

The Remarkable Criminal Financial Career of Charles Ponzi

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In the summer of 1920, Charles Ponzi and his Boston-based postal coupon enterprise was the talk of the East Coast. Was he truly a financial wizard, or merely an accomplished swindler? The latter was eventually revealed to be true, but before his investment bubble burst, Charles Ponzi had collected \$9,500,000 from 10,000 investors by selling promissory notes paying “fifty per cent. profit in forty-five days.”

Ponzi claimed he was giving investors just a portion of the 400 per cent. profit he was earning through trade in postal reply coupons. As Ponzi paid the matured notes held by early investors, word of enormous profits spread through the community, whipping greedy and credulous investors into a frenzy. Investigation later revealed that there were no coupons or profits--earlier notes were paid at maturity from the proceeds of later ones. The simplicity and grand scale of his scheme linked Ponzi’s name with a particular form of fraud. A swindle of this nature, once a “bubble,” is now referred to as a “Ponzi scheme.” While the postal coupon scheme earned Ponzi his place in history, it formed only the middle of what Justice Taft referred to as “the remarkable criminal financial career of Charles Ponzi.”¹

Immigrating from Italy in 1903, Ponzi went on to Canada, was convicted of forgery, and served a prison term there. Within ten days of his release, he was arrested for smuggling aliens into the United States and served a term in an Atlanta Prison. He went on to develop his namesake postal coupon scheme, earning a federal prison term and larceny charges in the state of Massachusetts. Released from federal prison while his state larceny conviction appeal was pending, he went to Florida, running afoul of authorities there

1 *Cunningham v. Brown*, 265 U.S. 1,7 (1923).

with a real estate pyramid scheme. After losing his Massachusetts Larceny appeal, he fled the country on a ship bound for Italy. When the ship docked in New Orleans, Ponzi was lured ashore, illegally kidnapped by a Texas deputy sheriff, and taken to the Lone Star state. Extradited from Texas to Massachusetts, Ponzi served out his term there and was deported to Italy. He later went to Brazil, dying in the charity ward of a Rio de Janeiro hospital in 1949, leaving an estate of \$75 to cover funeral expenses.

The Scheme

The engine of Ponzi’s postal coupon fraud was a simple accounting mis-classification. Money paid to investors, described as income, was actually distribution of capital. One need not, however, invoke accounting terminology to describe the fraud. Bankruptcy Referee Olmstead observed: “It was another instance of robbing Peter to pay Paul, of which the past affords examples,” and wryly described Ponzi’s business as that of “Borrowing money from investors at usurious rates of interest.”² Circuit Judge Anderson explained: “His scheme was simply the old fraud of paying the earlier comers out of the contributions of the later comers.”³

Although the economics of such schemes are simple, contemporary swindlers conceal this fact with sophisticated marketing. Bankers, lawyers, and wealthy investors are routinely taken in by multi-million dollar Ponzis. While Ponzi was not as sophisticated as latter day practitioners, his skills were certainly commensurate with his contemporaries.⁴ Exuding a relaxed confidence

2 *In re Ponzi*, 268 F. 997, 1000 (D. Mass 1920).

3 *Lowell v. Brown*, 280 F. 193, 196 (1922).

4 “Sufficient unto the day is the evil therof.” Matthew 6:34.

before investors as he frantically scrambled behind the scenes for funds, Ponzi showed himself the peer of swindlers from all ages. Let us turn our attention, then, to the adventures of neither the first nor last perpetrator of a “Ponzi scheme,” but certainly one of the most notable.

Early years, fantasy and fact

Charles Ponzi was born around 1882⁵. The only account of his early years is this fanciful tale he spun for reporters during the peak of his notoriety:

My family was well to do in Italy and my education was the best. We had considerable money but were not extremely wealthy. However, we had plenty. I never had to do any work of any kind and felt that it was beneath me in my own country to engage in labor of any kind. So I kept at school at Parma Italy, and then went into the University of Rome.

I'll be frank with you. In my college days I was what you call over here a spendthrift. That is I had arrived at that precarious period in a young man's life when spending money seemed the most attractive thing on earth. Such a game is like a balloon--it went up all right, but sooner or later has got to come down.

To make a long story short, I felt that I must get to work, and not wanting to do so with all my acquaintances around me I decided to come to America. I did not have much money then, and came to this country right here to Boston, just like any immigrant and when I arrived my total wealth was \$2.50. As I say, I landed in this country with \$2.50 in cash and \$1,000,000 in hopes, and those hopes never left me. I was always dreaming of the day I would get enough money on

which I could make more money, because it is a cinch no man is going to make money unless he has got money to start on.

I saved a bit of money from the odd jobs and had the time of my life for a couple of weeks. Then my cash was gone. So into the big town of New York I went to find a job. Up at one of the big hotels they needed some waiters, and they even furnished me with the tuxedo service coat. Yep, I've carried tons of food on the old waiter, and with the small salary and tips I made enough to live. I went from one waiting job to another worked in various hotels, small restaurants, and did my dish washing stunt [sic] from necessity at times. I got tired of New York and began to travel, getting jobs all along the way.

Once, when I was in Florida, I got it into my head that I could make something painting signs. So I bought some cardboard and paint and started in. No, I never had the slightest experience, but I got away with it, satisfied folks, and made a little cash. And all the time I kept dreaming of the time I was going to do big things.

It was small jobs, and small jobs, up to the year 1917, when I headed for Boston. Once more, saw an advertisement in a Boston newspaper, answered it, and took a job with J. R. Poole, the merchandise broker. My salary was \$25 a week.

And then I found my inspiration. She was Rose Guecco, daughter of a wholesale fruit merchant of Boston, and the fairest and most wonderful woman in the world. All I have done is because of Rose. She is not only my right arm, but my heart as well. We were married in February 1918.⁶

Ponzi did neglect to mention a few items of interest from this period. When he first entered

5 A police circular listed his age as 44 in 1926. N.Y. Times Jun. 23, 1926 at 30, col 3.

6 N.Y. Times, Jul. 29, 1920, at 15, col. 1.

the United States in 1903, at the age of 21, he went straight into Canada.⁷ In 1909, Ponzi was convicted of forgery in events surrounding the collapse of the Montreal banking firm of Zrossi & Co., of which he was a member. For this he was sentenced to a three year term in the St. Vincent De Paul Penitentiary in Montreal. A man associated with Ponzi in the scandal, one Gianetti, committed suicide, and another, Antonio Salviati, jumped bail and was re-captured in August 1920 after Ponzi's postal coupon arrest.⁸

Released from Canadian Prison after only twenty months because of good behavior, Ponzi entered the United States again on July 30, 1910,⁹ and within ten days of his release he violated immigration laws while bringing five Italians over the border from Canada. For this offense he served two years in Atlanta, Georgia during 1911 and 1912.¹⁰

After his release from the Atlanta prison, he made his way to Boston and toiled in relative obscurity until he seized upon the postal reply coupon scheme and formed the Securities Exchange Company. He admitted to being arrested for some reason in Boston, at the time claiming it was his only brush with the law. He said the case was dismissed in municipal court, but refused to elaborate.¹¹

Post-armistice Boston—hotbed of swindlers.

