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ANATOMY OF A SCAM: A CASE STUDY OF A PLANNED BANKRUPTCY BY ORGANIZED CRIME

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By

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TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION.....	2
SOME OBSERVATIONS ABOUT ORGANIZED CRIME.....	2
INFILTRATION OF LEGITIMATE BUSINESS BY ORGANIZED CRIME.....	4
PLANNED BANKRUPTCY.....	5
Three Step Scam.....	5
One Step Scam.....	6
Same Name Scam.....	6
Scam by an Established Company.....	7
SUMMARY.....	8
FORMATION OF MURRAY PACKING COMPANY.....	13
ENTER JOSEPH PAGANO.....	13
CONSPIRACY FORMED.....	16
DECEIT OF SUPPLIERS.....	17
MURRAY SELLS TO PRIDE AT BELOW COST.....	21
CASTELLANA'S DEFENSE.....	26
CIRCLE OF MONEY FLOW COMPLETED.....	34
ATTEMPT AT SETTLEMENT FAILS.....	48
FILING OF INVOLUNTARY PETITION IN BANKRUPTCY.....	50
THE CONSPIRACY: THE GOVERNMENT'S CASE AND THE DEFENDANTS' RESPONSES.....	51
PAGANO'S DEFENSE RIVALED "THE BEST OF BARON MUNCHAUSEN".....	53
OTHER CIVIL PROCEEDINGS.....	67
CONCLUSION.....	72
APPENDIX A: INDICTMENT.....	74
APPENDIX B: SELECTED DEFINITIONS ON BANKRUPTCY.....	81
APPENDIX C: SELECTED BIBLIOGRAPHY ON ORGANIZED CRIME.....	83

NOTE

All material used in this case study was derived
exclusively from public record sources.

INTRODUCTION

The subject of organized crime has begun to receive the amount of attention it justly deserves because it is in fact a reality in America functioning in both illegitimate and legitimate activities. The amount of material available for social science research which would permit us to broaden our knowledge and understanding is, however, very limited. Organized crime is reknown for its code of silence; the unavailability of material from government investigative agencies due to its sensitive nature makes the task of the researcher difficult indeed.

One source which was used as the basis for the preparation of this case study is court testimony - both criminal and civil - in cases involving suspected organized crime figures.

The task of using such sources is a tedious one. In excess of 8,000 pages of narrative testimony were read to prepare this paper; but the source adds an important measure to the further understanding of organized crime and its method of operation.

SOME OBSERVATIONS ABOUT ORGANIZED CRIME

There have been a number of financial estimates of organized crime's illegal and legal financial revenues all running in the billions of dollars.

The President's Crime Commission stated:

The core of organized crime activity is the supplying of illegal goods and services - gambling, loan sharking, narcotics, and other forms of vice - to countless numbers of citizen customers. But organized crime is also extensively and deeply involved in legitimate business and in labor unions.

Here it employs illegitimate methods - monopolization, terrorism, extortion, tax evasion - to drive out or control lawful ownership and leadership and to exact illegal profits from the public. And to carry out its many activities secure from governmental interference, organized crime corrupts public officials (italics not in original)¹.

The infiltration by organized crime into the national economy has become so extensive that the cost to the Nation's industrial and business community is impossible to accurately measure. Most estimates place its gross revenues between \$30 and \$50 billion a year in the United States with a net profit estimated at between \$9 and \$10 billion. The net profit rate is higher than in normal business operations because of the advantages organized crime enjoys through unfair labor practices, skimming of profits, income tax cheating, bribery, coercion, monopolization and other unfair competitive techniques.

Where does organized crime derive its huge capital which it invests in legitimate business? The traditional sources have been gambling, loan sharking, narcotics, prostitution, and bootlegging. The New York State Joint Legislative Committee on Crime estimated that, in one recent year, 1968, organized crime's revenues from narcotics and gambling alone in New York City's three main slum areas - central Harlem, south Bronx and the Bedford Stuyvesant section of Brooklyn - was 343 million, which was \$70 million more than the State spent on welfare in the same area. The Committee's chairman in 1970 made the following observation in this connection, "The flow of money from the ghetto to organized crime is so great that there can be little meaningful economic improvement in New York City's ghettos until it is stopped."² Significantly, the report of the President's Commission on the 1967 Newark Riots found that black ghetto dwellers have little or no respect for the police or the law because of the heavy influence of organized crime activities in their neighborhoods.

¹The Challenge of Crime in a Free Society. A Report by the President's Commission on Law Enforcement and Administration of Justice, (Washington, D.C.: United States Government Printing Office, 1967) page 187.

²"Organized Crime in City Bleeds Slums of Hundreds of Millions," New York Times, September 27, 1970.

The influence of organized crime is pervasive in our society. With drugs they reach the young and weak; with loan-sharking they victimize the office worker and laborer; with gambling the family breadwinner; with bribery the public official; and with business infiltration the economic core of our free society.

INFILTRATION OF LEGITIMATE BUSINESS BY ORGANIZED CRIME

Organized crime uses a number of methods as infiltration techniques: bankruptcy fraud (scam and bust-out), dummy association (protection), usury (shylocking), loan manipulation, labor involvement (racketeering), hijacking (insurance frauds), stock theft, monopoly, simple extortion and illegal cartels. When organized crime moves into the world of business, the cost can be measured, in part, in the following terms:

1. Higher taxes for everyone since organized crime rarely pays taxes on the millions it makes.
2. Higher insurance rates for all due to stock pilfering and hijackings arranged by organized crime.
3. Lower wages for thousands of workers caught in sweetheart contracts.
4. Higher prices for the consumer because of mob controlled shipping corporations.
5. Loss of millions to legitimate corporations due to thousands of planned bankruptcies manipulated by organized crime scam operations.

In recognition of the increasing impact upon the economic well being of our Nation, the business community has begun to circulate information as guidance to the community on how to protect itself against penetration.

There are six major reasons why organized crime has intensified its interest in legitimate business: (1) it provides a legitimate front, (2) a market for stolen property, (3) an outlet for the investment of enormous sums gained in illegal activities, (4) respectability, (5) a cover for illegal payoffs, and (6) a method to increase revenue and power of all kinds.

PLANNED BANKRUPTCY

One method of increasing revenue is the scam operation which is increasing in frequency. All scam operations involve the purchase of merchandise on as large a scale as possible through the use of credit now relatively easy to obtain. The merchandise is then turned into cash which is then milked from the business. After the business has been thus milked, the company is forced into involuntary bankruptcy by its creditors, which, of course, was the original intent of the scam operators.

Scam operations are popular in industries with merchandise having a high turnover potential, readily transportable and difficult to trace.

The following are the most common types of scam operations:

Three Step Scam:

1. A new corporation is formed, managed by a front man or "pencil" who has no prior criminal or bankruptcy record.
2. An initial large bank deposit, known as the "nut", is made to establish credit. This money, plus all other money subsequently deposited, is later withdrawn.
3. A large store is rented and orders for merchandise placed with as many companies as possible. The size of these orders appears to indicate a successful operation to the suppliers.
4. Smaller orders are placed during the first month, and such orders are almost always completely paid in full.
5. During the second month, larger orders are placed and about $\frac{1}{4}$ of the balance due on such orders is paid.
6. During the third month, using the credit established as a result of payments made for the previous orders, very large orders are placed. Items easily converted into cash, such as jewelry and appliances, usually constitute a large proportion of these orders.
7. Thereafter, merchandise is converted into cash through a fence or a surplus property operator, normally one with a sufficiently large legitimate inventory to easily intermix the scam merchandise into his normal inventory. The company is then forced into

bankruptcy by its creditors, since according to plan, all cash has been appropriated by the scam operator.

One-Step Scam - Since the Three-Step Scam requires several months for completion, the more rapid One-Step Scam is now more frequently used. This involves the following:

1. A successful business with a good credit reference is purchased.
2. No notice of the change in management is provided to Dun and Bradstreet or other credit agencies, thus trading on the previous owner's good credit reputation.
3. Manufacturers are approached in person or at trade shows to arrange for the purchase of merchandise.
 - (a) Since the orders placed are usually of a large quantity, suppliers who did not sell the company previously are very politely informed by the scam operator that if he does not sell him, some other company will be glad to do so. This technique is known as the "sketch".
4. Large orders are then placed, including orders for many items not previously purchased by the company.
5. After the orders have been received, the merchandise is sold, as with the Three-Step Scam; the money is milked from the business; and the company is forced into bankruptcy, just as the scam operator had planned.

Same Name Scam - This technique, which is a variation of the One-Step Scam, operates as follows:

1. A company is organized with a name deceptively similar, and often almost identical, to that of a successful company in the same area.
2. Large orders are placed with suppliers, who assuming legitimacy of the company based on the similarity in firm names, fill the orders.

3. The merchandise is then sold in the same fashion as for other types of scam operators, the money is milked from the business and as with other type scams, the company files for bankruptcy.

Scam by an Established Company - This technique which is a variation of other scam operations, operates as follows:

An individually owned business or a company which has operated legitimately for many years decides to make a quick killing. They then use the One-Step Scam techniques to rapidly withdraw money from the company and force it into planned bankruptcy. In such situations, the operators of the company usually blame gambling losses or below-cost sales for the bankruptcy into which they have deliberately placed themselves.

A popular time for the scam operator is just before a seasonal increase in the popularity of a particular merchandise when rush deliveries are common place and thorough credit checks often overlooked.

There are a number of danger signals which should alert the businessman and/or creditor to the possible existence of a scam:

1. A large deposit in a bank in one area which is then used as a credit reference with a bank in another area. Bank officials should be alert to this situation.
2. Unusual amounts of credit inquiries on a new, large depositor, or a great many additional inquiries on old accounts.
3. A great many "rush" or "immediate" delivery requests out of line with normal pattern.
4. A customer firm is under new management and information on the principal is vague.

Scams may never be completely eliminated. In a society supported by credit the lure of enormous profits will remain an inviting beacon for the syndicate. The answer lies in greater alertness on the part of the business community. It is hoped that this case study by describing the anatomy of one such venture will serve as a contribution to that effort.

SUMMARY

This is the story of the infiltration of a legitimate business by organized crime.

The facts disclose that Murray Packing Company, owned and operated by the Weinberg family and David Newman, a supplier of meat, poultry, and eggs to wholesalers and markets, was infiltrated by the underworld late in 1960 when it began to encounter financial problems.

In 1960, the owners of Murray, short of working capital, borrowed \$8,500 at an interest rate of 1% per week. This loan was arranged by Joseph Pagano, a salesman for Murray, and was advanced by the Jo-Ran Trading Corporation owned by Peter Castellana. As the debt increased, the legitimate owners accommodated Castellana's demand that Pagano be promoted and made an executive with the company with broad financial power.

Upon becoming President, Joseph Pagano with the assistance of David Newman as well as Joseph and Stanley Weinberg and others manipulated Murray Packing into a series of business transactions with Pride Wholesale Meat and Poultry Corporation which was also controlled by Peter Castellana. During January and February,

1961, Murray Packing made a substantial number of relatively small purchases throughout the United States of meat and poultry and paid for these purchases within its normal credit terms of one week. Most of this merchandise was in turn sold to Castellana who paid Murray **promptly** during this same period.

In March, 1961, there was a marked change in events. Purchases increased enormously eventually exceeding one million dollars with most of the merchandise going from Murray to Castellana who paid almost simultaneously but who arbitrarily paid Murray below cost or slightly above cost in most instances. Murray, however, stalled on its payments to its creditors. During the period March 20 to March 29, 1961, Pagano, as president of Murray, cashed Murray checks totalling \$745,000.00. These funds were never recovered. Approximately \$170,000.00 worth of merchandise was sold by Murray to Gondolfo Sciandra (an associate of Castellana). Murray never received payment from Sciandra.

In April, 1961, three creditors of Murray filed an involuntary petition in bankruptcy in the United States District Court for the Southern District of New York under Section 70e of the Federal Bankruptcy Act of 1898 (Title 18, U.S. Code).

In May, 1961, Murray Packing Company was adjudged bankrupt owing some 85 creditors approximately \$1,300,000. Total Murray assets were \$1,060,422.15 consisting of \$745,000 in

promissory notes from Joseph Pagano and \$268,692.15 accounts receivable. The remainder of its assets totalled less than \$50,000.

