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104

March 22nd? A No.

Q Did you see De Piere next day at dinner on Sunday?

A Yes, Leon De Piere.

Q Where does Leon De Piere live if you know? A He is living in Philadelphia.

Q Did he sleep and eat at 408 West 24th Street any time before March 22nd? A Never.

Q Did he sleep and eat with your cousin Emily Strolach at 826 Greenwich Street? A I don't know that.

Q Did you see any of those men, De Piere, De Franzo and Conak on Saturday afternoon at 5 o'clock when you were at your cousin's house 826 Greenwich Street? A No, sir.

Q Have you seen DePiere or De Franzo since Sunday March 23?

A I saw De Piere.

Q When? A 1 o'clock, after midday.

Q On Sunday, March 23rd? A That was Sunday.

Q Have you ever seen him since? A No, sir.

Q Have you visited Pezzulich or Sgelirrach in the prison?

A No, sir.

Q Did you visit your brother there? A Yes, sir.

Q Did you talk to him? A Yes, sir.

Q How many times did you visit the prison? A Five or six times.

Q How many times did you see Pezzulich and Sgelirrach there? A I did not see them.

Q How many times have you spoken to Mary Nachimovich about

0679
CASE #2647

what you were going to testify here today? A I did not speak to her about that.

Q Did you speak to her husband Nachimovich? A No.

Q Did you ever speak with Pete Jurman the man who was here this morning. A Yes, I told him those are honest men.

Q How often did you go to your cousin's house at 828 Greenwich Street? A I was there about four times, as I am working.

Q How many men slept on the same floor that the dining room is on? A Only Nachimovich with his family.

Q After you came home every night during the strike for supper did you go upstairs to your room and wash up? A Yes. When I get up in the morning I wash myself.

Q Did you go there after or before supper, to your room? A No.

Q How many rooms are there on the top floor? A Five.

Q Do you always spend most of your time in the landlady's dining room or do you spend most of the time in your own room? A Every one goes in his room upstairs.

Q Why was it everybody was in the dining room after you had your supper, until 9 o'clock?

Objected to as calling for a conclusion and question withdrawn.

Q Why did you remain in the dining room after supper was finished? A I stayed there because we were talking what we were going to do, not to go outside on the street where we were

CASE #2647

liable to be beaten by ~~some~~ bums.

Q What bums did you fear would beat you? A Men were not working and they were able to kill a person for a quarter.

Q Were you out trying to prevent workmen from taking your places at the strike? A No, sir. I always can get a place to work when I want it.

Q Did anyone take your place when the strike started?
A No, sir. The boat was tied.

Q Where did your boat put up? A In the Marine Shop of the Lehigh Valley.

Q What street? A Lehigh Valley side. There is no street. We call it the Marine Shop.

Q Where did you report for duty every day? A Unionport.

Q Where was that? A 85 West Street, New York.

Q Did you have to go there every morning when you went to work? A No, only if I want to.

Q Where would you get the boat every morning when you went to work? A My boat was tied up by the strike.

Q At what pier? A That is not a pier, it is the Marine Shop.

Q Was that in Jersey or in New York? A Lehigh Valley side.

Q During the strike what did you do? A Nothing, I went to the moving pictures.

Q Did you work any other place? A No, because they were striking.

CASE #2647

Q Was Pezzulich on a strike? A Sure.

Q Was Sgelirrach on a strike? A There was no work.

Q Was anyone who ate supper with you on March 22nd not on a strike? A No.

Q Did anyone come to visit you while you were eating supper that night March 22nd? A No.

Q Was anybody paid their weekly wage or their salary that day? A I think Pete Surgin.

Q When were you paid? A I am paid every 15 days.

Q When were you paid before March 22nd, the last time?
A The first of March.

Q Did you give any money to your brother that night?
A Yes, four dollars.

Q He had not been working in how long before that? A 22 days.

Q Did you give any money to Frank Pezzulich? A No, sir.

Q Did you give any money to Sgelirrach? A No, sir.

Q What did you pay your room rent? A I didn't have a room there. I am not paying for a room.

Q How much would you pay Mrs. Nachinovich? A Nothing.
What I ordered to eat I paid for it.

Q How much would you pay for your meals? A 25 or 30 cents.

Q How much did you pay for your room? A I did not have a room there.

Q You slept there for several nights that week you said?

CASE #2647

A Yes, but my countrymen let me sleep there without paying.

Q Where did you sleep before you slept in 408 West 24th Street? A In Bank Street.

Q 108 Bank Street? A Yes, sir.

Q Was that with the same women, Mrs. Nachimovich? A Yes.

Q Did Puzzulich and Sgelirrach live at 118 Bank Street too? A Yes.

Q And your brother? A Yes, sir.

Q And De Piere did he live there some times? A No, never.

Q And De Franzo? A No, sir.

Q And Tonak? A No, sir.

Q You never saw them there? A No, they did not live there.

Q Where did you see them? A When they came to New York I saw them.

Q Where did they come from? A From Philadelphia.

Q Do they all live in Philadelphia? A Yes, sir.

Q Did they ever live in 828 Greenwich Street? A I don't know that.

MR. BOHAN: That is all.

RE-DIRECT EXAMINATION BY MR. ROSENBERG:

Q Do you know other people that know these defendants?

A Yes, sir.

Q Are they other working men who know them? A Sure.

Q Do you know what the reputation of each of these de-

CASE #2647

endants is? A Everybody says that it is bad that honest men are in jail.

Q Do you know what the reputation of these defendants is?

A Very good.

MR. ROSENBERG: That is all.

BY MR. BOHAN:

Q Did you ever talk with anybody about the reputation of Pezzulich or Schelirrach? A Yes.

Q When and where? A Everywhere. In New York and Jersey.

Q With whom have you spoken? A With every man who knows me.

Q Did you ever talk with any person about Pezzulich's reputation? A Yes. Nobody tells anything bad about them.

Q When and where and with whom? A Every man that I know.

Q Every time that you met any of your friends you spoke about the defendants' reputation, did you? A Yes, because everybody was inquiring about them.

Q Do they inquire about all your friends reputations? A Anybody with whom I spoke anywhere about them said it is bad that honest men are in and that the real culprits are out.

Q Did Pezzulich and Sgelirrach also go out with your brother? A No, sir.

Q Did you ever go out with them? A No, sir.

Q Is your brother a ~~fr~~ friend of Pezzulich and Sgelirrach?

Objected to, and question withdrawn.

CASE # 2647

MR. BOHAN: That is all.

BY JUROR NO. 8:

Q Did you have rabbit dinner alone that night or did everybody have it that night?

BY THE COURT:

Q Did you all have rabbit for dinner that night? A Yes, we had all the same food.

A N T O N J U R M A N, of 408 West 24th Street a witness.

called on behalf of the defendants, having been duly sworn, testified as follows (through the Interpreter Mr. Ucas):

DIRECT EXAMINATION BY MR. ROSENBERG:

Q How long have you lived at 408 West 24th Street?

A Three months.

Q Did you live in Bank Street before you moved to 24th Street? A Yes.

Q From Bank Street you moved with the landlady to 24th Street, is that right? A Yes.

Q What is your business? A (In English) Fireman.

Q For what company? A (In English) Lehigh Valley.

THE COURT: Speak either in English or through the Interpreter. You better speak through the Interpreter.

Q What company do you work for? A Lehigh Valley Company.

Q Doing what? A Fireman.

Q Fireman on a boat? A On a boat.

Q Do you remember the night that these defendants were arrested? A Yes.

0679
CASE #2647

Q Where were you when they were arrested? A In the house.

Q What house? A West 24th Street.

Q What room were you in? A In the middle room.

Q Did you have supper there that night? A Yes, sir.

Q What time did you get home that night? A 6 o'clock.

Q Did you leave the house from the time that you got home until the policemen came and took the defendants away with them? A No, sir.

Q Did the defendants have their supper there that night?
A Yes, sir.

Q Did you see the defendants leave the house before the policemen took them away? A No.

Q Do you know other people who know these defendants?
A No.

Q Don't you know other working men who know them? A I know the men that work together that are in the same house.

MR. ROSENBERG: That is all.

CROSS EXAMINATION BY MR. COHAN:

Q Are you a friend of Pezzulich and Sgelirrach? A Not very much.

Q How long do you know Pezzulich? A I don't know.

Q Well, is it five years? A All my life.

Q Do you come from the same part of Istria? A I come from Fiume.

Q Did you know them in the old country? A Yes, sir.

CASE #2647

Q Did you know Sgelirrach in the old country? A Yes.

Q Have you lived together most of the time since you have been in this country? A Yes.

Q How long are you in this country? A Five years.

Q Are you related to Pezzulich or Sgelirrach? A No.

Q Are you related to Strolich? A No, sir.

Q Are you related to MaryNachimovich the landlady? A No.

Q Does she and her husband come from the same part of Istria that you do? A Yes.

Q Were you on strike around March 22nd of this year? A Yes.

Q How long were you on strike? A I was on the strike and then I fell sick and so I am not working.

Q How many days before March 22nd were you not working because of the strike? A From the 3rd of March.

Q Did you work at anything during that time up to the 22nd of March? A No.

Q On March 22nd^{where} were you in the afternoon and with whom were you? A I was together with Frank Sgelirrach to buy a suit.

Q What time did you come home? A 6 o'clock.

Q What did you eat for supper that night? A "Polenda", some kind of oatmeal.

CASE # 2647

Q What kind of meat ? A Rabbit.

Q Did anybody eat rabbit? A Yes sir.

Q How was the rabbit cooked? A As pot roast.

Q What time was supper finished? A After six o'clock.

Q What did you talk about at supper? A About our work and the strike.

Q How many men ate supper that night? A Six or seven.

Q After you finished your supper did any one leave the dining room? A No.

Q What room did you sleep in? A In a room on the second floor.

Q Who slept with you? A Frank Pezzulich the defendant.

Q How long were you and he sleeping together? A About two weeks.

Q When you came home that night did you find Frank Pezzulich in the dining room or up in your sleeping room? A In the dining room.

Q Did you leave the dining room and go up to your sleeping room at any time that night? A No.

Q Did any of the men who ate supper leave the dining room up until the time when the policemen came, and go to their sleeping room? A We were all together.

Q Did any one leave and go to the toilet? A I cannot tell you. I can't remember.

Q Did you all get up from the table after supper was finished?
A Some of us stood ^{up} and some remained seated.

CASE #2647

L 3

Q Did any of those go to their room or go out or go any place after they left the supper table? A We were all together.

Q Who sat next to you at the table? A Frank Pezzulich and Mike Strolich.

Q What time did the policemen come in? A Around nine o'clock.

Q How many men came in with them? A Altogether four men.

Q Three men who are outside in the corridor? A I don't know them.

Q Would you remember the men that came in with the police officer? A No.

Q Look at these men (indicating Frank Zio), did that man come in with the police officer? A Perhaps.

Q Did any of the men that came with the police officer speak your language, Croatian? A I did not hear them.

Q Do you speak Italian? A No sir.

Q Do you understand Italian? A Very few words.

Q Look at this man Summers, was he there that night with the officer? A I can't tell you. The only man I recognize is the tall detective.

Q Officer Murphy? A Yes sir, that man (officer Murphy standing up).

Q Did you hear any of the men that came with the police officer speak? A No.

Q Did you hear what any of them said? A No.

Q Were you all sitting down at the table when the officer

CASE # 2647

came with the four men? A Yes.

Q Who had left the room before the officer came in? A We were all in the house.

Q Did any men leave the room before the officer came in?
A No, all were in the house.

Q Did Frank Sgelirrach leave the room before the officer came in? A No, we were going out to take the suit and we were stopped at the bottom of the steps.

Q When you left the dining room did you walk through a hallway? A We went through the door, out.

Q Who left the room? A Nobody.

Q You left the kitchen, did you not? A Yes sir.

Q Who was with you? A Pete Surjian and Frank Sgelirrach.

Q Did you have to walk down the stairway? A We were going down the steps.

Q Where did you meet the policeman and the men who were with him? A At the bottom of the steps near the door of the house.

Q Did they say anything to you? A Yes sir.

Q Did they speak English or Croatian or Italian? A English.

Q Did you hear Sgelirrach say anything? A No sir.

Q Did the officer take you all back to the dining room?
A Yes.

Q Did the officer or the men who were with him say anything?
A No, nothing.

Q Did you hear Sgelirrach say anything? A No sir.

CASE #2647

Q Did you hear Pezzulich say anything? A He was talking with the detective, but I don't know what about.

Q Was he talking in English? A Yes sir.

Q Did you hear what Pezzulich said? A I heard him talking but I didn't understand what he was talking about.

Q Were all the other men in the room that you left there who had supper with you? A Yes.

Q How many men were in the room when the detective was there? A Six or seven.

Q And who left with the detectives? A The detectives asked for two men that could tell anything about Frank Strolach.

Q And who did they take away? A Frank Sgelirrach and Frank Pezzulich.

Q When did you first learn what Pezzulich and Sgelirrach were charged with? A I did not hear about that.

Q Are you still living at 34th street? A Yes sir.

Q Do you still have supper there every night with your friends? A Some times, not always.

Q Do you talk about this case every night? A Sometimes we are talking about that they are noneast men.

Q Did you talk with anybody at the supper table or at any other place since these men were arrested as to what you were going to testify to? A No.

Q Have you ever spoken with any other men who were in that dining room on March 23rd about your testimony here today? A No.

CASE #2647

Q Have you visited Pezzulich and Sgelirrach in the City Prison? A Yes.

Q How many times? A Once. I spoke with Pezzulich twice and Sgelirrach.

Q Did you tell them what you were going to testify to here today? A No.

Q Did you visit Strolich in the City Prison? A No.