Although the most prominent swindler of that period, Ponzi had plenty of contemporaries:

Since the armistice Boston has been infested with agents seeking to interest small investors by promising big profits. High wages in industrial centres, anxiety of many to increase their incomes in keeping with the

climbing cost of living, along with below-par quotations on Liberty Bonds, helped make New England a fertile field for those who promised quick and big returns.

In many cases these agents found their best argument in the assertion that while old banking houses made very small returns to their depositors, the banks themselves were able to make enormous profits by frequent turnovers of the money of their depositors. It was proposed by some agents that small investors share in these big profits by permitting their savings to be invested for them.¹²

The Securities Exchange Company

Ponzi adopted from contemporaries the notion of sharing enormous profits with investors, adding his own twist: trade in postal reply coupons. This "trick," the keystone of his swindle, was made more plausible with tales he spun about how he received the brilliant inspiration. On one occasion he said that in August of 1919, when he was considering issuing an export magazine:

I wrote a man in Spain regarding the proposed magazine and in reply received an international exchange coupon which I was to exchange for American postage stamps with which to send a copy of the publication. The coupon in Spain cost the equivalent of about one cent in American money, I got six cents in stamps for the coupon here. Then I investigated the rates of exchange in other countries. I tried it in a small way first. It worked. The first month \$1,000 became \$15,000. I began letting in my friends. First I accepted deposits on my note, payable in ninety days, for \$150 for each \$100 received. Though promised in ninety days I have been paying in forty-five days.¹³

This sketch lays out the essentials of the scheme,

7 N.Y. Times, Aug. 12, 1920 at 1, col 3.

8 N.Y. Times, Aug. 20, 1920, at 4, col 2.

9 *Ponzi v. Ward*, 7 F.Supp 736, 737 (1934).

10 N.Y. Times, Aug. 12, 1920, at 1 col 3.

11 N.Y. Times, Aug. 11, 1920, at 1, col 3.

12 N.Y. Times, Aug. 16, 1920, at 4, col. 1.

13 N.Y. Times, Jul. 30, 1920, at 1, col. 7.

and may well be the clearest explanation of its reply coupon underpinnings.

On another occasion “He related how he had hired a small office, used his capital in various business schemes, and then, with an international reply coupon always in front of him on his desk, ‘began to do some thinking.’”¹⁴

Ponzi opened his postal coupon business in December of 1919.¹⁵ On the 26th, he filed a certificate with the city clerk describing himself as sole manager of “The Securities Exchange Company.”¹⁶ In the beginning of the enterprise, Ponzi described himself as “everything from President to office boy.” He related that on the second day of operation he explained his business to a visitor from the Chamber of Commerce, and the man believed Ponzi’s enterprise could succeed. A postal inspector stopped by and expressed doubts about the legality of redeeming millions of coupons. Ponzi claimed this problem was solved by having the coupons redeemed overseas, outside of the federal government’s jurisdiction.¹⁷

At first Ponzi issued notes of different colors depending on the denomination, but beginning in March, 1920, all notes were yellow with the dollar amount written in.¹⁸ Later problems with forgers raising the face value of notes showed the advantage of the multi-color scheme. The notes were negotiable and written in the following form:

14 N.Y. Times, Aug. 11, 1920, at 1, col. 3.

15 *Cunningham v. Brown*, 265 U.S. 1, 7 (1923); N.Y. Times, Aug. 13, 1920, at 1, col. 3.

16 This filing was pursuant to “An act relative to recording names and residents of persons engaged in or transacting business under names other than their own, either individually or as members of firms or partnerships.” 1907 Mass. Acts 539. *In re Ponzi*, 268 F. 997, 998 (D. Mass. 1920).

17 N.Y. Times, Aug 11, 1920, at 1, col. 3.

18 *In re Ponzi*, 268 F. 997, 998 (D. Mass. 1920).

The Securities Exchange Company, for and in consideration of the sum of exactly \$1,000 of which receipt is hereby acknowledged, agree to pay to the order of _____, upon presentation of this voucher at ninety days from date, the sum of exactly \$1,500 at the company’s office, 27 School Street, room 227, or at any bank.

The Securities Exchange Company,

Per Charles Ponzi.¹⁹

Ponzi started his business essentially penniless, and in December of 1920, he borrowed \$200 from Joseph Daniels, a furniture dealer. Ponzi used most of the money to purchase furniture from Mr. Daniels, keeping the rest for spending money. Ponzi paid the note at maturity, but Mr. Daniels later claimed Ponzi had also agreed to share half of all future profits in his business as part of the deal.²⁰

Bankruptcy Referee Olmstead provides a glimpse of Ponzi’s operations during this early period:

Up to April, 1920, Mr. Ponzi seems to have kept the accounts himself by a system of cards. In April he employed a Miss Meli,²¹ and later on, as the business grew to a great volume, there were employed about 30 in the office. He also had an office on Hanover street, next to the Daniels & Wilson Furniture Company, on the corner of Washington and Walter streets. Miss Meli was his confidential clerk, and seems to have had pretty general charge of the business.²²

From these modest beginnings the business

19 *Lowell v. Brown*, 280 F. 193, 196 (D. Mass. 1922).

20 N.Y. Times, Oct. 2, 1920, at 9, col. 2.

21 Her name is normally reported as Miss Lucy Mell, and I believe her true name was Lucy Martelli

22 *In re Ponzi*, 268 F. 997, 998 (1920)

expanded, and on May 28, Ponzi purchased, for \$35,000,²³ a home in the banker's colony of historic Lexington.²⁴ This home, described as pretentious by envious reporters, was to become a tourist attraction when Ponzi's activities captured the public imagination later that Summer.²⁵

Mr. Daniels claimed that at the end of June, after hearing about Ponzi's success and "swell house," he visited Ponzi seeking a share in his profits. After Ponzi refused, Daniels retained Mr. Isaac Harris to pursue the matter, which, much to Ponzi's discomfort, he did with considerable success.²⁶

Although Ponzi never realized any profits from dealings in postal reply coupons, much of the debate prior to his 1920 arrest involved questions about whether it was possible to make enormous profits trading in such coupons, and even if it were possible, whether he was actually doing so. Let us then divert our attention from Ponzi's activities for a moment and consider the nature of the obscure postal reply coupon.

The Postal Reply Coupon

On May 26, 1906, the United States and over 60 other countries assembled in Rome, Italy, and revised the Universal Postal Convention of June 15, 1897, which provided for the administration of postal services among signatory countries.²⁷

Ponzi seized upon the mechanism provided by Article 11(2) of the revised Convention:

Reply coupons can be exchanged between the countries of which the Administrations have agreed to participate in such exchange. The minimum selling price of a reply cou-

pon is 28 centimes, or the equivalent of this sum in the money of the country which sells it.

