

Extended Controversial Issue Discussion Lesson Plan Template

Lesson Title: Sacco and Vanzetti

Author Name: Lindsey Clewell

Contact Information: lclewell@washoeschools.net

Appropriate for Grade Level(s): 8th

US History Standard(s)/Applicable CCSS(s):

RH.6-8.1. Cite specific textual evidence to support analysis of primary and secondary sources.

RH.6-8.8. Distinguish among fact, opinion, and reasoned judgment in a text.

Discussion Question(s): Should Sacco and Vanzetti have been hanged?

Engagement Strategy: Thrash Out Activity

Student Readings (list): 1. NY Times article-Sacco and Vanzetti are put to death
2. Excerpts from the Lowell Committee
3. Opinion of Justice Oliver Wendell Holmes

Total Time Needed: Two Block Days or 4 Regular Days

Lesson Outline:

Time Frame (e.g. 15 minutes)	What is the teacher doing?	What are students doing?
20 minutes	As students walk in teacher hands out different images of Sacco and Vanzetti case and also a "TACOS" worksheet. Explain TACOS to students. Walk around and checking on students. When students have completed their "TACOS" chart they will need to pair up with one of their "around the world" partners and discuss what they concluded.	Filling out "TACOS" sheets to go along with pictures of Sacco and Vanzetti Case
20 minutes	Teacher explains that students need to read through the article and pick 3 key points that they will be explaining later in the lesson. As students read, walk around and make sure they are completing the task.	Students read through a New York Time article about Sacco and Vanzetti being put to death. They choose 3 key points from the reading given to them.
5-10 minutes	Teacher hands out rubrics for first word. Last word.	Students are placed into groups of 3. Students are given instructions on how to participate in First word, last word.
25-30 minutes	Teacher walks around facilitating.	Students participate in first word, last word (see rubric)

[Type text]

15 minutes	Teacher passes out exit slip and goes over the question with class.	Students complete exit slip
	Day Two	
5-10 minutes	Teacher is walking around and making sure vocabulary is being filled in correctly	Have student add clemency to their vocabulary books
10 minutes	Teacher is giving a short discussion as to how the Lowell Committee came about in the Sacco and Vanzetti Trial	Students are taking Cornell Notes
25 minutes Trash Out	Teacher divided class into half. Teacher assigns ½ the class to create arguments that state why Sacco and Vanzetti was a fair trial. The other ½ of the class create arguments as to why Sacco and Vanzetti were not given a fair trial. Passes out reading resources for students and assists students.	Students are reading over resources and taking notes that help support their position on the trial.
25 minutes	Teacher guides the lecture and makes sure that students are following rules and are staying on track. Teacher gives points for great points and makes sure students are using the text to defend their position.	Students line up in a line across from someone with the opposite position on the Sacco and Vanzetti Trial. The first person states their argument and then the opposite side has time to rebut. The goal of each student is to convince the other side that their position is correct. Students continue to take turns until all arguments are stated. STUDENTS MUST CITE THEIR READINGS FREQUENTLY!
5 minutes	Teacher leads a wrap-up discussion. Teacher guides students to discuss great points and answers last questions	Students engage in a wrap up discussion.
15 minutes Exit Slip and homework	Teacher passes out persuasive essay outline for students.	Students must begin their persuasive essay that states whether they feel Sacco and Vanzetti received a fair trial or an unfair trial. Students must use their text frequently to receive full credit. Exit Slip- Students have begun their essay. Due next class.

Description of Lesson Assessment: Exit Slip Persuasive Essay- What arguments convinced you that the execution of Sacco and Vanzetti were fair/unfair? Justify your answer using the reading. Please utilize at least 3 quotes or evidence from your reading.
How will students reflect on the process and their learning? Discussion at end of second day and a persuasive essay

[Type text]

TACOS



Time: When was it created? When is it set? What is the time period? How do you know?

Action: What is happening in the visual? What can you see?

Caption: Are there any textual clues included to help you understand what it is about?

Objects: List everything that you can see in the visual.

Summary: What is the message of this visual? What have I learned from looking at it?
Can I make connections to something else?

TACOS is a Pre-Ap strategy used to analyze visual sources (political cartoons, photographs, paintings, graphs, charts, and other visual sources).



[Type text]





[Type text]

First Word Last Word Grading Rubric

	5	4	3	2	1
Quality of Comments	Timely and appropriate comments, thoughtful and reflective, responds respectfully to other student's remarks, provokes questions and comments from the group	Volunteers comments, most are appropriate and reflect some thoughtfulness, leads to other questions or remarks from student and/or others	Volunteers comments but lacks depth, may or may not lead to other questions from students	Struggles but participates, occasionally offers a comment when directly questioned, may simply restate questions or points previously raised, may add nothing new to the discussion or provoke no responses or question	Does not participate and/or only makes negative or disruptive remarks, comments are inappropriate or off topic
Resource/Document Reference	Clear reference to text being discussed and connects to it to other text or reference points from previous readings and discussions	Has done the reading with some thoroughness, may lack some detail or critical insight	Has done the reading; lacks thoroughness of understanding or insight	Has not read the entire text and cannot sustain any reference to it in the course of discussion	Unable to refer to text for evidence or support of remarks
Active Listening	Posture, demeanor and behavior clearly demonstrate respect and attentiveness to others	Listens to others most of the time, does not stay focused on other's comments (too busy formulating own) or loses continuity of discussion. Shows consistency in responding to the comments of others	Listens to others some of the time, does not stay focused on other's comments (too busy formulating own) or loses continuity of discussion. Shows some consistency in responding to the comments of others	Drifts in and out of discussion, listening to some remarks while clearly missing or ignoring others	Disrespectful of others when they are speaking; behavior indicates total non-involvement with group or discussion

PERSUASIVE ESSAY OUTLINE

Paragraph 1:

- Get the reader's attention by using a "hook"
- Give some background information
- **Must have a thesis or focus statement:** what you are trying to convince your reader of

Paragraph 2:

- This is your first argument or reason to support your position
- Topic sentence explaining your first argument
- Elaboration and in-depth information regarding this argument

Paragraph 3:

- This is your second argument or reason to support your position
- Topic sentence explaining your second argument
- Elaboration and in-depth information regarding this argument

Paragraph 4:

- This is your third argument or reason to support your position
- Topic sentence explaining your third argument
- Elaboration and in-depth information regarding this argument

Paragraph 5:

- This is the opposition/rebuttal paragraph to show your reader that you have considered opposing viewpoints, but also why you have rejected this viewpoint.
- State an opposing viewpoint
- Using your research, show why this viewpoint is not valid or unacceptable
- Use this paragraph to strengthen what you have discussed in paragraphs 2, 3, and 4

Paragraph 6:

- This is your concluding paragraph where you make one last pitch to convince your reader of your point of view
- Summarize your main points and reasons from paragraphs 2, 3, and 4
- Restatement of your thesis or focus statement
- Ask for a call to action and demand your reader to agree with you

Other:

- Your paper must be written in the 3rd person, not in the 1st person
- You cannot state your own opinion, rather let the research/facts speak your opinion for you
- Each paragraph needs to be a **DIFFERENT** reason why we should share your viewpoint, not variations of the same argument
- Editing and revision is very important to make sure that every word has an impact—too many words allows your reader to get bored and too few words will not convince your reader of your point of view

Total Points Possible: 40 Points

Opinion of Justice Oliver Wendell Holmes in the Case of Commonwealth v. Nicola Sacco & another.

Denial of Stay of Execution
Supreme Court of the United States
August 19, 1927

Holmes, J.:

This is a case of a crime charged under state laws and tried by a State Court. I have absolutely no authority as a judge of the United States to meddle with it. If the proceedings were void in a legal sense, as when the forms of a trial are gone through in a Court surrounded and invaded by an infuriated mob ready to lynch prisoner, counsel and jury if there is not a prompt conviction, in such a case no doubt I might issue a habeas corpus- not because I was a judge of the United States, but simply as anyone a having authority to issue the writ might do so, on the ground that a proceeding was no warrant for the detention of the accused. No one who knows anything of the law would hold that the trial of Sacco and Vanzetti was a void proceeding. They might argue that it was voidable and ought to be set aside by those having power to do it, but until set aside, the proceeding must stand. That is the difference between void and voidable-and I have no power to set the proceeding aside-that, subject to the exception that I shall mention, rests wholly with the State.

I have received many letters from people who seem to suppose that I have a general discretion to see that justice is done. They are written with the confidence that sometimes goes with ignorance of the law. Of course, as I have said, I have no such power. The relation of the United States and the Courts of the United States to the States and the Courts of the States is a very delicate matter that has occupied the thoughts of statesmen and judges for a hundred years and can not be disposed of by a summary statement that justice requires me to cut red tape and to intervene. Far stronger cases than this have arisen with regard to the blacks when the Supreme Court has denied its power.

A State decision may be set aside by the Supreme Court of the United States-not by a single justice of that Court-if the record of the case shows that the Constitution has been infringed in specific ways. An application for a writ of certiorari has been filed on the ground that the record shows such an infringement; and the writ of habeas corpus having been denied, I am asked to grant a stay of execution until that application can be considered by the full Court. I assume that under the Statute my power extends to this case although I am not free from doubt. But it is a power rarely exercised and I should not be doing my duty if I exercised it unless I thought that there was a reasonable chance that the Court would entertain the application and ultimately reverse the judgment. This I can not bring myself to believe. The essential fact of record that is relied upon is that the question of judge Thayer's prejudice, raised and it is said discovered only after the trial and verdict, was left to judge Thayer and not to another judge. But as I put it to counsel if the Constitution of Massachusetts had provided that a trial before a single judge should be final, without appeal, it would have been consistent with the Constitution of the United States. In such a case there would be no remedy for prejudice on the part of the judge except Executive Clemency. Massachusetts has done more than that. I see nothing in the Constitution warranting a complaint that it has not done more still.

It is asked how it would be if the judge were subsequently shown to have been corruptly interested or insane. I will not attempt to decide at what point a judgment might be held to be absolutely void on these grounds. It is perfectly plain that although strong language is used in the present application the judgment was not void even if I interpret the affidavits as proving all that the petitioners think they prove-which is somewhat more than I have drawn from them. I do not consider that I am at liberty to deal with this case differently from the way in

[Type text]

which I should treat one that excited no public interest and that was less powerfully presented. I cannot say that I have a doubt and therefore I must deny the stay. But although I must act on m convictions I do so without prejudice to an application to another of the justices which I should be very glad to see made, as I am far from saying that I think counsel was not warranted in presenting the question raised in the application by this and the previous writ.

The Report of the Lowell Committee

JULY 27, 1927.

YOUR EXCELLENCY:

Starting on the investigation with which you have charged us, with almost no knowledge of the evidence in the case of the Commonwealth vs. Sacco and Vanzetti, we have felt that our first duty was to read the full stenographic report of the trial; then the various affidavits and documents bearing upon the motions for a new trial; and, thereafter, to seek and hear such information as might throw light upon the report to be made to you. In doing this we have felt that our investigation had better be wholly independent of yours; and, indeed throughout, the only communication we have had from you is the suggestion of one or two people it might be worth while to see.

In conducting the investigation we have been guided by a few general principles. One was that our meetings should not be public; that our duty was to form our own impartial opinion by ascertaining the truth. Having no power to require the attendance of witnesses, or compel them to answer questions, they would be much less likely to come before us and speak freely if they thought that what they said would be published in the newspapers. Many of the persons most able to throw light upon the murder dislike notoriety and criticism by partisans, for there has been in this case much propaganda by adherents of the Defense Committee to which neither the courts nor the prosecuting officers could properly reply in the public Press.

On the other hand, it has seemed to us important to give the counsel for the defense and for the Commonwealth an opportunity to hear and question everyone who testified before the Committee, with the exception of Judge Thayer, Chief Justice Hall and the jurors, whom we did not think should be subjected to questions by counsel,-- certainly in the absence of specific evidence of misconduct. The Committee had thought that this principle should be a plied also to Mr. Katzmann, the District Attorney who tried the case, but after he had talked with the Committee he consented to be questioned by Mr. Thompson. With these exceptions, and what came incidentally in an inspection of the scene of the murder, and a visit to Sacco, Vanzetti and Madeiros in prison, all testimony has been submitted to the Committee in the presence of both counsel; nor has any member of the Committee received evidence separately. Such a course has seemed to us desirable in order to give counsel an opportunity to meet and rebut any evidence presented to us. Moreover, the Committee have heard all evidence the counsel desired to present, and except as aforesaid has investigated in their presence any matters that seemed to bear on the questions before us.