In May, 1963, Joseph Pagano, Peter Castellana, David Newman, Gondolfo Sciandra, Joseph Weinberg and Stanley Weinberg were indicted (63 CR 454) and charged with the crime of conspiracy to violate the Bankruptcy Laws, under Section 152 of Title 18 U. S. Code (fraudulently transferring property of a corporation that was in contemplation of bankruptcy) and on one count of violating 18 U. S. C. Section 371 (1964)*. The substantive count charged the fraudulent transfer of \$1,300,000 of Murray's assets. The conspiracy count charged agreements to defraud creditors of Murray and to commit acts which would cause Murray to transfer to various conspirators substantially all of Murray's property and assets. In December, 1964, all defendants were found guilty on all eight counts of the indictment. In July, 1965, Pagano's conviction was affirmed on appeal. United States vs. Castellana, et al., 349 F. 2d. 264 (2d CIR. 1965). Subsequent petitions to the Supreme Court of the United States for a writ of certiorari and then for a hearing were denied in February, and April, 1966, respectively, 383 U. S. 928 (1966).

*See Appendix A: Indictment (p 74).

According to the United States Attorney, Robert M. Morgenthau, Jr., this case was the "biggest, boldest, most audacious bankruptcy fraud" ever perpetuated in the Southern District of New York involving the takeover of a legitimate business by criminal elements.

The criminal prosecution of Joseph Pagano, Peter Castellana, Joseph Weinberg, Stanley Weinberg, David Newman and Gondolfo Sciandra, delayed civil judgment. The Trustee in Bankruptcy sought to impose civil liability upon them for their fraudulent acts seeking damages in excess of \$1,000,000.

In October, 1968, after conclusion of the bankruptcy proceedings, Judge Walter R. Mansfield, United States District Court, signed three orders directing the entry of a monetary judgment in favor of the Trustee as follows: against Castellana, Pride and Jo-Ran, \$10,000.00; against Stanley Weinberg, \$500.00; against Joseph Pagano, Gondolfo Sciandra, Joseph and Gussie Weinberg and David and Terry Newman, \$1,038,999.47. The Trustee was successful in recovering some \$83,244.30 from the various participants in the fraudulent scheme and both Jo-Ran Realty Trading Co., and Pride Wholesale Meat and Poultry Corp., went out of business.

On February 10, 1970, the Honorable Asa S. Herzog, Referee in Bankruptcy signed an order authorizing the Trustee to accept an offer of settlement by Pagano for the sum of \$75,000. Almost nine years had elapsed since it all began.

FORMATION OF MURRAY PACKING COMPANY

The Murray Packing Company headquartered at 631 Brook Avenue, Bronx, New York, with a branch at 113th Street and 2nd Avenue, New York City, was incorporated in December, 1959. It was owned and operated by the Weinbergs and Newmans, with David Newman serving as president and Stanley Weinberg as secretary-treasurer. The Board of Directors consisted of Stanley Weinberg, David Newman and his wife and Mr. and Mrs. Joseph Weinberg (Stanley's parents). Stanley Weinberg was designated office manager of the new wholesale business and was given the responsibility of maintaining bookkeeping, payments and deposits. The responsibility for supervision of poultry purchases and sales was given to David Newman with Joseph Weinberg supervising the veal, beef and lamb departments.

ENTER JOSEPH PAGANO

In 1960, less than one year after its incorporation, the company began to undergo serious financial difficulties. It lost a great deal of money and the acquisition of new markets and capital to improve its profit margin became critical to its survival. Murray had a capital base of only \$125,000 with which to support annual purchases of several million dollars. It's quite apparent that this was a serious overextension of its financial base.

Joseph Pagano¹ was employed as a salesman for Mercury

¹See U.S. Senate Committee on Government Operations, Permanent Subcommittee on Investigations, Organized Crime and Illicit Traffic in Narcotics (Washington, D.C., U.S. Government Printing Office, 1964) p. 1045. This report identified Pagano as having been associated with the Joseph Valachi organization, which was part of the Anthony Strollo combine, in local and interstate narcotics traffic. The report also noted that Pagano had a record of arrests going back to 1946 including arrest and conviction for violation of the Federal narcotics laws. See also: Peter Maas, The Valachi Papers, (New York: G. P. Putnam's

Hotel and Restaurant Supply Corporation at that time. Mercury was a comparatively small company owned by Murray specializing in the supply of meat and other provisions to camps and nightclubs.

In January, 1961, Joseph Pagano reached an agreement with Mrs. Weinberg and Mrs. Newman, as the stockholders each owning fifty percent of Murray stock. Each sold Pagano a part of her stock for \$17,500 totalling \$35,000. Both Mrs. Newman and Mrs. Weinberg then reinvested this sum back in Murray to permit it to expand its operations. Thus, Pagano became a one-third owner of Murray.

Subsequent to these arrangements, the three stockholders amended the corporate by-laws to provide for unanimous decision making as stockholders and directors, the resignation of David Newman as president and director, and, as events were to prove, took the fatal step of naming Pagano as president and director (to fill out the unexpired term of Newman).

These arrangements were formally approved at a joint director's and stockholders' meeting held January 31, 1961, and were subsequently supplemented by intra-corporate accord which, in addition to authorizing Pagano to sign all checks, designated him as "sole manager" and gave him "control" of the corporation. Thus, Pagano was given complete and final say as to the management and control of the business.

¹Sons, 1968), pp 214-225. This contains a description of Pagano's involvement with Joseph Valachi in a typical mob hit of Eugenio Giannini who had become an informer for the then Federal Bureau of Narcotics. "...and he (Valachi) selected three East Harlem 'kids', as he called them, rising hoodlums who were in line for membership in the Genovese Family, for the actual execution. Two were brothers, Joseph and Pasquale (Pat) Pagano..."

Up until Pagano's assuming the presidency, Murray's purchases averaged approximately \$100,000 per week, and it was meeting its bills in a timely manner. Immediately upon Pagano's designation, Murray undertook an intense effort to purchase large quantities of a variety of merchandise on credit not limiting itself to items it normally handled. Within a six-week period after Pagano's election Murray's purchases totalled approximately \$1,300,000.² Murray's sales took a correspondingly sharp upturn to customers brought in primarily by Pagano one of whom was Peter Castellana together with firms or corporations owned or controlled by Castellana or by one of his relatives.³ The vast majority of the increased amount of merchandise purchased by Murray was subsequently sold to one or more of the Castellana concerns specifically to G. S. Food Dealer and Pride Wholesale Meat & Poultry Corporation⁴, much of it a price less than cost to Murray or at a price slightly above cost. G.S. Foods was apparently created for the sole purpose of providing for the disposal of the vastly increased volume of

²On or about April 11, 1961, Murray's liabilities were \$1,282,070.08

³According to Milton E. Sahn, Trustee of the estate of Murray Packing Company, Inc., as alleged in a complaint filed by Booth, Lipton & Lipton his attorneys in the U.S. District Court, Southern District of New York (62 C.A. 517): "In furtherance of said fraudulent scheme and unlawful conspiracy it was agreed by and between all the defendants herein, except defendants Platt and Commercial Bank of North America, that the bankrupt (Murray) would place orders for poultry, meat and provisions with various processors and distributors throughout the United States and would promptly pay for the same, thereby causing said processors and distributors to believe that the said defendants were engaged in legitimate business operation and that the bankrupt would be able to pay for any and all merchandise thereafter ordered and purchased by it."

⁴Pride Wholesale Meat and Poultry Corp., operated a chain of wholesale and retail stores in the New York metropolitan area. For the month of November, 1961, sales by Murray to Pride approximated \$1,000 as compared to \$138,971.47 in December and \$241,284.33 in January.

merchandise purchased in March, 1961, by Murray⁵. Large orders would be considered normal during this time of year since it immediately preceded Easter.

CONSPIRACY FORMED

These events were preceded by a series of meetings arranged by Pagano and attended by Newman, Castellana, the Weinbergs and Pagano at which Castellana agreed to increase Pride's purchase of Murray's products.⁶ There was, in addition, an informal agreement reached at these meetings that Murray henceforth would bill Pride at only one-half cent per pound over Murray's own costs. Under these arrangements, sales by Murray to Pride increased very rapidly so that by March, 1961, Murray's sales to Pride amounted to \$922,000 of Murray's total sales of approximately \$1,437,000 for that month. These purchases by Pride constituted 80% of its total purchases for the month of March.

⁵G. S. Food Dealer (G&S) was organized on March 10, 1961, at the height of the conspiracy by defendant Gondolfo Sciandra. Sciandra was related to Castellana by marriage and had previously been working at one of Castellana's retail meat markets. G. S.'s role is discussed subsequently.

⁶Sahn, op. cit. p. 7, "That in furtherance of the said fraudulent scheme and unlawful conspiracy, when the merchandise so ordered arrived at the offices of the bankrupt, or prior thereto, the said defendants, other than defendants Platt and Commercial Bank of North America, caused the same to be transferred immediately to defendant Pride Wholesale Meat & Poultry Corp., ostensibly pursuant to orders for the same received from defendant Castellana and/or defendant Pride Wholesale Meat and Poultry Corp., pursuant to instructions given by defendant Castellana and/or defendant Pride Wholesale Meat and Poultry Corp."

DECEIT OF SUPPLIERS

With sales increasing to both Pride and G & S, Murray increased its wholesale purchases which, accordingly, more than quintupled from approximately \$257,000 in November, 1960, to \$1,437,000 in March, 1961. Until March, Murray paid for these purchases promptly within its normal seven-day credit period. This was quite characteristic of the industry noted for its quick turnover. In early March, however, there was a change in the pattern. The volume and size of poultry and meat orders increased rapidly but payments were delayed. Murray failed to employ proceeds from Pride and G. & S. to pay supplier-creditors and this resulted in a larger than usual bank balance which Pagano began to raid. Most significantly, Pagano between March 20 and 29 made substantial withdrawals from Murray's bank accounts. These withdrawals totalled \$745,000.

While Pagano was thus draining off Murray's assets, David Newman used his past association with poultry dealers to draw in merchandise from all over the country. He conducted a telephone campaign and made reassurances about payment. Throughout the month of March, he induced suppliers to forward merchandise in increasing amounts and gave false statements that the checks were in the mail. Over and over again, he reassured suppliers, "Don't worry. You will get your money."

One such supplier, Harry Feldman, of Colonial Provision Company, complained to Mickey Newman, David's brother, and Joe Weinberg about lack of payment. Feldman met with both Newman and Weinberg to discuss the situation; assurance was given that there was nothing to be concerned about and thereafter sales to Murray were increased. The first check from Murray to Colonial which did not clear was for \$26,919, a signal of things to come. Upon initial receipt of that check (before it was returned for insufficient funds) Colonial shipped additional merchandise. Feldman said that he never would have sold additional merchandise to Murray had he known this initial check would be returned. Colonial's total loss amounted to \$133,873.

Edward Murray, president of Edward Aaron and Company of Kansas City, Mo., delivered five trailer loads of poultry on March 23 and 24. In a telephone call by Murray on March 27 to complain about lack of payment, Newman told him that the check had already been mailed when in fact it had not. (Newman learned on March 22 that Pagano was making withdrawals.) Relying on Newman's assurances, Murray made additional shipments of poultry. Total loss to Aaron was \$82,000.

Myer Herholdt, a poultry broker for sales of various suppliers to Murray was called by several suppliers in March, 1961, about lack of payment. Upon contacting Newman and Weinberg, Herholdt was reassured of payment "tomorrow". Herholdt thereupon notified shippers conditions were favorable for receiving payment on delinquent accounts. Thus reassured, shippers began deliveries again.

J. Robert Mitchell was manager of Cordover Poultry, a subsidiary of the Schuldarberg-Kurdell Company. In response to inquiry by Newman on February 14, 1961, and after establishing Murray's credit through normal credit channels, Mitchell began shipments receiving payments up to the later part of February. By March 24, 1961, total amount owed by Murray to Cordover was \$80,651.38. Mitchell came to New York, but was assured by Newman that the checks would be mailed. With this reassurance he returned home and authorized three more shipments.

A representative of Penobscot Poultry, Bangor, Maine, called Newman on March 20 to inform him that he was disturbed about delayed payments. Newman assured him as well that "there was nothing to worry about," and as a result, on March 21, 23 and 26 Penobscot shipped \$40,000 worth of merchandise (total amount due to Penobscot was \$70,105).

Mathews Poultry Company delivered \$51,000 worth of merchandise during this period. On March 20, Mathews came to New York and when told that "one (check) is already in the mail to you.", returned home. On March 23, 1961, Newman reassured Mathews: "Don't worry it won't happen." This resulted in another shipment. Mathews asked for a check on March 23 and told by Newman that the checks were mailed. Based upon this reassurance, three additional shipments were made arriving on March 27 and 28. On March 27, a Mathew's driver picked up a check for \$15,000 after delivery which subsequently failed to clear the bank. Coincidentally, this very same shipment to Murray was offered back to Mathews Poultry by a Cander, New Jersey, dealer at a price less than its sale price to Murray.

