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Mistaken Identification

ON THE AFTERNOON of April 15, 1920, Mrs. Annie Nichols was taking a short break from her household chores when she happened to look out her window and see two men leaning against a nearby fence. Two more men appeared, a factory cashier and his bodyguard, each carrying a black bag containing the combined amount of over \$15,000. Suddenly, one of the men who had been leaning against the fence sprang forward, pulled a gun from his pocket, and fired directly at the bodyguard. The factory cashier was gunned down as he attempted to flee, still clutching his black bag. Mrs. Nichols, frozen in horror, next saw a car pull up near the bodies. The two men piled into it and it sped away. The payroll bags were nowhere in sight.

Neither Mrs. Nichols nor others who had seen the killings could give the police precise descriptions of the gunmen. One witness thought one of the men looked "awful" dark, while another said he had very light hair and looked to be either a Swede or Finn. A third witness thought the driver of the car had a mustache, but shortly thereafter decided the man had been smooth shaven. While no agreement could be reached about the descriptions of the gunmen, it was clear that the factory employees had been shot by an automatic pistol that fired .32 calibre, steel-jacketed bullets.

A few weeks later, Nicola Sacco, a shoemaker, and Bartolomeo Vanzetti, a fish peddler, were arrested. They were both armed, Sacco with a .32 calibre Colt automatic; neither had a criminal

record. The police, convinced that they had the culprits, attempted to obtain identifications using procedures that are unacceptable by today's standards. Witnesses were invited to view the two in jail and to indicate whether these were the gunmen who did the shootings.

Their trial opened on May 31, 1921. The prosecution introduced the testimony of five witnesses who identified Sacco. However, one of these had testified at a preliminary hearing that her opportunity to see the robbers was too limited for her to say that Sacco was one of them. Another told a policeman that she had not seen the faces of the robbers. Another claimed, at the time of Sacco's initial arrest, that he had not seen enough to be able to identify anybody. A fourth had told three people that he would not be able to identify any of the robbers.

Four witnesses placed Vanzetti at or near the scene of the murders. One of these had told a friend, shortly after the shootings, that he had ducked as soon as he saw a gun and thus would not know the robbers if he saw them again. As the friend related the conversation: "He said there was some fellows went by in an automobile and he heard the shots, and . . . one of them pointed a gun at him and he . . . ducked in the Shanty. I asked him if he knew them. He said, no, he did not . . . He said all he could see was the gun and he ducked" (Frankfurter 1927/1962, p. 27-28). Yet at the trial, this witness made a positive identification.

How can a witness go from being so unsure to being absolutely certain? Legal scholars who analyzed the identification techniques claimed that numerous improper methods produced this result. Other reports indicated that not a single person could originally identify Vanzetti, but that the repeated showing of his photographs to various witnesses finally produced identifications from a number of them. This type of influence can also be seen in a case brought against Vanzetti shortly before he stood trial with Sacco for the Braintree, Massachusetts, murders. Several eyewitnesses claimed to have seen Vanzetti at an attempted holdup of a Bridgewater, Massachusetts, payroll in 1919. One witness told a detective on the day of the crime that he had not gotten a good look at the robber's face: Two weeks later he repeated this statement to another detective. After Vanzetti's arrest, the witness was taken to view him, and later, at Vanzetti's preliminary hearing, the witness's description was suddenly quite complete: the gunman had a dark complexion, high cheekbones, red cheeks, hair

cut close in back, and a trimmed mustache. At Vanzetti's trial, a few other features were added to the list, and the witness was now certain that he had gotten a very good look at the assailant. Vanzetti was found guilty and sentenced to a term of twelve to fifteen years. With that conviction in hand, the police pressed on toward what was to become one of the most disputed criminal cases in history—the conviction of Sacco and Vanzetti.