The inquiry that you have asked the Committee to undertake seems to consist of answerin the three following questions:

- (1) In their opinion, was the trial fairly conducted?
- (2) Was the subsequently discovered evidence such that in their opinion a new trial ought to have been granted?
- (3) Are they, or are they not, convinced beyond reasonable doubt that Sacco and Vanzetti were guilty of the murder?

To us the reading of the stenographic report of the trial gives the impression that the judge tried to be scrupulously fair.

The cross-examination by Mr. Katzmann of the defendant Sacco on the subject of his political and social views seems at first unnecessarily harsh, and designed rather to prejudice the jury against-him than for the legitimate

[Type text]

purpose of testing the sincerity of his statements thereon; but it must be remembered that the position at that time was very different from what it is now. We have heard so much about the communistic or radical opinions of these two men that it is hard to put ourselves back into the position that they, and particularly Sacco, occupied at the time of the trial. There had been presented by the Government a certain amount of evidence of identification, and other circumstances tending to connect the prisoners with the murder, of such a character that-together with their being armed to the teeth and the falsehoods they stated when arrested-would in the case of New England Yankees, almost certainly have resulted in a verdict of murder in the first degree,-a result which the evidence for the alibis was not likely to overcome. Under these circumstances it seemed necessary to the defendants' counsel to meet the inferences to be drawn from these falsehoods by attributing them to a cause other than consciousness of guilt of the South Braintree murder.

From the statements before the Committee by the judge and by one of the counsel for the defendants it appears that Judge Thayer suggested, out of the presence of the jury, that the counsel should think seriously before introducing evidence of radicalism which was liable to prejudice the jury; but at that stage of the case the counsel thought the danger of conviction so great that they put Sacco and Vanzetti on the stand to explain that their behavior at and after their arrest was due to fear for themselves or their friends of deportation or prosecution on account of their radical ideas, conduct and associations, and not to consciousness of guilt of the murder at South Braintree. We have already remarked that at the present moment their views on these subjects are well known, but they were not so clear at the time. Save for his association with Vanzetti, and his own word on direct examination, there was, up to the time of his cross-examination, in the case of Sacco no certainty that he entertained any such sentiments. The United States authorities, who were hunting for Reds, had found nothing that would justify deportation or other proceedings against either of these men. Except the call for a meeting found in his pocket, there was no evidence that Sacco had taken a prominent part in public meetings, or belonged to any societies of that character; and although wholesale arrests of Reds-fortunately stopped by the decision of judge Anderson of the United States Circuit Court-had recently been made in Southeastern Massachusetts, these men had not been among those arrested. At that time of abnormal fear and credulity on the subject little evidence was required to prove that anyone was a dangerous radical. Harmless professors and students in our colleges were accused of dangerous opinions, and it was almost inevitable that anyone who declared himself a radical, possessed of inflammatory literature, would be instantly believed. For these reasons Mr. Katzmann was justified in subjecting Mr. Sacco to a rigorous cross-examination to determine whether his profession that he and his friends were radicals liable to deportation was true, or was merely assumed for the purpose of the defense. The exceptions taken to his questions were not sustained by the Supreme Court.

It has been said that while the acts and language of the judge, as they appear in the stenographic report, seem to be correct, yet his attitude and emphasis conveyed a different impression. But the jury do not think so. They state that the judge tried the case fairly; that they perceived no bias; and indeed some of them went so far as to say that they did not know when they entered the jury room to consider their verdict whether he thought the defendants innocent or guilty. It may be added that the Committee talked with the ten available members of the jury---one, the foreman, being dead, and another out of reach in Florida. To the Committee the jury seemed an unusually intelligent and independent body of men, and withal representative, seven of the twelve appearing to be wage-earners, one a farmer, two engaged in dealing in real estate, a grocer and photographer. Each of them felt sure that the fact that the accused were foreigners and radicals had no effect upon his opinion, and that native Americans would have been equally certain to be convicted upon the same evidence.

Affidavits were presented to the Committee and witnesses were heard to the effect that the judge, during and after the trial, had expressed his opinion of guilt in vigorous terms. Prejudice means an opinion or sentiment formed before the trial. That a judge should form an opinion as the evidence comes in is inevitable, and not prejudicial if not in any way brought to the notice of the jury, as we are convinced was true in this case. Throughout this report the Committee have refrained from reviewing the evidence in detail and have stated

[Type text]

only their conclusions with comments upon points that seemed of special significance. From all that has come to us we are forced to conclude that the judge was indiscreet in conversation with outsiders during the trial. He ought not to have talked about the case off the bench, and doing so was a grave breach of official decorum. But we do not believe that he used some of the expressions attributed to him, and we think that there is exaggeration in what the persons to whom he spoke remember. Furthermore, we believe that such indiscretions in conversation did not affect his conduct at the trial or the opinions of the jury, who, indeed, so stated to the Committee.

In one of the motions for a new trial Mr. Thompson, now counsel for the defense, contended that between the District Attorney and officers of the United States Secret Service engaged in investigating radical movements there had been collusion for the purpose either of deporting these defendants as radicals or of convicting them of murder, and thus of getting them out of the way; that with this object Mr. Katzmann agreed to cross-examine them on the subject of their opinions, and that the files of the Federal Department of justice contain material tending to show the innocence of Sacco and Vanzetti. In support of these charges he filed affidavits by Ruzzamenti, Weyand, Letherman and Weiss which declared that the files of the Federal Department of justice would show the correspondence that took place in the preparation of the case; but none of these affidavits states or implies that there is anything in those files which would help to show that the defendants are not guilty. For the Government to suppress evidence of innocence would be monstrous, and to make such a charge without evidence to support it is wrong. Mr. Katzmann in answer to a question by Mr. Thompson stated to the Committee that the Federal Department had nothing to do with the preparation of the case, and there is no reason to suppose that the Federal agents knew the evidence he possessed. He stated also that he made no agreement with them about the cross-examination. A spy named Carbone was, indeed, placed in the cell next to that of Sacco, and it was stated in an agreement of subsequent counsel that this was to get from him information relating to the South Braintree murder; but Mr. Katzmann, in answer to a question by Mr. Thompson, informs us that that is a mistake; that the Federal authorities wanted to put a man there with the hope of getting information about the explosion on Wall Street. To this he and the sheriff consented, but no information was in fact obtained.