These were but a few of the transactions conducted by Newman on behalf of Murray during a period of time when he knew that the withdrawals being made by Pagano would cause Murray to be unable to meet its debts. In each case the seller was reassured that there was nothing to worry about.⁷

⁷Mr. Christoffersen from California - \$37,600; Mr. Gunsberg from Detroit - \$99,510; John Mastro from California was told by Newman when he had shipped a load C.O.D., "John, the turkeys are here. I haven't got the money but I will have it in a couple of days; release them." Mastro's loss was \$37,000.

Seventeen suppliers to Murray were subjected to this fraud. By March 31, 1961, suppliers to Murray, thoroughly taken in by Newman and Weinberg, were defrauded of approximately \$1,300,000. This amount represented outstanding bills that would never be paid due to an almost empty bank account caused by Pagano's withdrawals.

MURRAY SELLS TO PRIDE AT BELOW COST

At the time in March when Murray was making these substantial purchases from suppliers without paying for them, it "sold" much of the merchandise to Castellana much of it at either $\frac{1}{2}$ cent above cost or even below cost.⁸ In depositions taken before the criminal trial and introduced as evidence by the prosecuting attorney, Albert Gaynor, Stanley Weinberg responded as follows:⁹

Q. When payments were received from Pride, whose job was it to check the payments against the statement? (Gaynor)

A. Mine. (Weinberg)

Q. Did there ever come a time in December, 1960, January, 1961, February, 1961, March of 1961, that you ascertained or noticed that Pride was not paying the full amount of the particular statement?

A. Yes.

Q. When would you say that you first noticed this?

A. In February.

⁸The effect of such price reductions, in the case of G.S. Food Dealer was compounded by the fact that G.&S. never paid for \$176,000 worth of delivered merchandise.

⁹All quotations from depositions and court testimony have been edited by the author by deleting extraneous comments. Nothing edited has changed the meaning of statements.

Q. What did you notice in February about the payments by Pride against particular statements?

A. Certain deductions per pound were being made, prices per pound without authorization, as far as I knew.

Q. Did you call these deductions to anybody's attention?

A. Yes, I did.

Q. To whose attention did you call it?

A. Both to Mr. Newman and Mr. Pagano.

Q. What did you say to Mr. Newman about these deductions the first time you called it to his attention?

A. In effect, I told him that statements were not being paid in full and we received notations from their bookkeepers that certain amounts per pound were being deducted from the invoices.

Q. And if the price was agreed upon before you prepared the invoice to Pride, how could that price be affected by something that happened afterward?

A. Don't ask me. I don't know.

Q. But yet in practice this is what happened was it not?

A. Well, we had made adjustments in prices before to other accounts because they received spoiled poultry or short weight of poultry and this also may have happened to Pride.

Q. Did you ever make adjustments with other accounts because of market conditions?

A. We may have once or twice.

Q. But it was not a customary practice with other accounts, was it?

A. No, not normal.

- Q. But it was a customary practice with the account of Pride?
- A. It was their practice, yes.
- Q. What do you mean by 'their practice'?
- A. As far as I know there was no authorization on our part for the prices to be changed.
- Q. Yet the prices were being changed?
- A. The prices were being changed without my knowledge, without Mr. Newman's knowledge, until after I knew the prices were not being paid in full.
- Q. Then Mr. Pagano would come back and tell you to prepare a credit memorandum?
- A. That is correct.
- Q. When Mr. Pagano told you to prepare a credit memorandum because there had been a change in market conditions did you question him on that?
- A. He didn't tell me why there had been changes. He told me to issue a credit and to issue the bill, to change the bill.
- Q. Can you tell me what this credit memorandum represents (showing it to the witness)?
- A. From what I can ascertain it is a credit of two cents a pound on the weights indicated against the invoice number previously charged.
- Q. Was this merchandise from a particular supplier?
- A. It says "on Gold Kist shipment of 3-17-61".
- Q. So that those particular invoices all represent sales of that particular Gold Kist shipment?
- A. That is correct, yes.
- Q. And two cents a pound credit was given on each one of those invoices to Pride Wholesale Meat & Poultry Corporation?

A. Yes.

Q. Who told you to prepare that credit memorandum?

A. Mr. Pagano, I believe.

Q. Did he okay that credit?

A. He okayed every credit I issued to them.

Q. And the effect of that credit was to give Pride Wholesale a reduction in price of two cents a pound on the invoices rendered?

A. That is correct.

Q. Did you ever discuss the effect of this credit memorandum with Mr. Pagano or with anybody else on behalf of or representing the firm?

Q. Yes, I did.

A. With whom did you discuss it?

A. With Mr. Pagano and with Mr. Newman.

Q. What did you say to Mr. Pagano and what did he say to you? Did you tell him that this sale would make it below cost?

A. I told him that the credit would bring it below cost, yes.

Q. Mr. Pagano knew that?

A. Yes.

Q. What did you say to your father and what did he say to you?

A. I told him about the credit and he said to me "Did you tell Joe Pagano?" I said, "I did." He said "What did he say to you?" I said "He told me to issue it and not to worry about it and Pride would make it up to us." He said "Well, if Joe okayed it, O.K."

Q. This was all?

A. That was it.

Q. During the time that these credits were issued for unauthorized deductions by Pride Wholesale Meat & Poultry Corporation did Murray Packing continue to make sales to Pride, did it not?

A. That is correct.

Q. At the time your father and Mr. Newman were selling merchandise to Pride they knew, did they not, that Pride was taking these unauthorized deductions and you were being called upon to issue these credits for the amount of these unauthorized deductions?

A. That is correct.

Q. Did you ever discuss with your father and Mr. Newman after these credits were issued the effect of these credits and the effect of selling merchandise below cost and at a loss to Murray Packing Company?

A. Yes, I have.

Q. What did you say to them?

A. Well, all I had said was "It does not make sense to sell it at this price."

Q. The company couldn't continue to continue in business if it continued selling at a loss, could it?

A. No company could.

Joseph Weinberg could, therefore, recall no basis for these reductions. Also, he could not recall any effort on the part of Murray to obtain a corresponding reduction from its processor-suppliers.

Pride's purchases from Murray increased substantially over a five (5) month period as evidenced by the following:

	Total Sales of Murray	Total Murray Sales to Pride	Total Pride Purchases
Nov. '60	\$257,930.78	\$ 1,072.96	\$ 592,733.40
Dec. '60	345,071.28	138,971.47	446,648.68
Jan. '61	456,165.32	241,284.33	550,449.80
Feb. '61	778,711.59	298,257.08	631,658.33
March '61	1,437,274.02	921,887.85	1,161,897.26

An FBI witness testified that he had undertaken an analysis of how much of a change took place between the time of original billing and the time the price was marked through or otherwise altered at a later date resulting in a change in the prices to Pride Wholesale Meat & Poultry Corporation. Of 70 examined transactions, the merchandise in 54 of them was ultimately sold to Pride "at a price less than what Murray Packing Company, Inc., was supposed to have paid for it."

CASTELLANA'S DEFENSE

What possible explanation could have existed for this apparent determination to destroy Murray? Through long and tedious testimony, Castellana - the only defendant to testify at the criminal trial - attempted painstakingly to justify each individual price reduction by pointing out a variety of explanations including late shipments or defective condition of the delivered merchandise.

- Q. What did you buy, sir, from Murray Packing? All types of merchandise, right? (Defense Attorney)
- A. I bought turkeys, chickens, beef, lamb, veal. (Castellana)
- Q. With regard to the procedure of inspecting each kind of merchandise, you went through the same procedure did you not?
- A. Yes, I did.
- Q. You examined each invoice?
- A. Yes, I did.
- Q. Were there times in the period of December through March of 1961 when you made any complaints about the merchandise you bought from Murray Packing?
- A. Hundreds of times.
- Q. And did you change invoices during that period of time?
- A. I certainly did.
- Q. Will you tell us what you did when these situations arose? I am now addressing your attention to December, 1960 and to January, 1961.
- A. When I received the merchandise and found something wrong with it, I would call Murray Packing---either Mickey Newman, Joe Pagano, Benny Wurmser----another salesman there---I forget his name---Joe Weinberg---and I told them what was wrong. There is many times they didn't believe me. So they would

come down, check it themselves, and see if I was right. There was many times they would not give me the allowance so I would send the merchandise back, and this happened many, many times, and you got a record on that, the merchandise that I would return. At any price I didn't want it. There are times we could not take it. I would send it back. They would not give me any credits - take it back.

Q. Mr. Castellana, will you kindly look at this C825 and will you first give us the date thereof, please?

A. March 17, 1961.

Q. Will you kindly tell us the circumstances of that transaction?

A. We received 769 boxes of turkeys on March 17. After unloading them and checking them out we found many bruises, wings missing, ribs, torn skin, scald markings on it. I explained to them that these were supposed to be Government Grade A's. After checking them out they weren't Grade A.

Therefore, we agreed on reducing the price only three cents which should have been more. I changed the price in my handwriting from 37 to 34 and initialled the ticket.

Q. Mr. Castellana, I show you Defendant Castellana and Pride's Exhibit R for identification and ask you if you can tell us what that paper is?

A. An invoice from Murray Packing to Pride.

Q. Mr. Castellana, will you give us the date of Exhibit S and tell us the circumstances of that transaction?

A. On March 17, 1961, I received a load of turkeys from Murray Packing which I had purchased. I had purchased them to be top grade with no markings, no bruises, no tears.

After inspecting them and checking them through, not one, maybe one hundred boxes I called Murray and told them to come down and look at them, I don't want them.

So finally, one of the representatives came down to look at them and did see there were bruised wings and I marked it on the invoice and we agreed on a price of 34 cents. I wanted to pay 32 cents but we agreed on 34, so I paid 34. The original price was 38, which was billed in to me.

Q. What is the date of that, sir?

A. March 17, 1961.

Castellana's practice of adjusting downward the price of Murray's shipments included merchandise other than poultry.

Q. Could we have the number?

A. The invoice number?

Q. Yes.

A. 2348. Upon receiving the veal I checked it for quality and the veal instead of being white, like it should have been, was all dark veal. I had called up Joe Weinberg on it and he asked me what was wrong with it and I told him that the veal was not white and I could not use it. So, therefore, he says, if I push it out he will give me a little allowance which he did.

On March 28th, on these two invoices, which are invoice Nos. C2349 and C2350, I had bought two loads.....of frozen poultry from Joe Pagano about three or four weeks prior, I had given him the order, which came in on the 28th. The bill came in at 30 cents. I called his attention to it. When we checked back three or four weeks, the time I bought them, the price was 28. So, therefore, they sent me a credit allowance accepting the deduction.

.....my initials don't appear on these two transactions, which are invoice No. C2585 and C2343. One was March 27 and one was March 31. My bookkeeper Mary at the time had made an error on pricing it. She had priced it. She called my attention to it and when the difference came on the statement I told her that after checking my purchase book that Murray was right and not to make the deduction and she never got it corrected because this happened on March 31 and March 27. Murray closed up three or four days later and she never got to making adjustment to show that Murray was correct and we were wrong.

On March 31, Exhibit FFF, which is tickets No. C3620, this is one load of eviscerated Beltvilles, part of one transaction that I had made with Murray, that the price was

changed from 39 to 35. They were sold to the Daitch Shopwell stores, which returned them all. I believe they kept one load out of five or six. They returned them all because the quality was poor. I had notified, I think it was either Mickey Newman or Joe Pagano on this, and they gave me the credit.

On March 30, on Exhibit GGG, I had bought six loads of turkeys from Joe Pagano. He called up and told me he had sold them to an Izzie Bachrach, another poultry dealer, a wholesaler in the poultry industry. Upon trying to deliver them to Izzie Bachrach, Izzie Bachrach had taken ill at the time and unfortunately passed away on March 30. He asked me that he was stuck with these six loads, they could not use them, if I could sell them for him. I told him I would let him know.

On March 31, which was a Friday, I called back Joe Pagano and I told him there is only one way I can sell them, 'If you can reduce the price. I don't want you to bill me. Bill them to Shoprite and give me a commission.

He said he would rather ship to Shoprite and bill me for them. When the invoices came in they were priced wrong and I told him about it and he gave me the credit. After Shoprite had received them, five or six days later they refused to buy them and they thought I had tried to pull a fast one on them, but subsequently they paid me in full.

On March 23 --

- Q. Do you have the exhibit number, please?
- A. Exhibit HHH; I had bought a load of under-grades turkeys from Murray Packing.
- Q. Invoice number?
- A. Invoice C2320. I had purchased them for the price of 32 cents. The invoice came in priced at 33½. I called Joe Pagano's attention to this and he said I was right. So he allowed me the credit. In turn I had sold three-quarters of the load to Food Parade at 33 cents.

On Exhibit III, which is dated March 15, invoice No. C773 and C774, I had bought a load of poultry which were New York dressed chickens. After getting them we found them all pin-feathered and scalded. I had called Mickey Newman on this here and he came down I believe that day to inspect them, because there was quite a big difference. We had a difference of about 7 cents a pound, 7½ cents a pound.

