

START

2168

CASE

CASE #2168

2752

INDEX

	D.	C.	R-D	R-C
Paul Bendix,	1	6	12	13
Herman E. M. Bernhard,	13	19	22	
George C. Craft,	22	25		
Paul Bendix,	27	28		
Joseph J. Cooney,	29	30		
Benjamin Weinstein,	33	39	54	
August Riha,	57	59		
Abe Weinstein,	61	63		
Sam Biarsky,	64	67		
Willie Weinstein,	68			
Oreste Ferrara,	69	71		
Tillie Weinstein,	73			
Benjamin Weinstein,	74			
Paul Bendix,	74	78		
Joseph J. Cooney,	81			
Herman E.M. Bernhard,	83			
Oscar Fritche,	84	90		
Rudolph Marks,	95	99		
Benjamin Weinstein,	102			
Paul Bendix,	104			

CASE #2168

COURT OF GENERAL SESSIONS OF THE PEACE,
CITY AND COUNTY OF NEW YORK.

-----x
THE PEOPLE

against

BENJAMIN WEINSTEIN.
-----x

2752

Indictment filed the 11th day of September, 1916.

Indicted for Grand Larceny in the Second Degree.

For the People,

~~ASSISTANT~~ DISTRICT ATTORNEY OLCOTT.

For the Defendant,

BENJAMIN STEINMAN, ESQ.

Tried before HON. JOSEPH F. MULQUEEN, JUDGE
and a Jury on the 26th day of February, 1916, etc.

Jury duly impaneled and sworn.

The Court admonishes the jury in accordance with
Section 415 of the Code of Criminal Procedure and takes
an adjournment until tomorrow morning, February 27th,
1917 at 10:30.

New York, February 27, 1917.

Trial resumed.

PAUL BENDIX, called as a witness in behalf of the
People, being duly sworn and examined, testified as fol-
lows:

1170

CASE # 2168

(Residence, 11 Mill Street, Far Rockaway, Long Island)

DIRECT EXAMINATION BY MR. OLCOTT:

Q What is your business? A Importer of paper.

Q How long have you been in that business? A Nine years.

Q Where at present and where during last summer was your place of business? A 67 Irving Place.

Q Do you know this defendant? A I know him.

Q Have you ever had any conversation or business dealings with him personally? A Yes, sir.

Q Tell us in a general way what they were prior to the month of August, last summer? A Prior to the month of August last summer he used to cut paper into a smaller size than the paper originally was.

Q Did you personally at any time interview this man in the beginning of the transactions which you have just described? A Yes, sir.

Q And arrange the terms and general business matters with him? A Yes, sir.

Q Did he address you as Mr. Bendix at that time? A Yes.

Q Do you remember the 18th day of August, 1916? A Yes.

Q Were you in your place of business on that day? A Yes.

Q Do you remember on that occasion seeing a number of bundles of paper being prepared to be sent out? A Yes, sir.

Q What kind of paper? A Gelatine paper.

Q Do you know what quantity was wrapped up on the 18th of August to be sent out? A 16,000 sheets.

CASE #2168

Q Do you know whether prior to that time there were any other quantities of paper sent out? A There was.

Q Gelatine paper? A Gelatine paper.

Q Do you know the exact quantities, or do you know the total quantities sent during the days prior to that time? A I have a record of it.

BY THE COURT:

Q Do you know, yes or no? A Yes, sir.

BY MR. OLCOTT:

Q Can you tell us without refreshing your recollection as to the exact amount sent out to be cut? A What day?

Q Several days prior to the 18th of August? A Several days prior to the 18th of August, 1916, I sent out to Mr. Weinstein's place every day about 5,000 sheets of gelatine paper to be cut.

Q Speaking of the paper sent on the several days prior to the 18th, were there any marks placed upon them? A Yes.

Q What was the nature of the marks placed on those pieces of paper? A Pencil marks.

Q Placed on the wrappers or papers themselves? A On the wrappers of the paper and partly on the papers themselves also.

Q As to the paper, 16,000 sheets, sent out on the morning of the 18th of August, how were they marked? A By a chemist with a certain chemical.

Q I show you a small piece of paper and I ask you whether

CASE #2168

4
you recognize the peculiar black marks on the corner there?

A I do.

Q Were those the type and kind of marks which were placed on?
A Yes, sir.

The piece of gelatine paper referred to is marked
People's Exhibit 1 for identification.

Q Do you remember in what manner these 16,000 sheets left your store on that morning, I speak of August 18th? A On August 18th, 1916, those 16,000 sheets, after having been marked by the chemist, were wrapped up again in their original wrappers, bundled together, and given over to the errand boy of Mr. Weinstein who as a rule or always used to take those goods over to his place to be cut.

Q Do you remember in what quantities these papers were wrapped? A These papers were wrapped in a thousand sheet quantities in a package.

Q That was the way they had usually been sent over there?
A Yes, sir.

Q Were they counted at that time by you? A Yes.

Q Who was present, do you remember? A Detective Ham of Crafts Detective Agency and I was present, too.

Q Anybody else that you recall? A At certain times Mr. Fritche of my business.

Q How long has Mr. Fritche been in your employ? A Four years now.

Q What position does he occupy there? A Office manager.

89127
CASE #2168

11174

Q Do you remember whether Mr. Craft was present at that time? A I do not remember.

Q You would not say one way or the other? A No, I don't know exactly.

Q The chemist's name is what? A Lee.

Q You had not known him before this occasion? A I did not know him before this occasion.

Q Now, when did you again see any part of this paper marked with a chemical as you have described? A A few days latter when it was recovered at the place of the Dragon Paper Manufacturing Company.

Q Did you see it there? A I saw it not there at their place, but at Mr. Weinstein's place in a taxicab.

Q In his place? A Before his place.

Q You were not present in the Dragon Company's place when it was found there? A No, I was not.

Q Do you remember who was present when you saw it in the taxicab? A Yes.

Q Who? A Attorney Mr. marks. Mr. Fritche and five or six of Craft's detective agency men who were working on this case.

Q Mr. Craft also? A Yes.

Q Do you know if officer Cooney was there? A Yes, sir.

Q In what quantity was this paper that you saw in the taxicab in front of Weinstein's place? A 8,000 sheets.

Q How much of the 8,000 sheets did you identify as bear-

CASE #2168

ing the chemical mark? A 4,000.

Q Did you see any other paper of this 16,000 lots, at any place after the 18th of August? A No, sir.

Q Was any of it returned to your place if you remember from Weinstein's place or did you see any of it there? A Yes, sir, it was returned to my place, part of it.

Q How much, do you remember? A I don't remember.

MR. OLCOTT: If your Honor please, I am now through with this witness except for the purpose of having him identify some property which is being brought here from Police Headquarters.

CROSS EXAMINATION BY MR. STEINMAN:

Q You are in the wholesale paper business? A Yes.

Q And you sell all kinds of paper? A Different kinds of paper.

Q And at various times you employ different paper cutters to work for you? A No, we employ one at a time, only.

Q How long have you been employing Mr. Weinstein to work for you? A Since 1914.

Q That is about two and a half years ago? A Yes.

Q Or three years ago? A Yes.

Q Mr. Fritche was your office manager during the entire period? A He was.

Q Mr. Fritche attended to the business for you? A Partly.

Q Mr. Fritche had all the business dealings with Mr.

CASE #2168

Weinstein? A He sometimes had. Sometimes I had.

Q Do you mean to say to this Court that you had business dealings with Weinstein personally? A I do.

Q When did you see Mr. Weinstein prior to the 18th of August, 1916? A Since the start of our business dealings.

Q When before the 18th of August? A Since 1913 continuously.

Q What do you mean by continuously -- when did you see him last before the 18th of August? A I cannot give you a date. I saw him very often.

Q You saw Mr. Weinstein at your place of business? A At his place of business.

Q You saw him at his place of business? A At his place.

Q How often did you go there? A I used to go there may be once in two months.

Q You say that a few days before the 18th of August, a certain quantity of gelatine paper was packed, is that what you call it? A Gelatine paper.

Q How many thousand sheets were packed? A We packed?

Q Yes, ready for shipment to Weinstein? A About 30,000 sheets.

Q How many days before the 18th of August? A About a week.

Q Who did the packing for you? A My employees.

Q Were you present during the entire time of the packing?

A Not always.

CASE #2168

Q You did not see just what quantity was packed? A Not always -- sometimes.

Q The only information you had is derived from your employees? A No, not exactly. Sometimes I was present when it was packed.

Q Occasionally? A Occasionally.

Q Not all the time? A Not all the time.

Q When you said a moment ago that you counted all the paper or every sheet of paper that was shipped to Weinstein prior to the 18th of August personally, you were in error? A I hardly believe I said I personally counted 30,000 sheets.

Q You said you personally counted? A I hardly believe I said so.

Q Who did the counting for you? A The counting is done at the factory where the paper is manufactured.

Q Who did the counting for you?

BY THE COURT:

Q Do you know who did the counting for you? A The paper is counted --

Q Who did the counting for you in this case -- did you do the counting? A No, my employees.

BY MR. STEINMAN:

Q You do not know of your own knowledge how many sheets of paper went to Weinstein?

MR. OLCOTT: I ask that the date be fixed.

Q prior to the 18th of August or on or about the 18th of

CASE # 2168

August? A The stock room sheets prove how many sheets were sent.

THE COURT: I will strike that answer out.

BY THE COURT:

Q You want to understand -- he wants to know if you are testifying from information that you gained first hand or from someone else? A From information I gained from employees.

BY MR. STEINMAN:

Q Is it not a fact that Mr. Fritche told you all that?

THE COURT: Mr. Steinman, you can now move to strike out all his testimony about quantities. It cannot be proved by hearsay.

MR. STEINMAN: I make that motion at this time.

MR. OLCOTT: The question directed to this man was as to prior to the 18th which we have no concern with at all.

THE COURT: Does he know anything about the 18th.

THE WITNESS: I do.

BY THE COURT:

Q You counted them yourself? A I was present when they were counted and over-watched the counting.

BY MR. STEINMAN:

Q When were they counted, on what day? A On the 18th of August in the morning, 1916.

Q Where were they counted? A In my stock room.

Q In your place of business? A In my place of business.

Q Who did the actual counting? A The actual counting

CASE #2168

was done by Mr. Ham, the employe of the detective agency, in my presence.

Q Was Mr. Fritche present? A He was.

Q And you stood there during the entire time, during the count? A I did.

Q How long did it take? A About three hours.

Q There were 16,000 sheets? A Yes.

Q You say on that day, 16,000 sheets were sent to Weinstein? A There were given over to Mr. Weinstein's boy, errand boy.

Q To Mr. Weinstein's errand boy? A Yes.

Q Were those 16,000 sheets marked? A They were.

Q Who did the marking? A Mr. Lee, a chemist.

Q Did you see that done? A I did.

Q Saw every sheet marked? A Every sheet.

Q Those 16,000 sheets were individually marked? A Yes.

Q When you say 16,000 sheets, they were counted? A Yes.

Q Do you mean every sheet was picked up from the package and counted one, two, three and so forth? A It is not necessary.

THE COURT: What do you mean?

MR. STEINMAN: I want to know how they were counted.

THE WITNESS: Sheet by sheet.

Q You mean each sheet was separately lifted from the package? A Yes.

CASE #2168

Q And so you counted 16,000 sheets? A Yes, sir.

Q Is this a sample of that paper? (Showing People's Exhibit 1 for identification) A Yes.

Q And you mean to say you counted 16,000 of those sheets?
A Yes.

Q In about three hours times? A Yes, sir.

Q Is it not a fact, Mr. Bendix that you could not possibly count 16,000 of these sheets in a day? A It is a fact. It can be done.

Q It can be done? A Yes.

Q Did you ever do it yourself? A I used to.

Q When? A Years ago.

Q How many years ago? A May be eight years ago -- six years ago.

Q This paper is very sticky? A It is not, it is simply sticking now because it is here now nine months.

Q It is very thin? A Yes, but not sticky.

Q You mean to say you counted 16,000 of these sheets in three hours time? A Yes, sir.

Q At the time that they were counted each sheet was marked separately? A Yes.

Q Do you remember Mr. Weinstein's place of business? A Yes.

Q Sometime after the arrest of Mr. Weinstein in this case you met me at his place of business? A If I met Mr. Weinstein at his place of business?

Q No, you met me. A I remember.

CASE #2168

Q You remember that? A Yes.

Q Do you remember I asked you to remove from his place of business a number of thousand of sheets of this paper? A Yes.

Q And there was some dispute as to an amount? A Yes.

Q You remember I asked you to count them in his place of business, in my presence? A I do not.

Q Don't you remember Mr. Marks being there and Officer Cooney? A I don't remember.

Q Do you remember I asked you, I want you to count these sheets of paper, and your reply to me was it will take at least two weeks to do that, did you say that to me? A I don't remember it.

Q You do not? A No.

REDIRECT EXAMINATION BY MR. OLCOTT:

Q Did you say that to counsel that day, that it would take two weeks to count it? A I did not.

Q You are positive of that? A I am positive about that.

Q I will ask you to come down from the witness stand and look at this bundle and examine it carefully, particularly for marks and tell me if that is part of the property that left your place of business on the morning of the 18th? A Yes, sir.

Q You are familiar with the value of this paper? A I am.

Q You purchased it I assume? A I purchased it.

Q On the 18th of August what was the market value of this paper? A \$32.50 per thousand sheets.

CASE #2168

Q Does that price vary from time to time? A It did go up continuously.

Q So that at the present time it is higher? A At the present time it is about \$65 per thousand sheets.

RECROSS EXAMINATION BY MR. STEINMAN:

Q Did you ever sell any paper to Mr. Weinstein? A I did not quite understand you.

Q Did you ever sell any paper to Mr. Weinstein? A I never sold paper to Mr. Weinstein.

Q Did you ever write him a letter asking him if he could use some of your paper? A I never did.

H E R M A N E. M. B E R N H A R D, called as a witness in
behalf of the People, being duly sworn and examined,
testified as follows:

(Residence; 275 Maolis Avenue, Bloomfield, N.J.)

DIRECT EXAMINATION BY MR. OLCOTT:

Q What is your business? A I have been with a detective agency.

Q What is your business now, since you left? A I am in the insurance business.

Q Do you remember the 18th day of August, 1946 seeing this defendant? A Yes.

Q What time of the day was it and where that you first saw him? A I saw him at about 1:30 P. M. at his place of business.

CASE #2168

Q And this view you had with him, and your actions at this time, were in connection with your detective work for the Craft Detective Agency? A Yes.

Q Following instructions given you by Mr. Craft? A Yes.

Q Will you tell us what you observed Mr. Weinstein do at that time and at any other time you observed him on that day? A Well, about 1:50 P. M. he left his place of business with two bundles and he proceeded to 114 East 28th Street.

Q What did you do? A I followed Mr. Weinstein. He went up the elevator in that building and entered the place of business of the Dragon Paper Manufacturing Company on the third floor.

Q Did you see what he did there? A I just saw him enter the place.

Q How long did you remain outside before you saw him again? A About ten or fifteen minutes.

Q What did you see him do then? A He then returned to his place of business.

Q Did he have the packages that you refer to? A No.

Q Tell us the size of those packages approximately?

A About twenty by twenty four inches -- twenty-four or twenty five inches.

Q Now, did you observe at any time what was inside those packages when you saw him carrying them? A Well, when Mr. Weinstein went up the elevator at 114 East 28th Street I was standing behind him.

