SUNDAY evening at the Elks Hotel in East Syracuse, New York, was usually very quiet. Mr. Olmsted must have thought so at 10.30 on December 7, 1930, as he surveyed the lobby from one corner. There on the sofa lay the proprietor, Samuel Meyers, quietly dozing the time away. But not for long. Two brusque figures came into the lobby brandishing pistols. Olmsted immediately slipped out. The bandits, a large one and a small one, stepped over to Meyers and nudged him. Meyers awoke and, upon seeing his predicament, jumped to his feet. He grappled with the large fellow, who was nearer to him. As they struggled for the pistol, it was fired several times, without effect. The smaller bandit hovered about; and when he got a chance he shot at Meyers, hitting his victim in the left side. The bandits then tried to take the diamond stick pin from Meyers’ tie, but it was fastened by a special clasp. The bandits fled. They got no loot, but left a wounded man, who was taken at once to St. Joseph’s Hospital.

This attempted robbery was reported to the Syracuse Police Department at once, with general descriptions of the men. They were wearing caps. Soon police headquarters received a call from the Pan-Am gas station at 4004 East Genesee Street, which was on the same route but nearer the city of Syracuse. Two men had been there at about 10.50 o’clock, had locked Attendant Frank J. Brady in a closet, and had rifled the cash register of a large sum of money. A few minutes later the police received a call from the Colonial gasoline station at 2974 East Genesee Street, which was farther along on the route from East Syracuse to the city of Syracuse. Attendant Samuel Starks had been surprised by two men with guns, announcing, “We are here, stick them up.” Starks was locked in a small closet, and the bandits drove off with the money in the cash drawer. These three reports to the police on Sunday night indicated that the same men had done all three jobs. It also recalled to the detectives the incident of the Friday preceding, December 5, when two
men, of similar appearance, had gone to the used-car sales-
room of Forsythe & Gale, had taken a demonstration ride
in an Oldsmobile landau with Mr. Martin, an auto salesman,
and then had stolen the car from Martin at pistol point.

Police Officers Ours, Dolphin, and Forsythe were assigned
to these cases. The rogues’ gallery was studied, and the pic-
tures of two men withdrawn. The week before, Vincent
Starowitz, aged twenty-four, had arrived in Syracuse.
Starowitz had just finished his sentence for a burglary
committed in Onondaga County in 1927, to which he had
pleaded guilty. His partner in that burglary had been Jos-
eph Nedza, then twenty years old, who had been placed on
probation. Nedza was known to be living at the Terminal
Hotel, an inexpensive boarding house near the New York
Central depot. Officer Dolphin took the pictures of Staro-
witz and Nedza to the hospital on Monday, the day follow-
ing the attack, and Meyers identified them as his assailants
—Starowitz as the smaller of the two, who had shot him, and
Nedza as the larger, with whom he had fought over the gun.

Officers Dolphin and Forsythe then went to the Terminal
Hotel. Clerk William Koss said that neither Nedza nor
Starowitz was there, but that Nedza had rented Room 3.
The officers returned late in the afternoon and arrested
Nedza as he was lunching in the barroom. He accompanied
them to his room, where everything was carefully searched
but no revolver was found. Nedza was taken to the police
station. A short while later, Starowitz was arrested in the
New York Central depot. Both men denied any knowledge
of the holdup of the Elks Hotel. They had spent all Mon-
day afternoon together, obtaining information for Staro-
witz about enlisting in the navy. Starowitz had been drink-
ing heavily.

On Tuesday, victims Brady and Starks were called to the
police station, where they identified both prisoners. Nedza,
during this interview, was dressed up in a gray topcoat and
a cap, as it had been reported that the large bandit had been
dressed at the gas stations. Mr. Armstrong, from the firm
of Forsythe & Gale, also identified them as the men who
had gone on the demonstration ride in the Oldsmobile with
Mr. Martin. Nedza was taken to the hospital, where Meyers, from his sick bed, identified him in person. However, he was never identified in a "line-up."

In the meantime, Starowitz swore to a statement at the police station in which he confessed his participation in each one of these crimes. He implicated "Jimmie" as his partner. Acting upon some of Starowitz' comments, the officers drove over to Utica with Starowitz and arrested a man named Sherwood. Before bringing Sherwood to Syracuse, he as well as Starowitz was identified by several holdup victims in Utica, so that the Utica police put in a claim for Sherwood. Nevertheless, he was brought to Syracuse, but was almost immediately released to the Utica police for prosecution there, for several of the Syracuse victims failed to identify him.

The county authorities lost no time in presenting the matter to the Grand Jury, which returned a joint indictment against Starowitz and Nedza for an attempt to commit the crime of robbery in the first degree. They were brought to trial before Judge William L. Barnum in the Onondaga County Court in February, 1931. Assistant District Attorney William C. Martin represented the people. Dennis Nash appeared for Starowitz, and Irving Devorsetz for Nedza. The court refused Mr. Devorsetz' motion for a separate trial for Nedza.