While the prosecution had its eyewitnesses, the defense had what they regarded as airtight alibis. Sacco claimed that on the day of the murders he had left his hometown, on a train headed for Boston, where he went to the Italian consulate to apply for a passport. A consular clerk remembered him well: Sacco had tried to use a large family group photo for his passport picture, and this unusual incident made the clerk laugh, leaving a special impression. Vanzetti claimed to be peddling fish in Plymouth on the day of the murders. A merchant from whom he had bought a length of cloth remembered him.

The transcript of the trial of Sacco and Vanzetti ran to over 2,200 pages, beginning with the clerk's opening statement and ending with the jury's verdict (Feuerlicht 1977). In the end, the jury must have believed the eyewitnesses over the alibi witnesses, for they convicted Sacco and Vanzetti on July 14. The two were put to death in the electric chair at Charlestown Prison at midnight on August 23, 1927. As Vanzetti was being strapped into the electric chair, he said something like, "I wish to tell you that I am an innocent man. I never committed any crime but sometimes some sin. I wish to forgive some people for what they are now doing to me." His many years in prison were finally over. At that moment hundreds of people stood in anxious vigil watching the light in the prison tower; they had been told it would fail at the moment of death (Porter 1977).

The case of Sacco and Vanzetti inspired a rash of books based on their trial and their long wait for death. The debate has, of course, focused on the pivotal question of guilt or innocence, but this question has in turn led to a welter of other uncertainties, many of which concern eyewitness testimony. Why, for instance, did so many witnesses, once so uncertain, make positive identifications of Sacco and Vanzetti at the trial? Were these witnesses improperly influenced by the police, and if so, how was this influence achieved? Why did the jurors believe Sacco's and Vanzetti's eyewitness accusers, even in the face of plausible alibis? Was the

jury correct to give so much credence to these eyewitness accounts?

In the case of Sacco and Vanzetti, we cannot say whether the identifications were erroneous or not, but there are many less famous cases where error is known to have occurred. These are not easy to come by, since someone else must later confess or some bit of evidence must later be produced that will exonerate a once-identified person. This sort of outcome occurred in the case of the Sawyer brothers (Pearlman 1977).

The Sawyer brothers, eighteen-year-old Lonnie and his twenty-year-old brother Sandy, came from the small town of Mint Hill, North Carolina. To their horror, they were arrested for a kidnapping that took place on May 15, 1975. Robert Hinson, assistant manager of Collins' Department Store in Monroe, North Carolina, was forced into a car by two men, one of whom pointed a gun at him and demanded that he lie down in the back of the car. He got only a glimpse of his abductors before they pulled stocking masks over their faces, preventing any further view. The men planned to drive Hinson to the store where he would open the safe for them. However, Hinson convinced them that he did not know the combination, and they then took thirty-five dollars from his wallet and let him go.

Hinson had little to say about his abductors. He reported that one of them looked Hispanic, that they drove an off-white 1965 Dodge Dart, that the car was similar to one owned by a woman who worked at the store. He claimed that one kidnapper looked similar to a man who had recently applied for a job at the store, and from the bits of information he could provide, a composite sketch of one of the suspects was created.

Three days after the incident, the police stopped a 1965 white Plymouth Valiant and arrested the driver and passenger, Sandy and Lonnie Sawyer. The Valiant looked similar to a 1965 Dodge. However, neither man looked like the composite sketch, neither had applied for a job at the store, and both vehemently denied knowing anything about the kidnapping.

At their trial, the prosecution introduced the testimony of the victim, Robert Hinson, who positively identified the Sawyers as the men who kidnapped him at gunpoint. Like Sacco and Vanzetti, the Sawyers had alibis. Four witnesses testified that Sandy was at home at the time of the kidnapping, and four witnesses testified that Lonnie was at a printing plant, where he was visit-

ing his girlfriend. After two hours the jury was deadlocked, nine for conviction. The judge instructed the jurors to try hard to reach a unanimous decision, and within a few minutes all twelve jurors voted to convict. The younger brother was sentenced to twenty-eight to thirty-two years, and the older one received thirty-two to forty years (in part because of a prior conviction). As the boys were led out of the courtroom, Lonnie yelled to his father and mother, "Momma, Daddy, appeal this. We didn't do it."