This coupon is exchangeable in all countries parties to the arrangement for a postage stamp of 25 centimes or the equivalent of that sum in the money of the country where the exchange is requested. The Detailed Regulations contemplated in Article 20 of the Convention determine the conditions of this exchange, and in particular the intervention of the International Bureau in manufacturing, supplying, and accounting for the coupons.²⁸

This provision, with a built-in 3 centime loss on the sale of each coupon (a centime being a hundredth of a franc), clearly did not contemplate profitable arbitrage through these coupons. The purpose of the reply coupon was simply to facilitate the prepayment of return postage when sending mail to another country.

The recipient of a reply coupon would exchange the coupon for the appropriate stamp in the recipient's country, such stamp not being available in the sender's country. The value of the coupon was intended to be constant throughout all countries forming the Postal Union, and regulations defined the rate of exchange between each countries' currency and postal reply coupons.

Because of economic dislocations caused by World War I, however, some currencies became devalued relative to others, and the postal regulations had not been updated to reflect this. For instance, Ponzi claimed "The same amount of American money will buy more value in coupons in Bulgaria in than in the United States."²⁹

There did seem to be potential for profit here, and although the aggregate volume of coupon redemption did not indicate abnormal trading activity, postal authorities took steps to prevent

23 Roughly \$400,000 in 2010 dollars. www.usinflationcalculator.com.

24 *Engstrom v. Lowell*, 281 F. 973 (1st. Cir. 1922); "Banker's Colony" N.Y. Times, Aug. 16, 1920, at 4, col. 1.

25 N.Y. Times, Aug. 2, 1920, at 3, col. 6.

26 *In re Ponzi*, 268 F. 997, 999 (D. Mass. 1920).

27 35 Stat. 1639 (1907-1909).

28 *Id.* at 1652.

29 N.Y. Times, Jul. 28, 1920, at 13, col. 4.

speculation. On July 2, 1920 the Post Office Department issued regulations limiting redemption of coupons to ten at one time.³⁰ The Post Office Department announced new conversion rates on July 28, to be effective August 15. Prior to this, the rates had not been changed since before the war. With characteristic government candor, postal officials denied that the changes were the result of concerns about speculation in reply coupons.³¹ On August 9, the Post Office Department again denied that the rate changes resulted from Ponzi's activities. Acting Third Assistant Postmaster General Barrows noted foreign countries had also taken steps to prevent speculation.³² Of course, these measures did not hamper Ponzi's operations, as he was not trading in coupons anyway.

The flaw in a coupon trading scheme as Ponzi proposed was that while an individual stamp transaction may indeed yield a 400 per cent. profit, the amount of that profit would be minuscule in absolute terms. In order to earn the millions of dollars Ponzi claimed, astronomical quantities of coupons would have to be handled. One can imagine hordes of Ponzi agents, pushing wheelbarrows full of coupons to post offices, unloading them with shovels or pitchforks.

Intuitively, we can see that the transaction costs of purchasing, transporting and redeeming the coupons would exceed any profits from sale, and it is not inconceivable that Ponzi actually made some trades early on and discovered this. Ponzi recognized that the problems of handling large volumes of coupons was a matter of concern to investors and authorities, incorporating this into the mystique of his scheme: "My secret is 'How do I cash the coupons?' That is what I do not tell."³³

Because the coupons were merely a cover, alluding to a mysterious mechanism worked fine. But

when his notes started bringing in wheelbarrow-sized quantities of cash, he must have found he had a similar problem. Shifting millions of dollars from later investors to earlier ones required, or at least suggested, the mundane administrative services provided by traditional banks. Ponzi turned to an institution with ethical standards compatible to his own, the Hanover Trust Company.

The Hanover Trust Company

On May 20, 1920, Ponzi opened a deposit account with the Hanover Trust Company.³⁴ The bank was to become the financial hub of his multi-state network, and would figure significantly in his demise. He would likewise figure significantly in Hanover's simultaneous demise.

The use of banking services in his enterprise brought Ponzi within the purview of yet another law enforcement authority, Joseph C. Allen, the Massachusetts Commissioner of Banks. While Ponzi sparred publicly with federal and state prosecutors, the behind-the-scenes drama involving the Hanover Trust Company and the Commissioner of Banks proved decisive in Ponzi's demise. The Commissioner of Banks took a timely interest in Ponzi's reply coupon business:

In July, 1920, the operations of Charles Ponzi had reached extensive proportions and were widely advertised. The Commissioner desired to make an inquiry in the nature and conduct of his business, but was advised by the Attorney-General that under the law he had no right to make such examination.

On July 15, 1920, the Hanover Trust Company notified the Commissioner that in compliance with the law relating thereto it had increased its capital stock from \$200,000 to \$400,000, and its surplus from \$50,000 to \$100,000. Learning that Ponzi had established banking connections with

30 *Id.*

31 N.Y. Times, Jul. 30, 1920, at 1, col. 7.

32 N.Y. Times, Aug. 10, 1920, at 1, col. 4.

33 *Id.*

34 *Cunningham v. Comm'r of Banks*, 144 N.E. 447, 450 (Mass. 1924).

the Hanover Trust Company, and having reason to believe that he had bought stock in the corporation, the Commissioner sought to determine to what extent, if any, the bank had become involved by Ponzi's relations to or transactions with the bank.

He learned, as a result, that Ponzi had acquired some \$150,000 par value of the new stock of the trust company."³⁵

Ponzi had purchased 38 percent of the bank's stock. William S. McNary, treasurer of the institution, later made the self-serving claim that he had prevented Ponzi from acquiring a controlling interest.³⁶ Absent Ponzi's controlling interest, the bank nonetheless became an instrument of his criminal enterprise. Justice Rugg, writing for the Massachusetts Supreme Court, recounted:

As early as the first part of June, 1920, the managing officers of the trust company knew that Ponzi's deposits in that bank, carried under different names, consisted of sums which he had received from purchasers of his notes. They also knew that the face of said notes represented the amount which had been paid therefor increased by 50 per cent. of said amount, that such notes were payable in 90 days from date, and that [Ponzi] was making it a practice to pay them in full in 45 days from their date. [Ponzi's] account with the trust company indicated that he was not employing the money received from the enterprise, but was using it, without interest, for the purpose of paying his notes as or before they matured, and that such was the fact was, or should have been, known to the officials of the trust company.³⁷

Knowing of Ponzi's fraud and yet desirous of

35 Annual Report of the Massachusetts Commissioner of Banks (1920) at vii.

36 N.Y. Times, Sep. 1, 1920, at 21, col. 5.

37 *Cunningham v. Comm'r of Banks*, 144 N.E. 447 at 450, 451 (Mass. 1924).

maintaining a profitable relationship, bank officers sought to protect the bank from possible Ponzi overdrafts in two ways:

On July 12, 1920, at the request of a vice president and with the knowledge of the other officers of the trust company, [Ponzi] signed an agreement under seal authorizing the trust company at any time to declare any note or notes, upon which his name appeared, to be due and payable without demand and to charge the same to his account under whatever name carried.³⁸

On July 22, 1920, in return for valid checks of [Ponzi] aggregating that amount, the trust company issued a certificate of deposit payable to his order 30 days after notice in writing for the sum of \$1,500,000.³⁹

When the end came, these agreements did nothing to protect the bank, as it collapsed precisely forty-eight hours after Ponzi's first overdraft. Following his arrest, the \$1,500,000 certificate of deposit turned out to be Ponzi's most significant asset, and his receivers in bankruptcy were able to recover some of it for the benefit of creditors.⁴⁰ The financial underpinnings of the trust company were only slightly more sound than Ponzi's, its officers only slightly more prudent. When Ponzi's affairs became desperate, bank officers would violate both the law and the direct order of the Commissioner of Banks in assisting Ponzi.⁴¹

The Run

Ponzi's operation expanded dramatically in May, June, and July of 1920. As word of early investor's profits spread, people flocked to his offices. By July he was taking in about \$1,000,000 a

38 *Id.*, at 451.

39 *Id.*, at 451.

40 N.Y. Times, Jul. 12, 1924, at 4, col. 5.

41 *Cunningham v. Comm'r of Banks*, 144 N.E. 447 at 450, 451 (Mass. 1924).

week.⁴² Under the capable administrative hand of the 18 year old Miss Lucy Mell, his operation expanded to several other northeastern cities.

Daniels, unable to reach accord with Ponzi over his partnership claim, filed a bill in equity in the superior court on July 2. A procedural feature attendant to the filing of a lawsuit in Massachusetts, the *attachment on mense process*, allowed Daniels to attach, and essentially freeze, over a half-million dollars Ponzi had in several banks.⁴³ This process, “peculiar to the New England states,”⁴⁴ gave plaintiffs the enormous tactical advantage of attaching defendant’s assets prior to any judicial review of the merits of their claim. If this seems violative of the due process clause, a three judge federal panel agreed in the early 1970s, finding the Massachusetts pre-judgment attachment laws unconstitutional.⁴⁵ Regrettably for Mr. Ponzi, this relief came 50 years too late.

Federal, State, and county officials, suspecting Ponzi’s business had no legitimate basis, and knowing the aggregate postal coupon volume did not support his declared profits, were nonetheless unable to identify concrete evidence of illegality. Apparently, all investors had thus far been fully paid in a timely manner.⁴⁶

Without any substantial case against Ponzi, Massachusetts District Attorney Joseph C. Pelletier began meeting with him to discuss his postal coupon business. Using some combination of in-

timidation and charm, Pelletier convinced Ponzi to quit accepting deposits from new investors starting Monday, July 26, and continuing until an auditor could verify the soundness of his operation. Pelletier admitted the agreement was not based on any specific law, but rather on “public policy.”⁴⁷ Hundreds of eager investors were turned away with money in their hands. It was estimated that Ponzi had been taking in \$200,000 a day of new investments prior to the halt.

Ponzi announced he would continue to pay matured notes at face value. Unmatured notes would be refunded in the amount of the original investment for those not willing to wait. He assured investors and law enforcement personnel that he had millions in banks here and abroad, far in excess of his liabilities.⁴⁸

Both Ponzi and the District Attorney stated the halt was temporary and that acceptance of new investments would resume once the auditor gave Ponzi a clean bill of health. Ponzi’s motives in entering into this agreement can only be a matter for speculation. Cutting off new investments, the lifeblood of his business, would cause the collapse of his enterprise. An audit would reveal liabilities far in excess of assets. While in retrospect his demise seemed inescapable, Ponzi may have expected he could eliminate law enforcement pressure and continue his scheme, at least for a time. In some respects, he very nearly succeeded in doing so. It may also be that as a respected and wealthy man, this former table-waiter and convict simply wanted to delay the inevitable, and savor his moment of glory.

Normally in a scheme of this sort, it is the perpetrator’s objective to abscond with the funds as the scheme is at its peak. While authorities eventually had Ponzi watched to prevent his premature exit, his failure to flee in late July remains inexplicable. Three weeks would find Ponzi in jail, but he was able to project a facade of respect-

42 Lowell v. Brown, 280 F. 193 at 196 (D. Mass. 1922).

43 *In re Ponzi*, 268 F. 997, 999 (D. Mass. 1922).

44 *Peck v. Jennes*, 7 How. 162, 621 (1849).

45 *Schneider v. Margossian*, 349 F. Supp. 741 (1971) (personal property); *Bay State Harness R & B Ass’n v. PPG Industries, Inc.*, 365 F. Supp. 1299 (1973) (real estate).

46 Prosecutors would not have the benefit of a “Blue Sky” law regulating the sale of securities in the state until the next year (Sale of Securities Act, 1921 Mass. Acts 499).

47 *Id.*

48 N.Y. Times, Jul. 27, 1920, at 1, col. 6.

ability right up to the last few days of freedom. We will now proceed with a day-by-day account of the nineteen days preceding his incarceration. During this time he demonstrated a remarkable charm and facility for deceit as he manipulated his finances, investors, investigators, reporters, and the general public.

Monday's announcement of a halt in new investments created a frenzy among investors on Tuesday as the New York Times reported:

Secret selection of an auditor to investigate the affairs of Ponzi, the newest 'financial wizard,' whose promise to 'double your money within ninety days,' has set Boston wild, a near riot in the school street offices of the Securities Exchange Company, in which four women, exhausted by hours of frantic endeavors to reach the inner office to collect their money during one of the periodic attempts of the crowd to force entrance to the rooms; the injury to several men in the crowd who were cut by flying glass from the doors when they attempted a wedge formation to force their way inside, and a constantly growing demand for repayments of credits marked the day's developments in the \$8,500,000 financial sensation.

District Attorney Joseph C. Pelletier announced today that he had appointed an auditor to examine carefully into the standing of Ponzi's business venture, but declined to make the name public until tomorrow. Pelletier refused point blank to answer any questions as to why he concealed the name of the auditor or to speculate or comment in any way upon the case.

Shortly before the news was announced of the appointment of an auditor a crowd of persons who had invested money with Ponzi, most of whom were Italians from the South End colony, rushed his offices, forced admittance, and gave the police a merry time

before order could be restored.

A second disturbance occurred during the luncheon hour when a flying wedge of creditors jammed the doors of Ponzi's office. A squad of seven policemen fought their way through and threw them, yelling, from the offices. Then followed a ten minute fight to clear the corridors.

So many creditors appeared at the School Street Offices that Ponzi took over the 'Bell in Hand,' famous for years as a barroom in the Alley, and transformed the place into a temporary office. There applicants for return of loans were received, their applications checked, and those approved paid from a hastily constructed cashier's booth within the exit doorway.