MY GAYNOR:¹⁰ May I just see that one second?
Thank you.

A. (Continuing) He checked the poultry and we agreed on the deduction. At that time I marked on the invoice that all the chickens were B graded, not Grade A's.

¹⁰ According to the prosecutor, Albert Gaynor, in a statement during the trial, Castellana and Pride were involved either directly or indirectly in three (3) prior bankruptcies with a similar "pattern" on the "same sequence of events". The three prior bankruptcies were just before a holiday season. A great increase in ordering of merchandise on credit took place a part of which was later sold below cost of market value to Castellana and Pride. The debtor subsequently went broke or disappeared and a petition in bankruptcy would be filed. The creditors were defrauded of hundreds of thousands of dollars. One such incident involved Capital Meat Market, 1315 Fulton Street, Brooklyn, N.Y. In July, 1955, Peter Castellana held a mortgage on Capital which he subsequently foreclosed. The market was taken over by Paul Masatto who, under the name of Frank Jessa, operated the business. Masatto previously worked for Castellana and Pride. Beginning in July of 1955 and up to Thanksgiving, Masatto purchased large amounts of merchandise based upon favorable credit information extended by Castellana. Masatto disappeared after the holiday owing \$150,000 to creditors. Masatto was subsequently indicted for bankruptcy fraud. Similarly, in November, 1957, Sal J. Bilello operated Tops All Supermarket which from November, 1957, until Easter, 1958, ordered on credit in excess of \$150,000 worth of merchandise and sold heavily to Castellana and Pride. Bilello was indicted for bankruptcy fraud. A third case involved Vito Maltese who operated the Eastern Brokerage Company which from November, 1958, to April, 1959, (Easter season) made extensive purchases on credit (in excess of \$270,000). Castellana and Pride purchased large amounts from Eastern during this period. Again, a bankruptcy proceeding followed with Maltese being indicted.

Q. I am showing you Government's Exhibits 47-a to L of the government. Do these represent the invoices and statements that you received from Murray Packing for your transactions?

A. Yes. Those are photostatic copies.

Q. All I want to ask in conclusion, Mr. Castellana, is this: Was most of the goods that you got from Murray Packing Company good, salable, merchantable merchandise?

A. Yes. It was all wholesome. There were times that it wasn't; I sent it back.

Q. They didn't send you junk all the time?

A. No, You got plenty of merchandise which there was nothing wrong with it, which I testified here to.

The price reductions described by Castellana, which occurred in January, totalled 92 out 128 transactions. This pattern of price reductions continued for the next two months.

With respect to business for the total period in question, Castellana responded as follows:

Q. Mr. Castellana, tell me from January to the end of March how much business did you do with Murray Packing Company? Give me your estimate, roughly.

A. Approximately a million and a half.

Q. A million and a half dollars?

A. Yes.

Q. And this was completely out of proportion to what you had previously done with him?

¹⁰It is interesting to note that Maltese was formerly associated with Masatto and Bilello. Also that Gondolfo Sciandra was an employee of Tops All Market and as noted by Gaynor, was observed "in the company of Vito Maltese. As a matter of fact he even accompanied Maltese to the bank on a number of occasions. Tie that in with the connection to Castellana....and the pattern of his participation in the Murray Packing Case is not too mystifying."

A. Yes.¹¹

Castellana's attempt at justification for each price reduction taken by Pride was counter-balanced by his subsequent admission that he did not make any notes with respect to the reasons.

Gaynor, in his summation to the jury in commenting on Castellana's testimony with respect to these reductions said: "It was interesting when I asked him about how many invoices he received over a period of years, oh, he had no way of knowing. I said wouldn't it be fair to say there were thousands. Oh, yes there were thousands. An yet he could look at 90 invoices and tell you from looking at each one, some three and a half years later, the reason for a reduction when only 12 out of 95 had anything on the face showing a reason for the deduction...He concocted a story for you and has the effrontery to think that you would believe his story...."

CIRCLE OF MONEY FLOW COMPLETED

Murray maintained its corporate bank account at the Royal State Bank of New York. Substantially all of Murray's \$1,300,000 worth of purchases went to Pride which made payment by checks to the order of Murray almost upon receipt of delivery. In the beginning, Murray deposited these checks at Royal State Bank and, immediately after each deposit, withdrew the money.

¹¹For March, Pride's purchases from Murray were as follows: first week - \$121,427.16; second week - \$161,091.99; third week - \$384,668.59; fourth week - \$192,262.36.

Royal State Bank subsequently refused to permit any withdrawals until the checks had actually cleared. On March 22, 1961, at the suggestion of Castellana, Pagano and Weinberg opened another account in the name of Murray at the Commercial Bank of North America in order to establish immediate credit. Both Pride and Castellana maintained accounts at Commercial Bank. The Commercial Bank account was opened with the understanding between Weinberg, Pagano and bank officials that Murray would be allowed to withdraw the funds as soon as the Pride checks were deposited at Commerical.¹² The only funds deposited in the account were the checks received from Pride. Sciandra, who made the Murray deposits, were present when these arrangements were made.

Indeed, the testimony at the criminal trial reveals at length how, during the critical period from March 20 to March 29, 1961, Pride deposited payments of several hundred thousand dollars to Murray's account in the Commercial Bank for merchandise purchased - March 20, \$93,156.46; March 21, \$75,000; March 22, \$40,000; March 23, \$50,000; March 24, \$125,000; March 25, \$241,930.95; March 26, \$90,000; March 27, \$35,000.¹³ (See Exhibit 1, page 37). These deposits by Sciandra were the only ones made in this account.

¹²Pagano and Weinberg provided Commercial Bank with what they claimed to be a certified copy of a resolution adopted at a meeting of Murray's Board of Directors which authorized the opening and maintenance of this account and the withdrawal of funds via checks signed by Weinberg and Pagano. There is no other record of any such meeting.

¹³Sciandra owed Murray \$138,227.31 on March 10, 1961. Between March 1, 1961, and March 31, 1961, Murray shipped to Sciandra merchandise totalling \$176,353.83 in value. G & S never paid Murray for this merchandise (see footnote #8).

Most significantly, Pagano at this same time withdrew the sum of \$745,000 from Murray's corporate bank accounts at the Royal State Bank of New York and Commerical Bank of North America.

These withdrawals began on March 20, 1961, when Pagano together with Stanley Weinberg, who having advised a bank representative of Murray's currency needs, went to Royal State Bank and cashed two checks for \$50,000 each. These checks were signed by both Joseph Pagano and Stanley Weinberg. Weinberg gave assurance to a bank representative that "We need the money to pay some trade bills."

These withdrawals continued at the Commercial Bank of North America (see Exhibit 1) until Pagano had withdrawn a total of \$745,000 as of March 29, 1961. On at least one of these occasions Pagano was met at the bank by Sciandra. On March 22, 1961, Pagano met Sciandra at the Commercial Bank of North America. Sciandra introduced Pagano to a bank officer, Mr. Stolzberg, as a customer of Pride.

During the short ten-day period of March 20, 1961 and March 29, 1961, this amount was withdrawn in cash from the two corporate bank accounts by corporate checks issued to the order of Pagano, signed by Pagano and Stanley Weinberg, and then cashed at the respective banks by Pagano. These withdrawals were as follows:

<u>Date of Check</u>	<u>Bank</u>	<u>Withdrawal Amount</u>	<u>Total</u>	<u>Castellana/Pride Deposits to Murray's Account</u>
3/20/61	Royal State Bank of New York	\$50,000 50,000	\$100,000	3/20/61 \$ 93,156.46 3/21/61 75,000.00
3/22/61	Commercial Bank of North America	35,000	35,000	3/22/61 40,000.00
3/23/61	" " "	50,000	50,000	3/23/61 50,000.00
3/24/61	" " "	25,000 50,000 50,000	125,000	3/24/61 125,000.00
3/27/61	" " "	50,000 50,000 75,000 75,000	250,000	3/25/61 241,930.95 3/26/61 90,000.00 3/27/61 35,000.00
3/28/61	" " "	25,000 50,000 50,000	125,000	
3/29/61	" " "	25,000 35,000	60,000	
Total Withdrawn			<u>\$745,000</u>	Total Deposit <u>\$750,087.41</u>

EXHIBIT 1

It's quite obvious that these withdrawals¹⁴ were the major cause of Murray's almost immediate bankruptcy. Of high significance

¹⁴Prosecuting attorney Gaynor, in an affidavit (Jan. 26, 1965) in opposition to a motion of Newman and the Weinbergs to set aside the jury's verdict stated as follows: "With respect to the \$745,000 of bank withdrawals, the evidence was more than sufficient to prove that all withdrawal checks were signed by S. Weinberg and, after March 20, were known to and permitted by Newman and J. Weinberg. S. Weinberg exhibited a fraudulent purpose when he stated to one bank officer at the time of a \$100,000 withdrawal that the funds were required to pay some trade bills. This same defendant also accompanied Pagano to the Royal State and Commercial Banks when the first withdrawals at each of these banks were made and he

is that Pride checks deposited to the account of Murray in the Commercial Bank during the same ten-day period were almost the same in daily and total amounts as to the withdrawals by Pagano. The evidence was clear that Sciandra regularly delivered Pride checks to Murray's account to the bank. There he joined Pagano in observing a bank officer fill out bank deposit slips and then stood by as Pagano proceeded to withdraw sums that were comparable to Sciandra's deposits. The circle of money flow was thus completed. Stanley Weinberg was implicated by virtue of the fact that he co-signed the checks and made the arrangements to cash these checks for Pagano by calling ahead to the bank.¹⁵

After the first day's withdrawals, Stanley Weinberg relayed this development to Mickey Newman and Joe Weinberg who went to speak to Pagano alone. They returned with instructions to Stanley Weinberg to "take care of it." Weinberg then accompanied Joe Pagano to

¹⁴arranged for the cashing of these and other checks during the withdrawal period by telephoning the bank before each withdrawal. Furthermore, he made a practice of giving Pagano several Murray checks in different amounts on particular days so that Pagano could withdraw whatever amount was in the account. The criminal intent of the other Murray defendants, Newman and J. Weinberg, was found not only in their agreement to permit withdrawals in order allegedly to recoup what had already been taken, but also in their continued purchases on credit during this period, and their continued false assurances to creditors that nothing was wrong and that they would be paid."

¹⁵It was the government's contention at the trial that "the purpose of these payments or transfers out of Murray's bank account was in contemplation of the bankruptcy of Murray and in order to defeat the fair rights of the creditors under the bankruptcy law by taking the money out of the corporation so it would not be available to the creditors justly entitled to it."

the Commercial Bank and apparently was so zealous of helping Pagano that he gave him, Pagano, a number of checks to enable him to withdraw whatever was in the account at the time.

The net effect of these transactions was to shift Pride's relationship to Murray from a debt of \$441,000 into a credit balance of approximately \$78,000 by March 29 despite the fact that Pride made additional purchases during the ten-day period.

During this period as previously noted, Joe Weinberg, knowing of these withdrawals, made false assurances to suppliers with respect to their being paid, and continued making purchases as long as he received credit from those suppliers.

The period March 20 to March 29 was the most important in this entire sequence of events. The Government's case was greatly enhanced by the following:

- (1) An accountant for Pride testified that the checks drawn to Murray's account were often for amounts in excess of \$25,000 which was quite unusual. In addition, the checks were frequently of rounded figures and many times certified thus permitting immediate withdrawal.

- (2) Simultaneously, Stanley Weinberg gave Pagano several checks of varying amounts on particular days to enable him to withdraw whatever sum happened to be in the account at the Commercial Bank at the time Sciandra delivered the Pride checks.
- (3) Finally, \$150,000 or about one-fifth of Pride deposits were obtained from a loan negotiated by Castellana with Julius Meshberg of Majestic Factoring Corporation.* This sum was given to Pride in three checks in the amount of \$50,000 each and all were dated March 27, 1961. Shortly after Pride received the money, two-thirds of which was in certified checks, it was deposited in Murray's account at the Commercial Bank and thereafter repaid to the Meshberg firm.

The following exchange took place between the prosecuting attorney and Mr. Meshberg in his testimony before the court:

- Q. Directing your attention to the end of March, 1961, did you have occasion then to meet Peter Castellana?
- A. Yes, I did.
- Q. Can you describe the circumstances of that meeting?
- A. We were negotiating for the financing of his accounts receivable. The meeting took place at Mr. Castellana's office in Brooklyn, I believe Atlantic Avenue, the office of Pride Meat in any event, at which time the contracts were entered into and the paper were signed.
- Q. At that meeting do you recall any conversation between you and Mr. Castellana?
- A. I can only explain that the financing arrangements were discussed as to our advancing upon their assignment to us of accounts receivable.
- Q. Did Mr. Castellana request an advance?
- A. That is correct.