Q When you visited either of the defendants did you talk about the case? A No, we were only complaining about that they are in.

Q Do you know Leon De Piere? A Yes, I know him very little.

Q Did you ever see Frank Strolich go out with either of the defendants Pezzulich and Sgelirrach, or did you ever see him in company with either of these defendants? A Sometimes.

Q Did they go out together? A No sir.

Q Did you ever visit 826 Greenwich street? A No sir.

Q Do you know Emily Strolich? A Yes sir.

Q Did Leon De Piere, Ivan De Franzo or Tony Tonak ever live at 24th street? A No, never that I know.

Q Did they ever stop there at any time? A No sir.

Q Did you live at 118 Bank street with Mrs. Nachimovich?

A Yes.

Q Did you ever see De Piere, De Franzo or Tonak there on any night? A No.

Q Do you know the three men I have just mentioned? A I know them very little.

CASE #2647

Q Are they countrymen of yours? A No sir.

Q Were you ever in Philadelphia? A Never.

REDIRECT EXAMINATION BY MR. ROSENBERG:

Q Did you talk to me about the case? A No sir.

Q Do you remember Miss Emily Strolich, the young woman who lives in Greenwich acting as the interpreter between you and me?

A I never spoke with you till today.

Q Did I ask you some questions through the interpreter Emily Strolich? A No.

Q What did I ask you about?

Objected to. Overruled.

A You asked me who was in the house between six and nine o'clock.

Q And you did not tell me, did you?

THE COURT: I exclude that.

J O H N N A C H I M O V I C H, (408 West 24th street), called and sworn as a witness on behalf of the defendant, testified as follows through the Interpreter, Mr. Ucas:

DIRECT EXAMINATION BY MR. ROSENBERG:

Q Are you the husband of Mary Nachimovich? A Yes sir.

Q Do you know these defendants at the bar? A Yes sir.

Q Were you home on the night that policeman Murphy came and took them away? A Yes.

Q What time did you get home that day or night? A I was the whole afternoon at home.

Q What time did the defendants come home that evening?

A Frank Pezzulich came first.

CASE #2647

Q What time? A Around six o'clock.

Q What time did the other defendant come in? A Ten minutes after that, 10 or 15 minutes.

Q Did you have supper at your home that night? A Yes.

Q Did the defendants eat supper at your home that night?

A Yes.

Q Did you see the defendants all that night up to the time they were arrested? A Yes sir.

Q Were you in the room all the time? A Yes, I was between the room and the kitchen. I was all the time there. They are connected.

Q Did you go to sleep before the policemen got there?

Objected to as leading. Overruled.

A No.

Q Were you in the bedroom? A Yes, I was in the same place, through all the rooms.

Q Were you lying on the bed? A No sir.

Q Do you know other people who know these defendants? A Yes sir.

Q Do you know what their reputation was? A Good.

MR. ROSENBERG: That is all.

CROSS EXAMINATION BY MR. BOHAN:

Q Do you come from the same part of Istria as the defendants?

A They are from another village.

Q Did you know them in the old country? A Yes.

Q Are you related to either one of them? A No sir.

Q What were you working at on the 23rd of March? A I was

CASE #2647

on strike.

Q Where was the strike? A In the harbor.

Q How long was the strike on? A There were two strikes.

Q Well, the last strike? A A long time.

Q How many men did you have as roomers there on March 32nd?

A Around 10 men.

Q Were they all country men of yours? A Yes, my friends.

Q Who came in with Pezzulich around six o'clock on March 32nd? A Mike Strolich.

Q Did Sgelirrach come in alone before supper? A No, he came in with De Surjian and Anton Jurman.

Q How long did it take you to have supper? A Around half an hour.

Q What did you eat for supper that night? A Rabbit.

Q Did any one leave that room after supper was over? A No.

Q Did any one get up from the chairs when supper was finished?

A Nobody went out of the house.

Q Did you go to bed? A No sir.

Q Did you lie down in your bed? A No sir.

Q Were you lying down when the policemen came in? A No sir.

Q Where were your children? A In the dining room and I was holding the baby.

Q How big is this dining room? A It is a very big room.

Q How many feet long and how many feet wide? A Four square yards.

Q There were 10 men, your three children and your wife, that

CASE #2647

is 14 people, is that right? A Some were in the kitchen and some were in the dining room. Those two rooms are altogether.

Q Were there 10 men besides your wife and children in that room at supper that night? A I think nine or ten men.

Q And those ten men all had sleeping apartments upstairs?
A Yes, not all of them, because two of them went out.

Q Did all the men that had supper have sleeping accommodations upstairs? A Yes.

Q Did any of the men after supper leave the dining room and go up to their room? A No.

Q Did you go upstairs and help your wife to do anything in the rooms? A She fixed the rooms that morning.

Q You did not work that day, did you? A No.

Q Your wife prepared the evening meal, did she? A Yes.

Q And you did not help her? A I was looking after the children.

Q And she washed all the dishes? A Yes sir.

Q And you did not help her, did you? A No.

Q Did any of the men leave their seats after supper was finished up until the time the policemen came in? A No, the men were sitting around the table.

Q Do you remember anything that was talked about at the supper table? A About work and the strike.

Q After the supper was over how long before the policemen came did any of the men leave the room? A Nobody went out of the house.

CASE # 2647

Q Where did the policemen find Pezzulich and Sgelirrach?

A Pezzulich did not move from the table and Sgelirrach with two other men went out to take some suits and the policemen stopped them at the bottom of the steps.

Q How long were they out of the room when they were brought back? A About one minute.

Q How many men were with the policemen? A I think three men.

Q Was Frank Zic, that man, there (indicating Frank Zic)?

A Yes.

Q And policeman Murphy (Officer Murphy standing up)? A Yes sir.

(Mr. Summers enters the court room.)

Q Was that man there with the officer too (indicating Summers)?

A Yes sir.

Q Did you hear any of those men say anything, yes or no?

A No.

Q Well, who spoke? A The big detective.

Q Do you understand what he said, yes or no? A Yes sir.

Q Who did the detective speak to? A Mostly with Frank Pezzulich.

Q And who else? A I was speaking with the detective too.

Q And all the other men remained in the room while he was talking to Pezzulich? A Yes.

Q Now what did Pezzulich say? A As the detective said that Frank Strolach was caught, Pezzulich stood up and wanted to go

CASE #2647

with the detective to see Strolach.

Q What did Sgelirrach say? A I don't remember. He went out and saw him, as he is his friend.

Q Did Sgelirrach speak English or Croatian? A Sgelirrach was talking Croatian.

Q Did he talk to you? A Talking to the men around.

Q Did any of the men who were with the policemen speak Croatian? A No.

Q How long was the detective and these three men in your dining room? A About three or four or five minutes.

Q Do you speak or understand Italian? A Yes, I understand it.

Q Do you ever speak Italian to Pezzulich or Sgelirrach?
A No.

Q You are a friend of both of the defendants, are you not?
A I know them since they are in America.

Q You would like to help them out of their trouble, would you? A I took the lawyer and I would like to help them because I know that they are not guilty.

Q How often have you visited Sgelirrach and Pezzulich in the City Prison? A Once every week.

Q Did you talk about this case to both of them? A They were asking me when is the trial coming up and I told them I don't know.

Q Did you talk about what you were going to say in the court today? A I testified to what I know is the truth.

CASE #2647

Q How many times did you speak to the defendants since they were arrested about what you were going to testify to in their case? A I was speaking once with Pezzulich and Sgelirrach but I did not tell them what I would say as a witness, but I would say what is the truth.

Q Did you talk to your wife about this case since they have been arrested? A Yes.

Q How many times did you speak to your wife about this case? A As we are living together we speak often about it.

Q Did you talk about it every night at the supper table? A That is no reason for talking every night.

Q Have you had the same men at supper table most every night since these men were arrested? A No.

Q Well, you have Pete Surjian and you have Mike Strolich? A Mike Strolich is working. He is not there.

Q Have you ever spoken about this case at the supper table since the men were arrested? A We are talking about them as honest men.

Q You were down here every day at the last trial, were you? A Yes sir.

MR. BOHAN: That is all.

REDIRECT EXAMINATION BY MR. ROSENBERG:

Q You were not a witness at the last trial, were you? A No.

Q And you were down here every day in this trial? A Yes.

Q Now what do you do on the boat? A Oiler and assistant.

CASE #2647

engineer.

Q Of what company? A Ferryboat Binghamton, Lackawanna Railroad.

Q How long have you been so employed? A About that seven years.

MR. ROSENBERG: That is all.

RECROSS EXAMINATION BY MR. BOHAN:

Q What were you doing down here at the last trial? You were not a witness for the people, and you were not a witness for the defendant? A I took their case to the lawyer.

Q Whose case? A For those two defendants.

Q And for Strolich, the man who was tried last month? A No.

Q Did you hire the lawyer? A Yes sir.

Q And you got the same lawyer for Strolich who was tried last month.

MR. ROSENBERG: He did not say anything of the kind.

THE COURT: And if he did it would not make any difference. It is very dangerous to refer to the last trial, because I

am very apt to take the case away from the jury and discharge these men. Any reference to the last trial is unfair.

Their guilt is to be determined by the evidence produced here.

It does not make any difference whether any other man was guilty or innocent. The question here is whether these de-

fendants are guilty or not.

BY MR. ROSENBERG:

Q Did you hire the lawyer for Strolich? A No sir.

CASE # 2647

L

126

Q Was your wife subpoenaed by the District Attorney at the last trial?

THE COURT: That is hearsay. He had a right to come down. You cannot make criminal acts out of such things.

The court room is open to spectators.

MARTIN HONOVICH, (691 Greenwich street), called and sworn as a witness on behalf of the defendants, testified as follows through Mr. Ucas, the Interpreter:

DIRECT EXAMINATION BY MR. ROSENBERG:

Q Do you know the defendants? A Yes sir.

Q What is your business? A Fireman.

Q With what company? A I am sick now. I am not working. Before I was working with the Lehigh Valley.

Q Were you present at 408 West 24th street when these defendants were arrested by the policemen? A Yes.

Q What time did you get to the house that night? A 40 minutes after seven.

Q Did you go out at any time until the policemen came? A No.

Q Did the defendants leave at any time until they were arrested? A No.

MR. ROSENBERG: That is all.

CROSS EXAMINATION BY MR. BOHAN:

Q Are you a friend of the defendants? A I know them.

Q Did you know them in the old country? A No, I know them in this country.

Q How long do you know Pezzulich? A Two or three months.

CASE #2647

L

127

Q How long do you know Sgelirrach? A Three or four years.

Q Did you work with either of them? A No.

Q Where did you live on the 22nd of March? A 691 Greenwich street.

Q Did you ever live in 408 West 24th street? A No.

Q What time did you get to 408 West 24th street, Saturday?

A About 7:40.

Q Did you go there with any one? A Alone.

Q What time did you leave there? A Nine o'clock.

Q Who did you see there? A There were many men in the house.

Q Did you know them all? A Yes.

Q What were they doing? A They were talking about the strike.

Q Were you on strike? A No, I was working.

Q Where were you working? A At that time, Erie Railroad.

Q Do you speak Italian? A No sir.

Q Are you a friend of Pezzulich's? A No sir.

BY THE COURT:

Q Why were you in the house that night if you were not a friend of these men? A I have a cousin in that house.

Q Who is the cousin? A The wife of Nachimovich.

BY MR. BOHAN:

Q How often have you visited 408 West 24th street? A Every second night, perhaps.

Q When did you first learn that these men were arrested?

A That night.

CASE #2647

Q Who told you? A (Krulich) Kuzovich.

Q Did you get there before or after supper was finished?

A After.

Q How many men came in with the police officer? A Three.

Q Did any of the men who came with the police officer speak Croatian? A No.

Q Did you hear what Pezzulich said to the policeman? A Yes sir.

Q What did he say? A The policeman asked who speaks English and Pezzulich said he speaks English.

Q Did you hear anything else said? A No sir.

BY THE COURT:

Q You speak English pretty well, do you not? A A little bit.

Q You can understand it. You understand me? A Yes sir.

BY MR. BOHAN:

Q Did you hear what Sgelirrach said? A Yes, Sgelirrach stood up and said he was going with them too.

Q Were Sgelirrach and Pezzulich in the room when the police officer came in? A No.

Q How long before that had they left? A Two minutes.

Q Who did you first speak to about this case since they have been arrested? A Where I was working on the boat.

Q Do you know Leon De Piere ? A Yes sir.

Q And do you know Tony Tonak? A Yes sir.

CASE #2647

Q And do you know Ivan De Franz? A Yes sir.

Q And do you know Peter Bozgak? A No sir.

Q Did you ever live in the same house with them? A No sir.

Q Have you seen either of these men that I have just mentioned since the time these defendants were arrested? A I saw afterwards one.

Q Who was that? A Leon De Piere.

Q Was that in 24th street, the day after the policemen took Pezzulich away? A No, I saw him under the elevated at Greenwich street.

Q When? A On the Sunday after.

Q Did you visit Pezzulich and Sgelirrach in the City Prison?

A No.

Q Have you talked with any one else about this case? A Yes, I was speaking with some one.

Q You would like to help these defendants? A They are nothing to me.

MR. BOHAN: That is all.

THE COURT: Gentlemen of the jury, the Court will excuse you now until Monday morning at half past 10, and meanwhile remember that the law forbids you to discuss this case with any one whatever, and you must not form or express any opinion on it until you have heard all the evidence on both sides. at the end of the case; that is the time for you to decide^{it} and not before that. Please come back Monday morning at half past 10.

CASE #2647

THE PEOPLE v. PEZZULICH and SGELIRRACH

New York, June 16, 1919.

Trial continued.