Before the Committee Mr. Thompson suggested that the fatal bullet shown at the trial as the one taken from Berardelli's body, and which caused his death, was not genuine.; that the police had substituted it for another, in order by a false exhibit to convict these men; but in this case again, he offered no credible evidence for the suspicion. Such an accusation, devoid of proof, may be dismissed without further comment, save that the case of the defendants must be rather desperate on its merits when counsel feel it necessary to resort to a charge of this kind.

The claim that the District Attorney failed to summon witnesses favorable to the defendants, or to give the names to their counsel, will be discussed when treating of the motions for a new trial.

Again it is alleged that the whole atmosphere of the courtroom and its surroundings, with the armed police and evident precautions, were such. as to prejudice the jury at the outset; while the remark of the Judge to the talesmen that they must do their duty as the soldier boys did in the war was of a nature to incline them against the prisoners. The jury do not seem to have been conscious of any such influence, or of the presence of any unusual number of police. Nor do they appear to have entered upon the case with the slightest predisposition in favor of the prosecution, some of them at least very far from it. We do not think these allegations have a serious foundation.

To summarize, therefore, what has been said: The Committee have n no evidence sufficient to make them believe that the trial was unfair. vn the contrary, they are of opinion that the judge endeavored, and endeavored successfully, to secure for the defendants a fair trial; that the District Attorney was not in any way guilty of

[Type text]

unprofessional behavior, that he conducted the prosecution vigorously but not improperly; and that the jury, a capable, impartial and unprejudiced body, did, as they were instructed, 'well and truly try and true deliverance make.

If the trial was fairly conducted, we are brought to the second point, whether, on account of newly discovered evidence, any of the motions for a new trial should have been granted.' So far as exceptions to the denial by the judge of these motions have been taken to the Supreme judicial Court of the Commonwealth, they have not been sustained there; but the counsel for the defendants contend that the Supreme Court decided only that these matters were properly within the discretion of the judge, and that his discretion had not been abused. They urge, therefore, that while the Judge's discretion was not illegally, it was in fact wrongly, exercised, because he was too prejudiced to be impartial; and that a wholly impartial exercise of discretion would have brought an order for a new trial.

There can be no doubt that the judge has been subjected to a very severe strain. Apart from the responsibility that he has borne, the nature of the criticisms made upon him has had its effect; and the Committee are of opinion that while there is no sufficient evidence that his capacity to decide rightly the questions before him in this case has been impaired, nevertheless he has been in a distinctly nervous condition. The Committee have felt constrained, therefore, to examine the motions for a new trial and the evidence on which they are based, with a view of determining whether in their opinion the discretion of the judge on each motion was in fact rightly exercised. We cannot put ourselves in the position of the jury at the trial, because we cannot see the witnesses upon the stand, and therefore have not the opportunities they possessed of judging the weight to be given to the testimony of each witness. Even if we were to see them all now, their appearance may be very different from what it was under cross-examination. But the motions for a new trial were all heard on affidavits or depositions, without oral evidence, and therefore the Committee are in the same position with regard to their credibility and weight as was the Judge when he heard them.

The first of these motions for a new trial is that known by the name of Gould. He was a bystander through the lapel of whose coat a bullet was fired by the bandits, and who was questioned by the police. He was not called as a witness by the prosecution, but he was certainly close to the car and has since made an affidavit to the effect that the men he saw were not the defendants. Two questions arise in his case; first whether his evidence, discovered by the defendants since the trial, is sufficient to demand a new trial; and second whether it shows a suppression of evidence by the Commonwealth. In regard to the first, he certainly had an unusually good position to observe the men in the car; but on the other hand his evidence is merely cumulative, the defendants having produced a large number of witnesses to swear to the same thing, and it is balanced by two other new witnesses on the other side. One is Mrs. Hewins, who stated to Mr. Thompson, as appears in one of his affidavits, that the bandit car stopped to ask the way at her house and that Sacco was driving it. Sacco, if guilty, may have been doing so at that moment, or she may have mistaken whether he was behind the wheel or in the other place on the front seat. The other witness is Mrs. Tattoni, formerly Lottie Packard, who claims to have known Sacco when he was working in the factory of Rice & Hutchins where she also worked, and to have seen him at South Braintree on the morning of April 15th on Pearl Street. The woman is eccentric, not unimpeachable in conduct; but the Committee believe that in this case her testimony is well worth consideration. There seems to be no reason to think that the statement of Gould would have any effect in changing the mind of the jury. The second question is whether the failure either to put Gould upon the stand or to give his name to the defendants amounts to a suppression of evidence. Gould was questioned within a few days of the murder, before the present defendants were thought of in connection with the crime, and apparently was not followed up because it was not thought he could give valuable testimony whoever the criminals might turn out to be. By occupation he was itinerant, and there is no evidence that he had an opportunity to see Sacco and Vanzetti after they were captured, and hence to say whether they were or were not the men he had seen at

South Braintree. There seems to the Committee to be nothing in the nature of a concealment by the prosecution of evidence that it believed valuable for the defense.

Another motion for a new trial is based upon the fact that Walter Ripley, the foreman of the jury, happened to have in his pocket throughout the trial three 38-caliber revolver cartridges of the same kind as those found in the revolver of Vanzetti when arrested. The Supreme Court in the case of that motion, as of others, held that the refusal of a new trial was within the discretion of the judge; but, as we have observed, this does not decide that his discretion was rightly exercised. There is no evidence that the presence of these cartridges did influence the opinion of the jury; but the question for us is whether it may reasonably have done so, and we do not see how it could have had any such effect. It was suggested by Albert H. Hamilton, who made an affidavit as an expert, that the jury might have derived from these cartridges an erroneous opinion as to the age of those found in Vanzetti's revolver. It is not easy to see how they could have formed any such opinion, or what material significance there was in the age of the Vanzetti cartridges. The presence of these objects in the jury room may have been irregular, but we do not see how it could have changed the result of the trial, and if so, the judge ought not in justice to have ordered a new trial on that ground.