*Factoring is the provision of financial assistance to manufacturers or wholesalers for additional working capital.

- Q. Do you recall how much of an advance he requested?
- A. Quite frankly, I don't recall whether a specific amount had been requested. Our usual advance is made at approximately 75 or 80 per cent of the accounts receivables assigned. I believe in this case our contract called for 75 per cent of the accounts assigned and the approximate amount of accounts submitted I think was close to \$200,000, about \$190,000-some-odd, and the advance would be in the neighborhood of \$140,000-some-odd, and therefore, the advance was rounded out to about \$150,000.
- Q. Was a formal agreement reached between you and your firm and Mr. Castellana?
- A. Yes.
- Q. I ask you to look at this document, Government's Exhibit 63A for identification.
- A. Yes, sir.
- Q. Do you recognize that, sir?
- A. Yes, sir.
- Q. Could you please identify it?
- A. This is a contract entered between Pride Wholesale Meat & Poultry Corporation and Majestic Factors on March 25, 1961.
- Q. Is it signed on behalf of Pride Wholesale?
- A. It is signed by Peter Castellana, president of Pride Wholesale, and Camelia Castellana, as secretary.
- Q. Is it signed on behalf of your company?
- A. It is signed on behalf of my company by Sidney Dorman as treasurer.
- Q. What is the date of that agreement?
- A. March 25, 1961.

During this period (March 20 - March 29) G. and S. owed a large sum of money to Murray. Stanley Weinberg testified as follows:

Q. How much did they owe on that date to Murray, G. and S. to Murray?

A. \$94,000.

Q. How about on an earlier date? What did they owe, according to those records, the first week in March?

A. \$65,000.

Q. Wasn't that a substantial sum of money?

A. Yes, it was.

Q. And did you call Mr. Sciandra and ask for payment or take any steps to collect the \$65,000?

A. Yes, I did.

Q. What steps did you take?

A. I called it to Mr. Pagano's attention and told him to get money up there for the account.

Q. And what did he say?

A. He said he will take care of it.

Q. Did any money come in from the account?

A. Yes, Mr. Sciandra -- that is when I first met him -- brought up checks.

Q. How much did he bring up?

A. Well, he brought up \$27,000, \$15,000 and \$10,000.

Q. How much of a balance did that leave when he made those three payments? How much did he owe to Murray?

A. \$12,000.

Q. He owed \$12,000 to Murray at that time? Where is that?

A. Here (indicating on card).

Q. That is on what date?

A. The 22nd.

Q. Of March?

A. Yes.

Q. Thereafter were any further shipments made to Mr. Sciandra?

A. Yes, there were.

Q. What dates:

A. The 24th.

Q. Just tell us the dates and the amounts?

A. Read all of it down?

Q. Well, if they refresh your memory as to what was done, yes.

A. It is not a matter of refreshing my memory. I can see he owed a substantial amount, and I told Mr. Pagano to have him bring more money up.

Q. You say on March 21st he owed \$69,000; is that right?

A. That is correct.

Q. A little over \$69,000. Then you spoke to Mr. Pagano about it.

A. That is right.

Q. And what did Mr. Pagano say?

A. He said, 'I will see that you get it.'

Q. Did you make any attempt yourself to contact Buddy Sciandra to get payments?

A. I couldn't reach him.

Q. What steps did you take to reach him?

A. I tried calling him.

Q. Where?

A. At that address, 152 Fort Greene Place.

Q. Do you recognize that address?

A. It is in the Fort Greene Market.

Q. Do you recognize that address as being Pride's address?

A. No, I don't -- Pride is on Atlantic Avenue, 651 Atlantic Avenue.

Q. Do you know Pride has an address on Fort Greene?

A. No, I don't.

Q. Now you say you attempted to contact Buddy Sciandra and were unsuccessful?

A. That is correct.

Q. What did you say to Mr. Pagano about it?

A. I told him I couldn't reach Mr. Sciandra and I have to get some money into the account.

- Q. Now that was on approximately March 21st, when you were aware of a balance of over \$69,000?
- A. That is right.
- Q. Now, did you take any steps to stop selling Mr. Sciandra any further merchandise?
- A. Well, I had mentioned to Mr. Pagano that we shouldn't sell him any more, we are getting in deep with him.
- Q. What did he say?
- A. He said, 'Don't worry. I am assuming responsibility for the account and you will sell him.'
- Q. That was on March 21st?
- A. Approximately that time.
- Q. Were you aware that thereafter, between March 21st and March 24th, there were a number of additional shipments?
- Q. How did you know about the additional shipments made to Sciandra?
- A. I can see the postings every day.
- Q. And what did you do about these postings?
- A. I called them to Mr. Pagano's attention, I called them to Mr. Weinberg's attention and to Mr. Newman's attention.
- Q. And what happened?
- A. They all told me Mr. Pagano told them to keep shipping them, he will be responsible for the account and he will get the money for it.
- Q. Now you said you were having trouble getting Mr. Sciandra on the telephone?
- A. That is right.
- Q. But isn't it a fact that Mr. Sciandra was ordering merchandise during that period of time when you couldn't get him on the telephone?

A. I presume he was.

Q. Did you take any steps to find out how Mr. Sciandra was ordering merchandise during this period of time that you couldn't get him?

A. I could only assume that he was calling it in.

Q. Did he ever come up to the premises during that period of time?

A. Only when he brought the check up.

Q. That is the only time?

A. That is right.

Q. Was that at the time when Mr. Pagano was taking the money from the corporation for his own use?

A. I don't remember the exact dates.

Q. Well, take a look at the dates, Mr. Weinberg, and see if you can't refresh your memory as to the dates of these purchases made by Sciandra and the dates when Mr. Pagano was taking the money out of the corporation for his own use?

A. What dates did he take them out on?

Q. You don't recall those dates?

A. I think --

Q. If I tell you it was between March 20 and March 29, 1961, would that refresh your memory?

A. Well, if that is what they were, that is what they were.

Q. Well, that is what they were.

A. All right.

Q. Now, after you made the inquiry from Pagano about the payment of \$69,000 balance, \$69,531.60 which was not paid, did you take any steps at all to stop shipments to G. and S.?

- A. All I could do is tell Mr. Newman and Mr. Weinberg that he owed us a substantial amount of money and we weren't getting paid. I couldn't overrule their shipping or not shipping.
- Q. Did you discuss with Mr. Newman and your father the fact that there was a very substantial amount which was growing each day without getting payments, due from G. and S. to Murray?
- A. Yes, I did.
- Q. What did they say to you?
- A. Well, they told me, 'Joe Pagano said he would guarantee the account. As long as he is going to get it for us, don't worry about it.'
- Q. Well, when did you get alarmed about not being paid?
- A. After we hadn't received a check for the following week.
- Q. When he owed you \$65,000?
- A. No, the \$65,000 -- in fact, up to the \$132,000 was all within one week's time.
- Q. You weren't alarmed when a man whom you knew nothing about, never met, owed you \$132,000?
- A. Not as long as Pagano said it was a good account and he would guarantee it.
- Q. And he was saying that at the same time as Mr. Pagano was taking out all the money of the corporation?
- A. I felt one had nothing to do with the other.
- Q. Wasn't this during the same period of time when you were making daily calls and couldn't get anybody on the telephone.
- A. Well, I gave up trying to reach G. and S. Food Dealers after about three or four days of no answering.
- Q. How much did he owe you or G. and S. owe Murray when you gave up? Take a look.

A. When who gave up?

Q. You say you gave up trying-----

A. Oh, I gave up calling him.

Q. Yes.

A. Oh, about \$146,000.

Q. And each day you received no monies?

A. That is correct.

ATTEMPT AT SETTLEMENT FAILS

On March 29, 1961, Abe Platt, an attorney, having been called by the Weinbergs, attended a meeting at which Joseph and Stanley Weinberg and David Newman were present. Platt was told by J. Weinberg that Pagano had taken several hundred thousand dollars and that as a result Murray Packing was on the verge of bankruptcy. Platt then recommended that Murray file for bankruptcy and go to bankruptcy experts Levin and Weintraub.

Accordingly, On March 31, 1961, Platt, the two Weinbergs and David Newman went to see Levin and told their story. Levin recommended a common-law settlement with Murray's creditors after a discussion with Pagano. The Murray representatives expressed the opinion that they could raise an amount of money in a proposed settlement at about 40 cents on the dollar.

On April 1, 1961, Platt, Joseph Weinberg and David Newman attended a meeting of several creditors where Weinberg accused Pagano of having taken the money. A general discussion of a proposed settlement took place and the suggestion that if there is a 40 percent settlement, Levin would handle the matter.

On April 3, 1961, a meeting was held at Platt's office with Platt, Joseph Weinberg, Stanley Weinberg, David Newman, and Joseph Pagano. Platt explained the mechanics of the proposed settlement and was told by Joseph Weinberg that \$100,000 would be realised as a good-faith down payment on the proposed settlement. Subsequently, the money was delivered by Pagano to Platt's office and later deposited in a bank account.

On April 8, Platt again met with the same group of individuals and was told that Murray couldn't go through with the arrangements because Murray's accounts payable were in excess of that previously reported to Platt and to Murray's creditors. Platt then went to the bank (April 9), withdrew \$100,000 and returned it to Joe Pagano. This money was never recovered.¹⁶

¹⁶The Government contended in the criminal trial that "these negotiations were to lull the creditors of Murray perhaps into thinking they might get some recovery and after a short period they were terminated and Murray went into bankruptcy. But before the bankruptcy the defendants Pagano and Stanley Weinberg took \$12,000 out of Murray's bank account which they delivered to the lawyer Platt and at least \$5,000 of this amount was paid to the defendant Pagano after the bankruptcy.. the government is contending and, of course, the defendants deny that all of these elements indicate that the conspiracy was formed to violate the bankruptcy law and defraud the creditors of Murray and that the evidence shows that role of the defendants played an active part in the information and carrying out of the conspiracy." P 3489

FILING OF INVOLUNTARY PETITION IN BANKRUPTCY

On April 11, 1961, a creditor's committee filed an involuntary petition in bankruptcy.¹⁷ Attorneys for the Trustee attempted to collect Murray's accounts receivable but discovered that Murray's officers had continued to collect the accounts after the petition was filed and had deposited the collected funds in a new account at the County Trust Company in Mount Vernon, New York. The bank was immediately notified and the Trustee was able to collect the full amount on deposit - \$2,415.82. Additional recoveries were life insurance policies on the life of Joseph Weinberg and David Newman and Murray Securities held in accounts with stockbrokers.

¹⁷Abe Platt, Stanley Weinberg, Joseph Weinberg and Joseph Pagano, after the filing of the bankruptcy petition, travelled together to Los Angeles, California, and Las Vegas, Nevada for the ostensible purpose of raising money to obtain a proposed settlement with the creditors of Murray. Actually, according to witnesses, no attempts to raise money were made, the trip "seemed to be nothing but a gambling and golf pleasure jaunt." In testimony before the Grand Jury, Platt responded as follows:

Q. Were you in some fear of Mr. Pagano?

A. Yes, I was.

Q. Well, even though you were in fear of Mr. Pagano, you made the trip to California with him didn't you?

A. Yes, I did.

Q. Played golf with him?

A. Yes.

Q. You weren't in very much fear of him at all were you?

A. Yes, I was.

Q. You socialized with him?

A. That is right.

Q. How do you explain that if you are in fear of him?

A. Well, it has nothing to do with anything else. I had not crossed him at that point or any time.

Q. You had not what?

A. I had not done anything to cross him at that point. I had not done anything to create any danger.

Shortly after the filing of the involuntary bankruptcy petition, the Receiver moved to obtain a turnover order against Stanley Weinberg and Joseph Pagano, secretary and president respectively of Murray Packing Co., in the amount of \$745,000.00. Hearings on this action were held in May and June, 1961.

On July 24, 1961, the Referee signed an order directing Joseph Pagano to pay the Trustee in bankruptcy the sum of \$745,000 within 5 days of service of the order. This order was made by the Referee on the basis of testimony offered on behalf of Pagano and of the Receiver/Trustee.

THE CONSPIRACY: THE GOVERNMENT'S CASE AND THE DEFENDANTS' RESPONSES

Prosecution argued strongly on the conspiracy. As to Sciandra, he was closely related to Castellana. Sciandra was not only the one who brought the deposits to the Commercial Bank but actually introduced Pagano to the banker. He was in fact present on one occasion when Pagano was counting money withdrawn the first time from the Commercial Bank (this was the third actual withdrawal by Pagano).

