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ON APRIL 2, 1959, the Joint Judiciary Committee of the Massachusetts Legislature conducted a public hearing and heard witnesses for thirteen hours on the Sacco-Vanzetti case. This would denote that, although Sacco and Vanzetti have now been dead for thirty-two years, the case is not buried, with the ashes of the principals, in the urns of an immutable judgment. Representative Alexander J. Cella of Medford had introduced a bill calling upon the Legislature to recommend to Governor Furcolo that he issue a posthumous pardon to the executed Italian workmen. The Committee, after deliberating for six days, made the following significant announcement in its report to the Legislature:

> "We are not unmindful of all that has happened in the Sacco-Vanzetti case. We neither *condone* nor criticize the action taken by the courts." (Emphasis supplied.)

This is the first time that an organ of the Massachusetts government officially conceded that their courts *could* be wrong. For over a quarter century, officials of that state had clapped hands over self-conscious ears to any argument on the *cause celebre* which had stirred passionate condemnation, in all parts of the world, of those who counselled, approved, and perpetrated the tragic execution. There were those in Massachusetts who remembered the pleas of the London Herald while the men were still alive:

> "The people of the United States should realize that in the opinion of millions of workers, lawyers and professional men, not only

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> the lives of the two Italians are involved, but the whole question of honest, honourable administration of justice in the most powerful republic in the world is at stake."

There were those who recalled also the entreaty of the world-famous authors, H. G. Wells and Arnold Bennett:

> "We, the undersigned, firm friends and admirers of America and American institutions, are deeply impressed by the weight of evidence against the conviction of Sacco and Vanzetti. We implore the Governor and people of Massachusetts not to stain the history of their State with the blood of two innocent men."

But these pleas meant nothing to Executioner Elliott who at midnight on August 22, 1927, threw the switch which ended the lives of Nicola Sacco and Bartolomeo Vanzetti and at the same time shocked the hearts of America-lovers everywhere. Many saw in the execution not only the perpetration of an appalling miscarriage of justice but perhaps also the passing of America's proud boast that here there was only one law for the rich and the poor, the educated and the uneducated, the socially elite and soil-stained workman. An English periodical sadly but eloquently expressed the heartache of grieving humanity overseas:

> "For the first time in 150 years the flag of the United States has been treated in every land as the symbol of a great wrong."

Those who uphold the conviction and execution of the Plymouth fish peddler and the Stoughton shoemaker assert, with the air of a revealed and incontestable truth, that the men were found guilty through the unerring process of trial by jury. Representative Edmond J. Donlan of West Roxbury, at the hearing on April 2nd, recalled that the members of the Sacco-Vanzetti jury had appeared before the Lowell Committee, which was reviewing the case for Governor Fuller, and affirmed the verdict they had rendered six years before. It was also recalled by others that in 1950, seven surviving members of the jury were interviewed at the time, and they all said, twenty-three years after the verdict, that they still believed Sacco and Vanzetti guilty. Did the interrogators of 1927 and 1950 expect the jurors to say that they knowingly sent two innocent men to their death?

One of the most articulate present day champions of the Sacco-Vanzetti verdict is attorney Paul J. Burns of Boston who represents the estate of one of the deceased jurors who served on the case. Mr.

Burns has asserted that a repudiation of the Sacco-Vanzetti convictions would constitute an adverse reflection on our jury system. This observation cannot be regarded seriously. Every year many hundreds of jury verdicts throughout the country are reversed because the judge or the lawyers erred, because the verdict was against the weight of the evidence or against the law, because witnesses had misconducted themselves, etc., etc. The verdicts in the Sacco-Vanzetti case could easily have been reversed, and should have been reversed if only because they were indeed against the weight of the evidence.

But there is a far stronger reason to repudiate them without necessarily attributing to the jurors an intentional wrong, except, of course to the foreman, Walter R. Ripley, who entertained a deep-ingrained prejudice against Italians and always referred to them as "dagos" and "ginnys." On his way to the courthouse before the taking of testimony began, Ripley met an old friend, William H. Daly, who expressed doubt as to the guilt of the defendants. Ripley replied: "Damn them, they ought to hang them anyway."

But, putting aside Ripley, and, of course, his conduct in itself was enough to vitiate the entire trial, there is no reason to believe that the remaining jurors approached consideration of the case with the deliberate intention of convicting the defendants regardless of evidence. In a manner of speaking, the jurors were as much victims of the prosecution's plotting as the defendants themselves.