At least a thousand claims were satisfied today before the business closed. After the cash on hand in Ponzi's offices had been exhausted, and clerks were paying with bank checks. There was little argument over claims, either for withdrawal at the end of the interest paying period, or for those surrendering notes and receiving face value of the original investment.⁴⁹

A Ponzi noteholder petitioned Superior Court Judge Wait for a temporary injunction freezing Ponzi's bank accounts, and sought to have Ponzi's business put into involuntary receivership. After Ponzi's counsel explained that Ponzi was solvent and had met all obligations in a timely manner, the petition was denied and the application for receivership was withdrawn.⁵⁰

The federal authorities also took action. United States Attorney Daniel J. Gallagher issued a statement from Ponzi explaining how he had profited from postal coupon transactions. Gallagher asked Ponzi a question that put the lie to his explana-

49 N.Y. Times, Jul. 28, 1920, at 13, col. 4.
50 *Id.*

tions: If Ponzi had millions in various banks and a profitable scheme, why would he want to solicit additional investment? Ponzi's answer was revealing in its deficiency, but nobody seemed to notice: "[Ponzi] said he did not use the money but would eventually need the people."

The hottest topic of the day, Ponzi held court with attentive reporters. He expounded increasingly grandiose schemes for their benefit. "Almost," a citizen, he would run for office; he would make Boston the largest importing and exporting centre in the world; he would launch a \$100,000,000 enterprise, keeping only \$1,000,000 and donating the remaining \$99,000,000 to charity; he would form a new banking system dividing profits equally between depositors and shareholders.

The most significant developments that day took place far from the public eye. The Commissioner of Banks ordered the Hanover Trust Company to report to him daily "the total clearings, reserves, the total deposits in both savings and banking departments of the trust company, and the amount of overdrafts."⁵¹ Ponzi, anticipating the need for additional funds due to the run, gave notice of withdrawal on his \$1,500,000 certificate of deposit. Under the terms of the certificate, the money would not be available for thirty days. As it turned out, the thirty days' wait proved too long for Ponzi.⁵²

The run continued Wednesday, July 28, and Ponzi had hot dogs and coffee served to the thousands crowding outside his office to get their money back. Some were so impressed with this gesture that they had a change of heart and went home. He assured nervous investors, claiming \$12,000,000 in assets; \$4,000,000 in America, and \$8,000,000 overseas.

Speculators milled through the crowd purchasing notes from nervous investors at a premium, hoping to redeem them at the full 50 per cent. profit

when they matured. Ponzi warned against such predatory practices and repeated his intentions to pay all notes in full. Ponzi estimated he had paid out "more than \$1,000,000 up to the close of business today."

Again holding court with reporters, he recounted his early days (quoted above) and repeated his new populist theory of banking. This served the need, shared by every swindle, for an explanation of why the swindler would be inclined to share extraordinary profits with the investor, rather than simply keeping them. Responding to skeptics, he claimed that profits such as his were routinely earned by banks, but they simply declined to share them with depositors.

The day also brought an announcement by United States Attorney Gallagher that the United States Government would audit Ponzi's books. The audit would be separate from the State audit already announced. Authorities were still tentative about their suspicions of Ponzi. Gallagher commented: "As I told Ponzi the other day, he is either a beneficiary deserving of the blessing of the public, and all the like, or he should be in jail. Ponzi agreed to that."

In an odd aside, a group who had profited from Ponzi investments presented themselves at the office of his attorneys as the "Ponzi Alliance." After presenting draft resolutions for adoption at an organizational meeting, they passed into oblivion.⁵³

The run continued Thursday, July 29, with an estimated half-million dollars paid out. Again, all investors were paid in full. Daniels continued pressing his claim for a partner's half share of Ponzi's profits, filing an amended motion with Judge Wait seeking to freeze Ponzi's investment in the Hanover Trust Company and a number of other firms.

Miss Lucy Mell estimated that \$2,000,000 had been paid to investors since the run began Monday. There was a brief panic as Ponzi's School

51 Annual Report of the Massachusetts Commissioner of Banks (1920) at vii.

52 *Id.*

53 N.Y. Times, Jul. 23, 1920, at 15, col. 1.

Street office did not open at the scheduled 9:00 AM. Rumors flew: had Ponzi “skipped out?” The office opened before 10:00, however, and Ponzi waved to a cheering crowd when he finally showed up at 11:00.

Postal officials announced the first change in postal conversion rates since pre-war days. The announcement stated that the new rates were not the result of any schemes by “individuals or corporations to profit by foreign exchange differences.”⁵⁴

By Friday, July 30, only a short line of investors were waiting when the office opened. Clerks reported that business was split equally between those seeking refunds and those surrendering matured notes. A firm of auditors appointed by United States Attorney Gallagher began examining Ponzi’s books. Ponzi reiterated his confidence that the audits would reveal assets far in excess of liabilities.

Ponzi responded to unfavorable articles printed about him:

Service of a writ calling for an attachment of \$5,000,000 worth of real estate belonging to Clarence W. Barton, publisher of the Boston News Bureau, will be made tomorrow morning by Deputy Sheriff Fennessey on behalf of Charles Ponzi, preliminary to the filing of a declaration setting up alleged libel. Ponzi maintains that an article which appeared in the Boston News Bureau this morning, relating to his methods of doing business, is a libel against him, and he therefore calls upon Mr. Barton to make reparation in money damages.

The investigation and other bad publicity did not dampen the enthusiasm of all investors. Ponzi reported he would probably decline an offer of \$10,000,000 for investment from a group of New York bankers. He repeated political aspirations, claiming he would be a citizen before city and

state elections took place. Alternately, he might pick a “wet” candidate and “back him to the limit.”⁵⁵

Sunday brought the first of August with federal auditors working well into the night on Ponzi’s books. A continuous line of gawkers drove past Ponzi’s Lexington house while his guards turned away those who sought a closer look on foot. Ponzi spent the afternoon motoring with his wife. Let us hope they savored this idyllic drive, as less than a fortnight would find Ponzi in jail, his wife in tears.⁵⁶

He had survived a multi-million dollar run with poise and charm, but the respite was brief. On Monday, August 2nd, a Boston Newspaper published an expose of Ponzi’s operations by W. H. McMaster, a former publicity agent for Ponzi. The article, attacking Ponzi’s claims of solvency, brought the biggest run on his offices yet. This publication also had legal significance, as all investors receiving payment from Ponzi after this point, were deemed to believe he was insolvent and became liable to Ponzi’s receivers in bankruptcy.

Investors began gathering at 6:30 A.M. jamming the street from one end to the other. Ponzi denied the published allegations and claimed he had twice the money necessary to meet all obligations. He greeted the clamoring crowd with his familiar smile and confident assurances that all would be paid. He then went inside and instructed his clerks to pay all claims as quickly as they could examine the notes, count out the cash, or sign checks. He then retired to his office and entertained reporters with more tales of his extraordinary wealth in various banks.