February, 1961, marked Sciandra's first entry into a business adventure. It was then that he signed a business certificate, G. and S., and there was really no business activity from the time of certificate filing in February until March 8,

1961. Beginning on that date, Sciandra did \$176,000 worth of business on an investment of only \$1,000. Further, according to testimony of Mr. Platt and corroborated by other sources, Sciandra attended the meeting at the Round Table where he picked up half the money.¹⁸ Thus, the Government contended his involvement in the conspiracy was quite obvious.

Each defendant denied the existence of a conspiracy; that there was any attempt to defraud Murray's creditors or that there was any intent to defeat the bankruptcy law. Castellana denied any connection with the bankruptcy and contended that all his dealings, including price reductions, were normal and customary business transactions. Indeed, Castellana claimed he sought to save Murray by trying to negotiate a settlement with creditors. Sciandra took a similar stance claiming all his dealings with Murray were "normal" and that his presence when Murray opened its account at Commercial was a "coincidence."

Pagano's contention was that he acted alone, there was no conspiracy, and he took Murray's money with no intention of defrauding the bankruptcy law or of defrauding Murray's creditors.

¹⁸The Government had to prove that Sciandra abetted the crime with knowledge that the assets were to be transferred. The Government had to prove that Sciandra knowingly became a participant, that he had a stake in the venture. It was contended that he was the means of effectuating deposits and withdrawals. Also, that he actually arranged the transfer of Murray's funds.

PAGANO'S DEFENSE RIVALED "THE BEST OF BARON MUNCHAUSEN"

Upon failure of settlement negotiations, Murray's creditors filed an involuntary petition in bankruptcy on April 11, 1961. Murray's fraudulent acts continued, however, with a \$12,000 deposit in a special escrow account with half of this amount subsequently given to Pagano to undertake a fund-raising trip (see footnote 17).

On May 11, 1961, Murray Packing Company was adjudged bankrupt owing some 85 creditors approximately \$1,300,000. Total Murray assets were \$1,060,422.15 consisting of \$745,000 in promissory notes from Joseph Pagano and \$268,692.15 accounts receivable. The remainder of its assets totalled less than \$50,000.

The Pagano defense¹⁹ was that these withdrawals were merely loans made to him by the corporation for which he issued promissory notes which were placed in evidence. However, when Pagano was questioned on cross examination as to what happened to the money or whether he still possessed any of it, he pleaded the Constitutional privilege against self-incrimination.²⁰ The Referee made the following observation about Pagano's loans:

The books of the bankrupt disappeared after the business collapsed. During the many days of 21-A examination the respondent Weinberg and other officers

¹⁹Rendered in testimony before referee in bankruptcy Herzog.

²⁰Pagano refused to testify as to whether he disbursed any of the moneys and where he had disbursed any of it. He also refused to reveal how long he had known Castellana or Sciandra.

of the bankrupt repeatedly testified that they did not know the whereabouts of the books, and Pagano refused to answer. On the very day the first hearing was scheduled on this turnover proceeding, persons unknown delivered several cartons of books to the office of Weinberg's attorney... (the attorney) says he has no idea who delivered the books to this office. Weinberg does not know, and Pagano refuses to say where they came from.

The promissory notes allegedly signed by Pagano were conveniently protruding from the ledger at the pages where entries were made under loans and exchanges. Weinberg admitted (that) on his instructions several of the pages of the ledger containing the Pagano transactions had been rewritten.

The case against Pagano has clear overtones of the invasion of legitimate business by racketeers, the use of strong arm tactics, and the perversion of the Bankruptcy act to gain their nefarious ends (italics not in the original).²¹

At a subsequent Hearing, Referee Herzog opinioned as follows:

This was in my opinion the most audacious raid on a treasury that I have ever encountered. To make sure he emptied the bank account, Pagano on each occasion of making withdrawals, took several signed checks instead of one so that he could cash as many as the bank balance would permit.

I completely disbelieve the testimony of Mr. Weinberg as to the execution of the promissory notes. He testified that he thought he could meet the bankrupt's debts on the week-end loans, but when the notes turned up it was found that they were payable three months after their date.

I am fully convinced that Mr. Weinberg committed the grossest perjury on the witness stand. The disappearance of the books, the denial by all parties as to their whereabouts and their sudden and fortuitous appearance on the day of this trial, with the notes neatly

²¹Asa Herzog, Referee, in the matter of Murray Packing Company, Inc. Bankrupt, Decision (Re: Offer of Pagano) In bankruptcy No. 61B 229, United States District Court, Southern District of New York.

peeking out of the ledger, demonstrates a contemptuous trifling with this court.

Even if the notes were executed when Weinberg says they were, they do not make Pagano a debtor nor his claim substantial. To put it boldly, he stole the money, he stripped the bankrupt of its assets, and to stand here now and say it was a pure business transaction, and to attempt to throw a mantle of respectability on the plainest of larcenies by calling it a loan, and at the same time refusing to answer the questions on the grounds his answer would tend to incriminate him, simply insults the intelligence. The claim is frivolous, baseless and fictitious and is put forward in bad faith. If ever a plan case calling for the exercise of summary jurisdiction existed this is that case. I hold that the Court has summary jurisdiction in regard to Pagano.²²

Referee Herzog concluded that Pagano still possessed or had under his control the \$750,000 and the Turnover Motion was granted against Pagano and the order signed on July 24, 1961. The Turnover Order sought against Stanley Weinberg, however, was denied.

Pagano petitioned for a review by the U.S. District Court, Southern District of New York. On December 6, 1961, District Judge John F. X. McGohey reversed the Turnover Order of July 24 1961, as to Pagano solely on the grounds that the Referee lacked summary jurisdiction. He sustained the order as to Weinberg. On April 25, 1962, the Court of Appeals unanimously reversed the District Court and directed that the order of the Referee be affirmed. The order of the Court of Appeals automatically

²²Record at 114-16, in re Murray Packing Company, 61-B-279, Hearing on Order to Show Cause re Turnover (record filed S.D.N.Y. August 22, 1961)

became the judgment of the District Court on May 14, 1962.

After several subsequent legal maneuvers (including the holding of Pagano in contempt on April 10, 1963), United States District Court Judge Sugarman ruled that Pagano had offered no proof of his inability to comply with the Referee's 1961 order.

In July, 1963, Pagano obtained an order to permit him to appear and testify before Referee Herzog and purge himself of contempt. Judge Sugarman ordered the Referee to take Pagano's testimony and report to him his findings and recommendations.

The hearing was held on July 15, 1963, Pagano appeared and according to Judge Sugarman offered testimony that rivaled "the best of Baron Munchausen." Pagano testified that he lost the \$745,000 shooting dice in a "floating crap game" over a period of a few days at places he did not remember to persons he did not know and in amounts he could not recall. He also testified that he was without funds or property and so was unable to comply with the Turnover Order. He pleaded his Constitutional privilege against self-incrimination when asked questions about the whereabouts of the \$750,000 in question, specifically in response to the following questions:

Q. Mr. Pagano, isn't it a fact that during the month of March, 1961, you received in the form of cash from the Murray Packing Company account the sum of \$745,000 in cash different days during the month? (R, p. 73)

- Q. Isn't a fact, Mr. Pagano, that you still have that sum of \$745,000? (R.,p.73)
- Q. Mr. Pagano, isn't it a fact that as of April 5, 1961, you had the sum of \$100,000 in your possession and under your control? (R.,p.74)

Referee Herzog findings rejected Pagano's testimony as nothing but lies - "with his freedom depending upon his very words he elected perjury rather than truth." Referee Herzog's
23
evaluation was as follows:

Pagano's story is, in sum and substance, that (he cannot now comply with the turnover order because) he gambled and lost the money at dice games, most of it in New York, and the balance in Las Vegas.

In an monotonous and incredible a story as I have ever heard, Pagano related that each time he withdrew the money from the bank, he proceeded to a bar or candy store where he knew runners for 'floating crap games' could be found, and was driven or steered to 'an apartment house or a building loft or a store, an empty store', where a 'crap game' was in progress and where he would proceed to lose the money he withdrew that day. He was unable to identify the site of the crap games beyond some indefinite statement, such as 'in the nineties', was unable to identify the persons who ran the game ('Joe'), the persons who played in the game, or the persons who steered him to the game, beyond the usual, 'A fellow named Frank.'

Thus, on March 20, 1961, Pagano withdrew \$100,000 from the Royal State Bank and according to his testimony went to a candy store where he found a 'runner' who brought him to a game where he lost 'over 100 thousand'. In detail the tale became increasingly incredible: He had the \$100,000 in a stachel in \$100 bills. From the bank he went to

²³Report, Findings and Recommendations on Application of Joseph Pagano to be relieved from imprisonment Asa S. Herzog, United States District Court, Southern District of New York (In Bankruptcy No. 61-B-279) p 8ff.

Lizzie's bar at 4 or 5 p.m. and left the money in the trunk of his car. He had dinner at the bar then took the valise out of the car and in 'the back room' of the restaurant, removed \$50,000 replaced the valise with the balance of the money in the trunk of his car, and then wandered about, with no recollection of where he went. Somewhere in his peregrinations he met up with Eddie Sisca, he doesn't remember where, and several hours later landed at the candy store where he picked up a runner who drove him to the game 'in the nineties'. He paid the \$50,000 to cover a previous loss of 'a couple of weeks ago', borrowed 15, 20 or 25 thousand dollars from the house, which he proceeded to lose. At that point, one of the men who worked for the game drove him to the bar where he again took the valise from the trunk of his car, and in the back room of the bar, emptied it, restored the valise to the trunk of the car, and was driven back to the game where he lost the balance of the money and 50 to 75 thousand more, after which the 'working fellow' drove him back to his car.

Two days later, Pagano drew \$35,000 from the bank in 'big money', and later in the day went to the candy store or bar, with no recollection of where he went in the interim. One of the 'chauffeurs' took him to the game at the location he cannot recall. He lost the \$35,000 and more, owing the house 65, 70 thousand when he left.

The next day, March 23, Pagano withdrew \$50,000 in large bills which he put in a valise. He 'might have went home', or to the barber shop, to dinner, and then proceeded to the bar or candy store to pick up a 'runner'. At the game he paid bank 'maybe \$25,000' which he owed, lost the remainder and left owing \$50,000.

On March 24, Pagano withdrew \$125,000 put it in a suitcase or bag and went to Lizzie's Bar where, again, he left money in the trunk of his car and walked across the street to a loft where he heard a game was in progress accompanied by a runner he picked up at the bar. This time, he took the valise with him and identified the location as a loft building on the east side of Second Avenue between 115th and 116th Streets. He paid off 50 or 75 thousand he owed and with the balance in his pocket, proceeded to the gaming table and lost the money and another 50 thousand.

On March 27, Pagano withdrew \$250,000 in 50 and 100 dollar bills stuffed in a stachel. At Lizzie's or the candy store or another bar, picked up a runner who took him to a house on 95th Street. He paid off 100 thousand or 125 thousand, and lost. The game broke up and he left with \$50,000 which he borrowed from the house. He went looking for another game but couldn't find one.

The following day, March 28, Pagano withdrew \$150,000. With the 65 to 70 thousand left from the previous day, this gave Pagano about \$215,000 and again he found the game at an unknown location. 'You go down the cellar and you go upstairs and there is another building and you go through another door.' He paid what he owed (65, 70, 50 thousand dollars). He lost all; he lost 'most of that'; he lost 125 to 150 thousand.

The final withdrawal took place the following day, March 29, when the last of the Murray Packing funds, amounting to \$35,000 was withdrawn. With what was left from....(previous games) he now had a total of \$125,000. He put up \$100,000 with a Creditors' Committee in an attempt to settle their claims against Murray Packing but the 'deal' fell through and he got the money back. He then went to Las Vegas to borrow money to put through a settlement but ended up shooting dice and losing 75 to 100 thousand dollars (50, 60, 70 thousand). He said at first that he lost it at the 'Sands' and later, 'at the Sands, the Flamingo and the Star Dust' and at 'a lot of places'.

Thus ended the recital of what happened to \$745,000. In an effort to bolster this story, Pagano said that 'most of the time' he went to the 'floating crap games' with somebody and then produced three witnesses.

Edgar Sisca (Eddie) testified he accompanied Pagano to games 'about three or four, something like that'. He didn't play -- he just watched Pagano. Other friends went along, to wit, Mike and Dee Anthony and one Velella. He, too, had no idea of where the games took place except that it was 'downtown'. Pagano left the games 'clean'.

Dee Anthony testified he attended one game with Pagano in March, 1961, and was 'interested in seeing a dice game' which he found 'fascinating'; Pagano 'took a bath'. He, too, did not gamble, he 'just watched', 'fascinated'.