Under the same motion was introduced an affidavit by William H. Daly, wherein he says that Ripley, when summoned as a talesman, in answer to the question by him whether he was to be a juror in this case replied "Damn them, they ought to hang them anyway." Now it is extremely improbable that Ripley was so different from other men that he desired the disagreeable task of serving on this jury, and he had only to reveal what he had said to be excused. Yet in spite of a selective process in making up the jury, so rigorous that out of the first five hundred talesmen only seven were taken, he was one of these. He did not live to contradict the statement, and we believe that Daly must have misunderstood him, or that his recollection is at fault.

The fifth supplementary motion for a new trial is known by the name of Captain Proctor, the police officer who testified as an expert on the question whether the fatal bullet found in Berardelli's body had been fired through Sacco's pistol. At the trial he was asked in regard to this matter as follows:

"Q. Have you an opinion as to whether bullet no. 3 was fired from the Colt automatic which is in evidence? A. I have.

Q. What is your opinion? A. My opinion is that it is consistent with being fired by that pistol."

In his affidavit of October 20, 1923, he says that while he was examining the bullet in preparation for the trial his attention was repeatedly called by the prosecuting attorneys to the question whether he could find any evidence that would justify the opinion that the bullet taken from the body of Berardelli-which came from a Colt automatic pistol-came from the particular pistol taken from Sacco, but at no time was able to find any evidence to convince him that it came from that pistol; that the District Attorney desired to ask him that question directly, but he repeatedly replied that if so, he would be obliged to answer in the negative. The two prosecuting attorneys in their affidavits denied that they had repeatedly asked him whether he had found evidence that the bullet was fired by Sacco's pistol; and Mr. Williams, who interrogated him, added that the form of the question was suggested by Proctor himself. It may be noted that Mr. Katzmann stated to the Committee, in answer to a question by counsel for the Commonwealth, that before Proctor made his affidavit he-Mr. Katzmann-had refused to approve Proctor's bill of \$500 for expert testimony. Counsel for the defendants claim that the form of the question and answer was devised to mislead the jury; but it must be assumed that the jury understood the meaning of plain English words, that if Captain Proctor was of opinion that the bullet had been fired through Sacco's pistol he would have said so, instead of using language which meant that it might have been fired through that pistol. In his charge the judge referred to the expert evidence on the question whether the bullet had been fired from Sacco's pistol, saying "To this effect the Commonwealth introduced the testimony of two experts, Messrs. Proctor and Van Amburgh." These two men did testify on the

subject, the first saying that it might have gone through Sacco's pistol, the second that it did so; the experts for the defendants giving their opinion that it- could not have gone through Sacco's pistol. It may be observed that the prosecuting attorney did not put the words into Captain Proctor's mouth, but asked him simply what his opinion was, and that Captain Proctor in answer used words that seem not unadapted to express his meaning. It does not seem to us that there is good ground to suppose that his answer was designed to mislead the jury. We shall return to this subject in connection with new evidence brought to the Committee.

In connection with this motion, affidavits by the experts, Albert H. Hamilton and Augustus H. Gill, supported by enlarged photographs, were submitted to prove that the bullet could not have been fired through Sacco's pistol; while other experts, Charles Van Amburgh and Merton A. Robinson, using the same photographs, stated their opinion that the marks appearing thereon show that the bullet was fired through that pistol. An inspection of the photographs, following the reading of these affidavits for the defendants and for the Government, leads us to the conclusion that the latter presented the more convincing evidence. We are of opinion, therefore, that the judge could not properly have ordered a new trial on the Proctor motion.

Another motion for a new trial, denied by the judge, was never brought by exceptions before the Supreme judicial Court. It was based upon an affidavit by Lola M. Andrews, stating that her evidence of identification at the trial was false. This is the witness who on cross-examination at the trial testified that Mr. Moore, then counsel for Sacco, at an interview with her suggested that she should take a vacation in Maine, and that if she lost her job in consequence he would find her as good or a better one; and who, after that interview, and after her identification of Sacco at the Dedham jail, was assaulted by a stranger at her home. Subsequent to the affidavit on which the motion was made, she swore to another in which she said that the former had been obtained by a threat of using discreditable events in her past life to the injury of her son; and the statements of Moore and another man employed by him show that they had hunted up, and told her they possessed, the information she claims they used. The judge very properly refused to grant a new trial upon an affidavit procured in this way, and Mr. Moore let the matter drop.

We now come to the motion for a new trial, based upon the confession of Madeiros, and the affidavits that accompany it. The exceptions to the denial of this motion by judge Thayer are those which in its recent decision the Supreme judicial Court has not sustained. The question whether a new trial ought to have been granted in consequence of the confession of Madeiros depends upon the weight which can be attributed to it, and the importance of the evidence offered in corroboration. The impression has gone abroad that Madeiros confessed committing the murder at South Braintree. Strangely enough, this is not really the case. He confesses to being present, but not to being guilty of the murder. That is, he says that he, as a youth of eighteen, was induced to go with the others without knowing where he was going, or what was to be done, save that there was to be a hold-up which would not involve killing; and that he took no part in what was done. In short, if he were tried, his own confession, if wholly believed, would not be sufficient for a verdict of murder in the first degree. His ignorance of what happened is extraordinary, and much of it cannot be attributed to a desire to shield his associates, for it had no connection therewith. This is true of his inability to recollect the position of the buildings, and whether one or more men were killed. In his deposition he says that he was so scared that he could remember nothing immediately after the shooting. To the Committee he said that the shooting brought on an epileptic fit which showed itself by a failure of memory; but that hardly explains the fact that he could not tell the Committee whether before the shooting the car reached its position in front of the Slater & Morrill factory, by going down Pearl Street or by a circuit through a roundabout road. Indeed, in his whole testimony there is only one fact that can be checked up as showing a personal knowledge of what really happened, and that was his statement that after the murder car stopped to ask the way at the house of Mrs. Hewins at the corner of Oak and Orchard Streets in Randolph. As this house was not far from the place on a nearby road where Madeiros subsequently lived, he might very well have heard the fact mentioned. In short if the Government

were to try to convict him of this offense, and he were to say that the whole thing was a fabrication to help Sacco and Vanzetti, he certainly could not be convicted on his own confession, and probably not even indicted.