CASE #2168

Q You got in the same elevator? A Yes, I got in the same elevator and I tore the package on the upper corner. The paper was torn some but not enough.

Q You mean the outside paper? A Yes, sir -- but not enough to expose the contents of the package and so I just ripped it off may be two inches or so to see the contents and expose that gelatine paper.

Q You saw some gelatine paper, is that right? A Yes.

Q After Mr. Weinstein came out of the Dragon Company's place of business what did you observe him do, if anything?

A He was with another young man.

Q Do you know who that man is? A Yes, I found out afterwards.

Q What is his name if you know it? A I know his second name is -- Leon Keller.

Q What did you observe the defendant do after he came out of the place -- he was with a man when he came out? A Yes.

Q Was he with that man when he went in? A No, he was alone.

Q What did you observe these two people do, the defendant and Mr. Keller? A Together they went back to Weinstein's place of business.

Q What did you see, if anything, then? A The next thing that happened, this man Keller came out with two packages same size and identically the same packages as Mr. Weinstein carried.

Q From Weinstein's place of business? A Yes.

89127
CASE #2168

Q What happened then? A This young man returned to 114 East 28th Street and went into the elevator and I went after him. He went upstairs, and in the elevator I did the same thing, I tore the package -- I tore the package already on the street while he was on his way -- walked up close to him and tore it and then again tore it in the elevator and I again saw gelatine paper. He went in the Dragon place.

Q Did you see Mr. Keller come out again? A I did not.

Q Did you see Mr. Weinstein again that day? A Yes, sir-- I cannot give the specific time --

Q How long approximately after observing Mr. Keller go into the Dragon Company's place with two packages was it that you saw Weinstein again? A I may give you a definite answer to that -- while I was waiting to see if that young man Keller was coming out again I saw Weinstein leaving his place of business.

Q How far are those two places of business apart? A A good block.

Q One is across the street from the other? A Yes.

Q About how many feet would you say? A That I could not really judge.

Q Fully a block? A It is a full block between -- it is a very long block.

Q Do you remember the numbers of those two concerns?

A 114 East 28th Street and Weinstein's place if I am not mistaken is 157 East 28th Street.

CASE #2168

Q Across the street and a block away? A Yes, a block away.

Q While you were waiting and observing the exhibit from the Dragon place of business, you observed Weinstein? A I saw Weinstein come out. He was very much in a hurry.

Q He was walking fast? A He was putting his coat on on the street and he went up the elevated station there on Third Avenue and I had to make quite some sprint to go after him but I succeeded getting on the same train with him.

Q What happened then? A He proceeded down to the State Bank.

Q Where is that? A Clinton Street Branch.

Q Did you see what he did there? A I think he cashed a check. I saw him endorse the check but I am not certain if he cashed it or deposited money.

Q Did you notice whose check it was, did you see the writing on the check or did you not get near enough?

BY THE COURT:

Q Do you understand the question? A Yes.

Q Then why don't you answer it? A I am not certain about that check.

BY MR. OLCOTT:

Q You did not observe it close enough to know? A I was standing very close to him, but --

THE COURT: He does not know so what is the use asking him.

CASE # 2168

Q After Mr. Weinstein acted as you have described in the bank, what, if anything, did you see him do? A He left the bank and bought some lemonade on one of those push carts down there and then he went back to his place of business.

Q Did you see him again that day? A Yes.

Q When? A Shortly after he entered his place of business, as soon as Mr. Craft, the official, came up, we entered his place of business.

Q You saw him at that time? A Yes.

Q Mr. Craft engaged him in conversation, if you remember?
A When Mr. Craft entered this place of business I went up to the Dragon place.

Q When you went to the Dragon people, did you see any material up there which you recognized as having seen before?

Objected to as calling for a conclusion. Objection sustained.

Q Did you see any material up there? A I did not enter the Dragon place.

Q Did you go in later at any time? A No.

Q Now Mr. Bernhard, at any time that day or shortly thereafter, did you see any material in the possession of Mr. Craft?

A Mr. Craft returned some bundles which I identified as those bundles that were carried over to the Dragon place.

Q Step over here and look at this bundle and this wrapper and I ask you if you can tell me whether that bundle was one of the bundles you saw being carried by this defendant?

CASE #2168

A Yes, sir, I identify the package.

Q That is one of the packages that you saw? A Yes, and it was afterwards marked in Mr. Weinstein's place of business.

The bundle is marked for identification People's Exhibit 2.

CROSS EXAMINATION BY MR. STEINMAN:

Q You are connected with some detective agency? A I have been.

Q What is the name of that detective agency? A George C. Craft.

Q They were doing some work for Mr. Bendix? A I cannot hear you very well.

Q This agency was doing some work for Mr. Bendix? A Work, yes.

Q And how long a time before the 18th of August were you doing work for the Bendix Paper Company? A Was I?

Q Your firm? A Before the 18th of August -- that I could not tell you.

Q You do not know? A I don't know.

Q When did you see Mr. Weinstein for the first time?
A August 17th.

Q On the 17th of August? A Yes.

Q Who pointed him out to you? A A man by the name of Stevens.

CASE #2168

Q Where did you see him? A Mr. Stevens?

Q Mr. Weinstein. A At his place of business.

Q Coming down to the 18th of August, you met him first about 1:30 P.M? A About that time.

Q After that you went where? A I followed Mr. Weinstein.

Q Where to? A 114 East 28th Street.

Q That is the Dragon Paper Company? A Yes, sir.

Q When, after that, did you see Mr. Weinstein again that day? A When he left the place of business.

Q Where? A 114 East 28th.

Q Did you follow him to his place of business again?

A Yes.

Q Then he went to the bank? A No.

Q What happened after that? A The man he left the Paper Company with came out and went to 114 East 28th Street.

Q Do you remember when Mr. Weinstein was arrested the same day? A Yes.

Q What time in the afternoon was he arrested? A I couldn't tell you, I don't remember.

Q Who was present at the arrest? A Mr. Craft, Mr. Bendix, Mr. Marks, Mr. Stevens, Mr. Ham and myself.

Q By Mr. Marks you mean Mr. Rudolph Marks, attorney for Mr. Bendix? A I presume so -- the gentleman is sitting there (indicating).

Q Do you remember asking Mr. Weinstein to sign some paper, some affidavits? A I do not.

CASE #2168

Q Some other statements? A I do not.

Q You say you don't remember or you are sure you did not, which is it? A I don't think I did ask him any such thing.

Q You are not sure about it? A I am almost certain.

Q Do you remember seeing Mr. Marks roughly handle Mr. Weinstein? A He did not.

Q He did not? A No.

Q Is it not a fact that Mr. Marks and yourself both assaulted Mr. Weinstein and threatened to hit him unless he signed some paper? A No, sir.

Q Answer me and do not laugh? A I have to laugh at you-- I beg your pardon, it is not true.

Q Do you remember that there was a fight in Mr. Weinstein's office? A There was a fight?

Q Yes. A Well, something very close to it.

Q Do you remember Mr. Marks and Mr. Weinstein trying to fight each other or punch one another? A They did not.

Q Do you remember an officer coming and arresting the two of them, Weinstein and Marks? A Something similar to that, but it is not correct, what you say.

Q Something did happen? A Something happened.

Q And a charge was made against Mr. Marks of assault?
A A charge was not made.

Q It was withdrawn afterwards? A Yes, because the gentleman did not have nerve enough to press that charge.

Q Mr. Marks was arrested on some charge of assault that

CASE #2168

day? A Mr. Marks was?

Q Yes. A No, sir.

Q Was he not taken in custody by a police officer? A Not to my knowledge.

Q The detective agency by which you were employed was paid by Mr. Bendix to get certain results, is not that true?

A You will have to ask the official of the agency as to that.

Q Were you not an officer of the company? A I was working for those people.

REDIRECT EXAMINATION BY MR. OLCOTT:

Q You said something very close to a fight occurred there, tell us what did occur?

THE COURT: What bearing has it on the case?

MR. OLCOTT: I will withdraw the question if you think it has none.

THE COURT: You may recall him if it becomes necessary.

GEORGE C. CRAFT, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

(Residence 2555 Bedford Avenue, Brooklyn.)

DIRECT EXAMINATION BY MR. OLCOTT:

Q What is your business? A Private detective.

Q How long have you been in that business? A Since July 1st, 1914.

CASE #2168

Q You are what is known as a principal, the owner or operator who is in charge of a detective agency? A I am the holder of the license.

Q The detective agency is named in your name? A Yes.

Q Do you remember on the 18th day of August going to the Dragon Paper Company? A Yes.

Q Prior to the time of your going to the Dragon Paper Company were you present when some paper was marked in the office of Mr. Bendix? A No, sir.

Q Were you shown at any time the marks which were put on that paper? A Yes.

Q I show you People's Exhibit 1 for identification and I ask you whether the marks apparently made by a chemical in the corner are those you understood were the marks? A Yes.

Q At the time that you went into the Dragon Paper Company who was present? A Mr. Bendix and I think Mr. Fritche.

Q In the Dragon Paper Company? A I know Mr. Bendix was present and Mr. Marks, and I think Mr. Fritche. My man Morard, Mr. Blyer, the principal of the Dragon Paper Company and a number of employees.

Q Did you in that place of business see any gelatine paper? A Yes.

Q How much, if you remember? A I did not count it. I was told it was 8,000 sheets.

MR. STEINMAN: I move to strike that out.

THE COURT: Strike it out.

CASE #2168

Q A large quantity, a number of packages? A A solid package of gelatine paper anywhere from four and a half to six inches thick.

Q I ask you to look at this package over here, Exhibit 2 for identification, and I ask you if that is the package that you saw there, or part of it, look at it carefully?

MR. STEINMAN: I object to the question: the witness testified he did not see the paper, he was merely told.

THE COURT: He did see them he said, but he did not count them.

A Yes.

BY MR. OLCOTT:

Q When and where was that paper found by you? A On the afternoon of Friday, August 18th, between three and four P. M. perhaps, I don't remember the exact hour.

Q In the afternoon? A In the Dragon Paper Company's place of business.

Q Where is that place of business? A 114 East 28th Street, I think.

Q What did you do, if anything, with that paper? A The paper was turned over to me to be held in escrow for the Dragon Paper Company subject to their order or to an order of the Court.

Q What did you do with it? A I took it to my office eventually that evening after we arrested Mr. Weinstein.

Q What did you do with it first, after taking it out of

CASE # 2168

the Dragon Company? A I put it in a taxicab.

Q And where did that taxicab go, if you remember? A From there to Mr. Weinstein's place of business.

MR. OLCOTT: I offer the paper in evidence.

Received and marked People's Exhibit 2.

Q Did you have any conversation with this defendant that afternoon when you saw him? A I had a conversation with him several times.

CROSS EXAMINATION BY MR. STEINMAN:

Q You did not count the paper? A No, sir.

Q You only know there were 8,000 sheets there because someone told you so? A Yes.

Q Who told it to you? A Either Mr. George Blyer or an older relative of his who is connected with the same concern, an older man.

Q Of the Dragon Paper Company? A In the Dragon Paper Company.

Q You never counted the paper yourself? A No, I only know that it was piled.

Q Did you examine the paper? A Yes, sir, carefully.

Q Carefully? A Yes.

Q Every sheet of it? A No, sir.

Q You mean you just looked at it? A I looked at it and also looked over the packages for certain marks.

Q When you say you looked over the packages, you mean

CASE #2168

that you looked at the top of the package? A This paper was not in a package. It was open on a shelf.

Q Loose? A It was piled.

Q One on top of the other? A One on top of the other with the exception of two or three packages which contained what I was told was a thousand sheets.

Q That you were told? A Yes.

Q You never examined it? A I did not.

Q You did not count it? A I did not count the thousand sheets.

Q Did you examine the entire package? A It was not a package. It was piled.

Q Did you loosen it up or open up the package? A We pawed it all over.

Q What do you mean by that? A We went over it as much as we could for the purpose of identification.

Q How much time did you spend in doing that? A Ten or fifteen minutes.

Q About fifteen? A No more.

Q No more than fifteen minutes? A No.

Q In those fifteen minutes you claim you examined 8,000 sheets of paper? A I did not.

Q You have no knowledge of the paper at all except what you were told? A You mean as to the number of sheets?

Q As to the kind of paper, as to the number of sheets?

A As to the kind of paper?

CASE #2168

Q Yes. A I instructed a chemist to mark the paper.

Q Who instructed? A I did.

THE COURT: Strike that out.

BY THE COURT:

Q You saw the paper, did you not? A Yes.

Q You had the evidence of your eyes, had you not? A Yes.

Q It is only the number of sheets you said you were told?

A Yes.

Q You said there was a large bundle of it there? A Yes.

BY MR. STEINMAN:

Q How long a time prior to the 18th of August were you doing service for Mr. Bendix? A Four or five days.

Q Since about the 12th of August? A I think the first active work we did was on the 12th.

Q Before that time you did not do any work at all for him?

A What?

Q Prior to that you did no work at all for Mr. Bendix?

A I did not work for Mr. Bendix prior to that time.

P A U L B E N D I X, recalled by the People:

BY MR. OLCOTT:

Q At the time that you saw this paper in bulk, this paper People's Exhibit 2, did you cause it to be counted or to be looked at in such a way so that approximately the number of sheets could be ascertained? A Yes.

Q When was that done? A About eight days before August 16th, every day.

CASE #2168

Q I mean, speaking of this package that was found in the Dragon Paper Company? A Yes.

Q After it was got from the Dragon Paper Company, were you present when it was counted or the approximate amount ascertained? A Yes.

Q When was that done? A About a week later.

Q How many sheets were found to be there? A About 3,200.

Q Not 4,000? A Not 4,000.

Q That is of those sheets which were marked with a chemical? A Yes.

Q Which you can positively identify for that reason?
A Yes, sir.

CROSS EXAMINATION BY MR. STEINMAN:

Q In the meantime -- you said it was ten days after you counted it? A About ten.

Q And during those ten days where was all this paper, who kept it? A It was for a time in the custody of Mr. Craft's detective agency.

Q And during those ten days you had not seen the paper at all? A I saw it at Mr. Craft's office.

Q How many times? A Several times.

Q Did you count it upon each occasion? A No, not upon each occasion.

Q You only counted it once? A Yes, sir.

Q About ten days after the paper had been recovered from the Dragon Paper Company? A Yes.

CASE #2168

J O S E P H J . C O O N E Y, called as a witness in behalf
of the People, being duly sworn and examined, testified
as follows:

(Second Branch Detective Bureau.)

DIRECT EXAMINATION BY MR. OLCOTT:

Q You are the arresting officer in this case? A Yes.

Q When and where did you place this defendant under arrest? A August 18, 1916, in the 25th Precinct Police Station, 35th Street right off Third Avenue.

Q Where had you first seen him on that day? A In the 25th Precinct.

Q Did you go to his place of business? A I did.

Q What, if anything, did you find there with special reference to any gelatine paper; I speak now of this defendant's place of business? A Yes, sir, we went down to -- at least I went down to his store in 28th Street right off Third Avenue and in his place of business I saw some gelatine paper on a table, and a large box and in that was a lot of scraps, little pieces, quite an amount of it, and Mr. Weinstein told me that --

Q Mr. Weinstein told you? A Yes.

BY THE COURT:

Q You mean the defendant? A Yes, he told me that was scraps of the paper after it was cut.

BY MR. OLCOTT:

Q Did you see any large amount of paper there, in bulk;

CASE #2168

if you don't remember say so? A I do not recall that.