Michael Velella testified that he, too, went to 'crap games' with Pagano in March, 1961, also did not gamble and also did not know where the games were held 'because they took you through different places.' He saw Pagano bet 'very heavily', and 'lost constantly'.

The Referee totally rejected the explanation of Pagano as to what happened to the money in his findings:

I am convinced that Pagano's story is made up of the whole cloth. With his freedom depending upon his very words, he elected perjury rather than truth. His sordid tale hinges upon a fanciful floating crap game, with unknown persons at unknown places, supported in part by three witnesses who in my opinion had as little regard for the oath as did Pagano. When he first testified, Pagano could only remember that Eddie Sisca was with him; at the second game Pagano did not remember if Eddie was with him. Examined in detail as to the third and fourth games, he made no mention of being accompanied by anyone but the 'runner' although he was asked if anyone went with him. The same is true of the fifth and sixth games. Only at Las Vegas could the witness name the persons with him and none of them appeared as witnesses. Yet later in his testimony he recalled that 'most of the time' he went to the games with 'somebody'.

The story of three hangers-on going to professional floating 'crap' games with Pagano, just to watch, is incredible. They vaguely float into and out of the picture and rather than lend support to Pagano's story they detract from it. It is my firm conviction that all three gave false testimony.

Returning to Pagano's story, it was, in my opinion, deliberately vague and indefinite so as to preclude any verification. Here was a man who gambled and lost three quarters of a million dollars in a span of a few days. He had never possessed \$100,000 before and yet he only vaguely remembers that he went to a candy store or one of several bars to pick up runners whose names he doesn't know, who took him to places he cannot locate, where he played dice with men whose names he cannot tell! His testimony as to amounts was just as vague, at one point it is 65 to 70 thousand, and another it became 75 to 100 thousand dollars! He is positive only that he lost \$745,000.

A little side light illuminates the entire fabric of the testimony: Pagano was asked if one "Buddy" went with him to the games. Pagano professed not to know Buddy, asking, "Who is Buddy?" I informed Pagano that the full name was Buddy Sciandra, whereupon he remarked "I have to think about it". He continued to deny that he knew Buddy, finally admitting that he knew him "a couple of years". He denied doing business with him and then admitted that he did business with him "mostly"....This clear lying under oath characterized the entire testimony of Pagano.

A story so palpably a fabrication must be rejected. To accept such a story is to put a premium on perjury. It is a standardized form of falsehood so often reiterated as to be neither credible nor interesting. In re Abesbaum 70 F. (2d) 6281. In the words of Judge Learned Hand, if courts allowed themselves to be fobbed off with such silly tales, there would be an end to the administration of Justice, Seligson v. Goldsmith, 128 F.(2d) 977.

I reject Pagano's testimony in its entirety. I find it to be a tissue of lies, concocted by a man desperate to be delivered from incarceration, but yet not desperate enough to speak the truth. I find that Pagano has not explained what he did with the sum of \$745,000 which he appropriated from the bankrupt, and that absent a reasonable explanation, he still has possession or control thereof. I find that he has not purged himself of the contempt for which he was imprisoned and has not shown that he is unable to comply with my order of July 24, 1961 (italics not in original).

Referee Herzog recommended that the application of Pagano be denied and that Pagano remain in confinement until he purged himself of contempt by paying over \$750,000 or by testifying truthfully as to the disposition of the money and his consequent inability to comply. On August 21, 1963, Judge Sugarman granted the Trustee's motion to confirm the Referee's report and findings, denying Pagano's petition for a writ of habeas corpus and dismissed as well his application for bail. There was no appeal from this order.

Finally on December 30, 1964, the jury in the criminal proceeding returned its verdict of guilty, against all defendants including Pagano, on all eight counts of the indictment. Pagano's sentence rendered February 16, 1965, was to a term of five (5) years on each count (sentences to run concurrently), a fine of \$10,000 on the first count and \$5,000 on the other seven counts. All fines were commuted. The judgment of conviction was affirmed on appeal.²⁴ Still further legal maneuvering followed. In one such attempt, Pagano applied for an order to vacate and set aside Judge Sugarman's order of contempt of April 16, 1963. In opposition Edgar H. Booth (Booth, Lipton & Lipton, attorneys for Milton E. Sahn, Trustee) filed an Affidavit in Opposition in which he stated the following:

In light of the history of these proceedings, the Trustee must oppose the instant application. Pagano abstracted \$745,000 from the corporate bank accounts of Murray Packing Co., Inc., in cash, in broad daylight without the necessity of pointing a gun at anyone, by the simple expedient of issuing checks to himself in astronomical amounts and getting the banks to cash them. Since the time this raid on the corporate treasury was discovered by the creditors of the Bankrupt, he has consistently refused to truthfully reveal what he did with the attaché cases jammed to bursting with the fifty and one hundred dollar bills that came into his possession and has not hesitated to perjure himself to thwart the Trustee in recovering this money for the creditors of the bankrupt. On his own application to purge himself of contempt by testifying before the Referee, he committed perjury. A month later, while testifying before the same Referee pursuant to an order of Judge Sugarman for his examination, he pleaded his Constitutional privilege against self-incrimination

²⁴United States vs. Castellana, 349 F. 2d 264 (ed Cir. 1965) cert. denied, 383 U.S. 928 (1966)

in reply to all questions dealing with his association with the Bankrupt, Murray Packing Co., Inc., and the disposition of these moneys.

Nevertheless, Pagano comes before the Court again to seek the vacation of the contempt order and to complain that his continued commitment at the Federal Detention House after he completes service of his criminal sentence will amount to cruel and unusual punishment because the same acts involved in the contempt proceedings also formed the basis of the bankruptcy fraud indictment upon which he was convicted. The instant application sets forth no new facts for granting the relief sought, that Pagano be discharged from confinement without purging himself of contempt. The petition merely contains Pagano's conclusory and self-serving statements that he cannot comply with the turnover order and that the inference of his continued possession has been eroded by the passage of time and his continued confinement, first under the contempt order and then in the Federal Penitentiary. It remains for Pagano to convince the Court of his inability to comply with the turnover order and to truthfully tell why he is unable to do so in whole or in part.

As has been said innumerable times before, Pagano holds in his own hands the key to release himself from detention. He may purge himself of contempt at any time, either by complying with the turnover order and paying over to the Trustee the sum of \$745,000 or by offering creditable evidence of his inability to comply with the turnover order. The fact that he was convicted of a crime involving the same state of facts and has served his sentence does not relieve him of the responsibility to purge himself of contempt. If he is permitted to escape the full force of detention without purging himself of contempt, then the entire efficacy of the contempt proceeding will have been lost. The purpose of the detention is to obtain compliance with the order not to punish Pagano for any misdeeds or to imprison him for non-payment of debts.

The facts recited above indicate that Pagano's detention is the result of lengthy and time-consuming proceedings in this Court and the Appellate Courts in which he has exercised every legal remedy available to him. He has had full and ample opportunity on innumerable occasions to purge himself of the contempt that has resulted in his detention. For reasons best known to himself, he has declined the opportunity to purge himself of contempt, either

by complying with the order or by testifying truthfully as to his inability to comply.

Under the circumstances, the Trustee most strenuously opposes the instant application and urges that it be denied. If the application is granted, the Trustee and creditors of the Bankrupt will have lost the benefit of these protracted proceedings to recover the aforementioned \$745,000 from Pagano which commenced in May, 1961, and Pagano will be released from detention to continue his contemptuous disregard of the orders of this Court.

Pagano can purge himself of contempt by complying with the order or by testifying truthfully as to what happened to the money. Certainly the Trustee has no objective if Pagano desires another opportunity to appear and testify. Indeed, it is inherent in the very nature of the proceedings that Pagano will be afforded every opportunity to testify that he may request. He can engage in an endless talkathon if he desires - but to obtain his release he must convince that in truth and fact the \$745,000 in question is neither in his possession nor under his control.

Pagano was detained for less than two years under a valid order to contempt (never appealed from), not for any debt, but for his failure to comply with another lawful order of the court (appealed all the way to the United States Supreme Court). His continued detention after release from prison, is not double punishment, but merely a consequence of Pagano's own failure to purge himself of contempt. The dilemma is of his own making. Whenever the opportunity has been afforded to him to purge himself upon his own request, he attempted to secure his release by perjured testimony.

For the foregoing reasons, the instant application should be denied in all respects, with costs to the respondent.

On August 6, 1969, the Appellate Court in affirming the decision of the District Court in the civil proceeding agreed with Judge Sugarman's determination in the lower court that Pagano's denial of present possession and his explanation as to the loss of the money was "incredible."

Settlement discussion were commenced in September, 1969,

with an offer being made on behalf of Pagano to compromise the turnover and contempt proceedings, and the judgment recovered on the federal court action in the sum of \$1,058,999.97 for the sum of \$75,000.00. The Trustee agreed to recommend it to the court.

Pagano finally agreed, after extensive negotiations, to make an offer of a good-faith deposit of \$37,500.00. Pagano experienced difficulty in raising this amount through November and December, 1969, and finally on January 6, 1970, Pagano through his attorney Segal advised that he had succeeded in raising \$70,000 to be made available as a good-faith deposit on the offer of settlement with the balance of \$5,000 to be paid in 90 days. Subsequently three cashier's checks totalling \$70,000 were delivered.

On January 12, 1970, the Trustee in bankruptcy for Murray Packing Co., Inc., submitted an application for permission to accept the offer of settlement. The Trustee stated that the acceptance of the offer from Pagano would be in the best interest of the estate and creditors for a number of reasons including the fact that he had long since come to the reluctant conclusion that neither the entire sum of \$745,000 or any substantial part thereof could be recovered from Pagano. Also, that the bankruptcy proceedings had been pending more than eight years (since May, 1961) and that any further proceedings under the contempt order and judgment against Pagano would

only further delay the closing of the estate under conditions which would not likely result in any additional funds being recovered for distribution.

Referee Herzog approved the settlement on February 6, 1970, with the following decision:

It seems perfectly clear to me that further detention of Mr. Pagano will be of no avail in enforcing compliance with the turnover order. He has served 71 months, 42 on the criminal conviction and 29 on the civil contempt.

It is rapidly reaching the point where Pagano must be released for inability to comply. The 75 thousand dollars compromise is in the nature of salvage, a sum which would be lost to the estate if Pagano were to be released, as he surely must be before long. I am satisfied that he cannot comply with the turnover order.

Creditors have received notice of the compromise and no one has appeared to object.

Trustee and his counsel recommend acceptance.

Trustee will submit an order in conformity with the foregoing.

Subsequently, the remaining \$5,000 owed was paid by Pagano and on April 16, 1970, a general release and satisfaction of judgment was executed by the Trustee and signed by Chief Judge Sugarman on May 21, 1970, approximately nine years to the date the receiver commenced the turnover proceeding.

OTHER CIVIL PROCEEDINGS

The Trustee filed a complaint in the United States District Court for the District of New York under Civil Action No. 62 Civ. 617 against Joseph Pagano, Stanley Weinberg, David Newman, Terry Newman, Joseph Weinberg, Gussie Weinberg, Commercial Bank of North America, Abe A. Platt, Peter Castellana, Pride Wholesale Meat and Poultry Corp., Jo-An Realty Corp., and Gondolfo Sciandra.

That complaint set forth ten separate causes of action against the various defendants charging certain acts and transactions in violation of the Federal Bankruptcy Law, the Laws of the State of New York and in fraud of rights of the creditors of the bankrupt estate, as follows:

a. The first cause of action was brought to compel all of the named defendants to re-transfer and re-convey to the plaintiff (Trustee) various property of Murray Packing Co., Inc., the bankrupt, fraudulently transferred and conveyed to them in violation of 67d(2) (d) of the Bankruptcy Act and to account to the plaintiff for the proceeds of such property and to direct defendants to pay to the plaintiff the sum of upwards of \$1,300,000 or such sum as might be found by the Court to be the correct amount for which they were accountable.

b. The second and third causes of action were against defendant Abe A. Platt to set aside fraudulent transfers of property of the bankrupt in the respective amounts of \$112,000.00 and \$111,193.00.

c. The fourth and fifth causes of action were against defendant Gussie Weinberg to set aside unlawful preferences in the respective amounts of \$4,000.00 and \$3,000.00 under the Bankruptcy Act and New York Stock Corporation Law.

d. The sixth and seventh causes of action were against Jo-Ran Realty Trading Corp. to set aside voidable preferences in the amount of \$9,860.00 under the Bankruptcy Act and the New York Stock Corporation Law.

e. The eight cause of action was against defendant Sciandra to set aside fraudulent transfers of property of the bankrupt in the amount of \$176,353.83

f. The ninth cause of action was against defendants Castellana and Pride Wholesale Meat and Poultry Corporation to set aside fraudulent transfers of the property of the bankrupt in the amount of upwards of \$250,000.00.

g. The tenth cause of action was against defendants Pagaon, Joseph Weinberg, Stanley Weinberg, Gussie Weinberg and Terry Newman, as officers and directors of the bankrupt to recover damages in the amount of upwards of \$1,300,000.00 for waste and diversion of the assets and property of the bankrupt. Application for allowances by Booth, Lipton and Lipton, attorneys for Trustee, United States District Court, Southern District of New York, in the matter of Murray Packing Company, Inc., in Bankruptcy No. 6-B-279.