How far do the other affidavits corroborate his statement? They state that Madeiros—who seems to have been rather prone to boast of his feats—had previously told Weeks that he had taken part with the Morelli gang in the South Braintree crime, and had talked with the Monterios also about it. The affidavits further state that he was acquainted with this gang, which consisted of a hardened set of criminals who had stolen shoes shipped from the Slater & Morrill and Rice & Hutchins factories, and were accustomed to spot the shipments when made at such factories; that on April 15th, 1920, a number of that gang were out on bail for a different offense for which they were afterwards sentenced, and consequently could physically have been at South Braintree; that the photographs of Joe Morelli showed a distinct resemblance to Sacco and to whoever shot Berardelli, and that of Benkoski to the driver of the car—but identification by photograph is very uncertain; that Joe Morelli possessed a Colt automatic 32-caliber pistol. They state that one of the gang was seen in Providence late on the afternoon of April 15th in a Buick car which, by the officer who so reported, was seen no more. In regard to the last item, the great improbability may be noted that bandits who intended to hide the car in which they made their escape should have first shown it in the streets of Providence after all but one of the members of the gang had already returned in another car. Even without considering the contradictory evidence it does not seem to the Committee that these affidavits to corroborate a worthless confession are of such weight as to deserve serious attention.

The motion for a new trial based upon the confession of Madeiros includes the affidavits offered to show a combination between the District Attorney and the secret service officers of the Federal Government to convict these men of murder in order to get rid of them. These affidavits we have already discussed, and we agree wholly with the remark of Mr. Justice Wait in the opinion of the Supreme Judicial Court that "An impartial, intelligent and honest judge . . . would be compelled to find that no substantial evidence appeared that the department of justice of the United States had in its control any proof of the innocence of these defendants, or had conspired to secure their conviction by wrongful means."

After considering all the evidence given in support of the various motions for a new trial, we are of opinion that it is not 'so grave, material and relevant as to afford a probability that it would be a real factor with the jury in reaching a decision.'

There remains a reference to new evidence brought before the Committee, and not hereinbefore considered. The only two matters that seem to us significant are as follows: The counsel for the defendants produced Albert H. Hamilton and Elias Field, who informed the Committee that in an automobile ride Captain Proctor had told Hamilton that in his real opinion the fatal bullet had not been fired through Sacco's pistol. After the time of this conversation Captain Proctor made the affidavit already referred to, and in that, after quoting his testimony at the trial--

"Q. What is your opinion? A. My opinion is that it is consistent with being fired by that pistol."

he says "That is still my opinion." It seems to us improbable that Captain Proctor, who has since died, should have stated both at the trial and in his affidavit that his opinion was consistent with the firing of the bullet from Sacco's pistol, and in the meanwhile should have said in conversation that his opinion was exactly the opposite. One of the witnesses, Field, merely overheard Proctor's conversation with Hamilton about a subject with which he was not familiar; and the latter stated also to the Committee that Proctor told him that he believed before the trial the bullet was not fired through the Sacco pistol, which would be an admission not of a misleading statement but of deliberate perjury. This charge is inconsistent with Proctor's later affidavit, and we do not believe Hamilton's testimony on this point.

The other significant new matter brought to the attention of the Committee by the counsel for the defense is the statement of Jeremiah F. Gallivan, former Chief of Police of Braintree, who said that in the cap found near the body of Berardelli, and claimed by the prosecuting counsel to be that of Sacco, the rent attributed by them to its hanging upon a nail in the factory, was in fact made by him in attempting to find a name under the lining before he delivered the cap to the officers investigating the case. This statement we believe to be true; but the rent in the lining of the cap is so trifling a matter in the evidence in the case that it seems to the Committee by no means a ground for a new trial.

Mr. James E. King brought to the attention of the Committee some calculations he has been making about the position at various times of the escaping bandit car, to the effect that if it travelled at the rate of speed the witnesses testified it would have taken much more time than elapsed between the moment of the murder and the arrival at the Matfield crossing. He suggested that the delay could be accounted for on the theory that the Morelli gang had committed the murder and spent some time in the Randolph woods three and a half miles from South Braintree while changing from a Buick to a Hudson, as described by Madeiros. To the Committee it seems that the calculations are based upon somewhat uncertain data, and that the delay is apparently accounted for by the undisputed fact that the bandits turned by mistake into Orchard Street, which leads into a muchtravelled highway and to the town of Randolph; that, discovering their mistake, they retraced their steps and inquired at the Hewins house the way to the old turnpike. It seems incredible that the bandits, as Mr. King supposes, should have spent something like twenty minutes in woods not far from the road and so short a distance from the scene of the murder.

"Finally, there is the question whether in our opinion Sacco and Vanzetti are or are not guilty beyond reasonable doubt of the crime of which if the nature of the crime itself there is no it would be sentenced rightly for murder in first degree.

In the discussion of what should be done about Sacco and Vanzetti, popular attention has been largely diverted by the belief that they hold unpopular views on political and social questions. Your Committee assume that this has nothing whatever to do with the question except so far as it may account for conduct that would otherwise be taken as evidence of consciousness of guilt. The fact that persons accused are or are not socialists or radicals of any type neither increases nor lessens the probability of their having committed the crime, and should be left wholly out of account except so far as in this instance it may explain their conduct at and shortly after their arrest.