Q I ask you to step down and look at People's Exhibit 2, which you brought into court this morning and I ask you when you first saw that? A The same night, August 18th.

Q When did you take possession of it, if at all? A I took possession of it at that time.

Q Mr. Craft was present at that time when he turned it over to you? A I took possession of some of it and not all of it at that time and Mr. Craft -- yes.

Q When did you get the bulk of it, the rest of it? A After the Magistrate hearing had been finished Mr. Craft had it and I believe Mr. Bendix replevined it, to turn it over to the Police Department. Then it was turned over to me about the 28th or thereabouts, of August, and I put it in the property clerk's office of the Police Department.

Q It has been there in the usual course of property held by the police until you brought it down here this morning?

A Been there from that day to the present day.

CROSS EXAMINATION BY MR. STEINMAN:

Q Do you remember having met Mr. Bendix and myself at the defendant's place of business after the arrest? A Yes.

Q Do you remember that Mr. Bendix wanted Mr. Weinstein to return a certain quantity of gelatine paper? A Yes.

Q And do you remember the conversation that was had between Weinstein and Bendix and myself? A I think so.

CASE #2168

Q Will you state to the jury what your recollection of that conversation is? A Mr. Bendix stated that he wanted to pay Mr. Weinstein, the defendant, for what work he had done for him and in fact he wanted to cancel all business transactions with Mr. Weinstein, the defendant, and wanted to pay him for what goods he had there in the place which were little squares of gelatine paper, about that long and about that high, about a foot long and about a foot wide, square. After a long talk there or argument Mr. Weinstein called his counselor up, this gentleman here, and he came up and he then, after settling the thing they decided to send back Bendix' stuff and Mr. Bendix told him to send his bill and he would give him a check for whatever stuff he had there.

Q Do you remember any talk about counting the paper?

A Yes.

Q Do you remember I asked Mr. Bendix to count the paper in Mr. Weinstein's place of business? A No, sir, Weinstein said that he would not count the paper. I said don't be foolish, count what paper you have here for your own eventual gain, I said, because Mr. Bendix will give you a check for it, no doubt, and count it so you will know what stuff you returned to Mr. Bendix.

Q Do you remember that Mr. Bendix insisted on Weinstein sending back the paper to Bendix place of business and that Mr. Bendix would count it there? A No, sir, he did not, not to my knowledge.

CASE #2168

Q You are not sure about that? A I am pretty sure he did not.

Q Is it not a fact, if you try to refresh your recollection, that the controversy between Bendix and Weinstein at that time was as to the amount or quantity of the paper, do you remember that -- try to think, Officer? A No, I do not recall that at all.

Q Do you remember I asked Mr. Bendix to have the paper counted in Weinstein's place of business so that there would be no trouble thereafter? A Mr. Bendix was willing to do that and he told Weinstein to count the paper and then send it down to his place of business, Bendix' place of business and that he would submit a check for whatever bill Weinstein would give him. That was to be counted in Weinstein's place and Weinstein refused to do it.

Q Is it not a fact that Mr. Bendix told Weinstein that he would not count it as it would take a long time to count it? A He said he would not count it in that place, but after it would be delivered to Bendix' place he would then count his own but he wanted --

Q His own place of business? A Yes, but he wanted it counted up before it left Weinstein's place.

Q Didn't he want Bendix to be present during the count? A We stood there and told him to go ahead and count it.

Q Bendix refused? A We told Weinstein to. Bendix said he would not count it.

CASE #2168

Q Weinstein told Bendix to count it? A Yes.

Q And Bendix refused? A Bendix did not refuse to count it, but he said he would count it when it got down to the office, but wanted him to count it beforehand.

Q Weinstein wanted Bendix to count it in his own place?

A I do not recall that at all.

THE PEOPLE REST.

MR. STEINMAN: I move to dismiss upon the ground the People have failed to prove the commission of a crime; that nothing has been shown as to the quantity of paper alleged to have been taken by Mr. Weinstein or the value of the paper, or how many thousands of sheets were taken. The testimony in a sort of a vague manner alleges some paper was taken, but how much and what and when and where it was taken does not appear.

Motion denied and exception.

BENJAMIN WEINSTEIN, the defendant, called as a witness in his own behalf, duly sworn and examined, testified as follows:

(Residence; 215 East 28th Street.)

DIRECT EXAMINATION BY MR. STEINMAN:

Q You are engaged in business under the name of the Weinstein Bookbinding Company? A Yes.

Q At 157 East 28th Street, Manhattan? A Yes.

Q How long have you been in business? A The last six

CASE #2168

years.

Q Married man? A Yes.

Q You have children? A Yes.

Q How many? A Three.

Q Do you remember seeing Mr. Paul Bendix on the witness stand? A No.

Q just a minute, and don't be excited, do you remember seeing Mr. Paul Bendix today on the witness stand? A Yes.

Q When did you see him for the first time? A August 18.

Q 1916? A 1916.

Q On the day you were arrested? A Yes, sir, my my place.

Q Did you ever see this Mr. Paul Bendix before? A No.

Q Before the 18th of August, 1916? A No.

Q How long have you been doing work for the Bendix Paper Company, about? A For the last two and a half years, I think.

Q Who did you speak to? A To Mr. Bendix.

Q During these two and a half years? A Yes.

Q With whom? A Mr. Bendix.

Q Was it the gentleman you saw on the stand here today?

A No.

Q That is the man that you afterwards found out to be Mr. Fritche? A Yes, sir.

Q Now Mr. Weinstein, in addition to your business as a bookbinder and paper man, do you regularly buy and sell paper?

A Yes, sir.

Q Whom do you buy paper from, mention some of the con-

CASE #2168

cerns? A The Linde Paper Company, the Beekman Paper Company, Harry Fuch and Visher Brothers.

Q And also the Bendix Paper Company? A Yes, sir, Bendix Paper Company.

Q Now, when you have a customer for paper, you call up one of those firms and order just the kind of paper you want?

A Yes.

Q When did you first buy paper from the Bendix Paper Company? A I am not sure, but I think from June or from July.

Q From June or July, 1916? A Yes.

Q That is you had been buying paper for about four months prior to your arrest? A Yes.

Q Who delivered the paper to you? A My boy.

Q Your errand boy? A Yes.

Q Who is working for you now? A Yes.

Q Whom did you first speak to about the purchase of this paper? A To Mr. Bendix.

Q By Mr. Bendix you mean Mr. Fritche now? A Yes.

MR. OLCOTT: Let us refer to him as Mr. Fritche.

Q Hereafter, when you intend to name Bendix, the one you thbought was Bendix, call him Mr. Fritche.

MR. OLCOTT: He is outside if you would like to see him.

MR. STEINMAN: I would like to have him called in.

(Mr. Fritche is now called into the courtroom.)

Q Is that the man you have been calling Mr. Bendix all

CASE #2168

the time? A Yes, sir.

MR. STEINMAN: This man's name is Fritche?

MR. OLCOTT: Yes.

BY MR. STEINMAN:

Q Now then, you have been buying paper from the Bendix Paper Company and you were doing business all the time with this Mr. Fritche? A Yes.

Q Mr. Fritche told you he was Mr. Bendix? A Yes.

Q I show you some bills, are these some of the bills that you received from this Mr. Fritche whenever a shipment of paper was made to you? A Yes, sir.

Offered in evidence.

Received and marked Defendant's Exhibits A, B, C, D, E and F.

Q I show you these checks, to whom were those checks given? A To Mr. Bendix, -- Mr. Fritche.

Q Call him Mr. Fritche? A Yes.

The checks are offered in evidence.

MR. OLCOTT: I object. There is nothing on them that would indicate -- this defendant testified --

MR. STEINMAN: That he gave them to Mr. Fritche.

MR. OLCOTT: For what purpose?

Q What were those checks given for to Mr. Fritche? A Well, any time I was ordering paper he sent over the paper with a bill and I paid him.

Q You gave him that check for paper? A For paper.

CASE #2168

Q Each one of these checks were in payment for paper?

A Yes, sir.

The checks are offered, received in evidence and marked Defendant's Exhibits G, H and J.

Q I show you a letter and envelope dated and postmarked June 12, 1916, did you get that on the date mentioned? A Yes.

Q Were these samples of paper inclosed? A Not exactly this, but small pieces of paper -- the same paper by small pieces.

MR. STEINMAN: I offer the letter in evidence.

MR. OLCOTT: There is no proof where it came from.

MR. STEINMAN: This is the stationery of the Bendix Paper Company.

MR. OLCOTT: There is no proof of that.

MR. STEINMAN: That was what he received.

THE COURT: This is the 12th of June, what has that to do with it?

MR. STEINMAN: As showing that since June 12, 1916 this defendant was buying paper from the Bendix Paper Company and that after the receipt of this letter he was dealing with the Bendix Paper Company, buying paper from them through Mr. Fritche.

MR. OLCOTT: How does that letter throw any light on the subject.

THE COURT: I will allow the letter for that purpose. Received and marked Defendant's Exhibit L.

CASE #2168

BY MR. STEINMAN:

Q After receiving this letter, did you ever speak to Mr. Fritche? A Yes.

Q Did you tell him that you received this letter? A Yes.
What

Q did Mr. Fritche or the one you call Bendix at the time say to you? A Asked him prices --

Q What did he tell you? A He was telling the prices but I can't remember.

Q After that you bought paper from Mr. Fritche? A No, before it was bought. I asked him the prices. After I went away to the Dragon Manufacturing Paper Company and told them I got this paper in stock for this and this price -- I can't remember the price now and he was telling me order some paper for me. I was ordering the paper and I paid for the paper, Mr. Fritche and I was sold to the Dragon Paper Manufacturing Company.

Q Subsequent to your receipt of this letter in evidence you bought paper from the Bendix Paper Company? A Yes.

Q You gave Mr. Fritche the checks marked in evidence, did you always give him checks? A Yes -- once I think I was making out a check in his name --

Q Answer my question. A Not always.

Q You sometimes paid him cash? A Yes, sir, sometimes cash.

Q Now Mr. Weinstein, did you ever take from the Bendix Paper Company paper which you did not buy in the regular course of business? A Never.

CASE #2168

Q Did you ever take from the Bendix Paper Company part of shipments made to you for the purpose of doing some work?

A No.

Q Did you ever steal any paper belonging to the Bendix Paper Company without their knowledge or consent? A No.

Q Did you ever steal any paper belonging to anyone without their knowledge and consent? A No.

Q Were you ever arrested for any crime? A No. The first time in court.

Q This is your first arrest? A Yes, sir.

Q You are in business for the last six years? A Yes.

CROSS EXAMINATION BY MR. OLCOTT:

Q When Mr. Bendix came in and got these checks marked Defendant's Exhibits G, H and J, he took them with him? A What?

Q He took these checks with him, is that right? A Yes.

Q Why did you endorse them on the back? A I was making him out a check the first time on the Bendix Paper Company. He refused to take the check on account he says it is a very particular paper, if I keep this for a day in my place it gets spoiled and after I am going to stop the check -- he was afraid I was going to stop the check, when he refused to take the check for deposit in his bank and he asked me to pay in cash. Sometime I was not having cash and I told him I am making out a check in cash and I signed on the other side -- go over in the bank and pay cash -- don't make any difference to me. I was buying the paper.

CASE #2168

Q So that was why you always endorsed them -- did you cash them then? A No.

Q Who cashed them, if you know? A I don't know. I was giving them to Mr. Bendix.

BY MR. STEINMAN:

Q You mean Mr. Fritche? A Mr. Fritche.

BY MR. OLCOTT:

Q His endorsement is not on the back? A No.

Q You do not know whether he cashed them? A Yes, in the bank.

Q In what bank? A The State Bank.

Q How do you know that? A I know if I buy paper sometimes from a new firm I have not go no account and I am giving the check, the cash check I sign on the other side and they cash it for me.

Q On each occasion that you sold him this paper or that you bought this paper from him he gave you a bill like that?

A Yes, sir. (Referring to Defendant's Exhibits, A, B, C, D, E and F.)

Q I show you one dated August 18, 1916 and I ask you when you got that? A 11 o'clock in the morning.

Q How did you get it? A Well --

Q Who gave it to you? A The bill?

Q Yes. A Mr. Bendix.

Q Mr. Fritche you mean? A Yes.

Q He gave you that bill on the morning of the 18th? A Yes.

CASE #2168

Q And it was for what paper, if you know? A Gelatine paper.

Q Was that some of the paper that you sold to the Dragon Company? A Yes.

Q You got from the Dragon Company that day a check? A Yes.

Q I show you this piece of paper and I ask you if that is the check? A Yes.

Q You got \$98? A Yes.

Q For how large a quantity of paper? A 4,000 -- there were coming to me a balance, I think, of \$20 or \$22 for this kind of paper. I can't remember the balance. I know I ^{was} sold \$19 a thousand.

Q Did you not state in the Magistrate's Court you sold this to the Dragon Paper Company for \$100 and that 2 per cent was taken off for cash and that is why this \$98 was paid you? A Yes, sir -- not for this kind of paper -- 4,000 paper, this kind of paper and two off.

THE COURT: I think we had better use an interpreter.

Mr. Rosenthal, the Official Interpreter,
now interprets.

Q (Repeated) A Yes.

MR. OLCOTT: I offer the check in evidence.

No objection.

Received and marked People's Exhibit 3.

Q Was this check given you for that gelatine paper or for some other kind of paper? A For gelatine and for this pa-

CASE #2168

per.

Q How much of this paper did you sell? (Referring to some other paper) On the 18th?

THE COURT: If you don't understand the question it will be repeated, but, understand all questions before you try to answer them.

THE WITNESS: I think of this paper I sold about three reams.

Q Where did you get it from? A The Bendix Paper Company.

Q That was sent over to you by Mr. Fritche, was it? A Yes.

Q Show me the bill for that paper? A The bill is not here among these bills.

Q How long after the 18th of August were you in the Magistrate's Court?

MR. STEINMAN: I object as matter of record.

THE COURT: He is testing his recollection. It is a preliminary question I suppose.

MR. OLCOTT: Yes.

THE COURT: You mean how many times he was there?

A The next day.

Q You produced this bill on that day in the condition it is now in? A Yes, sir.

Q How did it get so crumpled? A It was not as crumpled as it is.

Q It was not crumpled as it is now? A No.

CASE #2168

Q These others were not crumpled in that manner? A No, I kept it on file.

Q You are positive of that fact? A Yes.

Q Somebody must have crumpled them up in the Magistrate's Court after you gave them up, is that right? A I don't know.

Q Is it not a fact that you went out and had this Bendix Paper Company printed, on this letter head, that night, after your arrest, and crumpled them up to make them appear old?

A No.

Q Who wrote the writing on that paper, if you know? A I don't know.

Q They were sent to you when the paper went to you -- when did you get these bills? A When I gave the check.

Q On the 18th of August in the morning you gave a check to Mr. Fritche for \$66.68, is that right? A No.

Q When did you give it to him? A I guess cash.

Q On that morning? A Yes.

Q Then how much gelatine paper did you receive? A 20,000.

Q How much was this to pay for, 4,000 sheets, is that right? A I sent my man and he brought 20,000 -- 4,000 for me and 16,000 to be cut up and sent back.

Q Did you take the 4,000 for you and send that to the Dragon Company that day? A 2,000 I took myself and brought it over to the Dragon Company and then I told them to send their boy and get the balance because I was too busy.

Q Do you remember when Officer Cooney and Mr. Craft came

89127
CASE #2168

to your place of business? A Yes.