A major impediment to proceeding with these causes of action was the trial of the criminal indictment. With the

conclusion of the criminal trial on December 30, 1964, this impediment was removed and so in October, 1968, judgment was obtained against the defendants in the amount of \$1,038,999.47. Stanley Weinberg, who had just recently been released from prison after his criminal conviction, consented to the entry of judgement of \$500.00. Subsequently, Castellana, Pride and Jo-Ran consented to the entry of judgment of \$10,000.00

Then, on October 17, 1968, three court orders were signed directing entry of judgment against Stanley Weinberg in the amount of \$500.00, against Castellana, Pride and Jo-Ran, for \$10,000.00, and against Pagano, Sciandra, Joseph and Gussie Weinberg and David and Terry Newman for \$1,038,999.47.

The Trustee's claims against Abe Platt were settled via an offer and subsequent payment by Platt to compromise all of the Trustee's claims for the sum of \$6,500.00. Trustee claims against Joseph Weinberg were settled upon an offer by Weinberg for both himself and his wife for \$500.00. Similar agreement was reached with respect to Stanley Weinberg. On December 18, 1968, the Referee signed an order authorizing the Trustee to accept the respective orders of settlement.

The Trustee, after examinations in the bankruptcy proceeding disclosed sufficient facts to indicate a claim against the Commercial Bank of North America, notified the Bank on December 1, 1961, making demand for payment of \$645,000. This sum represented monies that were withdrawn from Murray's account by its officers acting without authority. The action was based on the grounds that the money was withdrawn by checks issued to the order of Joseph Pagano "and were cashed by the bank under such circumstances and conditions as to constitute notice of the lack of authority of the officers to issue the checks and to withdraw the funds in question."

On September 20, 1966, the Bank indicated that it was not prepared to pay any more than \$25,000.00 in settlement. This was offered on the theory that while the bank claimed there was an absence of liability in so far as the Trustee's claims were concerned, the amount in the Bank's estimation represented approximately what it was believed it would cost the bank to defend the action. At the trial which was heard before a jury, the Trustee "urged the theory that the bank need not have received notice at the time the first check was cashed, but that the jury could determine that at some point in time thereafter the bank was placed on notice with respect to the

impropriety of the withdrawals." The jury returned a unanimous verdict for the defendant the Commercial Bank of North America.

At the time the action went to trial, the Trustee claimed damages in excess of \$800,000 including interest.

Upon conclusion of the trial, there was an attempt to come to a settlement which would avoid an appeal and dispose of the action and the Federal Court action which still was pending. Subsequently, agreement was reached whereby the bank would be willing to compromise all claims against it by the Trustee, including those asserted in the pending Federal Court action, by payment of the sum of \$35,000.00. On March 27, 1967, Judge McLean signed the order.

On February 10, 1970, Referee Herzog signed an order authorizing the Trustee to accept an offer of settlement by Pagano for the sum of \$75,000. Thus, almost nine years had elapsed since it all began.

CONCLUSION

The saga of Murray Packing Company demonstrated the mechanics of how a scam operation may work. The planned bankruptcy or scam appears to be gaining favor with organized crime. Always seeking a quick way to make money, what could be faster than three-quarters of a million dollars in a six-week period?

The American business community has cause to be alarmed about this invasion which clearly threatens the stability of our free enterprise system. Clearly one answer is education of business to the clear and present danger of the scam.

The President's Crime Commission in 1967, in commenting on organized crime, stated:

The millions of dollars it can throw into the legitimate economic system give it power to manipulate the price of shares on the stock market, to raise or lower the price of retail merchandise, to determine whether entire industries are union or non-union to make it easier or harder for businessmen to continue in business.²⁴

Organized crime prospers because it provides services normally not available. It supplies the needy with gambling, narcotics, and usurious loans. The threat of organized crime

²⁴The Challenge of Crime in a Free Society, op. cit., page 187.

is, as we have seen, much more than the sum of these evils. We as individuals can choose to avoid these services and we must if we are to avoid the graver evils of organized crime - the infiltration into our economy, the corruption of our government and the stifling of our freedoms.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

PETER CASTELLANA, DAVID NEWMAN,
JOSEPH PAGANO, GONDOLFO SCIANDRA,
JOSEPH WEINBERG, STANLEY WEINBERG, and
PRIDE WHOLESALE MEAT & POULTRY CORP.,

Defendants.

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The Grand Jury Charges:

1. From on or about January 1, 1960, up to and including the date of the filing of this indictment, in the Southern District of New York, PETER CASTELLANA, DAVID NEWMAN, JOSEPH PAGANO, GONDOLFO SCIANDRA, JOSEPH WEINBERG, STANLEY WEINBERG and PRIDE WHOLESALE MEAT AND POULTRY CORP., the defendants herein, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other and various other persons whose names to the Grand Jury are unknown, to commit an offense against the United States, to wit, to violate Section 152 of Title 18, United States Code.

2. It was a part of said conspiracy that said defendants, in contemplation of a bankruptcy proceeding by and against Murray Packing Co., Inc., and with intent to defeat the bankruptcy laws, would unlawfully, wilfully, knowingly, and fraudulently transfer and cause to be transferred property of said corporation, to wit, money in the approximate amount of \$900,000.

3. During the course of the conspiracy and on April 11, 1961, an involuntary petition in bankruptcy was filed against Murray Packing Co., Inc., in the United States District Court for the Southern District of New York, praying that said corporation be adjudged a bankrupt, and thereafter on May 11, 1961, said corporation was duly adjudicated a bankrupt.

4. It was a further part of said conspiracy that DAVID NEWMAN, JOSEPH PAGANO, JOSEPH WEINBERG and STANLEY WEINBERG, defendants herein, while agents and officers of Murray Packing Co., Inc., in contemplation of a bankruptcy proceeding by and against the said corporation (hereinafter referred to as the bankrupt corporation), and with intent to defeat the bankruptcy laws, would agree to place orders on credit for poultry, meat, and provisions with various processors and distributors throughout the United States.

5. It was a further part of said conspiracy that DAVID NEWMAN, JOSEPH PAGANO, JOSEPH WEINBERG, and STANLEY WEINBERG, defendants herein, in contemplation of a bankruptcy proceeding by and against said bankrupt corporation, would knowingly and fraudulently assure and advise the creditors of said bankrupt corporation that each of said creditors would be paid in full for the merchandise furnished to said bankrupt corporation.

6. It was a further part of said conspiracy that PETER CASTELLANA and PRIDE WHOLESALE MEAT & POULTRY CORP., defendants herein, in contemplation of a bankruptcy proceeding by and against the said bankrupt corporation, and with intent to defeat the bankruptcy laws, would knowingly and fraudulently cause to be transferred to PRIDE WHOLESALE MEAT AND POULTRY CORP. certain poultry, meat, provisions, and other products from said bankrupt corporation.

7. It was a further part of said conspiracy that all of said defendants, in contemplation of a bankruptcy proceeding by and against the said bankrupt corporation, and with intent to defeat the bankruptcy laws, would cause said bankrupt corporation to open a bank account at the Commercial Bank of North America, New York City, New York.

8. It was further a part of said conspiracy that all of said defendants, in contemplation of a bankruptcy proceeding by and against the said bankrupt corporation and with intent to defeat the bankruptcy laws, would knowingly and fraudulently agree to and would assist JOSEPH PAGANO, a defendant herein, and President of

said bankrupt corporation to transfer \$745,000 from said bankrupt corporation's bank accounts.

9. It was a further part of said conspiracy, and covering the period from April 1, 1961, through April 11, 1961, that all said defendants, in contemplation of a bankruptcy proceeding by and against said bankrupt corporation, and with intent to defeat the bankruptcy laws, would agree to and would cause the said bankrupt corporation to transfer approximately \$112,000 of said bankrupt corporation's assets.

10. It was a further part of said conspiracy that all said defendants, in contemplation of a bankruptcy proceeding by and against said bankrupt corporation, and with intent to defeat the bankruptcy laws, would agree to transfer and would transfer property and monies of the said bankrupt corporation in an amount of approximately \$1,300,000.

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the defendants herein did commit, among others, the following overt acts in the Southern District of New York:

1. On or about March 20, 1961, PETER CASTELLANA, a defendant herein, did have a conversation with JOSEPH PAGANO, a defendant herein, at the offices of Murray Packing Co., Inc., Bronx, New York.

2. On or about March 22, 1961, DAVID NEWMAN, a defendant herein, met with STANLEY WEINBERG, a defendant herein, at the offices of Murray Packing Co., Inc., Bronx, New York.

3. On or about March 20, 1961, JOSEPH PAGANO, a defendant herein was on the premises of the Royal State Bank of New York, New York City, New York.

4. On or about March 22, 1961, GONDOLFO SCIANDRA, a defendant, was on the premises of the Commercial Bank of North America, New York City, New York.

5. On or about March 22, 1961, JOSEPH WEINBERG, a defendant herein, met with STANLEY WEINBERG, a defendant herein at the offices of Murray Packing Co., Inc., Bronx, New York.

6. On or about March 20, 1961, STANLEY WEINBERG, a defendant, was on the premises of the Royal State Bank of New York, New York City, New York.

The Grand Jury further charges:

1. On or about April 11, 1961, an involuntary petition in bankruptcy was filed against Murray Packing Co., Inc., in the United States District Court for the Southern District of New York, praying that said corporation be adjudged a bankrupt.

2. On or about May 11, 1961, the said Murray Packing Co., Inc., was duly adjudicated a bankrupt.

3. On or about the dates hereinafter set forth, in the Southern District of New York, DAVID NEWMAN, JOSEPH PAGANO, JOSEPH WEINBERG and STANLEY WEINBERG, defendants herein, while agents and officers of said corporation, together with PETER CASTELLANA and GONDOLFO SCIANDRA, defendants herein, in contemplation of a bankruptcy proceeding by and against said corporation, and with intent to defeat the bankruptcy laws, did unlawfully, wilfully, knowingly and fraudulently transfer to JOSEPH PAGANO, a defendant herein, property of said corporation, to wit, money in the amounts hereinafter specified:

COUNTS	DATES	AMOUNTS
2	March 20, 1961	\$ 100,000
3	March 22, 1961	35,000
4	March 23, 1961	50,000

COUNTS	DATES	AMOUNTS
5	March 24, 1961	\$ 125,000
6	March 27, 1961	250,000
7	March 28, 1961	150,000
8	March 29, 1961	35,000

(Title 18, United States Code, Section 152)

SELECTED DEFINITIONS ON BANKRUPTCY

BANKRUPTCY - A term used generally to describe proceedings undertaken in a federal court when a debtor is unable to pay or to reach agreement with his creditors outside of court. Most bankruptcies are initiated voluntarily by the debtor, though occasionally creditors file an involuntary bankruptcy petition.

BANKRUPTCY COURT - Technically, the United States District Court, which is the federal court of general trial jurisdiction. However, the term is generally used to describe proceedings held before a federal bankruptcy referee, to whom most of the district judge's responsibilities in bankruptcy matters are referred.

CREDITOR CONTROL - The theory on which the present Bankruptcy Act is based. It assumes that, because their claims may remain unpaid, creditors should have (and will use) the authority to choose the trustee and to insist on energetic collection of assets and investigation of the bankrupt's behavior.

INVOLUNTARY PETITION - A petition filed by creditors alleging that the debtor has committed an "act of bankruptcy" as defined by the statute.

RECEIVER - An Official appointed by the referee in straight bankruptcy proceedings to look after the assets between the filing of the petition and the election or appointment of the trustee.

REFeree - A federal official appointed for a term of six years to preside over bankruptcy cases.

RESTRAINING ORDER - An order obtained either by the petitioner or by other creditors to prevent a creditor or creditors from proceeding with individual collection efforts after the bankruptcy petition has been filed.

SCHEDULES - The petitioner's list of debts and assets, which are required to be filed either with the bankruptcy petition or shortly thereafter. Items on these lists are referred to as "scheduled".

TRUSTEE - An official either elected by creditors at a meeting held before the referee or appointed by the referee if the creditors fail to elect. The trustee is responsible for the collection and distribution of the bankrupt's property.

TURNOVER ORDER - An order by the referee or district judge requiring that property or the proceeds from the sale of property be turned over to the receiver or trustee for administration as part of the bankruptcy estate.

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