Ordinarily there would not be much hope. But because of the perseverance of their family, friends, a tenacious private detective, and a television producer who had become interested in the case, the Sawyers did have a chance. These people all believed in the results of a lie detection examination indicating that the brothers had nothing to do with the crime. And then in 1976 a prisoner at the youth center where the Sawyers were taken swore that Robert Thomas, an inmate, had admitted to being one of Hinson's kidnappers. With this rumor in hand, the private detective talked further with Hinson and discovered important information that he had initially given to the police but that the police had kept from the defense. This included Hinson's first description of the abductors, the composite sketch produced by the police, and Hinson's thought that one of the men resembled someone who had recently applied for a job at the store.

The detective searched the job applications on file at the store and found one, dated a week before the crime, that had been filled out by Robert Thomas, the inmate who had supposedly admitted to being one of the kidnappers. The detective would later find out that Thomas had a friend whose mother owned a 1965 Dodge Dart. The pieces were coming together, but the job was not over.

Those trying to free the brothers were still puzzled by one fact. During the trial a large number of witnesses said that the Sawyers could not have been the kidnappers, and only one—the victim—disagreed; yet the jury believed the one rather than the many others. Why? Several jurors were interviewed and subsequently confessed that they had eventually caved in to the majority, voting guilty simply because they were tired.

From that point it should have been easy: there was a new suspect, new evidence, and the jurors' admission that they had not voted their consciences. But it was not easy. The Sawyers were almost granted a new trial, but a judge ruled, despite the exis-

tence of new evidence, that too much time had passed. The defense attorneys petitioned the governor for a pardon. Robert Thomas confessed in writing and on camera, then recanted, then recanted his recantation. It was not until January 7, 1977, that the case was finally over. On that day the governor of North Carolina pardoned the Sawyers, but only after the brothers had lost nearly two years of their lives, their impoverished family had collected and spent thousands of dollars, and many people had suffered through a nightmare.

Like the case of Sacco and Vanzetti, the Sawyer case raises many important questions about eyewitness testimony—questions even more pointed here because it is apparent that reliance on eyewitness testimony caused a terrible error. Why did an eyewitness falsely identify someone whom he had actually never seen before? How is it that a witness can get a poor glimpse, have little confidence in his future ability to make an accurate identification, and yet ultimately make a positive identification? Why will jurors believe a single victim-eyewitness over five, ten, sometimes dozens of alibi-eyewitnesses who claim that the defendant was nowhere near the scene of the crime? Are errors of this sort rare and isolated events? Or is it possible that the reliability of eyewitness testimony is systematically overestimated by the courts?

Eyewitness testimony arises in instances that deal not only with someone's ability to identify a person but with his or her ability to accurately recall other kinds of details that were part of an important incident. Here, too, errors are abundant. For example, an article in *Flying Magazine* (July 1977) reported a major fatal aircraft accident. The crash of a small plane killed all eight people aboard and one person who was on the ground. Sixty eyewitnesses were interviewed, although only a few appeared at a hearing called to investigate the accident. Two of these people had actually seen the airplane just before impact, and one of them was certain that "it was heading right toward the ground—straight down." This witness apparently did not know that several photographs taken of the crash site made it absolutely clear that the airplane hit flat and at a low enough angle to skid for almost a thousand feet.

Whether we are concerned with the identification of a person or the accurate recounting of the details of an event, there can be problems posed by evidence of eyewitness testimony. The problem can be stated rather simply: on the one hand, eyewitness tes-

timony is very believable and can wield considerable influence over the decisions reached by a jury; on the other hand, eyewitness testimony is not always reliable. It can be flawed simply because of the normal and natural memory processes that occur whenever human beings acquire, retain, and attempt to retrieve information.