In a radio interview from New York (over WMCA) on June 25, 1959, conducted by Prof. William Kunstler of the New York Law School, attorney Burns said that the jurors performed their duties "to the best of their respective abilities." But these "abilities" were inescapably influenced by what the jurors were allowed to see, hear, and feel, as well as by what they were not allowed to see and hear. To begin with, nothing that the defendants or their counsel could say or do could efface from the minds of the jurors the ever-present demonstration that the authorities of the state regarded the defendants as desperadoes of the most dangerous and violent character. Throughout the entire trial the courthouse inside and out was patrolled by uniformed guards brandishing rifles, shotguns and pistols. Four times a day the defendants, manacled to officers, were marched back and forth between the jail and the courtroom by twenty-eight policemen bristling with firearms, electrifying the surroundings with suggestions of mysterious foes to be met and combatted. Doors were barred and all visitors (including defense counsel) searched for concealed weapons. Place a meek gazelle into a cage and surround him

with soldiers bearing rifles and bayonets, and spectators will naturally assume (especially if the view is reinforced by oral exhortations about the savageness of the animal) that they are looking upon a beast of man-killing propensities. And yet, at no time, either before or during the trial, did there occur the slightest incident or even the remotest suggestion of a threat which justified the glittering arsenal and the daily parade of armed might.

No one can sensibly dispute that the trial judge, Webster Thayer, entertained a bitter prejudice against the defendants. Outside the courtroom he referred to them as "anarchistic bastards," and, while the trial was in progress, he declared in an angry tirade in a restaurant: "You wait till I give my charge to the jury. I'll show 'em!"

Attorney Burns says that Judge Thayer may have made some injudicious statements but since the jury never heard these statements, they could not have been influenced by them. But there are many ways for a judge to influence a jury against the accused without openly expressing his bias. One way is for the judge to allow prejudicial and illegally improper questions to be asked and prejudicial testimony to be given, and then telling the jury to disregard the improper questions and answers, knowing full well that the jurors cannot efface from their memories what they have heard.

A judge may also prejudice a jury against the accused by what he fails to say, as much as by what he says. Both Sacco and Vanzetti pleaded not guilty on the basis of alibi evidence. Sacco testified that on the day of the murder in South Braintree he was in Boston arranging for a passport at the Italian Consulate, in anticipation of his forthcoming visit to Italy. Vanzetti testified that he was in Plymouth selling fish, his normal occupation, on that day. This alibi evidence on the part of both defendants, supported by eighteen witnesses, built a formidable bulwark of security against the terrible charge of murder. If true, the men had to be innocent. The Commonwealth called no witnesses to challenge the veracity or accuracy of the alibi witnesses. It was imperative, therefore, that the jury be instructed fully by the trial judge on the importance of the alibi evidence. The alibi was entitled to as much attention in the judge's charge as the Commonwealth's evidence. How did Judge Thayer balance the conflicting contentions? He devoted ten pages of his charge to a discussion of the Commonwealth's evidence. To the alibi he gave *two paragraphs.*

The eleven jurors (because Ripley with his announced pre-trial prejudice against the defendants cannot be regarded as a fair-minded

juror) had no way of guarding themselves against the wiles and outright dishonesty of the district attorney. They did not know that they were being treated like a piano; they did not realize they were being played upon to produce a dirge of death by dishonest fingers at the keyboard.

District Attorney Frederick Katzmann wanted Captain Proctor of the State Police, a firearms expert, to testify that he found that one of the bullets (bullet no. 3) in the body of the deceased payroll guard, had been fired through the thirty-two calibre pistol which Sacco had on his person when arrested. Proctor refused to so testify because there was no evidence to justify such an assertion. Katzmann and others then made an arrangement with Proctor whereby he would be asked a trick question which would be answered in such a manner as to convey to the jury the idea that bullet no. 3 had been fired through Sacco's pistol although literally he would not actually be saying that. Bluntly put, the district attorney and others connived with Proctor to have him perjure himself. Thus, at the trial, Katzmann's assistant asked Proctor his opinion as to whether bullet no. 3 went through Sacco's pistol. Proctor replied that it was "consistent with being fired through that pistol." Now, the strict interpretation of the answer meant that bullet no. 3 *might have been fired* through Sacco's pistol because his pistol was a no. thirty-two automatic. But, on that basis, it *could have been fired* through any one of the other two hundred thousand Colt 32's in existence. The ruse worked. The jury was fooled into believing that Proctor found that the mortal bullet had been fired through Sacco's pistol. The judge so charged them, and Katzmann told the jury: "You may disregard all identification testimony and base your verdict on the testimony of these experts."