While Ponzi tended to his office, federal officials met in a conference lasting several hours. Those present included the auditor Edwin L. Pride, Assistant United States Attorney Daniel Shea (acting for United States District Attorney Gal-

54 N.Y Times, Jul. 30, 1920, at 1, col. 7.

55 N.Y. Times, Aug. 1, 1920, at 10, col. 1.

56 N.Y. Times, Aug. 2, 1920, at 3, col. 6.

lagger who was in New York attending a Knights of Columbus convention), several Post Office Inspectors including Chief Inspector Mosby, and a representative of Attorney General A. Mitchell Palmer. Mr. Pride reported that thus far, no evidence of wrongdoing had been found.⁵⁷

The run continued unabated Tuesday, August 3rd, and Ponzi met it with smiles and assurances: "Mountains of money available to pay all claims. All the Boys and Girls have to do is drop in and get it." He described plans for his new \$100,000,000 operation which would involve "banking." Mr. Pride remarked that he had never seen so much ready cash in one place in his life and did not expect to again. Ponzi responded by offering Pride a position as chief bookkeeper in the new operation. Pride's response is not recorded.

Many waiting in line complained about the slowness of their progress and observed that some were allowed into the office without having to wait in line. Ponzi's finances were showing some strain, as he borrowed \$255,000 from the Hanover Trust Company using fictitious names.⁵⁸

Federal and state officials raced to prosecute Ponzi, and tensions emerged. The New York Times reported:

Today, Attorney General Allen sought to name another auditor, Samuel Spring, to cooperate with Mr. Pride in the audit. Pride resented the Attorney General's suggestion and replied that another auditor would hinder rather than speed his work. District Attorney Pelletier today displayed 'feeling' in a statement to the effect that 'He was getting well into the Ponzi case when the Attorney General took it away from him.' Attorney General Allen replied and showed a copy of a letter from Pelletier several days ago, requesting the latter to continue the work on

57 N.Y Times, Aug. 3, 1920, at 15, col. 1.

58 Annual Report of the Massachusetts Commissioner of Banks (1920) at vii.

the case.⁵⁹

All noteholders were again paid in full Wednesday, August 4th, with the line decreasing throughout the day. By the day's end, the second run appeared to be over. Ponzi became less accommodating toward investigators. Willing to have auditors review his liabilities, he drew the line when J. Weston Allen, state Attorney General, suggested an auditor review his assets: "There is no law which can force me to show my assets. My accounts are in the hands of Mr. Pride to reveal my liabilities and they are going to stay in his hands until he gets through with them. When my liabilities are established, then I will produce enough cash to cover them, and no more."⁶⁰ Due to the voluntary nature of the agreement, there was not much investigators could do to press the point.

Only twenty-seven investors were in line when the School Street office opened Thursday morning, August 5th. Investors straggled in throughout the day, mostly presenting matured notes. The federal auditors announced that their audit would take longer than expected.⁶¹

Responding to rumors, Ponzi denied that he was a bolshevist agent: "No, certainly not. Do I look like one?" His office was quiet for extended periods and a total of \$154,379 was paid out on 255 notes, all but 10 having matured.⁶²

Ponzi had handled the crisis with no apparent sign of weakness. A New York Times editorial reported public opinion was shifting toward Ponzi and away from his critics and antagonists.⁶³ The Commissioner of Banks stepped up his surveillance of the Hanover Trust Company, sending

59 N.Y Times, Aug. 4, 1920, at 6, col. 2.

60 N.Y Times, Aug. 5, 1920, at 15, col. 4.

61 N.Y Times, Aug. 6, 1920, at 6, col. 2.

62 N.Y Times, Aug. 7, 1920, at 2, col. 7.

63 N.Y Times, Aug. 7, 1920, at 8, col. 5.

over two examiners.⁶⁴

In fact, the run devastated Ponzi financially. A serious problem was the freeze Daniels had placed on some half-million of Ponzi's funds in pressing his partnership claim. On Friday, August 6th, Ponzi resolved to settle with Daniels. Bankruptcy Referee Olmstead related this remarkable narrative in which the swindler received a first-class shakedown from Daniels and his attorney:

Mr. Ponzi sent word to Mr. Daniels, requesting an interview. Thereupon Mr. Daniels met Mr. Ponzi at his office in the building of the Hanover Trust Company on Washington Street. A discussion took place as to the settlement of the suit. Mr. Ponzi was determined to settle at any price as his affairs were becoming desperate and he needed to release this large sum of money from attachment, in order that he might make payments, although he had ceased to take in money on the 26th of July by virtue of an arrangement with the state and federal district attorneys and the Attorney General of the Commonwealth.

Mr. Daniels finally agreed to settle for \$50,000. Mr. Ponzi immediately sent to the Hanover Trust Company and obtained \$10,000 in cash and a certified check for \$40,000 payable to Mr. Daniels. He and Mr. Daniels then went to the Cosmopolitan Trust Company to secure the release of certain attachments; his counsel, Mr. Fowler having prepared the papers therefor. At the Cosmopolitan Trust Company the bank officials were somewhat suspicious of the settlement in the absence of counsel; the name of Mr. Daniels counsel appearing on the writ. It was arranged, therefore, that Mr. Harris should be notified, and he accordingly repaired to the bank. After some angry discussion between him and Mr. Ponzi, Mr.

Ponzi stated that it was necessary to make a settlement with Mr. Harris in order to secure the release of the attachment, so the sum of \$9,500 was paid to Mr. Harris in cash by Mr. Daniels, and an additional sum of \$5,000 cash was paid by Mr. Ponzi to Mr. Harris.⁶⁵

Yet the settlement, and its freeing of assets, came a day or so too late. Ponzi's funds from various banks were being channeled through the Hanover Trust Company, and examiners were watching the balances in Ponzi's accounts there closely. At the close of business Saturday, August 7th, Ponzi's balance was \$13,391.32. With no significant deposits coming in, the Commissioner expected Ponzi to overdraw his accounts when the bank resumed business Monday, August 9th. In anticipation of this, he sent a representative to the Hanover Trust Monday morning.⁶⁶

On Sunday, August 8th, Ponzi announced he would open his new \$100,000,000 venture, tentatively named the "Charles Ponzi Company," on Monday, but as with his current business he would not accept investor's money, until he had received a clean bill of health from the auditors. He dropped out of sight for seven hours, again prompting rumors that he had skipped out. Upon his return he claimed he had been planning his new enterprise in private.⁶⁷

Monday, August 9th brought the effective end of his reply coupon business, even as he announced the opening of his new "\$100,000,000 concern for worldwide operations." At 1:45 P.M., the Banking Commissioner's representative reported that the Lucy Martelli Account (fictitious name for a Ponzi account) was overdrawn.

The Commissioner immediately telephoned the bank and ordered its officers to stop honoring

64 Annual Report of the Massachusetts Commissioner of Banks (1920) at vii.

65 *In re Ponzi*, 268 F. 997, 999 (D. Mass. 1920).