The first witness produced by the prosecution was Deputy Sheriff Hoffmire, to identify certificates establishing the convictions of these defendants for burglary in May, 1927. These were admitted, over defense objections, as bearing on the credibility of the defendants. The reason for this evidence was the fact that they had been indicted as second offenders, and this was the method adopted by the prosecution to prove the first offense. The arresting officers and the victim, Meyers, then testified as to their parts in the affair, and that part of Starowitz' alleged confession relating to the Elks Hotel was introduced. He identified his companion as "Jimmie," but claimed not to know his real name. The inference was that "Jimmie" was not Nedza.

Nedza, for the defense, took the stand and related that
he spent the Sunday evening in question at the Terminal Hotel and that he was there at 10.30. He was subjected to a grueling cross-examination, but survived it without a single inconsistency or contradiction. Three persons, one of whom had worked in the same factory for twenty years, supported Nedza’s alibi, and two others, who had been at the Terminal Hotel until about ten o’clock, testified that he was there at that time. Starowitz, in his own defense, said that at the time of the robbery he was in Utica, more or less under the influence of liquor, playing “rummy.” He claimed to remember but little about the “confession,” except that it was forced from him and that, though he signed it to be relieved from pressure, he did not know what was in it. He had no supporting witnesses. In rebuttal the prosecutor called the gas-station victims to break down the defendants’ credibility further, as each defendant claimed to have been elsewhere at the time of the holdups.

In submitting the case to the jury, Mr. Martin vigorously emphasized the criminal record of the prisoners, the fact that they had been known to be drifting about the country together after their release from prison, Starowitz’ confession, and the positive identifications. He discounted the alibi witnesses of Nedza as coming from his close friends at the Terminal Hotel.

After four hours’ deliberation the jury found both men guilty, and both received exceptionally long sentences—Nedza being sentenced for thirty-five years. Both men were sent to Auburn Penitentiary.

Mr. Devorsetz was firmly convinced that Nedza was innocent, but at the same time he believed Starowitz guilty. He interviewed Starowitz several times at Auburn, and finally the latter agreed to name his accomplice—Albert Sherwood. Sherwood, who had been convicted for the Utica holdups, was also serving a long sentence in Auburn. Mr. Devorsetz solicited the cooperation of Prosecutor Martin, and to them Sherwood made a complete and detailed confession. During his earlier term at Auburn, Sherwood had become friendly
with a Syracuse convict and had spent some time with him after his release. This man had taken him to the Elks Hotel in East Syracuse, so that Sherwood had had an opportunity to survey the situation. Several months later he encountered Starowitz and struck up the friendship which resulted in the holdups. This was checked very carefully by Mr. Martin, and he became convinced that it was true. Samuel Meyers was taken to Auburn, and he picked Sherwood out of a group of twenty convicts as the man with whom he had had the tussle over the gun. There could no longer be any doubt of the mistake. An application for a pardon was filed with Acting Governor Lehman, which was recommended by the District Attorney and Judge Barnum. Governor Lehman offered to issue an unconditional pardon, but suggested that the best way to erase the judgment of conviction was through an application for a new trial. This motion was duly made and granted by Judge Barnum, unopposed by the District Attorney. Thereupon, all indictments against Nedza were dismissed, and he was freed on May 19, 1931, having served about three months of his term. It is reported that efforts will be made to obtain indemnification from the state for this innocent victim of circumstantial evidence and mistaken identity.

Nedza's previous experience with the law and with Starowitz, the admitted association of the two on other occasions, and the identifications by persons robbed were sufficient to convince prosecutor and jury that Nedza must have been guilty. Five victims of a holdup identified him, though they seem to have been assisted by dressing up the accused in clothes similar to those the guilty man was supposed to have worn. When the truth was indicated and Sherwood established as the guilty man, Meyers evidently had little difficulty in admitting his error. Yet on the stand, though conceding that he was terribly agitated and excited and therefore could hardly have had a good opportunity for observation, he nevertheless felt absolutely sure that Nedza was the man. Why Sherwood was not taken before Meyers for iden-
tification is not clear—possibly because other victims did not identify him. In fact, Nedza and Sherwood bore practically no resemblance to each other. The past association of Nedza and Starowitz made it the more easy to discredit the witnesses for Nedza, who were nevertheless telling the exact truth. To open a trial with proof of the defendants' previous convictions and to admit the evidence in order to challenge the defendants' credibility even before they had testified, was highly prejudicial, even if deemed necessary to prove their indictment as second offenders. It colored the whole trial, though the prosecution was most honest. The New York law makes it possible, in the case of second offenders, to prove the prior conviction either during the trial or after the trial, the second offense carrying a more severe penalty. Only the second method seems fair, for it affects the sentence only. The fact that no money was found on Nedza should not have been dismissed as immaterial on the question of his guilt or innocence, though the District Attorney said that no money was found on Starowitz. Only the circumstances that pointed to possible guilt were apparently given weight, and it may be conceded that the circumstances for Nedza were mostly unfavorable. When, through the persistence of Nedza's attorney, the truth was finally established, prosecutor and judge were zealous in seeking to undo the error. Nedza deserves an indemnity from the state, which might in fact do much good, for it appears that he has not necessarily criminal propensities.

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3. Acknowledgments: Hon. William C. Martin, Syracuse, N.Y.; Mr. Irving S. Devorsetz, Syracuse, N.Y.