Q Do you remember saying to Mr. Craft or to Mr. Cooney at that time that you had sent no paper to the Dragon Company's place that day? A No, sir.

Q Did you tell them at that time that you had sent it over there? A I said I had sold 4,000.

Q Who did you tell that to? A To Bendix also and Ruddolph Marks.

BY THE COURT:

Q Did you tell that to the detective, he asked you? A Nobody spoke to me except the lawyer.

Q Did you tell it to the detective? A No.

BY MR. OLCOTT:

Q Or Officer Cooney? A No.

Q Did you have any talk with them at all, either of them, that day, August 18th? A Not Officer Cooney but the other one was beating me and asking me to sign a paper and I said I want to call up my lawyer and find out what was in the paper because I can't read well.

BY THE COURT:

Q Why didn't you tell Officer Cooney that he was beating you? A He was not there. He came in the evening after the arrest. I was arrested without Officer Cooney.

BY MR. OLCOTT:

Q You saw Mr. Fritche on the morning of the 18th, did you see him again that day? A Yes, when I was arrested.

CASE # 2168

Q Did you accuse him then of selling this paper to you?

A Immediately I said so.

Q What happened to the address on this envelope?

THE COURT: I wont allow that envelope in evidence.

I did not mean to let that in because it does not mean anything. The letter was allowed in evidence.

BY MR. OLCOTT:

Q What happened to the address on the envelope? A I don't know.

Q How did you happen to keep this piece? A All the letters for the last six or eight months I was keeping all the letters I received from all my customers, people I done business with, everything under my desk and after I was arrested I came back and looked for anything that would be necessary in this case.

Q The word Bendix that is written across here, was that written in your presence when the money was given? (Referring to Exhibits A, B, C, D, E, and F) A No, he gave me the bill and I gave him the money. I did not even look whether he was signing it or not.

Q He gave you the bill, signed "Received payment, Bendix" and had that already before you paid the money, is that right?

A Gave me a bill and looked at the amount and I paid him.

Q Sometimes you would pay for this paper before you had received the money for it, is that right? A No.

Q On this morning of the 18th of August you paid \$66.68

CASE #2168

and you did not get the \$98 until later, did you? A I paid out of my own money.

Q How did you happen to have money on that morning to pay it, did you keep cash on hand? A Yes. I had cashed a check the day before, I think, for \$50 and on the same morning for about \$25 and the checks can be seen.

Q Didn't you think it strange that a man whom you thought to be the owner of a big paper concern should demand checks given in this form and cash, and give you a bill already receipted and signed in the manner that you have described? A No, because from the Beekman Company they send me bills paid and then I paid them.

Q They send them up by a boy, they don't come themselves?
A By express.

Q When you got these 20,000 sheets as you say from the Bendix Paper Company on that day, were the 4,000 wrapped separately? A No.

Q Didn't you take 100 from each of the thousand sheet wrappers to make up the 3,200 or 4,000 as you claim? A No, sir.

Q Then they were wrapped separately so you just sent them to the Dragon Company in the same wrappers that they came to you from the Bendix Paper Company? A There were twenty packages and I took four packages.

Q Was that before or after you paid for them? A Before I paid.

Q So you saw Mr. Fritche, after they came to your place

CASE #2168

of business, is that right? A The boy brought the goods on a push cart and when he came in then Fritche came in and another man.

Q Who was the other man? A That is the man that used to make up the packages after I had cut the paper and put marks upon them.

Q How long after you received the paper? A The boy had just arrived with his push cart right at the steps and Bendix came in with the other man.

Q You mean Fritche came in? A Fritche, yes. When I say Bendix I mean Fritche.

Q He never said a word to you in warning about this paper -- do you want this jury to understand that?

The question is withdrawn.

Q What was the conversation you had with Mr. Fritche on that occasion? A He brought me a copy as to how to cut the 16,000 sheets. It was a yellow paper. It is over there in the envelope.

Q What else? A He said the 16,000 sheets I must have after dinner because I have promised that to my customer and here are 4,000 which you have ordered for yourself and here is the bill.

Q You did not run an account with the Bendix Paper Company, you setting off against that account the charges for cutting? A No.

Q Did you have any other or further conversation with

CASE #2168

Mr. Fritche after this bill was presented to you as you say, and you got your paper? A No, then he left.

Q Never said another word to you on that morning, is that right? A He only said send the paper as quick as possible.

Q How much paper in all had you bought from Mr. Fritche? A I think about 17,000 and of this kind I don't know how much.

Q About how much? A Of this here paper, of the green paper, about six reams -- not at one time, and of the white paper about five reams.

Q Was all of the paper bought from Mr. Fritche sold by you to the Dragon Paper Company? A No, sir.

Q Was all of the gelatine paper bought by you from Mr. Fritche sold to the Dragon Paper Company? A I can't remember.

Q You did sell to them \$114 and \$150 worth of goods in July, didn't you? A I can't remember.

Q I will show you a piece of paper and ask you what that piece of paper is? A I can't tell that because I have not got the bill.

Q I will show you the bills? A Yes.

Q That was this gelatine paper which came from the Bendix Company, was it not? A Gelatine I bought all the time from Bendix.

Q Did you know the market value of that paper? A There is no price on paper. Every time they have to ask the company for a price and then we figure our profits.

Q You bought this paper yourself or did you buy it as an

CASE #2168

agent? A I don't buy for myself, I buy in order to sell.

Q How did you come to buy this gelatine paper, what was the occasion for doing it? A I buy and sell all kinds of paper. One day a Mr. Blyer, I believe it was, from the Dragon Company came into my place and he saw me cutting that paper and he asked me whether I sold such kind of paper and how much it would be for one thousand. I told him that I did not know, that I would have to ask because I had never before bought this kind of paper.

Q What happened then? A He said all right, find out, and I called up on the telephone Bendix and a girl answered and asked who it was and I said Weinstein. Afterwards someone spoke to me on the telephone and it was Mr. Bendix and I said Mr. Bendix, what is the price for that paper, of that paper, because I have a customer who wants to buy it. He told me \$17. That was the lowest price that he can quote. Then I went to the Dragon people and told them that I wanted \$19 a thousand. He said all right, send me -- I don't remember exactly whether it was three or six thousand.

Q You mean to say that you called up the Bendix Paper Company at a telephone number that you knew to be theirs and that they quoted you this paper at \$17 a thousand, is that right? A No, Bendix himself said it and the same day in the evening he himself was in my place.

Q Mr. Fritche was in your place, you mean? A Yes, and he asked me well, does the customer want the goods and I said

CASE #2168

yes. He said as soon as you want it let me know and as soon as I get the paper I will let you know so you can send for it.

Q Were you cutting paper for the Bendix concern at that time? A You mean that day?

Q During that period. A Have been cutting paper for them for the last two years and a half.

Q Was that the occasion of your first purchase of gelatine paper, this conversation you have told us about? A That was the first time I bought paper from them.

Q Was that before or after the receipt of that letter, Defendant's Exhibit L? A I don't remember. I can't remember.

Q Mr. Fritche never made any objection to making these bills out to you, did he -- the Weinstein Bookbinding -- and never said he wanted to use some other name up there? A Whose name?

Q Your name? A He never asked about it. He never spoke about it. He made out the bills as they are.

Q Is it not a fact that the hearing in the Magistrate's Court was not the next day but was ten days to two weeks later? A I don't remember.

BY THE COURT:

Q Why did you say it was the next day if you don't remember? A I was let go the next day.

Q You got out on bail? A Yes.

Q And from the next day up to the time of the hearing in the Magistrate's Court you were out on bail? A Yes, sir.

89127
CASE #2168

BY MR. OLCOTT:

Q You know Mr. Blyer of the Dragon Paper Manufacturing Company? A Yes.

Q You consulted with him about this case, didn't you?

A No, I never saw him afterwards.

Q You never saw him after the 18th of August and before the hearing in the Magistrate's Court? A No, neither Bendix or the other man -- nobody.

Q Do you remember having a conversation with Mr. Marks sometime after the hearing in the Magistrate's Court? A Yes.

Q What was the occasion of having that conversation?

A I came to my shop one day and the girl told me there was a telephone call from Rudolph Marks either 220 or 320 Broadway to bind some books. I came there and I found Bendix' lawyer and Fritche was sitting there and they said hello Weinstein, and I said hello. I was like dazed. The lawyer said see here Weinstein, we don't want any trouble, we know everything about the case. He said we know that Fritche was doing the stealing. He stole it but he paid us for everything and all we want of you is not to say anything against him.

Q Didn't you tell Mr. Marks at that time that you had consulted with Mr. Blyer of the Dragon Paper Company and that he had told you to have these printed and to blame it on Fritche? A No, sir.

Q You are positive of that? A Yes.

Q Do you know a man named Goldberg? A No.

CASE #2168

Q Did you ever see any of these before? (Showing papers)

A No -- I see them for the first time now.

Q Did you ever send a man with those bills over to Mr. Blyer's place of business to sell gelatine paper from the Bendix Paper Company? A No.

Q Are you sure of that? A Positive.

Q How much of a pay roll have you got in your place, how many people do you pay -- don't you know? A I can't remember that.

Q You can't remember the amount of your pay roll each week? A About \$58 and sometimes overtime -- \$75.

Q You do some cash transactions, don't you -- you sell and buy for cash sometimes in your place? A Sure, sometimes I cash for somebody if somebody comes in and asks me.

Q Is it not a fact the two checks, Defendant's Exhibit H and Defendant's Exhibit J for cash and endorsed by you were pay checks of the two Saturdays July 8th and July 15th and not checks given to Mr. Fritche -- look at them? A No.

Q Sure of that? A Sure.

Q You know the cashier down in the bank, don't you? A Yes.

Q What is his name? A I don't know the name. I know them by sight. There are three different ones.

Q Who does your bookkeeping? A Myself.

Q Then you do your writing, don't you? A Yes.

Q What did you mean by saying you could not tell until you saw the bills; that is your account, is it not? A Because

CASE # 2168

we write everything on the bill and on the bill is the duplicate number. Here it says only on a certain day there was a certain bill -- for instance July 17th it says here a bill for \$114, and the bill is in the customer's hands.

The Court admonishes the jury in accordance with Section 415 of the Code of Criminal Procedure and takes a recess until two o'clock.

After recess. Trial resumed.

B E N J A M I N W E I N S T E I N, resumes the stand:

CROSS EXAMINATION CONTINUED BY MR. OLCOTT:

Q I do not recall what you said was the reason for the loss of this part of that envelope, what was it? A I found it in this condition under the desk. I don't know why.

Q Under the desk? A Together with all the letters.

Q Just happened to be there on the floor? A There is a place under the desk where I keep all letters and advertisements and so forth.

Q You are careful with your things, are you not? A No, I don't care for those. This is just advertisements. I don't care.

Q How did you happen to keep this part of it or any part of it? A There are all kinds of letters in that place there for the last six or eight months. Whenever I need something I look for it.

Q You remember the occasion this \$98 check was given to you? A Yes.

CASE #2168

Q Tell us what happened then? A I received the paper, the 20,000.

Q What happened over at the Dragon Company when you got this check? A I brought over two bundles of paper and I told them to send their man for the balance and I took the check.

Q Was the check already for you? A No.

Q Who wrote it? A I can't remember. There was another man but I think it was a girl.

Q Mr. Blyer signed it, didn't he? A The boss signed it but I believe a girl made out the check.

Q Will you look at it, at the writing "Weinstein Book-binding", on Defendant's Exhibits A, B, C, D, E and F, and tell me if it is not the same as that on the check People's Exhibit 3? A No.

Q You say not? A No.

Q How do you spell your name? A W-e-i-n-s-t-e-i-n.

Q Is it not misspelled in both of these places in the same manner W-i-e-n-s-t-e-i-n? A Well.

Q Both the same and both misspelled? A Yes.

Q Is it not a matter of fact that the girl in Blyer's office wrote Defendant's Exhibits A, B, C, D, E, F, inclusive?
A I don't know.

REDIRECT EXAMINATION BY MR. STEINMAN:

Q You say that some time in the month of June or July, 1916 you wanted to know the price of paper and you called up

89127
CASE #2168

the Bendix Paper Company? A Yes.

Q Who spoke to you over the phone?

Objected to as repetition. Overruled.

A At first a girl answered me and asked who iw twas and I said Weinstein.

Q And then who spoke to you? A A man.

Q That same day did anybody come to see you? A Yes, sir, in the afternoon.

Q Who came to see you? A After dinner.

Q Who came to see you? A Bendix.

Q You mean Mr. Fritche? A Yes.

Q Now, sometime after the hearing in the Magistrate's Court, you say you were called to Mr. Marks' office? A Yes.

Q The girl told you that Mr. Marks called up? A Yes.

Q And you went to 320 Broadway? A Yes.

Q And you found there Mr. Marks and Mr. Fritche? A Yes.

Q In Mr. Marks' office? A Yes.

Q Will you repeat again just what the conversation was had between you and Mr. Marks?

Objected to as repetition. Objection overruled.

A I came there and he said hello Weinstein and I said hello. He said say Weinstein we know now the whole story, but we don't want to make any trouble. Fritche told us everything and he paid us all the money and we only want of you one thing that you should not say anything against him, you should say that you bought it from another man in Bendix but that you cannot

CASE #2168

recognize that man or identify that man.

Q What did you say to Mr. Marks then? A I told him I was a young fellow, I don't know about the business, this is the first time I am in such a business and I am afraid of trouble, that I will have to tell the truth. Then he opened the door and he said get out of here I will fix you and I left.

Q That was the last you saw of Mr. Marks? A Yes.

Q Now, the checks marked in evidence were taken from the regular check book? A Yes, sir, sure.

Q When you sign your checks, you enter upon the stub to whom they were given? A Yes, sir, I have to know and remember to whom the checks were given.

Q I show you this piece of paper, where did it come from?
A From my check book.

Q Can you see on that paper under the date July 8th the entry of the check for \$50? A Yes, sir.

Q Does that paper state to whose order?

MR. OLCOTT: I object to what the paper states.

Objection sustained.

MR. STEINMAN: I offer that piece of paper in evidence.

THE COURT: How is that competent evidence.

MR. STEINMAN: It will corroborate his testimony that a check for \$50 was given to Fritche and in the stub he marked Bendix Paper Company under that date and the number corresponding with the number on the check and the

CASE #2168

same date as the check. There are three checks in evidence, which were questioned and have these three stubs to prove it.

THE COURT: I sustain the objection.

BY THE TENTH JUROR:

Q As I understand there is some gentleman by the name of Blyer mentioned in there, did you ever have any other occasion to know that man outside of business transactions? A No, only in business.

THE COURT: Blyer is the man that represents the Dragon Company.

BY THE TENTH JUROR:

Q Do you know if this Mr. Blyer was ever in any paper business outside of the Dragon Paper Company? A I don't know Blyer. I sold to the Dragon Company.

BY MR. OLCOTT:

Q You sold to Mr. Blyer, didn't you, of the Dragon Company? A Now I know his name is Blyer.

AUGUST R I H A , called as a witness in behalf of the defendant, duly sworn and examined, testified as follows:

(Residence 1439 First Avenue.)

DIRECT EXAMINATION BY MR. STEINMAN:

Q You are in the employ of the Weinstein Bookbinding Company? A Yes.

Q This Mr. Weinstein being your employer? A Yes.

CASE #2168

Q Do you remember the 18th of August, 1916? A Yes.

Q The day Mr. Weinstein was arrested? A Yes.