66 *Cunningham v. Comm'r of Banks*, 144 N.E. 447, 450 (Mass. 1924).

67 N.Y. Times, Aug. 9, 1920, at 6, col. 1.

Ponzi checks. Bank officers refused to comply, and continued honoring his checks until 2:45 P.M. when a written order from the Commissioner was received. By the end of the day, Ponzi's account was overdrawn by more than \$300,000. Two deposits were returned unpaid, and by the next day, the overdraft was \$441,878.⁶⁸

The bank's defiance of the Commissioner may have hastened its demise, as he seized the bank 48 hours to the minute after Ponzi's first overdraft.⁶⁹ Ponzi was still able to pay the few investors presenting mostly matured notes that day.

Ponzi claimed the commissioner had acted "improperly," and criticized state officials for not allowing him to pay investor's claims. He concluded: "I am sick and tired of the whole mess."⁷⁰ Federal auditor Edwin L. Pride announced his audit was complete and passed the results to United States Attorney Gallagher.⁷¹

Ponzi spoke before the Kiwanis Club on Tuesday, August 10. The invitation to be the club's after-dinner speaker had been extended before the controversy surrounding Ponzi began. Turnout for the luncheon was so great that attendees had to be fed in relays. Ponzi was greeted with a cheering and attentive crowd. His speech revealed nothing new about his activities, and Ponzi was asked why postal authorities could find no indication of high volumes of coupon redemption. He replied that foreign governments profited from issuance of reply coupons and would not disclose to other governments how many coupons they had issued.

Earlier that day, he had ordered his offices closed, telling those seeking payment to come back on Friday. Despite the bad publicity, Ponzi was deluged with applications from prospective investors. He received over a thousand letters,

68 *Cunningham v. Comm'r of Banks*, 144 N.E. 447, 450 (Mass. 1924).

69 Annual Report of the Massachusetts Commissioner of Banks (1920) at vii.

70 N.Y. Times, Aug. 10, 1920, at 1, col. 4.

71 *Id.*

many containing checks, but directed his staff to return the money. Ponzi's criminal record was beginning to come to light. He admitted he had been arrested once in Boston, but stated the case had been dismissed when it came up in municipal court, and refused to elaborate. He denied the report that he had been arrested in Montreal.

As Referee Olmstead had said, Ponzi's business was that of borrowing money at usurious rates. Ponzi investors sought and received assurances from the Attorney General that they would not be prosecuted under the Small Loans (usury) Law which prohibited interest over 3 per cent. on loans under \$300.⁷²

On Wednesday the 11th, Ponzi's Montreal forgery conviction and resulting prison term, as well as his Immigration law violation and resulting Atlanta prison term were revealed. He denied the Montreal story, admitted it, denied it again, and then, weeping, made a clean breast of both episodes. He expressed fear of deportation. The publicity brought other fears. Concerned about either disgruntled investors or past associates, he began carrying a loaded pistol. He even carried it in his dressing gown pocket before he put his clothes on in the morning, and showed it to reporters from time to time. He announced that his guards had been instructed to "shoot prowlers first and investigate afterward."

Unable to show assets to cover his liabilities as he had promised, Ponzi surrendered to Federal authorities on Thursday, August 12, was arrested and charged with mail fraud. He was arraigned before United States Commissioner Hayes who set bail at \$25,000. While the warrant formalities were handled and bail arrangements made, Ponzi slouched glumly in the Federal Marshal's private office.

Morris Rudnick, a Roxbury real estate dealer, posted bond and Ponzi was released, only to be arrested by Massachusetts authorities and charged with larceny. Bond was again set at \$25,000 and

72 N.Y. Times, Aug. 11, 1920, at 1, col. 3.

again furnished by Mr. Rudnick.⁷³ Fearing for his life, Ponzi had his bondsman surrender him to federal authorities the next day and he began residence in the East Cambridge Jail on Friday the 13th.

That evening Mrs. Ponzi entertained friends in their Lexington mansion. Smiling, she expressed her confidence in her husband, unaware of his arrest. He had called from jail and explained his absence by saying he would spend the night in Boston going over his books with the auditor. Knowing the truth, her guests left without revealing it. Ponzi was also allowed to telephone the guards at his home, telling them to keep newspapers and reporters away from the house.⁷⁴

Bankrupt

Following the news of Ponzi's arrest, on August 12th, the State Attorney General's office was deluged with Ponzi note holders. The staff took information from investors who stopped by, and ended the day with a backlog of several hundred unopened letters.

The federal auditor, Mr. Pride, reported that Ponzi's liabilities were estimated at nearly \$7,000,000, and that Ponzi had stated his assets would not exceed \$4,000,000. Mr. Pride also said that because of outstanding notes coming in that were not recorded in Ponzi's books, and canceled notes brought in for which Ponzi would receive credit, it would be a while before his liabilities could be stated accurately. A Ponzi note holder again filed a petition of involuntary bankruptcy against Ponzi.⁷⁵

Also that day, Banking Commissioner Joseph C. Allen reported:

There is no doubt whatsoever that the capital of the Hanover trust company is completely wiped out. It should be remembered, however, that the stockholders have a liability of a

100 per cent. assessment, providing such an assessment is necessary to enable the bank to pay 100 cents on the dollar to all depositors. Before the depositors can suffer loss, therefore, the capital stock of \$400,000, the surplus of \$100,000 and the stockholder's liabilities of \$400,000 provided the stockholders can pay, must first be used to take care of the loss.

Ultimately, the full 100 per cent. liability, in the amount of \$157,500, would be assessed against Ponzi's estate in bankruptcy.⁷⁶

The following day, Attorney General Allen's office said that those who received payment from Ponzi prior to the crash could be forced to return the money received, to be shared among all creditors. This would be based on the theory that any money Ponzi paid out would be stolen property, and hence recoverable. This theory does not appear to have been pursued, and the only moneys recovered in this manner were those the receivers recovered as preferences under bankruptcy law.⁷⁷

On Saturday, August 14th, hundreds of Ponzi investors again mobbed the halls of the State House, mistakenly thinking they could get their money back there. As the State House closed at noon, note holders were still streaming in.

The day after Ponzi's surrender and return to jail, Saturday August 14th, he began entertaining guests. His wife obtained a pass which granting her visiting privileges Saturday, Sunday, and Monday. Miss Lucy Mell, Ponzi's office manager, also received a pass. The federal auditor, Edwin Pride, stopped by, hoping to review some notes with Ponzi. Mr. Pride also responded to rumors that Ponzi had transferred substantial assets to his wife, promising that such assets were the proceeds of fraud and would be recovered from Mrs. Ponzi, along with any other assets Ponzi

73 N.Y. Times, Aug. 13, 1920, at 1, col. 3.

74 N.Y. Times, Aug. 14, 1920, at 1, col. 3.

75 N.Y. Times, Aug. 13, 1920, at 1, col. 3.

76 Cunningham v. Comm'r of Banks, 144 N.E. 447, 458 (1924).

77 N.Y. Times, Aug. 14, 1920, at 1, col. 3.

was believed to have hidden.