A N T O N Z U P C I C H, of 74 3rd Street, Long Island City,
called as a witness on behalf of the defendants, testified
as follows, through the interpreter Mr. Ucas, after having
been duly sworn:

DIRECT EXAMINATION BY MR. ROSENBERG:

Q What is your business? A Oiler on the tugboats of the
Reading Railroad.

Q What company do you work for? A Reading Railroad Company.

Q Do you know these defendants, and each of them? A Yes sir.

Q Did they work for the same company? A The same company.

Q How long have you known Sgelirrach? A Five years.

Q How long have you known the other man, Pezzulich?

A Ten years.

Q Do you know other people who know these defendants and
each of them? A Yes, I know many.

Q What is the reputation of Sgelirrach for truthfulness
and honesty? A Everybody says that he is honest, an honest man.

Q Is his reputation good or bad? A Good.

Q And as to Pezzulich; what is his reputation? A Good.

MR. ROSENBERG: That is all.

MR. BOHAN: No questions.

CASE #2647

MR. ROSENBERG: I have three other witnesses as to character. Mr. Bohan has agreed that the other witnesses will testify to the same effect as this last witness, without calling them.

MR. BOHAN: I will consent to that.

MR. ROSENBERG: I understand Mr. Bohan will concede that the defendants were employed by the Reading Railroad Company on their tugboats prior to the strike.

MR. BOHAN: Yes, I will concede that.

F R A N K P E Z Z U L I C H, of 408 West 24th Street, one of the defendants, called as a witness on his own behalf, having been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ROSENBERG:

Q How old are you? A Thirty-three years old.

Q What is your business? A Foreman.

Q For what company do you work? A The Reading Railroad Company.

Q Were you on their trains or on their boats? A On the boats. The "Germantown" the last time.

Q And that boat plied between New York and what other port?
A Boston, Portland, Rockland, Lynhaven, towing barges.

Q Were you in the house of 36 Beach Street on March 22nd of this year? A No sir.

Q Were you in that house on that day from eight to half-past eight? A No.

CASE # 2647

Q Did you go into that house alone or with this defendant and other people and rob the complainant? A What house?

Q 36 Beach Street? A No.

Q And steal the sum of \$1728 or any other money from a man whose name is Frank Zic? A No sir.

Q Did you go into that house on that day or night and steal any money? A No sir.

BY THE COURT:

Q You said you never were in that house. Is that so? A No.

Q You never were in that house? A Never.

Q Do you know where it is? A No sir.

Q Do you know where Beach Street is? A No sir.

Q You do not know where Beach Street is? A I know where it is now; when the detective took us to the police station. I never knew it before, because I never go there.

BY MR. ROSENBERG:

Q You were taken there by the detectives, were you, to Beach Street, on the night of March 22nd? A Yes sir.

Q Where were you on Saturday, March 22nd, between halfpast six and nine o'clock? A I was home, fifteen minutes of six, as far as nine o'clock.

Q Where were you? A In the house, in the diningroom.

Q In what house? A 408 West 24th Street.

Q Were you arrested in that house, or as you were coming down the steps; where did the policeman arrest you? A I went down

CASE #2647

myself.

133

Q Were you arrested in the house on 24th Street? A Yes.

He took me from the house.

Q From what part of the house were you arrested? A The dining room and in the middle, in the center.

Q Were you ever convicted of any crime? A No sir.

Q Are you sure of that? A Sure.

MR. ROSENBERG: You may examine.

CROSS-EXAMINATION BY MR. BOHAN:

Q How long have you been in this country? A Twelve years.

Q Are you a citizen? A No sir.

Q How long did you live at 408 West 24th Street? A About seventeen days.

Q But before that, where did you live? A I had been working on the boat.

Q Where did you live; did you live on the boat? A Yes, on the boat I lived.

Q Did you ever live in New York at any place? A I lived last summer about a week with the same people in Bank Street.

Q At 118 Bank Street? A Yes sir, about a week.

BY THE COURT:

Q How far is that from Beach Street; is it right around the corner? A I don't know; Bank Street is near 14th Street.

MR. ROSENBERG: I think we can all agree upon the distance, or the officer can testify to it.

BY MR. BOHAN:

CASE #2647

Q How long did you live at 118 Bank Street? A About a week.

Q And that was with Mrs. Nachimovich? A Yes.

Q And before that where did you live? A I was in Philadelphia.

Q You never lived in New York? A Well, ten years ago.

Q Where did you live in Philadelphia? A 2564 Salmon St.

Q Is that in a house of Leon De Pierre? A No, in the same house.

Q And Ivan De Franzo? A I know them.

Q Did they live there with you? A They did not live with me.

Q Did you see them on the 22nd of March of this year? A No.

Q Do you know that they were in New York? A Yes sir.

Q How long do you know Frank Strolich? A I know him about eighteen months.

Q You and he were friends? A Not friends; not bad friends.

Q You lived in the same house with him? A Seventeen days.

Q He worked for the Railroad Company with you? A Worked for the same company, the boat.

Q The same place he worked on the boat? A Yes.

Q Did he work on the same boat with you? A No sir.

Q How long do you know Sgelirrach? A I know him from the old country.

Q Are you related to him? A No.

CASE #2647

Q He worked on the same boat with you? A He did.

Q All these men that lived at 24th Street, did they work with you on the same boat? A No, no one except Sgelirrach.

Q How long were you on strike? A The company I worked for is the Reading Railroad Company and they called outside tow-boats. It was not a strike because they carry union men.

Q Were you a union man? A I am now.

Q How long were you out of work? A Seventeen days.

Q On the first strike, how many days were you out? A I was not on the first strike. This company was not on the strike. My boat was laid up.

Q How much pay did you receive? A \$90 a month they pay.

Q How many trips had you made before this? A About four trips a month; about twelve trips.

Q How much money did you have left from your wages on the 22nd of March? A About \$11 with me.

Q Were you paid before or after the strike commenced, for the previous month? A I got paid when I got off the boat.

Q When the strike was declared? A When I got off the boat, March 4th.

Q You mean when you stopped working? A Yes sir.

Q All you had left was \$11 on the day you got arrested?

A Yes.

Q You had no other money? A Not on me, but I had more.

Q How long do you know Mr. and Mrs. Nachimovich? A About

CASE #2647

nineteen months.

Q Did they come from the same part of Istria that you come from? A Yes.

Q Did you know them in Istria? A No.

Q Did you know this other man? A I know the husband from the old country.

Q Pete Jurman, how long do you know him? A Pete Jurian, about six years.

Q Did you know him from the other side, in the old country? A No.

Q Mike Strollich, how long have you known him? A I know him from the old country.

Q And Nathan Jurman? A I know him, too.

Q And John Nachimovich? A Yes, I know him from the old country.

Q And Martin Honovich? A I did not know him from the old country; I know him only about three months.

Q What did you do every day between the 4th of March and the 22nd of March? A Going around talking; sometimes I go out in the afternoon until suppertime.

Q You lived there from the 4th to the 22nd of March, when you lived at Bank Street with Mrs. Nachimovich; did you have your room, or did you get your meals also? A Then I had only a room, and once in a while I have meals.

Q Isn't it a fact that Mrs. Nachimovich only rented out the

CASE #2647

rooms and never prepared the meals? A She prepared meals sometimes.

Q But as a general rule all she did was to rent out the rooms? A She rented out the rooms, and supper.

Q How many days did you eat your dinner from the 4th of March to the 22nd of March in 408 West 24th Street? A I eat steady then, twelve days.

Q Did you ever eat your meals in the restaurants from the 4th to the 22nd of March? A No, not in them twelve days.

Q You say you had three meals every day? A Two meals and coffee in the morning.

Q Every day? A Nearly every day; when I happened to be home at noontime; if not I ate in the restaurant.

Q Did you work any place? A Not since March 4th.

Q What did you do every day? A I had to go to find a job.

Q Did you stay in your room or did you go to the pictures?

A Sometimes I go to the poolroom with friends; sometimes I take a glass of beer. Sometimes I take a walk to 691; sometimes I went to 828 Greenwich Street.

Q All the men that lived in this house, they were on strike were they? A Yes.

Q And also Frank Strollich? A He was on strike too.

Q Were you ever at the New York Central Freight Station over on the west side, that runs from Laight Street to Beach Street at Hudson and to Varick? A Yes, I know where it is.

CASE #2647

Q Were you ever there? A I was in the station, yes.

Q How many times? A About ten days, about ten days before I got arrested.

Q Who was there with you? A I cannot say.

Q Were you alone? A Yes, I think so.

Q Day or night, were you there? A Day.

Q What were you doing there? A I was going some place.

Q Going where? A On the other side, on the Jersey side.

To go on the Jersey side.

BY THE COURT:

Q You were going to go to Jersey City by that freight station, were you? A Yes, but not the freight station.

Q How long were you in the freight station the day you were there? A Not the freight station.

Q He asked you what you were doing in the freight station; you were in the freight station you said about ten days before you were arrested? A I was in the station, the train station.

Q He asked you about the freight station at Beach and Laight Street? A I thought it was the train station. I made a mistake.

BY MR. BOHAN:

Q Were you ever on Hudson Street? A No sir.

Q Were you ever on Varick Street? A No sir. I never traveled that way.

Q Do you know where the freight station is? A Yes sir.

CASE #2647

Q Where is it? A It is near, -- what street is that?

Q Is it near Canal Street? A Is it near Cortlandt Street?

Q What freight station are you referring to, at Cortlandt Street? A It is not a freight station; a ferry station.

Q Do you know what a freight station is? A No, I don't remember. I did not take no notice.

Q Do you know what the word "freight" means? A Yes.

BY THE COURT:

Q You have been working for twelve years for the Reading Company? A Yes.

Q Were you on the passenger boats or freight boats?

A Small tugs, towing barges.

Q Towing freight barges? A Coal barges.

Q Coal is freight, isn't it? A Yes, material.

Q He asked you is there a freight station at Cortlandt Street? A I can't remember.

BY MR. BOHAN:

Q You want to change your statement now that you were never in the freight station at Laight and Beach Street ten days before you were arrested? A In Beach Street I never go.

Q Do you want to change your statement? A No sir; I don't remember. I thought you were asking me before if I was in the ferry station by Cortlandt Street.

Q Did you hear me ask you whether you were in the freight station and I told you where it was in my question, at Beach,

CASE #2647

Laight, Hudson and Varick Street. There is no ferry station on Hudson Street, is there? A I don't know the street.

Q There is no ferry on Hudson Street. You know that is not near the river. And you know Varick Street is not near the river? A I don't know the streets. I can't even read.

Q What street is the Reading Railroad ferry at? A I believe Cortlandt.

Q What street is the Reading Railroad ferry at? A Cortlandt Street.

Q It is not near Hudson nor Varick nor Beach, is it? A I don't know; I know the ferry.

Q What language do you speak? A Croatian. It is like Slavish.

Q You come from where? A Fiume, Istria.

Q What part of Istria? A Near Fiume town.

Q You understand Italian? A Very little.

Q Do you speak Italian? A Very little.

Q But you do speak some Italian? A Very little I understand.

Q In Fiume where you come from there is a large Italian population? A Yes, in the town.

Q And everybody speaks a little Slavish, Croatian, Italian and sometimes other languages? A Yes, but we do not live there. We only take the boat there.

BY THE COURT:

CASE #2647

Q But where did you live? A In the other town, in Istria.

Q You are a Croat, are you? A Yes sir, Croat-Slavish;
it is between.

Q You are not an Austrian any more? A No, not now.

Q You are from Istria? A Yes sir.

Q Fiume is the biggest city near where you were? A Yes.

Q You sailed for this country from Fiume? A Yes.

BY MR. BOHAN:

Q Where you come from everybody speaks a little Italian
and Croatian? A No sir, not there.

Q They understand it? A A little bit.

Q When you came on here did you work with Italians on the
boats? A No.

Q What did you do on the 22nd of March in the morning?

A I was home about noon, to dinner.

Q What time did you get up? A About between seven and
eight o'clock.

Q What did you do in the morning? A Talking around
with the fellows.

Q Did you go out? A I stayed home to noon.

Q In the afternoon did you go out? A I was out in the
afternoon.

Q Whom did you go out with? A With Mike Strollich.

Q What time did you come back? A About fifteen minutes
of six.

CASE #2647

Q Whom did you come back with, Mike Strolich? A Yes.

Q Where did you spend the afternoon? A I was for a while in 691 and then we went to the saloon and had a glass of beer and then we went to 828 Greenwich about around four o'clock.

Q Whom did you see there. Did you see the brother Frank Strolich there? A He was not there.

Q Did you see him that afternoon? A No, I did not see him before I got home.

Q You were at Emily Strolich's house from four to five with Mike Strolich? A Yes.

Q Didn't you hear Mike Strolich say that he saw his brother Frank Strolich there?

Objected to; objection overruled. Exception.

A In our house.

Q Didn't you hear Mike Strolich say that he saw his brother in Emily Strolich's house at 828 Greenwich while you were with him? A I did not hear him say that; we find him home in our house.

Q Did you see Frank Strolich Saturday afternoon? A I did not see him since about one o'clock, since we went out. We find him home fifteen minutes of six, home.

Q You found him at 408 West 24th Street? A Yes.

Q Will you now say you did not see him in the house of Emily Strolich? A No sir, I did not see him there, not on that day.

CASE #2647

Q When you got home at 24th Street, he was there at home?

A Yes.

Q Was he there ahead of you? A He was ahead of me. He was home when we got home.

Q You came in with Mike Strolich? A Yes sir.

Q Did you see Leon De Pierre and Ivan De Franco that afternoon at 828 Greenwich Street? A No sir, not that day.

Q Or the day before? A No. About four or five days before I saw De Franco.

Q Where is 828 Greenwich Street? A Near 14th Street.

Q Where is 691 Greenwich Street? A Near Christopher St.