Q Do you remember the morning of that day going to the Bendix Paper Company? A Yes.

Q Did you receive any packages of paper for Mr. Weinstein?
A Yes.

Q How many packages of paper did you get at the time altogether? A Twenty.

Q Who gave them to you? A Mr. Bendix and a working man.

Q Mr. Bendix? A And the workman.

Q When you say Mr. Bendix do you mean this gentleman?
(Referring to Paul Bendix) A No, sir.

Q Did you see Mr. Fritche in the police court hearing?
A No.

Mr. Fritche is now brought into court.)

Q Is this the man who gave you the paper? A Yes, sir,
that is the man.

Q Did you know the name of this man? A No -- as Mr.
Bendix.

Q You did not know his name was Fritche at that time? A No.
BY THE COURT:

Q Do you know it now? A Yes.

Q Why did you say Mr. Bendix gave them to you if Mr.
Fritche gave them to you? You told this jury Mr. Bendix gave
them to you? A That was his name.

Q But it was Mr. Fritche gave them to you? A Mr. Bendix.

CASE #2168

Q That man who just went out, you know his name is Fritche? A No, he never told me so.

Q You just told your lawyer you knew his name was Fritche, when did you find out his name was Fritche? A Just now I found it out.

Q It was Mr. Fritche gave them to you? A Yes.

Q At leas that is the man you mean? A Yes.

BY MR. STEINMAN:

Q Did you ever see this man in Weinstein's place of business prior to the 18th of August? A No.

Q Who packed the paper? A I brought it to Weinstein's place.

Q In Bendix' place of business, when they gave you those 20,000? A He was there and a workman was there.

Q He gave them to you? A Yes.

Q You put them on the push cart? A No, he put them on.

Q Who did? A They did.

Q This man who was here, Mr. Fritche? A Yes, sir.

Q And you took them over to the Weinstein Bookbinding Company? A Yes.

CROSS EXAMINATION BY MR. OLCOTT:

Q How do you know there were twenty there? A Because there were thirteen supposed to be there and counted them up and there was seven more.

Q There was thirteen supposed to be there and there was

CASE #2168

seven more? A Yes.

Q How do you remember that; how did you happen to pay any attention to that? A He puts boards around it to hold the whole seven and he tied them up so they did not fall apart.

Q You counted them? A Yes, and he forced me to take them and gave me a dime to take it.

Q He forced you to take it? A Yes.

Q Were you not over there to take it? A Yes. I was not supposed to take it all.

Q Why not? A I could not carry it all.

Q Did you carry it all? A I pushed it.

Q Why couldn't you carry it all -- you did finally for 10 cents -- what do you mean that you were forced? A He gave me 20.

BY THE COURT:

Q How many did you call for? A I don't know. He told me I should take these and gave me a dime.

Q Didn't you bring an order over there for paper? A Mr. Weinstein told me to go down.

Q Didn't you have anything to show the Bendix people when you went there? A No, they knew me.

Q Who knew you? A The fellow that went out.

Q He knew you? A Yes.

Q You had been there before? A Yes.

Q How many times? A About ten months I was down there.

Q You were going there for ten months? A Yes.

891273V
CASE #2168

BY MR. OLCOTT:

Q And they had forced you to take the paper? A Yes.

A B E W E I N S T E I N, called as a witness in behalf of the defendant, duly sworn and examined, testified as follows:

(Residence 175 Madison Street.)

DIRECT EXAMINATION BY MR. STEINMAN:

Q You are a brother of the defendant? A Yes.

Q You worked in his place of business? A Yes.

Q And you have been working there last summer? A Yes.

Q In the month of July, 1916, did you give \$17 that your brother gave you, to someone in the Bendix Paper Company? A Yes.

Q To whom did you give it? A Bendix.

Q Whom do you mean by Mr. Bendix? A Mr. Bendix of course.

Q This gentleman sitting right here? (Indicating Mr. Bendix)

(Mr. Fritche is brought into court)

BY THE COURT:

Q Did you see that man? A Yes.

BY MR. STEINMAN:

Q Did you give the \$17 to him? A Yes.

Q On the 18th of August, 1916, on the day your brother was arrested, do you remember how much paper your brother asked you to cut? A Yes, sir.

Q How much? A 20 packages.

CASE # 2168

BY THE COURT:

Q How much in each package? A A thousand in a package.

Q At the time that you gave this last man that was here, Mr. Fritche the \$17, did he give you anything? A Yes.

Q What did he give you? A A bill.

Q Did he give you any paper? A Yes.

Q How much paper did he give you? A One package.

Q You mean a thousand sheets? A Yes.

Q He gave you a bill? A Yes.

Q Do you remember going to the State Bank, Clinton Branch, in Rivington Street to cash these checks on August 20th and August 21st, 1916, the day after your brother was arrested, or two days after? A Yes.

Q Did the paying teller in the bank pay you the money on those checks?

Objected to. Sustained.

MR. STEINMAN: I want to show it was not necessary for the one that got the cash to put his name on the check.

Objected to. Sustained and exception.

Q On the 18th of August you said your brother asked you to cut 20,000 sheets of paper? A Yes.

Q Did he tell you not to cut any paper?

Objected to as leading.

Q Did he say anything to you about cutting or not cutting other paper? A Yes.

Q What did he say to you? A He said I should cut up

CASE #2168

16,000 and 4,000 I should leave aside.

CROSS EXAMINATION BY MR. OLCOTT:

Q Why did you say your brother told you to cut up 20 packages? A Count 20 packages.

Q You counted them? A Yes.

Q How many did you find in the packages? A 20. I did not count the sheets. I counted the packages.

Q You have been with your brother some time? A Yes.

Q You are now working with him? A Yes.

Q You are friendly with him? A I am working with him.

Q He is your own brother? A Yes.

Q Do you know Mr. Blyer of the Dragon Paper Company?

A Yes.

Q When did you see him last? A Well -- last --

BY THE COURT:

Q The last time you saw him -- did you see him last night? A No, sir.

Q When? A 57th Street court.

Q When was that? A I can't remember exactly what date that was.

BY MR. OLCOTT:

Q Some time last summer? A Yes.

Q Up in court that day? A Yes.

Q Have a talk with him? A No.

Q Did you see your brother talking to him? A I don't know.

CASE #2168

Q Did you see him at any time before that? A He always came down in the place.

Q You knew him as Mr. Blyer when he came down in the place?

A Yes, I knew he was from the Dragon Company.

S A M B I A R S K Y, called as a witness in behalf of the defendant, duly sworn and examined, testified as follows:
Through the Official Interpreter Mr. Rosenthal.

DIRECT EXAMINATION BY MR. STEINMAN:

Q You are employed by Benjamin Weinstein, the defendant?

A Yes.

Q And you have been working for him in the months of July and August, 1916? A Yes.

Q Do you remember on the 15th of July receiving a check from Mr. Weinstein for \$50? A Yes.

Q Who did you give this check to? A To Mr. Bendix. I gave this check to Mr. Bendix.

Q Is this the Mr. Bendix you are talking about? (Indicating Mr. Paul Bendix) A No.

BY THE COURT:

Q What is the name of the man you gave it to? A Mr. Bendix.

Q What is the real name of the man? A I don't know.

Q You know it now? A No, I don't know, I just know Mr. Bendix.

Q Weren't you told it was not Mr. Bendix you gave it to

CASE #2168

at all? A My boss told me that if Bendix should come I should give him the check for \$50.

Q But you know now it was not Mr. Bendix, don't you -- now tell the truth? A Yes, now, they pointed out to me another man.

Q When did they point him out to you? A Just now.

Q Where? A Here, just now.

Q You have talked this over before today -- do you mean to say to this jury the lawyer put you on the stand without knowing what you were going to say? A The lawyer did not call me as a witness.

Q The lawyer did call you as a witness; haven't you talked about this case with Mr. Weinstein or this gentleman there, before you went in that seat? A Before not.

Q Before now -- you said last night? A Weinstein asked me I wanted to go for a witness.

Q Answer me yes or no; I want to know if you are going to tell this jury that you never talked about this case with the lawyer or Mr. Weinstein before you went on the stand? A No.

Q You did talk about it -- you know it was not Mr. Bendix that you gave that paper to? A No.

Q You do not know that? A No.

Q They did not point out the man you gave it to at all?

A I know Bendix.

Q You still persist it was Bendix? A Now --

Q What do you know now -- this jury must say if they are

CASE #2168

going to believe you or not -- that is what I am interested in.

A I know Bendix but just now a man was pointed out to me who is Bendix.

Q And you have not talked about Bendix at all before today? A No, did not talk to anybody.

Q Did you ever see the man since that day to whom you gave that check? A Several times.

Q Where? A In Weinstein's place.

Q When was the last time you saw him? A Before he was arrested.

Q Didn't you see him out in the hall there today? A Yes, sir.

Q Were you not talking to him? A No.

Q Were you not told what his name was? A No.

(Mr. Fritche is now brought into the court room)

BY THE COURT:

Q You saw that man that was just brought in? A Yes.

BY MR. STEINMAN:

Q Was that the man you gave this check to? A Yes.

BY THE COURT:

Q You saw him outside this morning? A Yes.

Q You saw him yesterday? A No, I did not see him yesterday.

Q Where did you see him before today? A I saw him in Weinstein's place.

Q When? A In August.

CASE #2168

Q You never saw him since last August until today? A No.
BY MR. STEINMAN:

Q At the time you gave this Mr. Fritche this check for \$50, did Mr. Fritche give you anything? A Two bundles of paper.

Q How many sheets do you mean by two bundles? A Two bundles.

CROSS EXAMINATION BY MR. OLCOTT:

Q Can you read? A No.

Q How do you know that is the check? A It is \$50.

Q Then you can read -- how do you know that is the check?

A Weinstein left on his desk two checks, one he said was for \$50 and I should give to Bendix for the paper.

BY THE COURT:

Q How do you know that is the check? A Because this check is for \$50 and the other was for a smaller amount.

Q Is that the only \$50 check in the world? A At that time he gave me this check, it was the same colored paper.

Q He gave you a check like that; you swore that was the very same check? A I said a \$50 check.

Q You did not say a \$50 check, you said this check which you hold in your hand, do you want to change that or not; will you swear that the check you hold in your hand was the check you gave to this person or not, yes or no? A No.

Q Why did you swear to that, if you cannot -- have you any regard for an oath? A I cannot read.

CASE #2168

Q Why did you swear that check was the check, if you cannot read, that is the question put to you? A Because I saw it was for \$50.

Q You have been told you would be handed a check and you were to swear it was the check? A No, I was not told that.

BY MR. OLCOTT:

Q You never had any talk about what was to happen here and what you were to say, is that right? A No.

WILLIE WEINSTEIN, called as a witness in behalf of the defendant, being duly sworn and examined, testified through the Official Interpreter Mr. Rosenthal as follows:

(Residence 692 Caldwell Avenue, Bronx)

DIRECT EXAMINATION BY MR. STEINMAN:

Q You are not relation to the defendant? A No.

Q You are strnagers? A I only worked for him.

Q You work for him? A Yes.

(Mr. Fritche is now brought into the court room)

Q On the 18th of August, 1916, did you see this man at Mr. Weinstein's place of business? A Yes, sir.

BY THE COURT:

Q You saw him there? A Yes.

BY MR. STEINMAN:

Q What happened there that morning? A Mr. Weinstein called me and asked me to go outside to change a five dollar

8912# ESD
CASE #2168

bill. Weinstein was standing on one side and Mr. Bendix on the other side.

BY THE COURT:

Q By Mr. Bendix you mean that man that was just at the Bar? A Yes, sir, the same man.

Q You thought that was Bendix, too? A All people called him Bendix.

Q We ask what you think, not what all people think?

A Certainly it was Bendix.

BY MR. STEINMAN:

Q What did you see pass between Weinstein and this man Mr. Fritche? A I brought back the five dollar change and I saw Bendix holding money, paper money, and next to him was lying there a paper on which something was written. I don't know what it was because I cannot read English.

No cross examination.

O R E S T E F E R R A R A , called as a witness in behalf of the defendant, duly sworn and examined, testified as follows:

(Residence 407 East 120th Street)

DIRECT EXAMINATION BY MR. STEINMAN:

Q Do you know the defendant? A Yes.

Q Where are you employed? A Leslie Judge Company.

Q You have been employed by the Leslie Judge Company and were so employed in the month of August, 1916? A Yes.

CASE #2168

Q Were you there on the 18th of August? A Yes.

BY MR. OLCOTT:

Q Where do you mean by there?

MR. STEINMAN: At Mr. Weinstein's place of business.

THE WITNESS: Yes.

(Mr. Fritche is now brought into the court room)

BY MR. STEINMAN:

Q Did you ever see that man before? A I saw him once.

BY THE COURT:

Q Did you ever see him before? A Yes.

BY MR. STEINMAN:

Q Where did you see him? A At Weinstein's place.

BY THE COURT:

Q You mean to say that is the only time you ever saw him?

A Yes.

Q Didn't you see him outside this morning? A Yes.

Q Did you see him yesterday? A Yes.

Q How many times did you see him before yesterday? A Once.

Q That was the day before? A That was yesterday, the second time, and today is the third time.

Q You saw him once in Mr. Weinstein's place? A Yes.

Q You remember that was the 18th of August? A Yes, sir, on a Friday.

Q You never saw him until yesterday? A I saw him yesterday, yes.

Q You recognized him at once? A Yes.

CASE #2168

Q You have a good memory? A Yes.

BY MR. STEINMAN:

Q Now, what were you doing at that time in Weinstein's place?

THE COURT: That is cross examination of your own witness.

CROSS EXAMINATION BY MR. OLCOTT:

Q How do you remember it was the 18th of August? A Because I went down to Weinstein's place and that was on Friday between half past eleven and twelve o'clock. I called him up first in the morning to send over a boy and then I did not see the boy coming across and so I stepped in Weinstein's place to send a boy over right away as we had a job to get out.

Q How do you know that was the 18th, what makes you fix the 18th in your mind? A Because I went down there Friday and on Saturday the job was supposed to go out and I went in Weinstein's place and I asked for Weinstein and they said he was arrested.

Q That is how you fix it? A Yes.

Q You saw that man just that one time in the morning?

A Yes.

BY THE COURT:

Q It was after the arrest that you saw him or before the arrest? A Mr. Weinstein -- I saw him before the arrest -- that was on Friday.

CASE #2168

Q You have Friday all right -- you have told us about Friday, drop Friday and just answer the question put to you?

A I went on Saturday.

Q You saw him on the same day he was arrested? A Yes.

Q How many times had you been in his shop before that day? A That was the first time that day.

Q That was the first time and the only time you were at his shop? A No, I come around there nearly every week.

Q That was your first visit? A That day.

Q That day was your first visit? A Yes.

Q Did they tell you what he was arrested for? A No.

Q Did you ask? A No -- I asked, yes.

Q What did they say? A He said did you see that fellow there, he paid him some money.

Q He got arrested for paying him some money? A That is all I know.

Q Did you ever see anybody get arrested for paying another man money? A No, I wanted to know.

Q You happened to be in the shop and saw him pay it?

A Yes.

Q And he got arrested for that? A Yes.

Q You did not get arrested? A No.

BY MR. OLCOTT:

Q That was on the 18th? A Yes.

Q No question about it? A No, sir.

CASE #2168

TILLIE WEINSTEIN, called as a witness in behalf of the Defendant, duly sworn and examined, testified as follows:

(Residence 215 East 28th Street)

DIRECT EXAMINATION BY MR. STEINMAN:

Q You are the wife of the defendant? A Yes.