What would the jury have done had they known of the Katzmann-Proctor trickery? After the trial Proctor confessed to the deception and declared: "I don't care. . . . I'm getting to be too old to want to see a couple of fellows go to the chair for something I don't think they did."

Four witnesses, in one form or another, shakily identified Sacco as being one of the active participants in the robbery-murder. Another witness, Roy E. Gould, had a far superior opportunity than any one of the four to see the bandits. He was only ten feet away from the man the four Commonwealth witnesss said was Sacco. The bandit fired point blank at Gould, the bullet passing through his coat. Gould notified the district attorney that this man was not Sacco, but Katz-

mann did not call him to testify. How would the jury have decided the case if they had heard Gould testify?

I located a witness by the name of Candido de Bona who was the third person to arrive on the scene as the bandits were escaping. He told me that he informed the district attorney that none of the bandits looked like Sacco and Vanzetti. But de Bona was not called to testify. What would the jury have said if they had known of de Bona's evidence?

One of the identifying witnesses was Carlos E. Goodridge, whose past included, among other things, the interesting accomplishments of horse stealing and perjury. He was coming out of a poolroom when the murder car dashed by. When questioned later as to whether he could identify any of the men in the car he said he was too scared to remember any of the faces. He maintained this lack of knowledge for five months. At the trial, however, he identified Sacco as one of the bandits. Goodridge himself was under indictment on a charge of larceny in the same court in which Sacco had appeared one day while Goodridge's own case was being heard. When Goodridge testified for the Commonwealth against Sacco, Sacco's counsel wanted to question him as to whether he had not made the identification of Sacco in repayment for a parole promised him by the district attorney. Judge Thayer refused to permit the question and, in doing so, violated one of the cardinal rules in cross-examination, namely, that a witness may always be cross-examined on matters which would show bias on his part.

Wouldn't the jury have been interested in learning why Goodridge, after at least five months of denying he could remember any of the bandits, suddenly changed his mind and identified Sacco as one of them? Wouldn't knowledge that Goodridge expected leniency on his own charge for larceny, by identifying Sacco, give the jury a clue as to how much credence to give to his "identification" of Sacco?

The prosecution introduced a cap, allegedly found at the scene of the murder and claimed this cap belonged to Sacco because the cap contained a hole in the lining and it was asserted that this hole was caused by Sacco's hanging it on a nail over his bench in the shop where he worked. The hole was in fact made by the chief of police looking for marks of ownership in the lining, but the district attorney did not call the chief of police to testify about the cap. Katzmann argued to the jury that they could convict Sacco on the cap alone. How would the jury have decided the case if they had known that they had been deliberately deceived about the hole in the cap?

Only one witness placed Vanzetti at the murder scene. He testified he saw Vanzetti at the wheel of the murder car. All the other Commonwealth witnesses testified that the driver of the car was a light-haired, light-complexioned man, which Vanzetti certainly was not. Levangie's testimony was utterly untrustworthy, but Katzmann leaped into the breach. He told the jury that what Levangie really meant was that Vanzetti was sitting in the back seat of the car. But if Levangie could make so gross an error as putting a backseat passenger at the driver's wheel, what reliance could be placed in his testimony at all? The jurors might have asked themselves this question had it not been that Judge Thayer instructed them that they did not need to be too meticulous in weighing identification testimony. Said Judge Thayer:

> "The law does not require that evidence shall be positive or certain in order to be competent. Overpositiveness in identification might under some circumstances and conditions be evidence of weakness in the testimony, rather than strength."

Why shouldn't a witness be positive when his testimony may invoke the solemn penalty of death? And why should overpositiveness be weakness? Judge Thayer said further:

> "Any evidence that tends in any degree, however slight, to prove a likeness or similarity between the defendants and the assailants is admissible."

Every one of the Commonwealth "identifying" witnesses was caught in numerous contradictions which, in any fair trial, would have made their so-called identifications ludicrous, but, under the instructions of Judge Thayer the slightest "likeness" was enough to establish identification. For instance, the Commonwealth's two star identifying witnesses, Miss Mary Devlin and Miss Frances Devlin, shortly after the crime identified a Tony Palmisano (whose picture they saw in the Rogues Gallery) as the bandit they saw from a window. The reason Palmisano was not indicted is that he was in jail on the day of the South Braintree crime! However, when these two women came into court fourteen months later and identified Sacco as the bandit they had first said was Palmisano, their testimony was accepted because the trial judge said that any resemblance, "however slight," was sufficient!