Q Have you a cousin down on Greenwich Street near Cortlandt? A I have cousins. A fellow married my cousin in the old Country, that is in Cortlandt Street.

Q Near Greenwich Street? A Away down near Cortlandt.

Q You know that neighborhood pretty well along the west side? A I only know where people are.

Q Were you ever in any house between Cortlandt Street and 14th Street? A Cortlandt Street I was in one house of Emily Strolich.

Q Where does she live? A Near Cortlandt Street and Greenwich.

Q Any other house on the west side? A No sir. I never was in any house.

Q What did you do after you got home? A I stayed home.

CASE #2647

Q Did you go to your room? A No sir,

Q Did you wash up? A No sir.

Q Did you go to your room at any time that night? A No sir, I was in the dining room.

Q How many people were in the dining room when you got home? A Eight and the Missus made nine.

Q Were they all there when you got in? A Yes. When I got in fifteen minutes of six Sgelirrach came home around six o'clock and Pete Zurian and Tony Jurman came home about six o'clock.

Q How many were there there before supper commenced?

A Before they came in?

Q Yes. A Oh, they came in with five.

Q What time did supper commence? A About fifteen or twenty minutes after six.

Q Were these men working that day, any of these men?

A No, they did not work.

Q How long did it take for supper? A About twenty minutes or half an hour. Sometimes more, sometimes less.

Q Did any of the men leave the dining room after they came in that night? A No, they did not leave the dining room.

Q All of the men that had rooms on the top floor stayed in the dining room? A On the top floor; one's room is outside the dining room.

Q All the men that had their room upstairs remained in the dining room and did not go in their rooms, is that right? A No

CASE #2647

sir, did not go near their room.

Q Did you leave that room at any time from the time you went in at 5.45 until the time the policeman came? A No, we were always there.

Q All of you? A I was there.

Q Did anyone else leave the room? A Sgelirrach and Tony Jurman and Pete Zurian went out. They were on the steps.

Q What time did they leave? A About five minutes to nine. They came back about two minutes after with the officer.

Q Before they left did any of the men who were in the room leave the dining room between ~~and~~ five to six and nine o'clock? A No sir.

Q They all remained in this dining room? A Yes, talking.

Q What did you eat that night? A Rabbits.

Q You are sure it was rabbit? A Yes sir.

Q How often did you eat rabbits before that? A Five or six days.

Q With Mrs. Nachimovich? A Yes.

Q She cooked the rabbit suppers while you were there? A Sometimes twice; sometimes three times.

Q How many times in these seventeen days did she cook rabbit? A About two or three times.

Q She had ten men upstairs, is that right? A Yes.

Q Did she clean those rooms and fix the beds? A No.

Q You did not take care of your bed? A No.

CASE #2647

Q And she cooked three meals every day for all of you men? A Two meals, and coffee in the morning.

Q And she took care of her children? A Yes.

Q On this night while you were sitting in the dining room what was she doing? A After we ate supper she washed the dishes.

Q Where was the child? A The husband had them.

Q Were they in the same room? A In the dining room, taking care of them.

Q Give me the names of the men sitting at the table in that room? A Tony Jurman, Joe Jurman, Joe Yellovich, Mike Strolach, John Nachimovich, Frank Sgelirrach and me and Martin Honovich came about fifteen minutes after seven in the house.

Q That is eight men? A Yes, and Mrs. Nachimovich is nine.

Q And the three children? A Yes sir. But Martin came in fifteen minutes after.

Q That would be ten men and Mrs. Nachimovich is eleven?

A No; I counted Martin. He came in the house fifteen minutes after seven.

Q That would be thirteen or fourteen people in this one room in the dining room? A With the children.

Q And no one left between six and nine o'clock? A No sir., except the three men on the steps when they wanted to go out and they met the officer, Murphy.

Q What did you talk about? A About work and the strike,

CASE #2647

where we were going to work, to which one we go.

Q Did Mrs. Nachimovich join in the talk? A She washed the dishes, cleaned the kitchen and attended the children.

Q The kitchen was a separate room? A Yes.

Q Sometimes she could go into the kitchen and you would not see her in the dining room? A You can see.

Q Sometimes she would go into the part of the kitchen where you could not see her? A You can see always because there is doors on the side.

Q What part of the table were you sitting at? A On the corner.

Q Who was on the right side and who was on the left side of you? A On the right side behind me was Mike Strolach and on the left side was Tony Jurman.

Q Where was Frank Sgelirrach? A He was next, and Pete Zurian was next to me, I believe.

Q After supper was over did you get up from your chair or move away from the table? A I sat down talking.

Q Did you all get up? A No.

Q What time did supper commence? A About fifteen or twenty after six.

Q What time did you finish? A About a quarter to seven or twenty to seven.

Q Did you sit in the chair at the table from twenty after six until the time the officer came in? A Yes.

CASE #2647

Q You never left it? A No. I got up and sat down there and talked.

Q You sat down in the same chair every time you got up?

A I sit down there.

Q Where was Frank Sgelirrach? A He was lying, on what they call a sofa, in the dining room.

Q How near the table? A Behind the table (indicating).

Q Where was Mr. Nachimovich? A He was taking care of the children.

Q In the dining room? A Yes.

Q Did you see him lying down on the bed? A He was not lying on the bed. He got up when Sgelirrach wanted to go out to get his suit.

Q Did he ever lie down on the bed? A Not in the day.

Q Sure? A Yes. He laid down in the dining room.

Q If Mrs. Nachimovich said he laid down on the bed, what do you say?

MR. ROSENBERG: Objected to.

(Question withdrawn.)

Q Did you hear Mrs. Nachimovich say that her husband laid down on the bed? A I did not hear her say that, that he laid down in the bed. He was lying on the sofa. He did not sleep. Before that a couple of minutes Sgelirrach got up from the sofa and he went out and met the officer on the steps. He was just sideways lying on the sofa in the dining room.

CASE #2647

Q Did you hear me ask Mrs. Nachimovich this question:

"He was in the bedroom? A He was lying down all dressed up".

Was he lying down or sitting at the table? A He was lying down in the dining room on the sofa.

Q Not in the middle room? A No, only a couple of minutes.

Q What room did Mr. and Mrs. Nachimovich use to sleep in?

A In the front room she slept.

Q In the middle room? A No, that is the dining room.

Q Was there a bed in the middle room? A No sir.

No bed, but a sofa.

Q Was there a sofa in the middle room? A In the dining room, yes; in the middle.

Q Is the middle the dining room? A There is a kitchen and middle room.

Q You call the kitchen the middle room, do you? A No.

Q How many rooms are there on that floor? A The kitchen and what they call the dining room and the front room, three; and another room outside.

Q Where was Mr. and Mrs. Nachimovich's bed? A In the front room.

Q Was he lying down on the sofa in the dining room or on the bed in the front room? A When the officer came in the house he was lying down a couple of minutes on the sofa.

Q I thought you told me a few minutes ago Sgelirrach was lying down on the sofa? A I was telling you Sgelirrach got up

CASE #2647

about two or three or four minutes before the officer came in the house and he wanted to get his suit.

Q Was he lying on the sofa? A Sgelirrach was lying there before that.

Q Is that the same sofa that Nachimovich was lying on? A Yes.

Q How long did Sgelirrach lie there? A I cannot say how long; fifteen or twenty minutes.

Q When the officer came there who spoke to him first?

A I spoke the first to Sgelirrach because I told him, "What you come back again for?" He said, "The officer stopped me on the steps", so that is what he was telling me.

Q Is that all he told you? A Yes sir.

Q What did you say to the officer then? A The officer was the first one spoke to the Missus. Then the boss he got up and spoke also, because they asked for Frank Strolich, if he was living there. After they spoke for a while I asked the officer, "What is the matter with Frank Strolich". He said he got cut, so I thought he was cut with a knife, a cut. He asked was he working. Somebody was telling he was working with the Lehigh Valley. Then I answered the last time he was working on the Reading Company. The last time I seen him he was working in the Reading Company.

Q What else? A Then I did not say nothing.

Q As I understand you, Officer Murphy came and said something to you in English? A Yes.

Q First, Sgelirrach said something to you in Croatian? A Yes.

CASE #2647

Q He told you that the officer brought him back from downstairs and he wanted to know if Frank Strolach lived there?

A Yes.

Q He did not say anything else to you in Croatian, did he?

A Sgelirrach, no.

Q Then you spoke to the officer, who told you that Frank Strolach was out? A Yes, he got out.

Q You thought by that that he was out with a knife? A Yes.

Q And that is all that was said between you and Officer Murphy? A Yes. I say nothing more.

Q What else? A The officer asked if he was working. I told him the last time he was working in the Reading Company.

Q Did you say anything else to him? A No. Yes, I think I was asking what was the matter with him, what did he do; was he fighting. He said, yes, something like that.

Q What did the officer say to you? A He say nothing to me there.

Q Did he say anything to you? A No.

BY THE COURT:

Q Did he give you an invitation to come along with him?

A Yes, he gave me an invitation; he said, anybody want to go down to see him, so we said yes.

Q Is that Officer Murphy? A There was another officer, too.

Q Officer Summers? A A little fellow; two officers were there. They said "yes, walk down".

CASE #2647

BY MR. BOHAN:

152

Q Did they take the four of you? A No.

Q How many did they take? A Two of us.

Q Sgelirrach and you? A Yes.

Q And no one else? A No sir.

BY THE COURT:

Q And how many were there? A We were there, the same as before.

Q There were eight or ten of you there? A Ten.

Q And they picked out two? A They did not pick them out at all.

Q Who did the picking? A Officer Summers.

Q Didn't the complaining witness do the picking? A No sir.

BY MR. BOHAN:

Q Did you see that man there (indicating Frank Sgelirrach)?

A I seen that man there, yes.

Q Was he at 24th Street with Officer Murphy? A Yes.

Q And this man here (indicating Officer Summers)? A Yes.

Q And that man there entering the courtroom? A Yes, he was there, too.

Q Did you see him do anything before they picked you out?

A No.

Q Before they asked you to come with them? A No.

Q Did Frank Sgelirrach speak? A No.

Q Did he say anything in Croatian? A No.

CASE #2647

Q Did you hear him say anything in English? A Not a word.

Q How did the officer tell you to come away with him?
A He said anybody wants to go down to see him, we said yes.

Q Did he take you by the sleeve? A No. We went by ourselves. We said yes. He said, "You better come on; you can speak better English". At the steps he said, "That is enough, two of you".

Q How long were they in the house? A Between five and ten minutes.

Q Where did they take you to? A To the 9th Avenue stationhouse.

Q What street? A Beach Street.

Q How did you come down? A In the car.

Q What, street surface car? A Yes, the electric car.

Q You did not go down on the subway? A No.

Q You went to the stationhouse at Beach and Varick Street?

A Yes, to Christopher Street first.

Q You first went to Christopher Street, 826? A Yes, to get Tony Kursovich.

Q How long did you stay there? A We were not there long.

Q How long did you stay there? A We were not there long.

Q How many men did you see in 826 Greenwich Street? A In 691, Sgelirrach and Officer Summers went down. I did not go inside the house.

CASE #2647

Q With whom? A Officer Murphy and two other fellows.

Q Then you went directly to the police station? A Yes.

We took the car to the police station.

Q On the way down did you talk to Officer Murphy in the English language about where you were that night? A I talked in English where I was that Saturday night, yes. I told him I was home.

Q When you got to Beach Street did you see Frank and Mike Zic and all these men who were on the stand the last two days. Did you see those men there? A The men that were in the house.

Q In the stationhouse? A Yes, they came down with us. That is the first time I seen them near our house.

Q This man Frank Zic and Summers were the only men that came from 24th Street to the stationhouse, two men and two officers? A Yes.

Q And when you got to the stationhouse you saw the other men that were on the witness stand last week, is that right?

A I saw four men in the stationhouse; four or five men.

Q Did they put you in a line? A In the station, we went straight there, and there was a line of people in the stationhouse; I don't know who. We went straight across to a different room and I cannot say was it four or five men standing in that room, standing up, and then we got in there, they say, "Line up; line up". I did not know what that meant.

Q How many men were there in that line? A About eight or nine.

CASE #2647

Q And you and Sgelirrach were the only men you knew in that line? A Yes.

Q He was the only man you knew in that line, Sgelirrach?

A Yes. He was in that line with me.

Q He was the only man you knew? A No, I knew somebody else. Tony Kursovich, and I did not know who was the rest.

Q How many men did you know in that line? A In that line with me I knew Tony Kursovich and Sgelirrach.

Q You knew two men out of the eight or nine men? A Yes. They took us out in a different line again.

Q Did you see Mike Zic (indicating) in the stationhouse? A Yes.

Q Did you see him go up to that line and do anything? A Not in that line.

Q Did you see him go up and point his hand or say anything that you heard while you were standing at that line?

MR. ROSENBERG: Objected to as incompetent, irrelevant and immaterial, in reference to the actions of a third person over whom we have no control.

Objection overruled. Exception.

A Not in that line because we had two line-ups.

Q The first line-up was in the stationhouse? A In a different room.

Q Who came up and picked you out there?

Objected to; objection sustained.

CASE #2647

Q Did you see any of these men, Mike Zic, Frank Zic, Vincent Zic, come up and point their finger at you or Frank Sgelirrach while you were in that line?

Objected to; objection sustained.

MR. ROSENBERG: I ask that the District Attorney be instructed not to repeat that.

MR. BOHAN: All right.

BY THE COURT:

Q Mike Zic was there, was he not? A Yes.

Q Did you know him before that day? A No sir.

Q He saw that line that you were in? A He seen the line.

Q How many other men were brought before you when you were in that line-up; how many men like Mike Zic were brought there while you and your co-defendant were in the line-up? A Four or five.

