day or who had seen the crime, but not Sacco or Vanzetti. One, an official of the Italian Consulate in Boston, confirmed Sacco’s claim that he had been in Boston on April 15 acquiring a passport. The official remembered Sacco because he had tried to use a picture over 10 inches square for his passport photo. “Since such a large photograph had never been presented before,” the official recalled, “I took it in and showed it to the Secretary of the Consulate. We laughed and talked over the incident. I remember observing the date . . . on a large pad calendar.” Others said they had met Sacco at a luncheon banquet that day. Witnesses for Vanzetti claimed to have bought fish from him. Katzmann could only try to persuade the jury that the witnesses had little reason to connect such a mundane event with a specific date.

In the face of contradictory eyewitness testimony, the ballistics evidence might have decided the case. To prove murder, Katzmann wished to show that the fatal shot striking Berardelli had come from Sacco’s gun. Ballistics

specialists can often identify the gun that fired a bullet by characteristic marks, as distinct as fingerprints, that the barrel and hammer make on the projectile and casing. Two experts, Captains William Proctor and Charles Van Amburgh, connected the fatal bullet to a Colt pistol similar to and possibly the same as Sacco’s. But neither of Katzmann’s witnesses made a definitive link. “It is consistent with being fired by that pistol,” Proctor replied to Katzmann. Van Amburgh also indicated some ambiguity: “I am inclined to believe that it was fired . . . from this pistol.”

For unknown reasons defense attorneys never pursued the equivocation of those testimonies. Instead, they called their own ballistics specialists who stated with absolute certainty that the fatal bullet could not have come from Sacco’s gun. In addition, they controverted the prosecutor’s claim that Vanzetti had taken Berardelli’s gun during the holdup. Shortly before his murder, Berardelli had left his pistol at a repair shop to have the hammer fixed. Shop records, though imprecise, indicated that the gun was .32 caliber, not a .38 such as Vanzetti was carrying. The records also supported Mrs. Berardelli’s sworn testimony that her husband had never reclaimed his pistol. The defense then argued that the hammer on Vanzetti’s gun had never been repaired.

Since the defense had weakened the ballistics evidence, Katzmann based his case primarily on “consciousness of guilt.” To convict on those grounds, he had to convince the jury that Sacco and Vanzetti had behaved like men guilty of the crime, both before and after arrest. Here, Katzmann made his case with telling effect. Why had the defendants been carrying guns when they were arrested? They had gone hunting that morning, they claimed. But if that were the case, why were they still carrying hunting weapons and extra ammunition at night, when they set out to pick up Mike Boda’s car? They were in such a hurry, Sacco and Vanzetti replied, that they forgot to leave their revolvers at home. But Katzmann continued his onslaught. Why did the two men lie at first about knowing Mike Boda or having visited the garage? Surely this evasion indicated a clear consciousness of guilt.

To explain such evasive behavior, defense lawyers were forced to introduce the inflammatory issue of Sacco and Vanzetti’s political beliefs. For indeed, both men proudly proclaimed themselves to be anarchists, rejecting the authority of any government. Capitalism, they believed, was little more than an organized system of banditry under which the rich and powerful exploited the poor. Sacco and Vanzetti had both been active in the strikes and labor unrest of the era. As a result, they had been alarmed by the government crackdown on radicals that began in 1919. When Officer Connolly arrested them, the two men assumed that they, too, had been snared in the government’s dragnet. They acted evasively, defense lawyers argued, not because they were criminals but because radicals were being persecuted and deported. Once arrested, Sacco and Vanzetti’s fears were only confirmed by the police’s constant questions about their political beliefs.

Similar worries accounted for their peculiar actions at Johnson’s garage, the defense argued. Shortly before his arrest, Vanzetti had conferred with the Italian Defense Committee of New York, then inquiring into the fate of a

fellow anarchist, Andrea Salsedo. The committee knew only that Salsedo was being held by Justice Department agents; members warned Vanzetti that he and his friends might be in danger of being jailed or deported. Only a week later, newspapers across the nation reported that Salsedo had fallen to his death from a twelfth-floor window. The police insisted the case had been a suicide, but many anarchists thought Salsedo had been pushed. Before he died, had he provided the government with the names of other anarchists? If so, Vanzetti and Sacco were at risk. Anyone found with anarchist literature could be arrested and deported. It was for that reason, Sacco and Vanzetti told the court, that they had gone to retrieve Mike Boda's car: they needed it to carry away the radical pamphlets stored in their homes—something they hardly wished to admit to police questioning them about radical activities.