Any impartial study of the record in the Sacco-Vanzetti case must show that the jury sitting on the case was not really made up of impartial arbiters. They were more in the nature of captive listeners

who, under the command of the trial judge and the hypnotic influence of the unscrupulous, diabolically skillful district attorney, stood ready to believe what was not visible, accept what was not in existence, and swallow what to a fourth grade pupil would have been indigestible.

No one in possession of a single brain in his head and a filament of decency in his heart would argue today that a person on trial for murder should be convicted of murder because he holds political views contrary to those held by the community in which he lives. Sacco and Vanzetti were pacifists. In May, 1917, they left Massachusetts for Mexico in order to avoid conscription for military service. This departure, of course, had nothing to do with whether they were at South Braintree on April 15, 1920, where and when the murder occurred. Nevertheless, the first question which Katzmann put to Vanzetti on cross-examination was:

> "So you left Plymouth, Mr. Vanzetti, in May, 1917, to dodge the draft, didn't you?"

Katzmann did not put this query as a question. He advanced it as an accusation, an indictment, a branding stigma. His voice rang vibrantly through the courtroom. After Vanzetti replied: "Yes, sir," Katzmann followed up his previous question with: "When this country was at war, you ran away so you would not have to fight as a soldier?" Vanzetti once more replied: "Yes, sir." This still did not satisfy Katzmann. He asked again: "Is it true?" And Vanzetti replied: "Yes, it is true." Of Sacco, Katzmann asked: "Did you love this country in the month of May, 1917?" And when Sacco answered this question in the affirmative, Katzmann's voice rose stridently:

> "And in order to show your love for the United States of America, when she was about to call upon you to become a soldier, you ran away to Mexico?"

As a matter of international law, Sacco and Vanzetti, being Italian aliens, were not subject to the American conscription law. However, they did not know this and certainly Katzmann didn't intend to enlighten them. Nor did Judge Thayer come to the assistance of the accused.

One of the main functions of a trial judge is to see that lawyers do not stray from the central issue of fact. It is his duty to make certain that the jury is not affected by outside influences because jurors have all the weaknesses, foibles, devotions, likes, and dislikes of man. Thus, it is not enough to tell jurors to leave behind their prejudices.

What must be done is to see to it that no meat is served to feed those prejudices. But when defense counsel objected to this last question, Judge Thayer indicated that the only fault in the question was that Katzmann had asked if Sacco *ran* away, and there was no evidence that he had run. If the district attorney would ask: "Did he *go* away?," the question would be permitted. Whereupon, Katzmann having been instructed on how to ask the same prejudice-laden question in a legal way, inquired: "Did you *go* to Mexico to avoid being a soldier for this country that you loved?" When Sacco answered: "Yes," Katzmann asked whether Sacco loved his country when he returned from Mexico, to which Sacco replied: "I don't think I could change my opinion in three months," which was the period of time Sacco remained in Mexico.

Taking the violent assumption that there was some relevancy to this questioning, its purpose seemed now to have been fulfilled, but Katzmann had not yet sounded the deepest depth of prejudice, so he continued:

"You still loved America, did you?"

"I should say yes."

"And is that your idea of showing your love for this country?" [Witness hesitates.]

"Is that your idea of showing your love for America?"

"Yes."

Sacco had hesitated because, although lacking formal education, he had enough acumen to realize that whether he answered yes or no, the inferences would go against him. Just a minute before, he had protested that he could not answer with one word, but Katzmann had insisted he must answer with yes or no. Sacco was confused. Had he possessed the necessary educational equipment he might have said:

> "Mr. Katzmann, your question as to whether I left America to show my love for her is obviously unfair. I have told you I love America and I have told you I hate war. These two concepts may not be reconcilable to you. Nevertheless, that is my philosophy. But what has that got to do with whether I am innocent or guilty of the South Braintree crime?"

But Sacco was an unschooled immigrant; it was his first time in court, he did not know that he was not required to answer a question of the "Have you stopped beating your wife?" kind, and so, since he was required by the judge to answer, he replied yes.

Were the jurors to hold themselves above Katzmann's denunciation of Sacco and Vanzetti for their failure to serve as soldiers? Judge Thayer had told them at the very beginning of the trial:

> "Gentlemen, I call upon you to render this service here that you have been summoned to perform with the same spirit of patriotism, courage and devotion to duty as was exhibited by our soldier boys across the seas."