Q They also saw you and saw this defendant in this line-up? A He saw us there.

BY MR. BOHAN:

Q And after that you were locked up? A We were in a different line; I had two lines.

Q They gave you another line-up? A Yes sir.

Q And again these men saw you there; you had two line-ups and each time Mike Zic and the other Zic saw you there, is that so? A They saw us there, yes.

Q And then you were arrested and locked up? A Yes.

CASE #2647

Q. After the second line-up you were arrested? A Yes.

Q. How many men were in the second line-up? A I cannot say.

Q. Eight or ten, the same as the first? A About that.

Q. Sgelirrach was the only man you knew in the second line-up? A Sgelirrach and Tony Kursovich, two men.

Q. Did you hear any of these men while you were in the line-up speak in your language, the Croatian language? A Yes, after I was in the line.

Q. Did they speak about you and Sgelirrach?

Objected to; objection sustained.

Q. Were you ever in 36 Beach Street? A Not what I know.

Q. Would you know, or would you say so if you knew? A I don't know. I don't know because I was not there.

Q. Were you ever at Beach Street? A I could not swear. If I go down in Battery Place I used to take the ferry in Port Richmond.

Q. Were you ever in a house there? A No sir.

Q. Isn't it a fact you were in 36 Beach Street on the 18th of March? A No sir.

Q. (Officer Summers is recalled to the court room) Do you see that man entering the court room? A Yes.

Q. Isn't it a fact that that man, Mr. Summers, put you out of the hallway on the evening of March 18th, while you were in company with Frank Strolich? A No sir, I swear my life off.

CASE #2647

Q You heard these men pick you out in this court room?

A Yes, in the court room.

Q They identified you as among one of the six or seven men that robbed them on the 22nd of March, yes or no?

MR. ROSENBERG: Objected to on the ground that it is incompetent, irrelevant and immaterial and hearsay, calling for the actions of persons over whom the defendant has no control.

Objection overruled. Exception

BY THE COURT:

Q You can hear well; you have good ears? A I can hear, yes.

Q You heard them say that you robbed the, did you? A They said that, yes.

Q Right here in this court room you heard them say that?
A Yes, I heard them.

BY MR. BOHAN:

Q Do you know any reason why Frank Zie would charge you with robbing him of \$1728 at the point of a revolver?

Objected to as incompetent, irrelevant and immaterial.

Objection sustained.

THE COURT: You can ask him if he ever had any difficulties with them. I understand he does not know them.

BY THE COURT:

Q You do not know these men at all? A No, I never saw

CASE # 2647

them in my life.

Q You never had any trouble with them? A No, and never saw them before.

BY MR. BOHAN:

Q How was your friend Sgelirrach dressed on this night that he was arrested? A He was dressed the same.

Q He had that brown shirt on? A Brown shirt. He got two brown shirts and he had a brown shirt on.

Q When the police came into the room on that night you were the only one that spoke to them and they spoke to you about Frank Strolach, is that right? A The boys also.

Q Did Officer Murphy talk to anyone else in that room but you and Frank Sgelirrach? A Not in our house.

Q In the dining room? A Not anybody else.

Q You and Sgelirrach were the only ones he spoke to; I am referring to Officer Murphy now? A He spoke to me.

MR. BOHAN: That is all.

REDIRECT EXAMINATION BY MR. ROSENBERG:

Q What time did Frank Strolach leave the house? A About ten minutes after six.

Q Did he come back that night? A No sir.

BY THE COURT:

Q How do you know it was ten minutes after six? A Because I had a watch.

Q Every time he left the house you looked at your watch to

CASE #2647

see what time it was? A I just looked at the watch.

Q It was very important when he left the house, was it; he was a man of such importance that you had to keep time on him, is that so? A I did not know the man's business when they go out.

Q What was it your business to look at the watch when he left? A Because I got ready for supper.

Q The woman said he left at halfpast five? A No, he left about ten after six.

Q No matter what she says, you looked at your watch and you know? A Yes.

Q He never came back, did he? A No.

Q He has not come back yet? A I guess not.

BY MR. BOHAN:

Q Did you live at 691 or 828 Greenwich Street with Frank Strollich? A 691.

Q Did you live at 691 on that afternoon and go home to 24th Street with him? A Not with Frank Strollich.

BY THE COURT:

Q What time did you have your supper that night? A Fifteen or twenty after six.

Q Did you look at your watch to see what time you sat down?
A There was a clock in the dining room.

BY MR. BOHAN:

Q Did you ever have your picture taken in a cowboy's suit

CASE #2647

with a couple of guns on you? A No.

Q Never? A No.

Q You never had your picture taken with Mike Strolich?

A No sir, not with Mike Strolich.

Q Look at this picture (handing photograph to witness)?

A That is not me.

Q Who is that? A That is him there, Sgelirrach.

Q Who is the other man on the picture? A Mike Strolich.

MR. BOHAN: That is all.

F R A N K S G E R R I C H, of 408 West 24th Street, one of the defendants, called as a witness on his own behalf, having been duly sworn, testified as follows, through the interpreter, Mr. Ucas:

DIRECT EXAMINATION BY MR. ROSENBERG:

Q How old are you? A Twenty-seven.

Q What is your business? A Fireman.

Q For what company? A Reading Railroad Company.

Q What work do you do. Are you on the railroad or on the boat? A On the boat.

Q Did you ever live at 408 West 24th Street? A Yes.

Q How long did you live at 408 West 24th Street? A Since the 1st of March, and the 22nd of March is when I was arrested.

Q On the 22nd of March, 1918, did you in company with the co-defendant, or with anyone else, enter the premises on 36 Beach Street? A No sir.

CASE #2647

Q Did you on that day between eight and nine o'clock or at any other time in company with the defendant or alone or in company with anyone else enter those premises and steal or rob money or property from Frank Zic and anyone else? A No sir.

Q Did you on that day have a revolver in your hand in company with the co-defendant or anyone else and command the people in those premises to hold their hands up and then rob them of their money? A No sir.

Q Or were you with anyone else who robbed the people in that house on that day? A No sir.

Q Were you ever convicted of a crime? A No sir.

MR. ROSENBERG: That is all.

CROSS-EXAMINATION BY MR. BOHAN:

Q How long are you in this country? A Seven years.

Q Are you a citizen? A Out of seven years I was away three months.

Q Are you a citizen? A No.

Q What do you mean you were away three months? A I was on a trip to Europe.

Q When was that? A Five years ago.

Q Before or after the war? A Before.

Q You are not a citizen, are you? A No.

Q How old are you? A (In English) Twenty-seven.

Q How long do you know Frank Strolich? A (In English) Five years.

CASE #2647

Q Do you know my questions in English? A I understand very little.

Q Did you know Frank Strolich in the old country? A No.

Q Did you know Frank Pezzulich in the old country? A Yes.

Q Did you know Mr. and Mrs. Nachimovich in the old country?

A No.

Q Did you know Pete or Antony Jurman in the old country?

A No, not in the old country.

Q Did you know Martin Honovich in the old country? A No.

Q What kind of work have you been doing in this country?

A Fireman and riveter's helper in shipyards.

Q How long were you on this strike? A I was not on strike.

Q Were you working on the 22nd of March? A No sir.

Q How long had you been out of work? A Two months.

Q Who paid your room and board? A I was paying with my brother, too. If I did not have any money my brother helped me out.

Q What was your brother's name? A Mike Squerrlich.

Q Did he live at 24th Street also? A Yes.

Q What room did you occupy - with your brother or with Mike Strolich? A With Pete Zurian.

Q What room did Pezzulich have? A With Tony Zurman.

Q What room did Frank Strolich have? A Tony Kursovich.

Q How much money did you have on the 22nd of March when the officer arrested you? A I had \$42 and my brother gave me \$20 that

CASE #2647

day, to buy a suit of clothes.

Q That is all the money you had, is it? A I had 20 or 30 cents in my pocket in my trousers.

Q You had no money in the bank? A No.

Q Do you mean you had that much money on your person when you were arrested and searched? A Was I arrested?

BY THE COURT:

Q Were you arrested; you have been in prison since that night, haven't you? A Yes sir.

Q You were arrested that night, weren't you? A Yes.

Q And you have been in prison ever since? A Yes sir.

Q When you were arrested how much money did you have on your person? A \$42 and some change in my trousers pocket.

BY MR. BOHAN:

Q Did the officer return that money to you? A Yes.

Q Were you ever at or near 36 Beach Street? A No sir. When they took me out of the house I asked Detective Murphy where was 36 Beach Street.

BY THE COURT:

Q He mentioned 36 Beach Street to you? A In the police station he mentioned it.

Q You said when they took you out of the house you asked them where was 36 Beach Street? A I asked them. They did not want to say to me.

Q Who told you about 36 Beach Street? A I did not hear from anyone.

CASE #2647

Q Why did you ask them about it if you did not hear about it? A I asked the detective where was Frank Strolich and he did not want to tell me exactly and then we went with them.

Q You said you asked him where was 36 Beach Street when they took you out of your own house. Now, why did you mention 36 Beach Street? A I did not ask him where that was.

Q You told us that you did ask him; which is true?
A No, I did not.

Q Why did you tell us you did ask him? A I asked him where the trouble was.

Q What did he say? A He did not want to answer me.

Q Who mentioned 36 Beach Street? A I heard that in the police station.

BY MR. BOHAN:

Q Did you hear Frank Zic or Mr. Summers say anything about 36 Beach Street in your house? A Show them to me.

Q (Frank Zic stands up) Did you hear what he said in 24th Street? A No.

BY THE COURT:

Q There were four men came to 24th Street, weren't there?
A Yes.

Q Two police officers, weren't there, and two other men named Zic; you saw them, did you not? A No.

Q They looked over the whole parlor of the house? A Yes.

Q There was a parlor floor full of men there, Croatians?

CASE #2647

A Yes.

Q And you and this defendant were the only two men that they took out of the house with them? A We went.

Q The police took you out; did they take anyone else?

A No.

Q Didn't they tell you why they were taking you? A No.

BY MR. BOHAN:

Q When was the first time you learned why they took you away from 24th Street? A I did not know before I was arrested.

BY THE COURT:

Q That is when you were arrested; that is what the Assistant means, when you are placed in custody for investigation for an alleged crime? A I did not do anything and therefore I was not arrested.

Q You have never been free, ever since they went to your house, have you; have you ever been free since these two officers escorted you from 408 West 24th Street on the evening of March 22nd? A No, not after that.

Q Did that convince you that you were under arrest? A I could escape because they were not holding me.

Q You know if you attempted to escape from custody they had a right to shoot you, to apprehend you? A I would not fly because I was not guilty of anything.

BY MR. BOHAN:

Q You said they wanted to find out something about Frank

CASE #2647

Strollich? A I wanted to know why they were asking for Frank Strollich.

Q Why didn't they ask his brother, Mike Strollich, to go down to the stationhouse?

Objected to; objection sustained.

Q They did not take Frank's brother with them to see Frank, did they? A No.

Q And when you got down to the stationhouse you found Frank Strollich? A I did not see him. He was arrested inside.

Q Did you ever see Frank since that night? A Yes, I was in prison with him.

Q Did you see him in the line-up on the night you were taken to the Beach Street stationhouse? A No, he was not in line.

Q Before you entered the stationhouse they took you to 691 Greenwich Street, did they not? A Yes.

Q Did they tell you anything about Beach Street? A No.

Q How many men were in this line-up in Beach Street station? A There were two lines.

Q In the first line how many men were there? A I am not sure; eight or nine.

Q How many men did you know in that line? A Frank Pezulich and Anthony Kursovich.

BY THE COURT:

Q You saw this defendant in this line-up also? A Yes,

CASE #2647

I said that.

Q How many men did you know in that line? A Three men and the detectives.

Q You were with three men in that line? A The three men that were with me in that house.

Q Can you count up to ten? A Yes.

Q Please tell us how many men were in that first line-up that you knew? A One man I am sure, the co-defendant, and I am not sure if Kursovich was in the line.

Q While you were standing in the first line did you see anyone there that you knew; did anyone walk up and down in front of you? A They were looking at the line.

Q Who was looking at the line? A I know the man that was in this room.

BY MR. BOHAN:

Q (Frank Zic stands up) Did you see that man (indicating Frank Zic)? A Yes.

Q Did you see that man (indicating Mike Zic)? A Yes.

Q Did you see that man (indicating John Benefacto)? A He had his head tied.

Q And this man (indicating Vincent Zic)? A I am not sure.

Q Isn't that the man that had his head tied, Vincent Zic?
A I can't tell exactly.

Q When you went to the stationhouse you saw a man that had his head tied? A Yes, I saw.

CASE #2647

Q And that man walked up and down in front of the line in which you were standing, that man with the battered head?

A No; he was not in front of the first line.

Q Was he there at the second line? A Yes, and he was the last to come.

Q How many men were standing in that second line? A I know there were ten men; I am not sure.

Q How many men were in that line that you knew before that night? A Myself, the co-defendant and Tony Kurzovich.

Q After those two line-ups you were placed in a cell, were you? A Yes.

Q How many revolvers did you see in the stationhouse?

MR. ROSENBERG: Objected to as not binding on this defendant.

THE COURT: You may ask him if he had a revolver.

Q Did you have a revolver? A Never.

THE COURT: We will adjourn now. Gentlemen of the jury the Court will excuse you until two o'clock. In the meanwhile remember that the law forbids any discussion on your part about this case with anyone whatever. The time to discuss it is after you hear all the evidence on both sides and when the Court submits it to you, then you retire and discuss it and decide it, but not before then. Please be here at two o'clock.

CASE #2647

Trial continued at 2 P.M.