Q Were in your husband's place of business in the morning of the day upon which he was arrested? A Yes.

Q That is the 18th of August, 1916? A Yes.

Q Did you bring him breakfast that morning? A Yes.

(Mr. Fritche is now brought into the court room)

Q When and where did you see this man in your husband's place of business? A What did you say?

BY THE COURT:

Q Did you ever see that man before? A Yes.

Q Where and when? A Friday when I brought my husband breakfast about 11 o'clock I met this man over there.

BY MR. STEINMAN:

Q Now, did you ever see that man there before? A Yes, sure, I saw him many times.

Q Did you hear any conversation between your husband and this man Fritche? A No.

Q Did anything happen between Weinstein and Mr. Fritche?
A No.

Q But you saw him there that morning? A Yes.

No cross examination.

CASE # 2168

MR. OLCOTT: With your Honor's permission I would like to ask the defendant one or two questions concerning a matter brought out in rebuttal.

BENJAMIN WEINSTEIN, recalled:

BY MR. OLCOTT:

Q This is the stub taken from your book? A Yes.

Q And that is the stub from which that check was torn, is that right? A Yes.

Q Look at that check and look at that stub and compare the numbers so there will be no mistake about it? A Yes, sir.

MR. OLCOTT: I offer this stub in evidence.

Received and marked People's Exhibit 4.

Q You are familiar with the water marks on paper, are you not? A Yes -- not in all papers.

Q Compare the water marks on these papers and tell me now if you still say that check was torn from that stub?

THE COURT: Look at the water marks.

THE WITNESS: This is the same.

THE DEFENCE RESTS.

PAUL BENDIX, recalled:

BY MR. OLCOTT:

Q I show you a piece of paper Defendant's Exhibit L and I ask if the letter head and printed matter on that paper is of your concern? A No, it is not.

BY THE COURT:

CASE #2168

Q How do you know -- look at it -- did you ever see it before? A No.

Q Did you ever see it before this morning? A No.

Q Did not the District Attorney show it to you during recess? A No.

Q This minute now, you understand the question, this is the first time you saw it? A Yes -- I saw it lying on the table here when I moved out.

Q How do you mean? A When recess was taken at about one o'clock.

Q You had no chance to examine it then? A No.

Q What I want to get is a careful answer and the result of thought and deliberation, look at it well? A I can see it at a glance.

Q You can see at a glance it is not your paper? A Yes.

BY MR. OLCOTT:

Q I asked you at noon time, in the hall, to bring all of the types of paper which were used by your concern, is that right? A Yes.

Q I show you these papers that were handed to me by you at two o'clock and I ask you if those are all the types of paper used by your concern or have been for the past year? A Yes, sir, they are.

Marked for identification People's Exhibit 5.

Q I show you Defendant's Exhibits A to F inclusive, and ask you if that type of billhead was ever used by your concern?

CASE #2168

A Never has been used.

Q Now, on the occasions which you have testified, for the past two years, when you saw this defendant, by what name did he call you? A Mr. Bendix.

BY THE COURT:

Q You met him before the 18th of August? A Yes.

Q How many times? A Dozens of times.

Q And he always called you Mr. Bendix? A Yes.

Q Who was this Mr. Fritche, is he employed by you? A Yes.

Q His position with you is what at the present time?

A Officer manager.

Q Now? A Now.

BY MR. OLCOTT:

Q He has a right to sign checks for you? A Yes.

Q And that right has continued from last summer to the present day? A Yes.

Q Now, on the 18th, at the time that a certain number of packages were sent, you have already testified that 16 were sent, were you present when they went out? A I was.

Q Did you see the number of packages that went out?

A Yes.

Q Do you remember this young man here taking them? A Yes.

Q It was 16 and not 20? A 16 -- not 20.

BY THE COURT:

Q Did not the other four go over? A They did not.

BY MR. OLCOTT:

CASE #2168

Q Only 16? A 16,000 sheets.

Q No other four went over? A No.

BY THE COURT:

Q How many were ordered?

MR. OLCOTT: None were ordered.

Q You sent 16? A To be cut.

Q Only 16? A Yes.

Q Not 20? A No, not 20.

BY MR. OLCOTT:

Q Those that went out that morning were the only ones marked by the chemist? A Yes, sir, the chemist worked only one day.

BY THE COURT:

Q What did Mr. Fritche have to do with them? A As a rule he put up the diagram showing to the cutter in what way a sheet 20 by 24 ought to be cut in small strips or smaller cuts.

Q He had nothing to do with the deliveries? A Sometimes he gave orders to the stockroom boys to deliver the paper or give it over to the errand boy of Mr. Weinstein.

BY MR. OLCOTT:

Q He had the same powers that you had in the place? A Yes.

Q Your general manager? A Yes.

Q On the occasion when you went over on the afternoon of the 18th of August to Mr. Weinstein's store, do you remember having a conversation about counting? A Yes, sir.

CASE #2168

BY THE COURT:

Q Discussion with hom?

BY MRE OLCOTT:

Q There was a general conversation?

THE COURT: With whom?

Q With the defendant? A With the defendant.

Q There was general talk about when and how these were to be counted? A Yes.

Q When were they counted, those found in Weinstein's place -- not those found in the Dragon Company's place -- do you know when they were counted? A No, I do not.

Q They were returned to you? A Returned to us.

Q Were you present when they were counted? A I was present when they were counted, after they came back to our store.

Q On that occasion in the thousand sheet wrappers, how many were found, if you remember? A Only 900 in each 1,000 sheet wrapper.

Q So, of those returned from Weinstein's place of the 16,000, there were 100 missing from each 1,000? A From each 1,000 package.

CROSS EXAMINATION BY MR. STEINMAN:

Q How long after these sheets were returned to you were they counted? A I did not quite understand the question.

Q How long after these sheets were returned to you were they counted? A They were counted right away.

CASE # 2168

Q The same day? A The same day.

Q In your presence? A In my presence.

Q You stood there through the entire time of counting?

A Yes.

Q How many sheets were there altogether? A 16,000 less 10 per cent -- exactly out of a thousand sheet package 100 taken out.

Q What didn't you want to have these sheets counted in Weinstein's place when I was there? A Because I did not want to.

Q Do you remember I asked you to count them in my presence and you refused? A I refused.

Q I told you after their return to your place Mr. Weinstein will refuse to be responsible for the number of sheets?

A Yes.

Q And warned you there and then to count them in my presence? A Yes.

Q And you refused to do it -- you answered to Mr. Olcott's questions that this is all the printing and all the stationery ever in use in your place? A Yes.

Q You have never used anything else? A Nothing else.

Q During how long a period have you been using this kind of paper? A Since about five years. We have not changed it in five years, our stationery.

Q Is it not a fact that you had all these printed recently? A What?

CASE #2168

Q You had all this new stationery printed just a little while ago? A We never changed our type of printing in five years.

Q You never had any other kind of printing? A No, always those.

Q Did you ever have any lithographed letter heads? A They are lithographed, -- mine are. My letter heads are lithographed.

Q You never had any other style outside of these? A No.

Q I show you a letter dated August 21st, 1916, look at it? A Yes.

Q Does that come from your firm? A From my firm.

Q Will you say now that the only kind of stationery ever used by you is what you have just stated to Mr. Olcott? A Yes, the same lithograph.

Q Will you show me one like it. (The witness picks one out) A Exactly the same.

Q You say this is exactly the same as these? A Yes, sir, the same lithograph, the same stone.

Q Look at the imprint on these blank letter head and see if it is exactly the same as on this letter head?

THE COURT: He has already told you it was. It is for the jury to say if you want to make an issue of it.

THE WITNESS: Printed from the same stone by the same concern.

MR. STEINMAN: I offer these papers in evidence.

CASE #2168

Received and marked Defendant's Exhibits O and P.

THE COURT: All that is produced is the lithograph--
the style of printing. He says they were all printed from
the same stone.

THE WITNESS: The telephone number was changed.

BY THE COURT:

Q You mean you got a new telephone number and had to
change that? A Yes, sir, but the lithographic work, Bendix
Company is always the same.

Q The same address, too? A Yes.

Q You have not moved your place of business? A No, the
name of the concern, Bendix Paper Company always been there.

Q They changed your telephone and gave you a new number?
A Yes.

BY MR. OLCOTT:

Q You changed the place of your telephone number at the
time of changing the number on that letterhead? A Yes, and
we changed something else. I used to have on the letterhead
Bendix Paper Company, Paul Bendix, Proprietor, and I left
that out, but I never changed the head of the letterhead.

Q The general style was the same? A Yes.

J O S E P H J. C O O N E Y, recalled by the People:

BY MR. OLCOTT:

Q Do you remember the occasion of going to Mr. Weinstein's
store after the arrest and having a conversation with him
about the delivery of paper, or, if not there, where was it

CASE #2168

you had a conversation? A Yes.

Q Who was present at that time? A Mr. Weinstein, some friend of his, I don't know who he was.

BY THE COURT:

Q The attorney here? A No. Mr. Bendix' employe, the Craft Detective Agency and their operators.

BY MR. OLCOTT:

Q Now do you know if Mr. Bernhard was present? A Yes.

Q Tell us what was said by the defendant and you in the way of questions answered in regard to the delivery of this paper to the Dragon Company that day? A While standing at the table in Weinstein's office that evening about 7:30 or 8 o'clock I believe Mr. Bernhard said to him, to Weinstein, the defendant, why don't you remember I went over -- I went over there and saw you going upstairs and he said no, not me. I said -- my answer to him was, what the devil are you lying about, did not this man follow you, pointing to Bernhard, didn't he follow you over there and see you go upstairs and all, and Weinstein did not answer but just shrugged his shoulders.

Q Before this conversation did the defendant make any statement about not having taken it over there? A Yes, sir, he said he had not.

Q Tell us that? A He stated, or words dimilar to these, that he had not been over near the Dragon Paper Company. I did not know where that was and I said where is that place.

CASE #2168

Over here in 28th Street between Fifth and Fourth Avenue.

BY THE COURT:

Q Who said that? A I think it was Bernhard --.

Q Do not say anything except what the defendant said.
What did the defendant say to you? A The defendant first
said he had not been over there, to me.

Q What else did he say, if anything? A I said what good
is there lying about it.

Q Did he ever say anything else? A No.

THE COURT: What you said is evidence only against
you and not against him. He says he did not go over
there. The rest will be stricken out.

HERMAN E. M. BERNHARD, recalled:

BY MR. OLCOTT:

Q Were you present during a conversation between Officer
Cooney and others and this defendant? A Yes.

Q Did you hear what this defendant said in answer to any
questions inquiring as to whether he had been over to the
Dragon Paper Company that day -- what this defendant said?

A He denied having been over there first.

BY THE COURT:

Q He said he was not over there? A Yes.

Q He did not use the word deny? A He said I was not
over there.

Q Did he ever say anything else? A He changed and then--

CASE #2168

Q What else did he say; let the jury determine whether it was changed. A That he went over there.

Q When did he say he went over there -- no matter what you did, you are not on trial. I want what he said?

BY MR. OLCOTT:

Q How much later in point of time did he say that he had been over there after denying first that he was over there?

A Just a few minutes afterwards.

Q Between the two times, the denial and the admission of being over there, there was a general conversation? A Yes.

Q In which a number of people talked including the defendant? A Yes.

No cross examination.

O S C A R F R I T C H E, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

(Residence 807 Lexington Avenue)

DIRECT EXAMINATION BY MR. OLCOTT:

Q What is your business? A General manager of the Bendix Paper Company.

Q How long have you been employed in that capacity? A For about four years.

Q Before that time by whom were you employed? A I was London representative of a Berlin banking house.

Q You still occupy the position of general manager? A I do.

CASE #2168

Q For Mr. Bendix? A Yes.

Q In the Bendix Paper Company? A Yes.

Q You know this defendant? A I do.

Q When did you first meet him, what was the occasion of meeting him, keep your voice up? A I met him in the spring of 1914 when he had certain papers of ours for cutting.

Q What was the occasion of your meeting him? A I remember it was a patent paper and he was not able to cut it and finally we took it back to our place and to give it to some other cutter.

Q From that time on about how frequently have you seen him? A He did very little cutting for us in 1914. I saw him very infrequently then and he did a little more in 1915 and I may have seen him eight or ten times during the year.

Q On the occasions of your seeing him, it was when you went over there to superintend or instruct as to the cutting of paper? A Entirely.

Q On the occasions you went over there to see him, did you address him by name and did he address you by name? A I addressed him by name, I called him Weinstein.

Q Do you know if he called you by name? A I would not be positive about that.

BY THE COURT:

Q Did you ever tell him your name? A Yes, I guess I told him my name at the beginning.

Q Did you ever represent yourself as Mr. Bendix? A I

8917-2168
CASE #

never did.

BY MR. OLCOTT:

Q You never said you were Mr. Bendix? A No.

Q In 1916 how many times between we will say the first of January and the first of August did you have occasion to go over there to see Mr. Weinstein in connection with the business?

A I should say about ten to fifteen times.

BY THE COURT:

Q How far was your place from his? A About ten blocks.

Q Where was your place of business? A 18th Street and Irving Place.

Q And his? A On 28th Street, I believe, between Lexington and Third Avenue.

BY MR. OLCOTT:

Q You went over there for what purpose? A For the purpose of instructing him regarding the cutting of our paper.

Q He had machines there to cut it, which you did not have? A Exactly.

Q Now, the defendant has stated that he bought paper from you, did you ever sell him any paper? A I never did.

BY THE COURT:

Q Were you in the business of selling paper? A The Bendix Paper Company is.

Q You sold paper besides having it cut, sold it in these bundles? A Yes, sir. We sold the paper that was cut for us.

Q Did you have other paper for sale besides that which

CASE #2168

was cut? A Yes, sir.

Q These bundles were sent over there to be cut up in smaller shapes? A Yes, sir.

Q For customers? A Yes.

Q You had some customers to whom you sold paper and they got it cut themselves? A Yes, sir.

Q Did you ever sell him any? A I never did.

BY MR. OLCOTT:

Q I show you Defendant's Exhibits A to F and ask you if you ever gave these or caused them to be given to Mr. Weinstein?

A I did not. The first time I saw these exhibits was at the Magistrate's Court.

Q Have you ever seen any similar letter heads to those there? A No, I did not.

Q Is that your handwriting? A It is not.

Q You never saw them until in the Magistrate's Court at the end of August? A Exactly.

BY THE COURT:

Q You do not recognize the handwriting? A I do not recognize it.

Q As that of one of your employees? A It is not.

Q Do you know whose handwriting it is? A I do not.

BY MR. OLCOTT:

Q I show you three checks Defendant's Exhibits J, H and G, and I ask you if you have ever seen those before? A No, I believe they were up at the Magistrate's Court, too.

CASE #2168

Q Did you ever receive them from this defendant in payment for anything? A No, I did not.

Q Or ever receive them at all? A No, I never did.

BY THE COURT:

Q Did you ever get any checks from him? A I never got any checks nor did I get any cash from him.

Q You never had any transactions with him except in looking after or talking about the work of the Bendix Company?

A No. The only money transaction that ever passed between us was the Bendix Paper Company paying him for cutting.

BY MR. OLCOTT:

Q You were instrumental in having him paid for the cutting of this paper? A And besides I never handed the checks personally.

BY THE COURT:

Q Did they mail the checks to him? A Yes.

Q You paid him by check? A Yes.

Q You did not bring it over to him? A No, mailed every check to him.