With that instruction, did they not feel obliged to support Katzmann in condemning those who failed to do their patriotic duty? Were they not made to believe that to acquit the defendants would be an act of disservice to the nation?

Hundreds of questions Katzmann thundered at Sacco and Vanzetti on their political beliefs, and then he asked Sacco what he meant by a "free country." This was a trap and Sacco, not being equipped with a Harvard education, as Katzmann was, and not being trained how to fence with a clever, unscrupulous prosecutor, walked straight into the trap. He thus proceeded to make a ten-minute speech on his political beliefs, his hatred of war, his desire for improvement in working conditions in America, his ideas on education. From his badly constructed English, his odd phrases and blundering description of things, Katzmann fashioned spears of accusation, ridicule and merciless lampoon. When Sacco said something about schools, Katzmann leaped upon the statement as a jaguar might leap upon a wounded calf: "Are there any schools in the town you came from in Italy that compare with the school your boy goes to [in America]?"

Shamelessly Katzmann had now dragged racial prejudice out into the open. In tones of dramatic chastisement he demanded to know of Sacco:

> Is Italy a free country?
>
> Is it a republic?
>
> Do you know how many children the city of Boston is educating in the public schools free?
>
> Why didn't you go back there? [To Italy]

Of course, all these questions were exhilarating food and drink to the Italian-hating foreman of the jury, Walter Ripley, and it cannot be doubted that the district attorney knew of Ripley's prejudices since Ripley had been chief of police for many years.

The eleven jurors perhaps were in many ways naive, and this is what makes the crime of Thayer and Katzmann all the more repre-

hensible. They knew of the child-like faith of these eleven in the courts, in the judge, and in the district attorney who, in their eyes, seemed part of the court itself. Thus, the judge was charged with the imperative duty of holding the scales of justice even. Instead, he took advantage of this naivete and, by unfailingly supporting the district attorney, made it quite clear that he believed the law required conviction of the defendants.

Thus, any review of the Sacco-Vanzetti case must regard the jury as puppets responding to strings being pulled by two men in as devilish a plot as ever disgraced our courts. A jury a little more detached than this jury could have penetrated the smoke screen of radicalism thrown up by the prosecution and a smarter jury would have more thoroughly analyzed the evidence, refusing to convict of a capital offense on such feeble, vacillating identification testimony.

At the end of his summation to the jury, Katzmann cried out to them: "Men of Norfolk, stand together!" Here was an appeal to local patriotism. Katzmann called upon the jurors to respond to a civic duty to stand together against the two foreigners, the two radicals, the two draft-dodging pacifists. A jury on a higher intellectual level would have resented this crude descent into provincialism, but this jury had been carefully chosen, carefully conditioned, and carefully chaperoned. Miss Louise B. Rantoul, who covered the trial as a representative of the Greater Boston Federation of Churches, reported to that organization:

> "At the opening of the trial I was surprised to find that all the court officers and officials considered the defendants guilty. This meant that the jury was surrounded by that atmosphere even though no words were spoken."

Thus, surrounded by that type of atmosphere, led by the imperious judge and mesmerized by the dynamic district attorney, the jurors felt that they were emulating the brave deeds of America's soldiers by standing together and protecting America against foreign radicals.

In conclusion, let it be said that the jury in the Sacco-Vanzetti case was not the jury we apostrophize at bar association conventions and at banquets for legal personages, the jury which rises above the passions and the clamors of the day to render justice in the white light of truth. The Sacco-Vanzetti jury was putty in the hands of two of the most masterful sculptors of deception and hate as ever molded injustice. From the first day of the trial the judge and the district attorney began to weave in and around the jury box the spider's web of prejudice, fabrication and distortion in which the

jury, without being aware, became willingly and happily entangled, believing that they were discharging the highest type of civic service.

By the time the case was given to them for final decision, the jurors had lost all independence of thought and initiative of action. There were only two wills in the courtroom, Thayer's and Katzmann's, and together they welded a chain which throttled trial by jury as we know it, and thereby made possible the verdict which has cried out for shame ever since it was rendered on that hot, sultry day in July, 1921.

Thus, the still surviving jurors of the Sacco-Vanzetti case will go on saying that they rendered a just and honest verdict, and those who have passed on will continue to mumble until doomsday that they only did what they were required to do, not realizing that what they were required to do was outlined for them as clearly as are the channels in the Chicago slaughterhouse which convey the marked animals to their inescapable doom.