F R A N K S Q U E R R L I C H resumed the stand:

CROSS-EXAMINATION CONTINUED BY MR. BOHAN:

Q Did you buy a suit of clothes on the afternoon of March 22nd? A Yes, but I did not pay for it.

Q What time? A Halfpast four.

Q Are you now wearing the suit of clothes you bought on that day? A No.

Q What time did you see Frank Strolich that afternoon?

A I did not see him until I came home, ten minutes after six.

Q Is that the first time you saw him, when he came home?

A I am not sure if I saw him in the morning.

Q Did you see him in the dining room of 408 West 24th Street, when you came home after six o'clock? A When I came home he went right out.

Q Did he say where he was going? A No sir.

Q Do you speak the English language? A I understand a little.

Q Do you come from the same part of Istria as Frank Strolich, where most of you understand Italian? A Frank Strolich lives three hours away from me.

Q Did you ever have your picture taken as a cowboy with guns on you? A Yes.

Q When did you have that picture taken? A I can't exactly tell when. It was in 14th Street.

CASE #2647

Q Is that the picture? (Handing picture to witness)

A Yes. This is Mike Strolich with me.

Q Weren't you known as a bad man among your countrymen and wasn't that the reason you had your picture taken? A No, everybody was thinking good things about me.

Q Did you ever handle a gun? A No sir.

Q Did you ever use a gun? A No sir.

Q How many of these pictures did you have taken? A Four. Two I took and two Mike Strolich.

Q You showed those pictures to your friends, didn't you?

A When we came home they saw the pictures? Q Those clothes that the picture was taken in, did they belong to you? A No. They belong in the place where the picture was taken.

Q The shirt is the same kind of a shirt you have on?

A Yes, the underwear was the same.

Q You had that shirt on the night you were arrested, or the same kind of a shirt? A Yes. The same shirt as I have on now.

Q Do you know Ivan De Franzo? A Yes sir.

Q Do you know Leon De Pierre? A Yes sir.

Q And do you know Tony Banco? A Yes sir.

Q Did you see any of those men on the 22nd of March? A No sir, nobody.

Q Now, before the 22nd of March, how long before the 22nd of March, did you see any of those men I have just mentioned?

CASE #2647

A I saw Leon de Pierre at 691 a month before.

Q Isn't it a fact that you and Pezzulich and Strolich and Leon de Pierre and Ivan de Franzo and Tony Banco and Peter Bozzak were the seven men that entered the premises, 36 Beach Street, on the night of March 22nd, and held these men up?

A No sir.

Q Were you ever in Philadelphia? A Yes sir, last year.

Q Were you ever in the house of Leon de Pierre in Philadelphia? A Yes sir.

Q Did you ever meet Pezzulich when he lived there in Philadelphia? A I saw him in a poolroom.

Q How long did you live in Philadelphia? A I was a year in Philadelphia.

Q Where were you working? A Cramp's Shipyard.

Q During the war, was it? A Yes sir.

Q You knew these four men I have just mentioned, De Pierre, De Franzo, Banco and Bozzak? A Yes sir.

Q Have you ever seen any of those men since the 22nd of March? A No.

Q What did you eat for dinner on the 22nd of March? A Soup and meat.

Q What kind of meat? A Meat; I think it was boiled meat.

Q Were you in the same cell with Frank Pezzulich since the time you have been arrested over in the Tombs? A Yes, in the same cell.

CASE #2647

Q Was Frank Strolach on the same floor with you, on the same tier? A Yes.

Q Did you talk about this case every day? A Sometimes, because that is my bad luck that I am here.

Q Did Pete Zurian visit you in the City Prison? A No.

Q Did Anton Jurman visit you in the City Prison? A Yes.

Q Did you talk to him about the case there? A No.

Q Did Mike Strolach visit you in the City Prison? A No.

Q Did you ever talk with him since the night you were arrested? A Where they allow visitors to come in, perhaps I was talking to him.

Q When he visited his brother did you talk to him?

A No, because he was talking only with his brother.

Q Did John Nachimovich visit you in the City Prison?

A Yes, many times.

Q How many times? A I could not tell exactly, but I think it was ten or twelve times.

Q Did you talk to him about the case? A Sometimes, because this is my bad luck.

Q Were you ever at or near 36 Beach Street? A No.

Q Do you know where Beach Street is? A No sir.

Q Do you know where the New York Central Railroad freight station is? A I was not there.

Q Do you know where Canal Street is? A No, I don't know.

Q Were you ever on Hudson Street? A Yes.

CASE #2647

Q What part of Hudson Street were you? A When we were going to the police station and passed with the car, I think that is Hudson Street.

Q Is that the only time you were ever on Hudson Street?

A I was there, but down where I am living.

Q Did you ever live in Banks Street with Mary Nakimowich?

A I didn't live there but I slept a few nights there.

Q Where is Banks Street? A Seven blocks from 14th Street.

Q Did you ever live at 691 Greenwich Street? A No. I did not live there. Except I slept there one or two nights.

Q Did you ever live or sleep at 132 Greenwich Street; that is the cousin of Mike Strolich, Anton Strolich? A I slept there one or two nights.

Q Where else did you sleep in New York besides the places you have just mentioned? A No other place except one where I am living now.

Q Did you understand Mike Zic and Frank Zic and Vincent Zic when they were on the stand testifying in their Croatian language? A Yes.

Q You heard what they said about what you did and six or seven other men, on the 22nd of March, at 36 Beach Street?

A Yes, I heard that. I heard what they said as witnesses.

Q Do you know any reason why these men should charge you with robbery on the 22nd of March?

MR. ROSENBERG: That is objected to.

CASE #2647

THE COURT: He is not obliged to give any reason.

You may ask him whether he ever had any quarrel or trouble with him, but the other question you should not ask him.

I have excluded that before. Objection sustained.

Q Did you ever see Mike Zic before you saw him in the stationhouse in Beach Street on the 22nd of March this year?

A I want him to stand up.

Q (Mike Zic stands up) That man there. Did you ever see that man before the 22nd of March? A No sir, never.

Q Did you ever see Frank Zic? A The first time I saw him was when he came to my house, to my bad luck.

Q Did you ever see Vincent Zic? A The first time I saw him in the police station.

Q At what part of the table were you sitting at in the dining room? A The table is in the center of the dining room and I was sitting against the kitchen, in the middle. Tony Jurman and Pete Zurian, they were on both sides of me.

Q When you came in did you go to your room? A No sir.

Q Did you leave the room at any time between 6.15 and the time that the policeman came in? A No.

Q What time did you leave the room? A I went out to take the suit that I had bought when the detective stopped me on the stairs in the house.

Q What time was that? A A quarter or ten minutes to nine.

Q Was there a gaslight in the hallway when he stopped you?
A No sir.

CASE # 2647

Q Who spoke to you first downstairs in the hallway? A The smaller man, not the big man, Murphy.

Q Which one, Frank Zic or Summers? A The smaller detective.

Q What did he say? A He was talking with me downstairs and the detective said to me if Frank Strolich was living upstairs.

Q Is that the man who spoke to you (indicating Summers)?

A No sir, that is not the detective.

Q When you got upstairs did you hear anyone speak in Croatian? A When they came up the men that were in the dining-room with me asked who were the men that came in.

Q Who did they speak to? A They asked if Frank Strolich was living there.

Q Who answered them, Frank Strolich? A I am not sure who answered.

Q How many times have you lived with Mrs. Nachimovich, how many places? A I was living in her house in Banks Street and in 24th Street.

Q When you lived at Banks Street did you have a room and get your meals, or did you just have your room there? A I slept there only two or three nights.

Q You never got your meals there? A I am not sure if I had a meal or two.

Q What did the officer tell about Frank Strolich when he spoke to Frank Pezzulich? A Just asked if Frank Strolich was

CASE #2647

living there.

Q Did they tell you where Frank Strolich was? A No.

Q Did you see Frank Strolich that night? A When he went out of the house.

Q Did you see him after that? A At the police station.

Q Did you talk with him there? A No sir,

Frank Pezzulich was talking with him.

Q Did you find out why he was there? A No, I did not know anything.

BY THE COURT:

Q What time did you go to the stationhouse? A I am not sure about that, but I know it was a quarter to eleven^{when}/we were locked up.

BY MR. BOHAN:

Q How long were you in the stationhouse before you were put in a cell? A I am not sure; perhaps 35 or 40 minutes.

Q Would you say it was before or after nine o'clock when they took you from 24th Street? A I am not sure, but I think it was between five and ten minutes before nine.

Q Did any one of the men who were in the dining room leave the room between 6.15 and the time the policeman came? A Nobody went out of the house only we went out to take the suit, when we were stopped.

Q What were you talking about? A About our work and the strike.

CASE # 2647

BY THE COURT:

Q You said you were not on strike? A But I was talking with the men about the strike.

BY MR. BOHAN:

Q You had not worked for two months, you said? A I was not working for two months, but I was talking about the strike.

Q Were you interested in the strike? A I was ^{not} participating in the strike, but I was taking an interest in it.

Q Did your brother support you and give you any money while you were out of employment? A If my brother has anything he would give me anything.

Q Did he give you any money during the two months you were out of employment? A Yes, he gave me and I gave to him.

Q How long was Frank Strolach out of work? A About three weeks.

Q How often and how long were you in Frank Strolach's company during the three weeks preceding March 22nd? A I was not many times. I saw him in the house and in the poolroom.

Q You were a friend of his, were you? A I am not his friend.

Q How long did you know him? A Five years.

Q Did you work in the same railroad with him? A We were working for the same company.

Q Did you live in Banks Street with him? A No, I was not living there; when I slept there I saw him.

CASE #2647

Q Did you ever see him in Philadelphia when you lived there? A Yes.

Q What was John Nachimovich doing after you finished your supper, that night? A He was by the table and talking with the men, as our landlord.

Q Did you see him lying down in bed? A No sir.

Q Did you see anyone lying on the couch? A Before I went out to take the suit I had bought I was lying on the couch. When I left he laid down on the couch.

Q How did you secure employment on the Reading Railroad?

A My friend took me on that job; he gave me that job.

Q Where did you go to get the job? A Richmond Street, in the office.

Q Were you ever employed on the New York Central Railroad?

A I think the Reading and Jersey Central.

Q Were you ever employed on the New York Central? A No sir.

Q All these men that testified against you speak the same language that you do? A Perhaps they speak another dialect, but we could not understand each other.

MR. BOHAN: That is all.

MR. ROSENBERG: I offer in evidence the testimony of Vincent Zic given upon the last trial, which is as follows (reading):

"Q Which one of those two men struck you over the head with a revolver? A I can't tell that because I was dazed .

CASE # 2647

"BY MR. ROSENBERG:

Q 'Because I was dazed', you said? A Yes". That is on page 56. Also on page 58 of the same witness (reading):

"Q Can you identify any of the men who were near Frank Zic and took his \$1728? A No, I can't identify him.

Q You can't identify any of the men? A No.

Q Do you understand that last question. Can you identify any of the men who took Frank Zic's money? A No, I can't."

MR. BOHAN: I object to that as incompetent, irrelevant and immaterial, because the same questions were asked. There is no contradiction or any inconsistency.

THE COURT: Did he identify anyone on that trial?

MR. BOHAN: Yes sir, he identified both.

THE COURT: That they were present, but he could not say that they were the men that actually took the money?

MR. BOHAN: No sir.

THE COURT: He did say both these defendants were present at that time?

MR. BOHAN: Yes sir.

THE COURT: Is that so, Mr. Rosenberg?

MR. ROSENBERG: I challenge the accuracy of Mr. Bohan's statement.

THE COURT: The only purpose for which any reference could be made to the testimony given in a former trial or the

CASE #2647

trial of another defendant is to show that the witness in this trial made a contradictory statement.

MR. ROSENBERG: That is why I am offering this testimony.

THE COURT: That has been received in evidence but Mr. Bohan may recall his witnesses and examine them further. Do you claim that the witness on this trial said that he could identify those people, the men that took the \$1728?

MR. ROSENBERG: No, but we claim that there is a contradiction because on the last trial he said he was dazed, and I want to argue to the jury on that point.

THE COURT: If one of these witnesses said that a black man robbed him at the last trial and on this trial he says he is a white man, you have a right to call the attention of the jury to that. As I understand you here, the witness at the last trial said he was dazed and could not recognize the men that actually took the money. Did he on this trial say that he could recognize the men that actually took the money?

MR. ROSENBERG: No. That is all.

JAMES T. MURPHY, recalled on behalf of the defense, testified as follows:

BY MR. ROSENBERG:

Q You are acquainted with the section of Beach and Bank Streets and 691 Greenwich, the general location? A Yes.

Q And also on the 24th Street place? A Yes sir.

Q How far is it from Beach Street to 118 Banks Street?

CASE #2647

A About 20 blocks.

Q That is, Banks Street is to the north of Beach Street?

A Yes.

Q And Banks Street is about opposite Little 12th Street?

A Banks Street is the street north of West 11th Street.

Q How far is West 24th Street north of Banks Street?

A About sixteen or seventeen blocks.

BY THE COURT:

Q The blocks over there are very irregular? A There are several streets into Greenwich Village.

Q It is not laid out like the rest of the city? A They run parallel, but the streets run in different directions.

Q About 14th Street it is all regular? A Yes sir, above 13th Street.

Q Below 13th Street on the West Side the streets are very irregular and out of alignment; that is, they run in different directions? A There are more small streets in between.

Q But they do not run regular, like in the upper part of the city? A No.

BY MR. ROSENBERG:

Q 691 Greenwich Street, where is that? A One door south of West 10th Street.

Q When you entered the premises 408 West 24th Street with one of the defendants did you see in those premises Mike Strolich?

A Yes sir.

CASE #2647

Q Did you see Peter Zurian? A I don't know whether I could see him.

Q Did you see Jurman? A Yes.