The case has been popularly discussed as if it were one turning mainly upon identification by eye witnesses. That, of course, is a part, but only a part, of the evidence. As with the Bertillon measurements or with finger prints, no one measure or line has by itself much significance, yet together they may produce a perfect identification; so a number of circumstancesno one of them conclusive-may together make a proof clear beyond reasonable doubt. In the case of Sacco the chief circumstances are as follows: He looks so much like one of the gang who committed the murder that a number of witnesses are sure that he is the man. Others disagree; but at least his general appearance is admitted even by many of those who deny the identity to resemble one of the men who took part in the affair. Then a cap is found on the ground near the body of the man he is accused of killing, which bears a resemblance in color and general appearance to those he was in the habit of wearing; and when tried on in court it fitted,-that is, his head was the size of one of the men who did the shooting. Then there is the fact that a pistol that Berardelli had been in the habit of carrying, and which there is no sufficient reason to suppose was not in his possession at the time of the murder, disappeared and a pistol of the same kind was found in the possession of Vanzetti when he and Sacco were arrested together, and of which no satisfactory explanation is given. It is difficult to suppose that Berardelli was not carrying his pistol at the time he was guarding the paymaster with the pay-roll, and no pistol was found upon his person after his death. It is natural also, if the bandits saw his pistol they should carry it off for fear of someone shooting at them as they escaped. Moreover, when Sacco was arrested he had a pistol which is admitted to be of the kind from which the fatal

bullet was fired. In the controversy between the experts, one side striving to show that the bullet must have been, and the other that it could not have been, fired through that pistol, we are inclined from an inspection of the photographs to believe that the former are right; if they are, there could be little or no doubt-even if there were no other evidence-that the owner of the pistol fired the shot. But even if we assume that all expert evidence on such subjects is more or less unreliable, we can be sure that the shot was fired by the kind of pistol in the Possession of Sacco. Then again, the fatal bullet found in Berardelli's body, was of a type no longer manufactured and so obsolete that the defendants' expert witness, Burns, testified that, with the help of two assistants, he was unable to find such bullets for purposes of experiment; yet the same obsolete type of cartridges was found in Sacco's pockets on his arrest. It is true that the expert Hamilton deposed that in these cartridges the knurls were true with the axis of the bullet, while in the fatal bullet they were at an angle of three degrees, which led him to believe that they must have been manufactured at different times. But the expert Robinson himself ballistic engineer in the Winchester factory where these bullets were made-wholly refuted this statement by showing that the fatal bullet was so deformed that it was impossible to determine its original axis within three degrees, and that the Winchester Company had never manufactured bullets with knurls not parallel to their axes. Such a coincidence of the fatal bullet and those found on Sacco would, if accidental, certainly be extraordinary.

Furthermore, there is the fact that when examined after their arrest they told what they afterwards admitted on the stand to be a series of lies. This they attempted to explain by saying that they were afraid of deportation or other punishment for themselves or their friends, because they were conscious of having dodged the draft, of possessing socialistic literature, and in general of being of the type that the Federal Government was then persecuting. The difficulty with this excuse is that it by no means explains all their falsehoods, some of which had no connection whatever with their being Reds, but did have a very close connection with the crime at South Braintree. Such, for example, was Sacco's statement that he worked at the factory all day on the 15th. If he were innocent of the crime, and had been in Boston that day to get a passport, why should he not have said so when first questioned?

Finally there is the fact that both of them were armed for quick action when arrested. Sacco had a fully loaded automatic pistol under the front of the belt of his trousers and twenty-two spare cartridges in his pocket. Vanzetti had a fully loaded 38-caliber revolver. It is claimed that Italians, particularly those who get into criminal difficulties, commonly carry weapons; but carrying fully loaded firearms, where they can be most quickly drawn, can hardly be common among people whose views are pacifist and opposed to all violence. Such a condition cannot be explained by the fear of being arrested as Reds, nor did the defendants attempt to set up such an excuse. Indeed they could hardly have alleged, that they went fully armed in order to be prepared to shoot officers who attempted to arrest them for that reason. Vanzetti declared that he carried a pistol because there were so many robberies and other crimes; Sacco that he put his pistol in the belt of his trousers to fire away the cartridges in the woods the day he was arrested, but that in conversation he was detained from doing so, had forgotten about his pistol, and was quite unconscious that he had it in the belt of his trousers. That statement seems incredible.

On these grounds the Committee are of opinion that Sacco was guilty beyond reasonable doubt of the murder at South Braintree. In reaching this conclusion they are aware that it involves a disbelief in the evidence of his alibi at Boston, but in view of all the evidence they do not believe he was there that day.

The evidence against Vanzetti is somewhat different. His association with Sacco tends to show that he belonged to the same group. His having a pistol resembling the one formerly possessed by Berardelli has some importance, and the fact that no cartridges for it were found in his possession, except those in it, is significant. So also is his having cartridges loaded with buck-shot, of which his account sounds improbable, and which might well have been used in the gun some witnesses saw sticking out of the back of the car. His falsehoods

and his armed condition have a weight similar to that in the case of Sacco. In one way they are a little stronger because he virtually confirms the statement of officer Connolly that he tried to draw his pistol when arrested, for he testified that the officer pointed a revolver at him and said "You don't move, you dirty thing,"-an admission that the officer thought he was making a movement towards his pistol. On the other hand, all these actions may be accounted for by consciousness of guilt of the attempted robbery and murder at Bridgewater, of which he has been convicted.

The alibi of Vanzetti is decidedly weak. One of the witnesses, Rosen, seems to the Committee to have been shown by the cross-examination to be lying at the trial; another, Mrs. Brini, had sworn to an alibi for him in the Bridgewater case, and two more of the witnesses did not seem certain of the date until they had talked it over. Under these circumstances, if he was with Sacco, or in the bandits' car, or indeed in South Braintree at all that day, he was undoubtedly guilty; for there is no reason why, if he were there for an innocent purpose, he should have sworn that he was in Plymouth all day. Now there are four persons who testified that they had seen him;-- Dolbeare, who says he saw him in the morning in a car on the main street of South Braintree; Levangie, who said he saw him-erroneously at the wheel-as the car crossed the tracks after the shooting; and Austin T. Reed, who says that Vanzetti swore at him from the car at the Matfield railroad crossing. The fourth man was Faulkner, who testified that he was asked a question by Vanzetti in a smoking car on the way from Plymouth to South Braintree on the forenoon of the day of the murder, and that he saw him alight at that station. Faulkner's testimony is impeached on two grounds: First, that he said the car was a combination smoker and baggage car, and that there was no such car on that train, but his description of the interior is exactly that of a full smoking car; and, second, that no ticket that could be so used was sold that morning at any of the stations in or near Plymouth, and that no such cash fare was paid or mileage book punched, but that does not exhaust the possibilities. Otherwise no one claims to have seen him, or any man resembling him who was not Vanzetti. But it must be remembered that his face is much more unusual, and more easily remembered, than that of Sacco. He was evidently not in the foreground. On the whole, we are of opinion that Vanzetti also was guilty beyond reasonable doubt.