BY MR. OLCOTT:

Q You remember the 18th of August? A I do.

Q Did you go to this defendant's place of business on the 18th of August before the afternoon when you went with others, did you go there alone on that day in the morning? A I did not.

Q positive of that? A Very positive of that.

CASE #2168

BY THE COURT:

Q You were not there at 11 o'clock that morning? A I am positive of that, that I was not.

BY MR. OLCOTT:

Q Do you remember where you were at that time? A Yes, as far as I remember I stayed in the office up to about one o'clock.

Q Were you present at the time these various sheets of paper were being marked and counted as testified to by Mr. Bendix? A Yes, I was present.

Q You knew of them being marked?

THE COURT: They were marked on the 17th?

MR. OLCOTT: Some of them, but the 18th, 16,000 were marked.

THE COURT: He had the chemist there one day.

MR. OLCOTT: That is the 18th. The others he marked with pencil.

BY MR. OLCOTT:

Q You saw the chemist there and others working? A Yes.

Q And you knew the purpose of it? A Yes, sir, I certainly did.

Q When did you first see Mr. Weinstein on that day? A I saw him first when we went over to his place which was about five o'clock.

Q Who was there at that time, if you remember? A Mr. Craft, Mr. Bernhard, Mr. Marks and myself.

CASE #2168

CROSS EXAMINATION BY MR. STEINMAN:

Q You have known the defendant Weinstein for a number of years? A I know him.

Q You have had all transactions with him personally for the Bendix Paper Company? A I had transactions with him for the Bendix Paper Company only.

Q You went to his place of business several times? A I did.

Q And spoke to him? A I did.

Q And his employes? A In his absence I may have done so.

Q They called you Mr. Bendix? A That may be. I don't remember that.

Q You never corrected them? A I don't think I did -- if they did.

Q If they called you Bendix, you never told them your name was Fritche? A I hardly think they called me Bendix, but called me Bendix Paper Company.

Q Never called you Mr. Fritche? A I do not recall that.

Q Is it not a fact you have been selling paper to Weinstein for about eight months? A I have not.

Q And you have been collecting money from Weinstein for this paper? A I have not.

Q You did not? A No.

Q You know if this was true, you would be guilty of a crime? A I know that.

BY THE COURT:

CASE #2168

Q You know stealing is a crime? A I know that.

Q To take your boss's paper and sell it to your own advantage, that is a crime? A Yes.

BY MR. STEINMAN:

Q Do you remember the day of the arrest? A Yes.

Q You remember Mr. Weinstein was taken into custody by one of your private detectives? A Yes.

Q And taken to the station house? A He was taken to the station house by an officer.

Q It was not Mr. Cooney was it? A I am not positive of that, I rather think it was a uniformed officer.

Q Before he was taken into custody some time elapsed?
A Yes.

Q You stayed at Mr. Weinstein's place of business that afternoon or evening for several hours before Mr. Weinstein was finally arrested? A May have been an hour or an hour and a half, yes.

Q Do you remember just what conversation was had between Weinstein and yourself and Mr. Bendix? A I don't think I talked much to him. I left it to the others.

Q Left it all to the others? A Yes.

Q Do you remember telling Mr. Bendix not to arrest Mr. Weinstein? A I don't know.

Q You don't know? A No, sir.

Q You may have said it? A We were not very anxious to arrest Weinstein at that time.

CASE #2168

Q When you say we, you mean yourself, you were not anxious to arrest him? A No, sir.

Q You did not like to have him arrested? A I had no personal interest in him.

Q You rather not had him arrested? A I did not say that.

Q Is it not a fact you were trying to have Mr. Bendix and Mr. Weinstein come to some money settlement? A No, sir.

Q Do you remember, Mr. Fritche, about a month or two after the hearing in the Magistrate's Court having met Mr. Weinstein in the office of your lawyer, Mr. Marks? A Exactly, at Mr. Weinstein's request.

MR. STEINMAN: I move to strike that out.

Motion denied and exception.

MR. STEINMAN: I asked him if he met him.

THE COURT: He says he met him at his request.

MR. STEINMAN: I move to strike that out.

Motion denied and exception.

Q Did you speak to Mr. Weinstein before Mr. Weinstein came to Mr. Marks' office? A I did.

Q When you found Weinstein at Marks' office you did not know he was coming over there? A Yes, I knew he was coming.

Q Who told you that? A I knew he had --

Q Who told you that? A May be Mr. Bendix told me or Mr. Marks, but I rather think it was Mr. Marks.

Q He is your lawyer? A Exactly.

Q You do not know personally that Mr. Weinstein request-

CASE #2168

ed an interview with you, do you know that personally? A He did not request an interview with me.

Q Why did you say at Mr. Weinstein's request? A Because he telephoned to the office of the Bendix Paper Company and asked for an interview with Mr. Bendix. He was told that he could not have that, but that he could communicate with our attorney Mr. Marks which was done and an interview was arranged and Mr. Marks asked me to come to his office and be present at the interview and at that interview --

THE COURT: That was why you say it was at his request?

THE WITNESS: Yes, sir.

BY MR. STEINMAN:

Q Did you have that conversation with Mr. Weinstein personally over the telephone? A I did not telephone him. I did not speak to him over the telephone.

Q You did not? A No.

Q The information that you had was from Mr. Bendix?

A Exactly.

MR. STEINMAN: I move to strike out all the testimony.

The Court

The motion is denied. You asked him why and he has given you the reasons.

MR. STEINMAN: I asked him if he knew personally if Mr. Weinstein requested.

THE COURT: He said no and you asked him why and he told you why. The reason is perfectly satisfactory to

CASE #2168

him. It is not necessary to have it satisfactory to you.

BY MR. STEINMAN:

Q Is it not a fact that when Mr. Weinstein found you and Marks in Marks' office, Mr. Marks in your presence asked him to accuse some other employe in your office? A That is not true. That is a lie.

Q Didn't you make some cash settlement with Mr. Bendix?

A I?

Q Yes. A Never did.

Q Never did? A I never did. There was no occasion for it.

Q You came personally over to Mr. Weinstein's place of business with some of the shipments of paper?

THE COURT: At what time?

MR. STEINMAN: Before or prior to August 18.

A I never brought paper over to him personally.

Q Never did? A Never did.

Q You had someone bring it over to him? A No, he always called for the stuff. It may have happened once or twice our boy brought over a package or two.

Q You mean to say you never went with the man who brought the paper to him? A I never went with the man that brought the paper to him.

Q Never did? A Never did.

CASE #2168

RUDOLPH MARKS, called as a witness in behalf of the People, in rebuttal, being duly sworn and examined, testified as follows:

(Residence 15 Mill Street, Far Rockaway)

DIRECT EXAMINATION BY MR. OLCOTT:

Q You are the attorney for the complaining witness, Mr. Bendix in this case? A I am.

Q You have acted in that capacity for some time even prior to the 18th of August? A Yes, sir.

Q It was at your advice and according to your direction that certain papers were marked, that is right? A Yes.

Q You were present on the 18th of August during the marking of that paper and later in Mr. Weinstein's place when he made certain statements? A Not during the marking of the paper.

Q You were present in Mr. Weinstein's office? A Yes.

Q Now passing over that and getting to the period in the Magistrate's Court when an examination was had, you were there? A Yes.

Q I think on two occasions -- there was an adjourned date? A Yes.

Q I show you Defendant's Exhibits A to F inclusive and I ask you whether those papers were in that crumpled condition at the time they were produced by the defendant? A They were.

Q Do you remember any request that was made by you in regard to them? A I assisted the assistant there in putting

CASE #2168

the case for the complainant and I asked him to request the Magistrate to impound these exhibits produced by the defendant, on their looks so they could come down to the General Sessions.

Q Did you see them put in the envelope? A Yes, I did.

Q That is the envelope they were put in? A It looks like it.

Q And placed in the custody of the Magistrate? A The District Attorney.

The envelope is marked People's Exhibit 6 for identification.

Q Do you remember an occasion in December seeing this defendant? A Yes.

Q About what day was it; can you remember? A I don't remember the date, but it was a day or two before this case came upon the calendar in this court.

Q A number of months after the occurrence in August, it must have been? A Yes, it was in December.

Q Did this defendant come to your office? A Yes.

Q Had you any communication directly with him before he came to your office? A No, sir.

Q You had a conversation with Mr. Bendix? A Yes.

Q And as a result of that conversation you fixed a day for this defendant to come? A It was the same day. I fixed no time at all.

Q Who was present at the time when you first saw this defendant? A You mean on that day in my office?

CASE #2168

Q Yes. A Mr. Fritche.

Q Do you recall in substance the conversation that was had between you and this defendant on that occasion? A Yes.

Q Give it to us please.

THE COURT: If it had any admission of guilt in it, it would be proper.

MR. OLCOTT: It has.

THE COURT: Very well.

THE WITNESS: Mr. Weinstein came to me and said that he recognized his mistake that he had made and he wanted me to do something for him, to intercede with Mr. Bendix. I said to him that I did not think Mr. Bendix was vindictive in the case at all and that I would gladly ask Mr. Bendix to go to the District Attorney and recommend clemency to the defendant if he wished to plead, but before I would do that I would ask him to tell the whole truth in the matter and he said he is willing to tell the whole truth. I asked him how long ago he started to sell paper to the Dragon Manufacturing Company and he said it was just shortly before his arrest. I asked him about how much of that paper he sold altogether. He claimed only those sheets, that is my best recollection -- claimed only those sheets that were taken from the Dragon Paper Company on that day.

Q 8,000 in all? A I don't remember -- mentioned a number -- he said the sheets that were taken there.

CASE #2168

Q Do you know of your own knowledge how many sheets were taken from the Dragon Company? A I do not. I said -- I asked do you know a man by the name of Goldberg. He said at first no. I said to him now, how can you deny it when Blyer told me that the receipts that he has seen are Goldberg's also for paper that came from you, gelatine paper. He said he did not know anything about that but he reminded himself, he said, that there was a man by the name of Goldberg for whom he cashed checks. I said it is strange that at a time when you come and ask for mercy and clemency that you would not give the entire truth. You surely must remember something about it. He said that is all I can remember and all I know is that I want to make good for my mistake. I said you have done a terrible thing in accusing Mr. Fritche here of having sold you this paper. Now, how did you come to do that. This is putting an innocent man into a terrible accusation. He said that was not my fault, the Dragon Paper Company told me to do that, and I told him then, I believe the last words were, before we parted, I said I don't think that you have been properly advised in the case, and I don't think it is proper for me to go any further with you in the matter, but if you really wish clemency and want us to do something for you, go and see your lawyer and let him come up here with you and let me draw a statement for you to sign, which I shall eventually hand to the District Attorney and ask Bendix to go and intercede for you. With that he left. That was the last thing I said to him.

CASE # 2168

Q On that occasion did you ever say in substance to this defendant that you had learned all, that Mr. Fritche had admitted his guilt and made a cash settlement and that you wanted him to so arrange it as to throw suspicion upon some other man in the Bendix Company? A No, sir.

Q Anything of that sort? A No, nothing of that kind.

Q Nothing of that sort? A No, nothing of that kind at all.

CROSS EXAMINATION BY MR. STEINMAN:

Q You are an attorney? A Yes.

Q How long? A Twenty years.

Q You have been attorney for the Bendix Paper Company a number of years? A Yes.

Q Mr. Bendix and Mr. Fritche and you are intimately acquainted? A I can't say that Fritche is intimately acquainted, but Bendix is an intimate friend of mine.

Q You are very much interested in the outcome of this case? A Not any more than to see justice.

Q You spent a lot of time on this case? A For pay.

Q You were in the Magistrate's Court during the hearing?

A Yes.

Q The first day and then on the adjourned day? A Yes.

Q You were in court yesterday? A In court -- no.

Q You were in court all day today? A I came here at quarter past eleven and stayed here until recess and came back

CASE # 2168

after recess and asked Mr. Olcott if he thought he would call me and he said he might have to and so I said I had better stay around in the court house.

Q When did you see Weinstein for the first time? A On the 18th of August, on the day of his arrest.

Q How long were you in his place of business before Mr. Weinstein was arrested? A Possibly an hour and a half or two.

Q During that hour and a half didn't you try to get some money out of Weinstein? A No, sir.

Q Did not? A No, sir.

Q Didn't you say to Weinstein settle up and we will go no further with the matter? A No.

Q Did not Weinstein say to you I have nothing to settle for? A No such conversation took place to my recollection.

Q Did you and Mr. Weinstein have a personal fight? A No.

Q Didn't you punch Mr. Weinstein? A No.

Q Were not you and Weinstein taken in custody by a police officer? A No, you have got it confused with another incident entirely.

Q I ask you what happened that day? A Here is what happened, about this custody of an officer. While I was there with Mr. Craft, Mr. Fritche and two or three others of the operatives, two men came in, one very tall and another a little shorter and stout, he seemed to be -- at least they addressed Weinstein intimately. Said they wanted their goods, that they had there to be cut. Weinstein told them I am in

CASE #2168

trouble here, don't bother me and Weinstein went and spoke to one of them in a whisper. Immediately after that the tall man turned around and said, what do you fellows want in here, addressing all of us; why don't you get an officer and put them out, they are all crooks. I said, Mister, I never saw you before, but if you use that word again I shall make you suffer for it and he made a run for me and I lifted my walking stick and struck out and put his hat off with it and he immediately rushed out into the street and brought an officer in uniform and brought him in and pointed to me and said, this man assaulted me. The officer said to me what took place.

BY THE COURT:

Q You explained to the officer? A Yes, sir.

THE COURT: That is enough.

BY MR. STEINMAN:

Q The two of you were taken to the police station? A No.

Q Come down to your office in the month of December, didn't you telephone to Mr. Weinstein to come down to see you?
A No.

Q Didn't you ask Mr. Weinstein to sign a paper for you telling him if he signed that paper that you would withdraw the charge against him? A Absolutely no.

Q Mr. Fritche was there? A Yes, he was there.

Q Did not Mr. Weinstein tell you he would sign no paper unless his lawyer came down? A He did not. I did not ask him to sign any.

CASE #2168

Q Did not? A No.

Q Is it not a fact the moment he mentioned his lawyer you opened the door and told him to get out? A That is not a fact.

Q Did you chase him out of your office? A It is not so.
BY THE COURT:

Q You know that you have no power to withdraw a complaint or dismiss indictments, you know that? A Yes.

BY MR. OLCOTT:

Q You never offered to do so? A No, sir.

Q You never offered to withdraw the complaint? A No.

THE COURT: How could you withdraw the charge, do you know anyway?

THE WITNESS: No, sir all I told him I would tell Mr. Bendix to go and intercede for him for clemency.

Q That was on the occasion when you advised him to see his lawyer? A Yes.

THE PEOPLE REST.

BENJAMIN WEINSTEIN, the defendant, recalled:

BY MR. STEINMAN:

Q You heard the testimony of Mr. Marks? A Yes.

Q You understood what he said? A Yes.

Q Did you tell Mr. Marks that you wanted to do the right thing by Mr. Bendix or something similar to that? A No, sir.

Q Did you tell Mr. Marks and Mr. Fritche that you wanted

CASE #2168

to settle up and that you were sorry for what you did or something like that? A No, sir.

Q Did Mr. Marks tell you to go to your lawyer and have your lawyer draw up a statement? A No, he told me to sign a paper.

Q And did you tell Mr. Marks or Mr. Fritche or anyone that you took the paper from the Bendix Paper Company wrongfully? A No, sir.