Q Did you see Martin Honovich? A Not that I can recall by name.

Q You saw him on the witness stand? A I saw different men that I saw there, but I could not recognize them by name.

Q The witnesses I put on the stand for the defendant, did you see each one of them on the stand when you entered with the prisoner? A All except the man with the black mustache that was here this morning.

Q And that man was a witness as to the character here this morning? A Yes.

Q The other witnesses you saw there that night? A Yes.

BY MR. BOHAN:

Q What time was it when you got to 408 West 24th Street?

A About 9.30.

Q Whom did you find in the hallway? A Frank Sgelirrach and two others.

Q Did you say to Frank Pezzulich upstairs in the dining room that Frank Strolich had been cut? A I did not.

BY MR. ROSENBERG:

Q What did you say on that subject? A I had Detective Collins with me, and Detective Collins asked Mary Nachimovich and questioned her in regard to the room occupied by Strolich,

CASE #2647

and Collins and Mary Nachimovich went to that room occupied by Strolich. There were seven or eight other men there besides the defendant. I said nothing outside of taking them with me.

Q You just took them along? A Yes sir.

Q Didn't you say something to Frank Strolich? A Not to the two defendants.

Q Didn't you ask them whether they knew Frank Strolich?

A No.

Q Or whether they could talk English? A No.

Q Didn't you say anything? A In the house I told the men to come with me.

Q How many complainants did you have with you? A Frank Zic. I had two men with me but only one was the complainant.

Q Can you talk Croatian? A No sir.

BY MR. BOHAN:

Q After Frank Zic and Summers said something you arrested both of these defendants? A Yes sir.

MR. BOHAN: That is all.

BY THE COURT:

Q And they are the only two ^{defendants} ~~men~~ you took out of that room full of men? A Yes sir.

V I N C E N T Z I C, recalled in rebuttal:

THE COURT: You can offer in evidence the part of that record where he identified these men.

MR. BOHAN: I offer in evidence pages 55 and 56 of the

CASE # 2647

9759

186
record of the trial of Frank Pezzulich on May 7th and 8th,
1919.

MR. ROSENBERG: No objection.

THE COURT: The jury have a right to have all the testimony bearing on that point so that they may determine whether there is a contradiction or not, because you, gentlemen of the jury, are the judges of the credibility of the witnesses. It is always proper on cross-examination to show that the witness made a contradictory statement. You must determine whether they made contradictory statements or not, or whether the statements are consistent, or whether any apparent contradiction is entitled to any consideration. This testimony is read not for the purpose of showing that that testimony is true, but for rebutting the charge or claim that he made contradictory statements.

MR. BOHAN (Reading): "Q Do you recognize any men now in the courtroom as among those who came into the kitchen on the 27th of March? A Those two men that are standing now.

Q Will you indicate? A That man with the stiff collar and the other man with the soft collar and blue tie.

(Mr. Bohan indicating Pezzulich and Sgelirrach.)

THE COURT: That is, these defendants.

MR. BOHAN: Yes.

Q Do you recognize any other person in the court room?

A No sir.

CASE #2647

Q These two men that you have just indicated, did they have guns in their hands? A Yes sir."

MR. BOHAN: That is all.

J O H N S U M M E R S, called as a witness on behalf of the People, having been duly sworn, testified as follows, in rebuttal:

(Witness gives his address as 36 Beach Street.)

DIRECT EXAMINATION BY MR. BOHAN:

Q What are you working at now? A At the present time I am working with a sponging concern, United Sponging concern, 107 West 25th Street.

BY THE COURT:

Q You mean a cloth sponging concern? A Yes sir.

Q You are not a detective? A No sir.

BY MR. BOHAN:

Q Were you ever employed by the New York Central as a special policeman? A Yes sir.

Q When? A I was laid off about a week and a half ago. I was employed there just a month.

Q On the 22nd of March, 1919, did you live in 36 Beach Street? A Yes sir.

Q How long did you live there? A I am living there ten years.

Q Have you been away from 36 Beach Street for some time?
A Ten months I was in the army.

Q When were you discharged? A The 15th of March of this

CASE # 2647

year. I arrived home on the 17th, at 36 Beach Street.

Q What floor do you live on? A The third floor.

Q Do you live there with your father? A Yes sir.

Q Your father is caretaker of this house, is he? A Yes.

Q You were not working on the 22nd of March? A No sir.

Q You had not secured employment up to that time? A No.

Q Where were you about 8 P.M. on the evening of March 22nd?

A I was in the toilet attending to my wants.

Q Where was the toilet? A In the rear of this house, about 25 feet in the rear of the house.

BY THE COURT:

Q In the yard, do you mean? A Yes sir, in the yard.

Q These are oldfashioned tenements? A Yes; Erickson lived there.

Q There are no waterclosets in the house? A No, just in the yard.

Q There is a front house and a rear house? A No, just the front house and in the yard is a toilet, a little shack.

BY MR. BOHAN:

Q Do you know Frank Zic and Mike Zic and Vincent Zic and John Benafacto? A Yes sir.

Q The men who were witnesses in this trial? A Yes.

Q Did they live on the ground floor of that house? A Yes.

Q How long have they lived there? A Six years.

Q How do you get from the main part of the house to the

CASE #2647

toilet in the yard? A You have to walk in through the hallway to the back and then there is a step right down.

Q The stairway from the first floor? A Yes sir.

Q How many windows face the yard? A There is two doors on one end and two on the other. It is all windows in the back.

Q Was your attention attracted by any noise while you were in the yard? A Yes sir.

Q What did you hear? A I heard three shots and I had the door open.

Q Did you adjust your clothes? A Yes, I buttoned my pants. I had no vest or jacket on.

Q When you came out of the toilet did you look into the windows of the first floor? A Yes.

Q Did you see anything? A I seen the hands above their heads that way (witness indicating by holding his hands above his head).

Q By some of the men you knew? A Yes sir.

Q Did you see any other men there that you did not know?

A Well no, I could not exactly see the men. I could not see their faces then.

Q What did you do? A I put my suspenders on and I came running through the hallway. I came running with such terrific speed, - my father was out in the front of the hall lying down, - that I tripped over him at the stoop.

Q Where did you find your father? A He was lying down in

CASE #2647

the front door going out to the street.

Q Did you stop then? A Yes sir. I picked him up and I asked him was he hurt.

Q Did you see any men running on the street? A Yes; before falling I seen two men running up Beach Street towards Varick, but I could not identify them.

Q Did you take care of your father after that? A Yes sir, I took him upstairs.

Q Did you afterwards go to the stationhouse? A I did.

Q Did you afterwards go to any other place with Detective Murphy? A Yes sir, up to 24th Street with Detective Murphy.

Q Whom did you see there? A I seen these men here (Pointing to the two defendants). They were up at the house.

Q The two defendants here at the bar? A Yes sir.

Q Did you ever see either one of the defendants at any time in the premises 36 Beach Street and if so, when?

MR. ROSENBERG: I object to that as incompetent and not rebuttal; besides it affirmatively appears that Mr. Bohan drew from one of the witnesses a statement that he was never in those premises and he is bound by that answer. He cannot now contradict the answer made by this witness, it being a purely collateral matter drawn out by Mr. Bohan.

THE COURT: Objection overruled.

MR. ROSENBERG: Exception, if your Honor please.

A On Tuesday night, March 18th, about 9 P.M. as I was coming

CASE #2647

in from the yard there had been three men at the door. As I opened the door running east and west I kind of hit one of them on the shoulder. I walked in and they kind of spoke broken English and asked me, "Twilight", by which I believed they meant "toilet", and there were three of them had handkerchiefs over their faces. I had my uniform on at the time and I said, "Get out of here". They walked out slowly. When they got near Hudson Street they run up towards Hudson Street. This is one of the men that was there that night I am positive.

Which one? A This man with the collar and tie (indicating the defendant Pezzulich).

Q The defendant Pezzulich? A Yes sir.

Who else? A The other man that was sentenced by Judge Nott.

MR. ROSENBERG: I object to that.

THE COURT: Strike it out.

Q What other man; do you remember his name? A On the 18th?

Q Yes. The man that was with Pezzulich, did you afterwards find out his name? A No sir, I never did find out his name.

Q Was it Frank Strolich? A Yes sir, Frank Strolich.

Q And you saw this defendant Pezzulich and Strolich in the hallway at 36 Beach Street on the evening of March 18th?

Same objection. Objection overruled. Exception.

A Yes sir.

Q About what time? A About 9 P.M.

CASE #2647

MR. BOHAN: That is all.

MR. ROSENBERG: No questions.

Both sides rest.

Both sides sum up to the jury.

THE COURT: I will instruct the jury to disregard the testimony of the last witness Summers. It is doubtful whether it is admissible in evidence, and if counsel will ask to have that instruction given I will ask the jury to disregard it.

MR. ROSENBERG: I claim it is illegal to have it go in at all, and should be stricken out, and I so move.

THE COURT: Well, it is very close; I am very sorry I admitted it in the case because it is extremely doubtful whether it is admissible or not. Ordinarily it would not be admissible, but I will instruct the jury at this time to disregard the testimony of Summers entirely. Is that satisfactory, Mr. Rosenberg?

MR. ROSENBERG: Yes, your Honor.

THE COURT: Gentlemen, it is time to adjourn now. I will excuse you until halfpast ten tomorrow morning. Meanwhile remember the admonition which the law requires me to give you, namely, that you must not talk about this case with anyone whatever in the interval, and you must not form or express any opinion at this time as to the guilt or innocence of the defendants. You must wait until the Court submits the case to you and then it is your duty to retire to discuss it and decide it but not before then.

CASE # 2647

193

PEOPLE
vs.
PEZZULICH and
SGERRLICH.

THE COURT'S CHARGE TO THE JURY.

THE COURT: Gentlemen of the Jury: These defendants with one other person named Frank Strollich are charged with the crime of robbery in the first degree. It is alleged in the indictment that in the night time of the 22nd of March, 1919, in the County of New York, they made an assault feloniously upon one Frank Zic, and that they took from the said Frank Zic the sum of \$1,738 in money, lawful money of the United States of America and of the value of \$1,738, and that this money was the goods, chattels and personal property of the said Frank Zic; that they took it from the person of the said Frank Zic against his will and by means of force and violence; and it is therefore charged that they did feloniously and violently rob, steal, take and carry away the said sum of money; it is further alleged that the defendants at the time of the robbery were armed with a dangerous weapon, to wit, with pistols and that they were aided and abetted by accomplices actually present, - that is, each of the three by the others and by other persons to the Grand Jury aforesaid unknown.

0758

CASE #2647

That is a very simple charge. The indictment also says that that is a violation of the statute, and you will see that the law is equally clear.

Section 2120 of the Penal Code defines robbery, as follows:-

"Robbery is the unlawful taking of personal property, from the person or in the presence of another, against his will, by means of force, or violence, or fear of injury, immediate or future, to his person or property, or the person or property of a relative or member of his family, or of anyone in his company at the time of the robbery."

You see there are two elements in the crime of robbery. There is a taking of personal property. Money is personal property: it is cash. The first element that it is necessary to prove is that the personal property or money was taken unlawfully from the person of Frank Zio: and then, secondly, the method of the taking, - by force or violence, or by instilling fear in the mind of the person robbed that he would be injured, and thus preventing or overcoming resistance to the taking.

CASE # 2647

9753

119
Section 2121 of the Penal Code provides:-

"To constitute robbery, the force or fear must be employed either to obtain or retain possession of the property or to prevent or overcome resistance to the taking. If employed merely as a means of escape it does not constitute robbery."

Section 2122 provides:-

"When force is employed in either of the ways specified in the last Section, the degree of force employed is immaterial."

Robbery in the first degree is defined in Section 2124 of the Penal Code, as follows:-

"An unlawful taking or compulsion, if accomplished by force or fear, in a case specified in the foregoing sections of this article, is robbery in the first degree, when committed by a person,

1. Being armed with a dangerous weapon, or
2. Being aided by an accomplice actually present."

There is another subdivision which, however, does not apply to this case.

The indictment charges that the robbers were armed with a dangerous weapon, - a loaded pistol. It also is charged in the indictment that there was more than one

CASE # 2647

robber, more than one person actually present helping in the robbery. Those elements make it robbery in the first degree. If the robber was not armed with a dangerous weapon, or there was but a single robber, it would be robbery in the second degree or robbery in the third degree.

Robbery in the second degree is defined in Section 2126 of the Penal Code, as follows:-

"Such unlawful taking or compulsion, when accomplished by force or fear, in the case specified in the foregoing sections of this article, but not under circumstances amounting to robbery in the first degree, is robbery in the second degree, when accomplished;

1. By the use of violence, or
2. By putting the person robbed in fear of immediate injury to his person or that of someone in his company."

You see, in the definition of robbery in the second degree there is no mention made of any accomplice or of any dangerous weapon.

Section 2128 provides:-

"A person who robs another under circumstances not amounting to robbery in the first or second degree, is guilty of robbery in the third degree."

CASE # 2647

Under our law, when there are different degrees of the crime, the jury must fix the degree of the crime from the evidence. If you are convinced beyond a reasonable doubt that a robbery was committed here, but you have a reasonable doubt concerning the degree, you can only find the defendants guilty of the lowest degree of that crime, namely robbery in the third degree. But you should not so find if you are convinced by the evidence beyond a reasonable doubt that they were guilty of robbery in the first degree. That is, you must be guided by the evidence in fixing the degree of the crime, just the same as in determining whether or not you find the defendants guilty. You see the law is very plain, and the charge is a very simple one.

The indictment must not be regarded by you as any evidence of guilt. The indictment merely serves to bring the defendants here for trial, and serves to let you know what the charge is, so that the indictment now has performed all its functions.