It has been urged that a crime of this kind must have been committed by professionals, and it is for well-known criminal gangs that one must look; but to the Committee both this crime and the one at Bridgewater do not seem to bear the marks of professionals, but of men inexpert in such crimes.

Sacco & Vanzetti Trial

There Are Two Sides to Every Story- Examining the Case of Sacco and Vanzetti

Lindsey Clewell

American history is full of incidents that have captivated and taken the American public by storm. The Sacco and Vanzetti case of 1920 was an event that tore America into two categories: those who believed these men were innocent and those who believed they deserved the outcome of their trial-to be hanged. This case created passion among America whether people were picketing for their execution or picketing for their release, they were passionate about their side and this had an impact on America and American beliefs of immigration in a very effective way.

America was experiencing a time of backlash against immigration. Immigration was a topic that many did not embrace. The change in the recant of events and coincidences of these two men ultimately land them accused and eventually convicted of robbery and murder (Yuhl, 2010). However; much evidence points to their innocence as well.

A trial that causes America to divide on opinions finds itself smack in the middle a time that is often associated with jazz music, flappers, and swinging good times.

During the 1920's America experienced a backlash against immigration. Many American felt a sense of nativism and did not want a large amount of immigrants to occupy America. Citizens began to discriminate against certain immigrants. The height of this debate was brought upon by a trial that captivated America.

On April 15, 1920, two employees of a shoe factory were killed in Massachusetts. Three weeks later two poor Italian immigrants were arrested and charged with robbery and murder. One of the immigrants was Bartolomeo Vanzetti, and the other Italian immigrant was Nicola Sacco. Vanzetti was a part-time construction worker while Sacco was employed as a shoe edger. Through a whirlwind trial that would eventually take 6 years, America took sides as to whether they believed that Sacco and Vanzetti were guilty or innocent. The trial concluded over eighty years ago but the debate whether these two Italian immigrants received a fair trial

[Type text]

continues today. The crime and trial occurred post WWI during the Red Scare era. The two immigrant were anarchists who were not afraid to speak out. During this time Palmer Raids were taking place and radical immigrants were being deported due to fear of Bolshevism and domestic bombings.

The two men were arrested three days after the robbery and murders took place. The only physical evidence that linked Sacco and Vanzetti to the crime was Sacco's gun. The defense argued that this evidence was overstated. Sacco and Vanzetti were well known anarchists in town and many believe this is why they were targeted (Mintz, 2012). This trial divided the nation because many Americans did not feel that there was enough evidence pointing at the immigrants as being guilty. Americans especially felt that Vanzetti was innocent and was being punished for the group he hung out with. There was no evidence pinning him at the scene of the crime. Both men had strong alibis with witnesses that placed them in locations not close to where the crimes took place. Sacco and Vanzetti would eventually be found guilty of the robbery and double murder. America began to protest the outcome of the trial. They began to rally and picket for a new trial. This also grabbed the attention of world. Benito Mussolini, fascist leader of Italy, even voiced his concerns about the fairness of the trial that the two Italian immigrants were receiving.

On the other hand Americans were supporting the trial of Sacco and Vanzetti. They were pointing to the fact that witnesses identified Sacco and Vanzetti at the scene of the crime and stated that they had seen these men pull the trigger thus killing two people. The supporters of penning these Italian immigrants as guilty also argued on the fact that Sacco's gun had been linked to the crime. This was physical evidence that proved that he was guilty. These men had been extreme anarchist followers and were associated with known men who had been found guilty of crimes such as murder and bombings of American facilities (Mintz, 2012).

Sacco and Vanzetti were denied a new trial even after a man by the name of Celestino Maderios, who was already in jail for a separate offense, admitted that he was responsible for the crime that the two Italian immigrants were being charged with. One of Maderios' accomplices resembled Sacco and it was argued that the eye witnesses could have mistaken one for the other. Eventually the judge assigned to the case denied Sacco and Vanzetti a new trial.

The two men were found guilty of robbery and double murder after a second trial that took place in 1927. Sacco and Vanzetti both wrote many letters while being held in prison awaiting their sentencing. Both men claimed that they were framed because they were anarchists. Sacco and Vanzetti continued to impress the guards at their prison for their obedience and laid back demeanor (Linder, 2000). On April 9, 1927 Bartolomeo Vanzetti and Nicola Sacco were sentenced to death by electrocution. After hearing the verdict Vanzetti stated, “I would not wish to a dog or to a snake, to the most low and misfortunate creature of the earth—I would not wish to any of them what I have had to suffer for things that I am not guilty of. But my conviction is that I have suffered for things that I am guilty of. I am suffering because I am a radical and indeed I am a radical; I have suffered because I am an Italian and indeed I am an Italian...if you could execute me two times, and if I could be reborn two other times, I would live again to do what I have done already” (Lindy, 2000).

As a last effort the public protested to grant clemency on Sacco and Vanzetti. Massachusetts Governor, Alvan Fuller appointed a review committee that was headed by the Abbott Lawrence Lowell, the president of Harvard at the time (Lindy, 2000). The committee examined every aspect of the trial and came to a consensus after two week that Sacco and Vanzetti were given a fair trial and a new trial was not warranted.

In the end Sacco and Vanzetti were executed on August 23, 1927. Before their last moments each proclaimed their innocence. Following their death violent demonstrations took place all over the world in protest. This was a trial that divided not only a nation, but the world. This trial brought an issue that had been encompassed in American for many year to the forefront and made Americans choose a side. It forces Americans to examine and analyze the American judicial system and determine whether they felt this system was fair or unfair due to one’s beliefs or race.

References

Linder, D. (2000). The Sacco -Vanzetti Case: An Account. Retrieved (May 15, 2012) from <http://law2.umkc.edu> (<http://law2.umkc.edu/faculty/projects/ftrials/saccov/saccov.htm>)

Mintz, S. (2012). Sacco and Vanzeeti *Digital History*. Retrieved (February 12, 2012) from <http://www.digitalhistory.uh.edu> (http://www.digitalhistory.uh.edu/database/article_display.cfm?HHID=445)

YUHL, S. E. (2010). Sculpted Radicals: The Problem of Sacco and Vanzetti in Boston's Public Memory. *Public Historian*, 32(2), 9-30