Q Did you call up Mr. Bendix or Mr. Marks requesting for an interview? A Never after the 18th.

Q How did you happen to go to Mr. Marks' office? A After I had attended to my customers --

BY THE COURT:

Q Why did you go, you got a telephone message did, you?

A Yes.

Q Did you talk to anyone over the phone? A No.

Q Who got the message? A The girl.

Q The girl told you? A Yes.

Q What did she tell you? A Told me there was a telephone call calling me to go to a place to bind books, to take an order to bind books.

Q You went to take an order? A Yes.

Q And you found yourself in Lawyer Marks' office? A Yes, sir, I did not know where I was going to. I was never there before.

DEFENDANT RESTS.

CASE #2168

PAUL BENDIX, recalled:

BY MR. OLCOTT:

Q Mr. Bendix, do you remember receiving a telephone message in the middle of December, 1916? A Yes, sir.

BY THE COURT:

Q Did you talk on the phone yourself? A I did.

BY MR. OLCOTT:

Q Someone called you up, do you remember what name was given and did you recognize the voice? A I did.

BY THE COURT:

Q Was it the defendant? A Yes.

BY MR. OLCOTT:

Q What was stated at that time? A Mr. Weinstein called me up on the phone and asked for an interview with me and I refused him and told him I cannot talk to him, but it may be that Mr. Marks, my lawyer, is willing to listen but I will call up first Mr. Marks and find out.

Q Did you call up Marks and have a conversation with him? A Yes.

Q As a result of that conversation did you leave a message for Weinstein? A I called up Weinstein and told him that he could go down to Mr. Marks' office and see Mr. Marks.

Q Naming a time when he could go? A Yes.

Q Which you had previously arranged with Marks? A Yes.

CROSS EXAMINATION BY MR. STEINMAN:

Q When you called up Weinstein when did you speak to at

CASE #2168

the telephone? A To Mr. Weinstein.

Q Weinstein personally? A Yes.

Q Did you ever speak to him over the telephone before?

A May be not and may be, I don't know, I don't remember.

Q You are not quite sure it was Weinstein? A I am positively sure.

Q You spoke to Mr. Weinstein before? A I recognized his voice and especially his broken English.

Q You never spoke over the telephone with him before?

A May be not -- just as I said.

Q You recognized his broken English? A Yes.

Q Is your English any better? A I don't know.

THE COURT: I will say yes for that.

TESTIMONY CLOSED.

The Court admonishes the jury in accordance with Section 415 of the Code of Criminal Procedure and takes a recess until February 28, 1917, at 10:30.

CASE #2168

February 28, 1917.

THE COURT'S CHARGE.

MULQUEEN, J.

Gentlemen of the Jury: The indictment in this case charges the defendant with the crime of Grand Larceny.

The first count charges what is known as a common law larceny, which is the ordinary taking of personal property from the custody of the owner or of anyone else with intent to deprive the owner of it.

There is a second count which charges what is called larceny by one who is a bailee. That is, it is alleged that the defendant did not take the property here in the ordinary sense of taking it, but that it was given to him and that he had it in his possession for the purpose of using it as Mr. Bendix directed, and having thus acquired possession of it lawfully, he then unlawfully and feloniously appropriated it to his own use, instead of using it for the lawful purpose that it was given to him.

The Court submits the case to you on the second count.

It is not alleged that he went in as a thief does into the place of Mr. Bendix and stole the articles and walked off with them. It is true, that is larceny,

CASE #2168

but it is also larceny if you send any of your property to another person to be made over or manufactured or have anything done to it if, instead of dealing with it honestly the person you send it to appropriates it to his own use.

Larceny is defined in the law as follows: It says "One, who with intent to deprive the true owner of his property or, the use and benefit of it, or to appropriate it to the use of anyone other than the true owner, takes from the possession of the true owner or any other person personal property steals that property and is guilty of larceny. You see there are two elements in larceny. There is the taking and the intent. If you were to take one of your fellow juror's coats by accident, believing it was your own, and walk off with it, that would be a taking of property but it would not be larceny, as there would be no criminal intent there. But, if you knew the coat was not yours, and you believed it was a better one than yours and you took it and walked off with it with the intent of never returning it, of wearing it yourself, or doing anything with it except returning it to the true owner, that would constitute larceny -- the taking with felonious intent.

If you find that the Bendix Company delivered to the defendant certain paper and that it was given to him for the specific purpose of cutting it up in the way

CASE #2168

that their agreement called for, if instead of cutting it up into smaller shapes or forms, to be returned to Mr. Bendix, he took any part of it for his own use -- and in this case it is alleged that he sold it to the Dragon Company -- if he did that, then he stole that paper and he was guilty of larceny. The question of the degree of the larceny would be determined by the value of the stolen property. Evidence of value was given by Mr. Bendix and has not been contradicted; he testified that the sheets of paper were worth \$32.50 a thousand on that day, namely the 18th of August. Grand Larceny in the Second Degree is the stealing of property of the value of more than \$50 and less than \$500. If more than \$50 worth of paper was stolen by defendant in the way the People claim, he was guilty of Grand Larceny in the Second Degree. If the value of the property was only \$50 or less it would be petty larceny. You have to determine whether any property was stolen and the value of that property from the testimony in the case. You will have to determine therefore whether this defendant has been proved guilty of Grand Larceny in the Second Degree or Petty Larceny, or whether you will acquit him as not guilty.

You understand in the trial of a criminal action there is a division of the labor between the Court and jury. It is the duty of the Court to see that the defendant receives a fair trial. He has had a fair trial.

CASE #2168

He has been confronted with his witnesses, he had the right to cross examine them, to call witnesses and to testify in his own behalf; he has had a jury carefully selected and approved of by himself and his counsel. That is all the law requires on that point; secondly, the Court must correctly instruct you in the law. There is no difficult question of law involved in this case. It is a very simple case from a legal standpoint -- just as clear as day. Larceny is stealing. The question is did he steal anything or not -- did he steal this paper or not? If it had been given to him, as I told you, to cut it up for the purposes of the owner, so that Mr. Bendix could use it in his business, and if the defendant failed to do that but on the contrary appropriated it to his own use and sold it to the Dragon Company, then he is a thief. If that is not proved beyond a reasonable doubt you must pronounce him not guilty. So the law is simple.

Therefore, the Court having passed on the legal questions must now submit the case to you. You are the sole judges of the facts; you must decide the facts for yourselves. Facts can only be proved in one way, by witnesses brought here before you -- by the oral testimony of the witnesses, or by exhibits which are introduced in evidence, documents which speak for themselves.

CASE # 2168

It is your duty to take the oral testimony and those documents and to weigh them calmly, patiently and neutrally. You are not to take sides in the controversy. The People of the State of New York are the party on the one hand and this defendant on the other. The People of the State of New York comprise nine or ten millions of people. They are not vindictive nor malicious. They have no prejudice, as might be inferred from the argument of counsel, against the poor or the foreigner. I think all the witnesses were foreigners. I hope any appeal or attempt to appeal to your prejudice on behalf of an alleged poor man or an alleged foreigner will be absolutely eliminated from the case by you. If I were a juror and an attempt were made to sway my judgment by appeal to passion and prejudice in America at this time, I would resent it. Eliminate that therefore and weigh this evidence calmly and quietly. The People of the State of New York, that majestic body, have made laws decreeing that every man, wherever born, or whatever his race or creed may be, may come here and enjoy all the blessings of liberty, with one condition only, that he must not be a thief, a lawbreaker. We do not want thieves. There is no prejudice against a foreigner or a poor man. We are all the children of foreigners, every one of us. There is not a white man in the State that is not the descendant of a foreigner. Therefore that element is not in the case.

CASE #2168

The People of the State of New York simply ask you as jurors to say whether or not the evidence satisfies you beyond a reasonable doubt that this man is a thief as charged in the indictment. You must not be other than neutral. You must not take sides. You are just American citizens doing the most important duty you can ever be called upon to do in times of peace. In time of war you may have to give up everything that you hold dear and go out to certain death, to defend your country. That is your duty. In time of peace when you sit as jurors, you are defending your country just as truly as if you were going against the cannon of the enemy. All the law asks you is to be honest men, to weigh the stories of the witnesses honestly, calmly and patiently, without any bias or prejudice on one side or the other, to find the truth from the evidence and pronounce it. That is a very simple matter. Therefore banish prejudice. Prejudice and sympathy have no place in the jury box. There is not one law for the rich and another for the poor. There is not one law for the foreigner and another for the man who is called an American. That is not the law. Every man is equal before this Bar and you know it. It is for you to decide what witnesses here are worthy of belief. You are to pass on the credibility of witnesses and you may be aided in your decision on that point by their manner, by the inherent probability or improbability of the stories

CASE #2168

they tell, and by the interest, if any, which they may have in the controversy; by the motive, if any, which might prompt them to come here and testify as they have. You might ask yourselves whether it appears that Mr. Bendix had any motive to make a charge against this man instead of Mr. Fritche. If Mr. Fritche was the thief why did Mr. Bendix not accuse him? Is there any reason shown? Has Mr. Bendix testified honestly, or if so, is he mistaken? That is for you to say. You must decide whether the witnesses told the truth or not, and you may believe all that any witness testified to or part of it, or reject it all or reject part, believing only what you think worthy of belief. Even if you find that a witness has a motive to testify falsely, you should not reject his testimony on that ground. A witness may tell the truth notwithstanding the existence of a motive to do otherwise. The defendant is allowed to testify in a criminal case and yet it is clear that he has a motive to testify falsely. His liberty is at stake. The result of this trial will either send him out as an honest man, free to bring an action for large damages against a man who said his property was stolen by him or brand him as a thief to be dealt with as the Court thinks proper. It is for you to say whether, notwithstanding the existence of that motive, he is telling you the truth or not; and so with other witnesses in the case. Therefore weigh this evidence

CASE #7-2168

calmly, quietly, dispassionately, neutrally. Make up your minds what witnesses are worthy of belief; weigh well their testimony; and then every man on the jury will be able to render an honest verdict on the facts as you find them. The evidence is addressed to your reason and conscience and not to your passion and prejudice. Weigh carefully all the evidence on both sides, be animated solely by the desire to find the truth, with no other thought in your minds, and after you have found the truth proclaim it. If you treat the evidence that way then you will know in your hearts what effect it has produced in your minds. If the result of that investigation is a firm conviction to a moral certainty that the defendant did steal some paper, then he is guilty of larceny, and the value of the paper stolen will determine the degree of the crime.

If, on the other hand, you are not convinced to that extent by the evidence that he stole this paper; if you believe that the witnesses knowingly testified falsely against him and were guilty of perjury: or if you feel that they were honestly mistaken; or if you conclude that the evidence is consistent with his innocence, or that it merely creates suspicion in your minds that he is guilty, then your minds are in a state of reasonable doubt and you must acquit him. That is what the law means when it says that the defendant is presumed to be innocent

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CASE #

until the contrary be proved, and if his guilt be not proved by evidence sufficient to satisfy a jury of his guilt beyond reasonable doubt, he must go free.

The law does not say he must go free no matter what the proof is. If there were no testimony he would be discharged; or, if the testimony did not afford legal proof he would be set free by the Court without submitting the case to you. But, when all the evidence in the case, if believed by you, will warrant a conviction, then the Court must submit the case to you. But by doing so the Court does not express any opinion on the facts. The Court has formed no opinion on that subject. The Court is simply to tell you your duty, to state to you the rules of law which should guide you in dealing with the case, to remind you of your duties as American citizens, to be honest men and render an honest verdict. Every honest verdict is a vindication of the law, whether the verdict be not guilty or guilty. But a dishonest verdict, a verdict that the jury know is contrary to the law and the evidence; a verdict that the jurors know is the result of prejudice or other improper motive is a blow at the stability of our government. Therefore weigh this testimony patiently: ask yourselves what impression is created in your minds by it and render an honest verdict. If you are fully convinced to a moral certainty that the defendant is guilty say so and fix the degree of the

CASE #2168

crime of larceny according to the evidence in the case. Your verdict should be guilty of Grand Larceny in the Second Degree, or Petty Larceny, or not guilty. If the evidence does not satisfy you of his guilt beyond reasonable doubt acquit him.

THE DEFENDANT'S COUNSEL: I request your Honor to charge that if the defendant purchased the paper from Mr. Fritche believing it to be Mr. Bendix, that he was not guilty of the crime charged.

THE COURT: I so charge; you must acquit him if he did not get the paper in the manner set forth in the indictment. The People claim that the sheets of paper were counted, marked by a chemist and delivered to the defendant for a specific purpose, not by Fritche, but by the Bendix Company; and that part of it was stolen by him and sold to the Dragon Company, instead of being used for the benefit of the Bendix Company. Unless that is proved, you must acquit him. If you have a doubt as to how he got it, acquit him -- a reasonable doubt.

THE DEFENDANT'S COUNSEL: Also request the Court to charge that from the evidence it appears that only sixteen hundred sheets were missing from the Bendix Company.

THE COURT: The People claim that some of the property was delivered to the defendant on the 18th and

CASE #2168

another portion delivered the day before. It is claimed by the People that thirty-two hundred sheets were found in the premises of the Dragon Company. If the jurors have any reasonable doubt about the quantity of paper alleged to have been stolen, that doubt would offset the degree of the larceny. If you find that sixteen hundred sheets were stolen on the 18th, you must determine the value, if possible, from the evidence. If the paper be of the value of \$32.50 per thousand, then 1600 sheets would be worth \$52 according to that testimony.

THE DEFENDANT'S COUNSEL: Sixteen hundred would be about \$48.

THE COURT: No, \$52, and if he stole property of the value of \$52 it is Grand Larceny in the Second Degree. But the value of the property is a question of fact for the jury to determine from the evidence. The jury must decide two things, first, whether he stole anything, and second, the value of the property stolen. If he stole property of the value of more than \$50, that is \$50.50 and less than \$500, that is Grand Larceny in the Second Degree. If the value were \$50 or less than \$50, it would be Petty Larceny. I have told them that in my charge. That is one of the facts, gentlemen for you to decide. Did he steal anything? If so, how much? If you have a reasonable doubt as to whether he stole anything or not, acquit him. If you are convinced that he did

CASE #2168

steal, but at the same time you have a reasonable doubt as to the value of the property he stole, then you can only find him guilty of the lowest degree of the crime, which would be petty larceny.

The jurors state that they would like to take the exhibits with them into the jury room.
himself

THE COURT: The defendant must be asked whether he is willing to have the jurors take the exhibits.

The defendant states personally that he has no objection.

The jury retire.

Later the jury render a verdict of Guilty of Grand Larceny in the Second Degree with a recommendation to mercy.

CASE # 2168

COURT OF GENERAL SESSIONS OF THE PEACE,
CITY AND COUNTY OF NEW YORK.

-----X
T H E P E O P L E

against

BENJAMIN WEINSTEIN.
-----X

For the Defendant,
MR. WAHLE and MR. STEINMAN.

Defendant arraigned for sentence before HON. JOSEPH
F. MULQUEEN, J., on the 16th day of March, 1917.

MR. WAHLE: If your Honor please, I move to set
aside the verdict upon the ground the verdict is against
the evidence and against the weight of the evidence, and
upon all the exceptions taken during the trial.

Motion denied and exception.

*I hereby certify that the foregoing is a
complete & correct transcript of my
stenographic notes of the entire proceedings
in the case of the People vs Benjamin
Weinstein*

*Thos. W. Sabour
Official Stenographer*

CASE #2168