X In the trial of a criminal action there is a division between the duty of the Court and that of the jury. The Court is simply the judge of the law; the jurors are the judges of the facts and the credibility of witnesses. +

CASE #2647
9762

The defendants are presumed to be innocent, and if the evidence fails to overcome that presumption by satisfying you of their guilt beyond a reasonable doubt, you must acquit them.

A reasonable doubt has been defined to be a doubt which is based on reason. It is not a doubt that is based on sympathy or prejudice, or a desire to avoid doing your duty if it should be disagreeable. It is the state of an honest man's mind, when, after a careful consideration of all the evidence on both sides, he finds himself unable to say that he is convinced to a moral certainty that the charge has been proved. If that is your state of mind after viewing all this evidence you must acquit the defendants. On the other hand, if you are convinced to a moral certainty that the charge has been proved, you must convict them.

You understand that you are the sole judges of the facts and the credibility of the witnesses. That word "credibility" means worthiness of belief. What witnesses here were credible in your opinion? What stories were worthy of belief? That is your sole and exclusive province to decide. No one else has any right to decide that.

There is only one way of proving facts in a criminal action and that is by the production of witnesses before you

CASE #2647

in open court so that you may observe them when they testify, so that they may be cross-examined, and so that we may ascertain all they know concerning the case. And if there be a conflict in the testimony, as there usually is, then it is for the jury to decide which of the witnesses you believe, and your power is very great in that respect. There is no fixed rule which can guide you. You have to use the good sense, the good judgment and the honesty of purpose that you employ in your own important personal business affairs. In business life you know you do not believe everything you hear: if you did you would soon need the services of the bankruptcy court. You have to exercise common sense, reason and judgment, based on your own experience and your own knowledge of the world. And so when you sit as jurors you must use those same qualities. You must be absolutely fair: you must calmly, coolly and neutrally review the evidence. You must remember you are not lawyers. You are not retained on one side or the other. You are not partisans of either side. You are simply to act as judges of the facts, just as the Court acts as the judge of the law. All that the Court has to do is to see that the defendants are tried according to law. That is what we mean by a fair trial, in America. Every man, no

CASE # 2647

9764

250

9765

matter where he is born, when he comes to America is entitled to the equal protection of the law. But he has no right to violate the law, and when he is charged with violating it he is entitled to an American trial, a trial in which all his legal rights are respected.

The defendants have been represented by able counsel who has faithfully discharged his duty to his clients. The People on the other side of the controversy have been represented by Mr. Bohan, who has diligently, patiently and ably presented his case. The Court has ruled on the legal questions that have been presented. There is no dispute about the law: the law is plain. The only dispute is as to the facts, and that is for you to decide. ^(X) You are the sole judges of the facts, and when determining facts you must pass on the credibility of the witnesses. The law says that you may believe every statement that a witness made, or you may reject every statement that he made: you may believe part of his testimony and reject part, just as you think it is worthy of belief or not.

It is sometimes said that the manner of a witness may be of great aid to a jury in determining whether you will believe such witness or not. You have to determine whether the witnesses when they took the stand intended

CASE # 2647

to tell the truth or whether they intended to deceive you. If you find that they intended to tell the truth you must find whether they succeeded or not, or whether they were honestly mistaken. If you find that a witness intended to deceive you and did try to deceive you by testifying falsely on the material facts in the case, why then you may reject all the testimony of such witness, although you are not obliged to do so. You may believe some of the statements made by the witness. Did the manner of the witness or witnesses impress you as being convincing, or did they impress you as honest men anxious to tell the truth, or as men who were seeking to conceal the truth and evade telling the truth? Were they frank and honest with you? That is for you to say. You may also consider the interest that the witnesses had in the controversy, the relationship of the witnesses to the defendants or to the complainant. And finally, it is said that the motive of a witness may be helpful in determining his credibility. What motive, if any, has any witness had here to testify falsely? You know the same rules apply to all the witnesses on both sides. There is not one set of tests for the People's witnesses and another for the defendants'. You have to determine whether Frank Zic and the other witnesses here had any motive which would lead them to

CASE #2647

202

testify falsely, and if so you may take that into account in determining their credibility. They may have told the truth notwithstanding the existence of some apparent motive to testify falsely. It is sometimes said that defendants have a powerful motive to testify falsely. Their liberty is at stake. They are on trial for their liberty, and liberty is dear to us all. It is said that they have a strong motive to deceive you and to testify falsely so that they may go free, yet they may have told the truth notwithstanding the existence of that motive. So you see it would be unfair to reject the testimony of any witness absolutely even if you believe he had a motive to testify falsely. For that reason alone it would not be fair, you understand, to reject the testimony solely on that account. You must take all the facts and circumstances into consideration. X The facts here, although they took some time to bring out on account of the language which the defendants and other witnesses spoke and the difficulty of getting all the facts from them, are confined to a very simple issue.

X You heard Frank Zio and the others testify that while they were in their own home, --"in their own castle" in the City of New York, a band of robbers came into the room and held them up: that they said "Hands Up", pointed

CASE # 2647

pistols at them and discharged pistols, assaulted one man who refused to hold up his hands and robbed them, taking \$1700. from the stocking of Zio and \$28., his week's wages, which he had in his trousers pocket. If that be true, that was a desperate crime, a terrible crime. Mr. Rosenberg the defendants' counsel says he has no doubt that these men were robbed: he made no issue of that. But he does dispute the question of identify. The question is, who did the robbing? You have heard the People's witnesses. They say this robbery took place at or about 8 o'clock in the evening, or a little after 8 o'clock, and that after the robbers had completed their crime and left the room, one man ran after them and caught one man whom he charged was a robber, right on the corner of the block where the robbery took place, within a short distance from the house; that he was struggling with him, and a policeman came along and arrested that robber: that they found out from him where he lived: that then three detectives, with Zio, went to that place, 408 West 24th Street, and there they found a room in which there were 9 or 10 Croatians, countrymen of the victims of the robbery, the alleged robbers, the accused and the accusers, that there the police arrested these two defendants on the charge

CASE # 2647

by Zio that they were two of the men who robbed him. The People claim he picked out only two of the ten men, showing that he intended to be honest at least, that he would not charge any man with the crime unless he was sure of the identity. The defendants and the other victims of the robbers were brought to the station house, and you have heard them all say on the witness-stand that they recognized these two men, the defendants, as two of the robbers; and they come here now and tell you under oath that these are the robbers; that they saw them first when they broke into the room and held them up; that they saw them within an hour after in the station house, and they have seen them from time to time since, during this trial and during another trial.[†] You know that when more than one person is to be tried in a felony action, the defendants may have the action severed, as it is called; they may be tried separately. The third man was tried separately and these two men have elected to be tried together; that is why these two defendants are being tried now. That is the People's case. On the other hand the defendants have produced before you a number of their countrymen and one countrywoman, Mrs. Nachimovich, and they testify that these defendants were in that room in

CASE # 2647
9769

408 West 24th street from a little before six o'clock until the police appeared there at about nine o'clock, or ten minutes to nine I think one of the officers said. If that be true, if they were in that room at 408 West 24th street from six o'clock until nine, they could not have been guilty of this crime. The testimony is that the place where the robbery occurred was about thirty-five or forty blocks away from 408 West 24th street. You will have to determine whether the witnesses for the defense are honestly mistaken as to the date, or whether or not they have deliberately formed a plan to defeat justice and protect their countrymen, or whether they have told the truth.

You have heard their stories: You have noticed their manner, and above all you have noticed the manner of the defendants on the stand. That is an important matter for you to consider. You can observe the personality of the defendants. Look at them and see what is the possibility of recognizing them an hour from now after seeing them. Do they bear any physical marks or physical characteristics which distinguish them from the others who have appeared on the stand. Look at their dress, which has been testified to by all the witnesses of the prosecution. They say they are dressed now as they were then. The defendants admit they are attired in the same clothing now that they wore on the

CASE # 2647

22nd of March. Weigh all these facts coolly and calmly, and be honest men. Be fearless in the discharge of your duty. Do not hesitate to pronounce an honest verdict. And after you weigh all the evidence in that way, calmly and coolly and neutrally, if your minds are firmly convinced to a moral certainty that there was a robbery and that these defendants were among the robbers, find them guilty of robbery in the first degree, if you find that they acted in concert. Remember that it is not necessary to prove that either of these defendants actually took Frank Zio's money. If two men are acting together in the commission of a crime and one of them is advising, aiding or helping the other in the commission of that crime, why he is equally guilty whether he be present or absent when the crime is committed. For example, if two men conspire to rob a man and one of the men lures him to a room where ^{the} another man robs him, the man that lures him there may remain outside of the building and not go in at all and not be present at the time the money is taken, but he is a robber just the same. If a man hires four gunmen to kill a man, as in the Becker case, he may be miles away when the crime is committed, but if it can be shown that he hired the men he may be guilty of murder

1726
CASE # 2647

just the same as if he actually pulled the trigger with his own hand.

No matter which of these men took the money from Frank Zic, - if you find that any one did take his money - whether these men took it or not, if they were there actually aiding and abetting the man who did take it, they are just as guilty of robbery as if they took it themselves. Do not misunderstand that. Do not say it has not been proved that these men actually took the money personally from Frank Zic. Zic testified that the man who took his money slit his trousers from behind and took the money out of his stocking, and that he could not see him. You must determine whether that shows you he is an honest man or not. But he did say that he saw one of these men, the man with the blue necktie and colored shirt, that he had a handkerchief over his mouth which dropped off. You have heard the other testimony of the other witnesses. If Zic is not mistaken, if that man was in that room helping those robbers to take his money, or anyone to take his money, he is guilty of robbery in the first degree, the same as if he took it himself. So get the law clearly fixed in your minds.

The question for you to determine is whether there was any robbery whatever, and if there was a robbery

CASE #2647

208
whether these men were there aiding and abetting the men who took the money, helping along the robbery. If they were then they are guilty of robbery in the first degree. If there was only one robber there and he was not armed with a pistol it would be robbery in the second degree or robbery in the third degree.

If counsel for the defense would be agreeable, I would submit this case to you as robbery in the first degree, or nothing.

MR. ROSENBERG: I think it should be robbery in the first degree, or nothing.

THE COURT: There is no doubt about that in my mind, but still the Court thought it just as well to submit the three degrees of the crime, as I like to follow the law.

Now gentlemen, as I said before, the attorney for the defense has done his full duty, and so has the District Attorney. The Court has endeavored to make the law as plain as day to you and to make your duty clear to you. Do not be in a hurry to arrive at a decision: weigh all the evidence calmly, patiently and neutrally, and render an honest verdict. Every honest verdict is a vindication of the law. It would be a great crime for you to pro-

CASE #2647

709
0774

nounce these defendants guilty if you were not satisfied beyond a reasonable doubt that they were guilty. It would be an equally great crime for any man on the jury to pronounce them not guilty if he honestly were convinced of their guilt beyond a reasonable doubt. So do your duty and then you will be entitled to the thanks of the community. Render a verdict of guilty of robbery in the first degree if you are convinced of their guilt beyond a reasonable doubt. If you have a reasonable doubt of their guilt, acquit them by a verdict of not guilty.

THE COURT: Mr. Rosenberg, have you any requests?

MR. ROSENBERG: Will your Honor instruct the jury that all evidence which your Honor struck out must be absolutely disregarded by this jury?

THE COURT: I so charge.

MR. ROSENBERG: Will your Honor charge the jury that evidence of good reputation may of itself create a reasonable doubt where otherwise no doubt would exist.

THE COURT: I so charge.

MR. ROSENBERG: I respectfully ask your Honor to charge the jury that if, after reviewing the evidence,

CASE #2647

their minds are undecided as to whether these defendants are guilty, or whether the People have proved a case, it is their duty to resolve that doubt in favor of the defendants, and to acquit them.

THE COURT: I so charge.

MR. ROSENBERG: That is all; thank you.

MR. BOHAN: I have no requests, your Honor.

THE COURT: You may retire, gentlemen.

The jury retire at 11:18 A.M. and return at 1 P.M.

THE CLERK: Gentlemen of the jury, have you agreed upon a verdict?

THE FOREMAN OF THE JURY: We have.

THE CLERK: How say you; do you find the defendants at the bar guilty or not guilty?

THE FOREMAN: Guilty of robbery in the first degree.

THE CLERK: You say you find the defendants guilty of robbery in the first degree as charged in the indictment?

THE FOREMAN: Yes sir.

THE CLERK: Harken to your verdict as it stands recorded; you say through your foreman you find the defendants at the bar guilty of robbery in the first degree, as charged in the indictment, so say you all.

THE FOREMAN: Yes sir.

CASE # 2647

I hereby certify that the foregoing is a correct transcript of the proceedings taken in this action.

Rudwig Lutz
Official Stenographer

THE COURT: You may have the jury polled, if you like.

MR. ROSENBERG: No sir, your Honor. - Well, yes, I think I would like to have the jury polled.

THE CLERK: Gentlemen of the jury; you say through your foreman that you find the defendants at the bar severally guilty of robbery in the first degree as charged in the indictment? (The Clerk asks each and every juror if that is his verdict, and each of the 12 jurors answer in turn that the verdict rendered is his verdict.)

(Defendants pedigrees are thereupon taken)

THE COURT: If the defendants are ready for sentence now I will sentence them. Judge Nott gave the other man, Strolach, from 8 to 16 years. I will give them the sentence that Judge Nott gave the other man.

MR. ROSENBERG: Investigation will indicate that they were not a part of that band of robbers.

THE COURT: Well, I will postpone the imposition of sentence for one week.

MR. ROSENBERG: Will your Honor make it Friday, the 20th?

THE COURT: Yes, I will sentence them on Friday of this week. You can then make any legal motions that you wish to make.

(Defendants remanded to June 20th, 1919)

CASE # 2647

9779