The revelations of the defendants' radical politics could hardly have raised the jury's opinion of the two men. And their explanations did not stop Katzmann from focusing on consciousness of guilt in his final summation. Nor did Judge Thayer take into account their explanations in his charge to jury. In theory, a judge's charge guides the jury as it interprets conflicting evidence: in separating the relevant from the irrelevant and in establishing the grounds for an objective verdict. But Thayer made his sympathies all too clear. In discussing the ballistics testimony, he wrongly assumed that Katzmann's expert witnesses had unequivocally identified Sacco's gun as having fired the fatal shot. And he spent no time weighing the defense's argument that prosecution eyewitnesses had been unreliable. Only when he discussed consciousness of guilt did the judge become expansive and specific. He lingered over the evidence offered by the police and the garage owner while ignoring Sacco and Vanzetti's explanations.

Lawyers and legal historians have raised other telling criticisms—excesses in the trial procedures, prejudice on the part of both judge and prosecutor, bungling by the defense lawyer. Inevitably, these criticisms have influenced the way historians have approached the controversy. Most of them have centered on the issue of *proof* of guilt. Contrary to popular opinion, the courts do not determine whether a person is guilty or innocent of a crime. They decide merely whether the prosecutor has assembled sufficient evidence to establish guilt. The judge may even suspect a defendant is guilty, but if the evidence does not meet minimum standards of legal proof, the court must set the accused free. As one court concluded, "the commonwealth demands no victims . . . and it is as much the duty of the district attorney to see that no innocent man suffers, as it is to see that no guilty man escapes."

Thus lawyers tend to focus on narrow, yet admittedly important, questions. They are all the more crucial when human lives are at stake, as was the case with Sacco and Vanzetti. Believing that the legal system maintains vital safeguards of individual rights, lawyers in general seek to ensure that proper legal procedures have been followed, that evidence is submitted according to established rules, and, in accordance with those procedures, that guilt has been adequately determined. A lawyer answering the question, "Why all the

fuss over the Sacco and Vanzetti case?" would most likely reply, "Because the trial, by failing to prove guilt beyond reasonable doubt, perpetrated a serious miscarriage of justice."

STOP HERE BEYOND GUILT OR INNOCENCE

So far in these essays we have considered enough historical methods to understand that history affords far more latitude in weighing and collecting evidence than does the legal system. The law attempts to limit the flow of evidence in a trial to what can reasonably be construed as fact. A judge will generally exclude hearsay testimony, speculation about states of mind or motives, conjecture, and vague questions leading witnesses to conclusions. But those same elements are sources of information upon which historians can and do draw in their research. Historians can afford to speculate more freely, because their conclusions will not send innocent people to jail or let the guilty go free. In one instance, for example, appeals judges refused to act on defense claims that Judge Thayer had allowed his prejudices against Sacco and Vanzetti to influence his conduct of the trial. They ruled that remarks made outside the courtroom, no matter how inappropriate, had no bearing on what occurred inside. By contrast, the historian can accept the fact of Judge Thayer's prejudice regardless of where he revealed it.

Given their broader canons of evidence, historians might be tempted to go the lawyers one step further by establishing whether Sacco and Vanzetti actually did commit the robbery and murders at Braintree. To succeed in such an investigation would at least lay the controversy to its final rest. Yet that approach does not take us beyond the lawyers' questions. We are still dealing with only two men—Sacco and Vanzetti—and one central question—guilty or innocent?

We must remember, however, that when historians confront such either-or questions, their overriding obligation is to construct an interpretation that gives full play to *all* aspects of the subject being investigated, not just the question of guilt or innocence. They must look beyond Sacco and Vanzetti to the actions of the people and society around them. What political currents led the prosecutor to bring those two men to trial? How much were Judge Thayer, District Attorney Katzmann, and the men in the jury box representative of Massachusetts or of American society in general? Of just what crime did the jury actually convict the defendants? In answering those questions, historians must lift their drama out of the Dedham courtroom and into a larger theater of action. In short, we cannot answer our original question, "Why all the fuss?" merely by proving the defendants guilty or innocent. Historians want to know why this case provoked such sharp controversy for so many years.

Any historian who studies the climate of opinion in the early 1920s cannot help suspecting that those who persecuted Sacco and Vanzetti were far more concerned with who the defendants were and what they believed than with what they might have done. Throughout the nation's history, Ameri-