Since entering jail, Ponzi had been receiving letters containing death threats, and American detectives visited Montreal searching for a man who had allegedly made such threats. It may be that Ponzi's American publicity conjured up ghosts from his Canadian criminal past.⁷⁸

Mrs. Ponzi visited the East Cambridge jail again Sunday, spending 45 minutes with her betrothed. She greeted him affectionately and delivered a large care package containing, among other things, haberdashery and cigarettes.

Ponzi's family reported that his attorneys were preparing a defense of "financial dementia." His associates of the past ten to twenty years reported that he obsessively devised schemes for amassing immense wealth. Excusing a swindler based on such "financial dementia" would be like excusing a murderer for being an "angry person," and this line of defense was not pursued.

While Ponzi's arrest put an end to public debate over the legitimacy of his scheme, it gave rise to an equally fascinating intrigue: hunting for the fortune Ponzi was thought to have concealed. Saturday evening, Mr. Pride and a Postal Inspector secretly searched Miss Lucy Mell's home at 27 Temple Street in Revere. The search yielded no riches, and the raiders had to settle for a bundle of papers.

There was also speculation on the streets of Boston as to whether Ponzi was merely a front for an organization which provided the brain power and backing, and received the profits, from the Securities Exchange Company forty-five day notes. While such a thing is not inconceivable, this theory was never elaborated on or substantiated by subsequent events.⁷⁹

On Monday August 16, State Authorities announced that they had discovered a small portion of Ponzi's rumored hidden assets as well as

information on how his wealth had been hidden. The only manifestation of this was the seizure of \$9,926 from a bank vault and \$1,155 from a Ponzi agent. On the federal side, Mr. Pride, United States District Attorney Gallagher, Assistant United States District Attorney Shea, and a postal inspector interviewed Miss Lucy Mell at some length, hoping to locate Ponzi assets.

As the State Attorney General's office had thus far uncovered only \$2,121,808 in liabilities (with only 5,000 of the final tally of 10,000 notes identified), investors and authorities were optimistic that Ponzi's assets, once uncovered, would prove adequate to pay his liabilities.

While initially dejected with his latest series of setbacks, Ponzi demonstrated remarkable resilience of spirit. It was reported that he awoke and met the new day with "restored cheerfulness of spirits."⁸⁰

The nadir of the futile search for Ponzi's hidden wealth was probably the seizure, by Internal Revenue agents, of 100 gallons of Italian wine from his Lexington mansion on August 18th. With Mrs. Rose Ponzi's gracious cooperation, investigators searched every inch of the home, presumably knocking on walls and ceilings in search of secret compartments. The seizure of wine was apparently a pretext to search for hidden cash, securities, or clues as to the location of hidden assets.

The State Attorney General was by now estimating Ponzi's liabilities at \$3,000,000 while the federal estimate of \$7,000,000 was closer to the \$6,396,353 ultimately established by auditors. Observers interpreted Rose Ponzi's receipt of a week-long pass to visit her husband in jail as a sign that her husband had given up trying to make bail.⁸¹

The next day, August 19th, state Attorney General Allen stated that he would seek \$100,000 bond,

78 N.Y. Times, Aug. 15, 1920, at 6, col. 1.

79 N.Y. Times, Aug. 16, 1920, at 4, col. 1.

80 N.Y. Times, Aug. 21, 1920, at 4, col. 3.

81 N.Y. Times, Aug. 19, 1920, at 5, col. 2.

but suggested that if Ponzi revealed the location of his hidden assets, the state might become more flexible on the matter of bail. This amount would be in addition to the \$25,000 bond already required by federal authorities.⁸²

On Friday, August 20, three prominent local attorneys were appointed as receivers of Ponzi's estate. At this time, the State House reported that 10,550 Ponzi note holders had come forward, their notes representing a face value of \$4,308,874.73. The receivers confronted Ponzi with this amount. Ponzi abandoned all pretense and admitted he was bankrupt. He was then taken to Bankruptcy Court and took the bankrupt's oath before Referee Olmstead.

News of Ponzi's bankruptcy devastated note holders who had clung to the hope of getting at least their original investment back, some still planning on collecting the 50 per cent. profit as well.⁸³ With the face value of known liabilities still some \$2,000,000 short of the final tally of \$6,396,353, comparatively little was known about Ponzi's assets.

Investigators had thus far uncovered very little in the way of assets, compared to the millions in liabilities, and the task of seeking out Ponzi's assets and sorting out the mess now fell to the receivers. They, and their successors, would spend seven years recovering assets totaling 37 per cent. of Ponzi's liabilities.

While some efforts to locate hidden cash would continue, with limited success, the receivers would ultimately make recovery from only two significant sources: the \$1,500,000 certificate of deposit at the Hanover trust, and the estimated \$5,000,000 received by investors in the run prior to Ponzi's collapse. The receivers would fight most of this battle in the judicial system, winning a significant victory in the United States Supreme Court, and making several appearances before the Massachusetts Supreme Court.

82 N.Y. Times, Aug. 19, 1920, at 15, col. 1.

83 N.Y. Times, Aug. 21, 1920, at 4, col. 3.

The next day, August 22, in a hearing with federal receivers, Ponzi produced two certificate of deposits for \$500,000 and a third for \$58,221.⁸⁴ These certificates were derived from the original \$1,500,000 certificate, created when bank officials desperately sought to cover Ponzi's overdrafts on August 10th. The bank's activities in the final days of Ponzi's run show that it had become an instrument of his criminal enterprise. The story of how the \$1,500,000 certificate of deposit became a number of smaller ones provides one such example.

On the morning of August 10th, bank officials calculated the balance of Ponzi's account, finding it overdrawn in the amount of \$441,778.07. Hanover Trust officials backdated three \$500,000 certificates of deposit to July 22, and substituted them for the original \$1,500,000 certificate. The treasurer of the bank then wrote a check in the amount of the overdraft, credited it to Ponzi's account, and made out a certificate of deposit for \$58,221.93, the difference between the overdraft and \$500,000, substituting it for one of the \$500,000 certificates. Bank officials, both in allowing Ponzi to overdraw his account, and then in making available the funds from the certificate of deposit prior to expiration of its thirty day notice period (August 22), to cover that overdraft, violated Massachusetts banking law.⁸⁵

Upon taking the stand at the hearing, Ponzi stated his willingness to make "full disclosures" to assist receivers in recovering assets for his creditors. After some routine questions, counsel for the receivers asked Ponzi if he had told the truth when he told the State Attorney General he had between \$6,000,000 and \$8,000,000 cash. Finding this question intolerable, Ponzi angrily replied that the subject of the hearing was not his statements to the Attorney General, that if the hearing were not confined to questions about his assets, he would no longer cooperate. Ponzi's counsel

84 N.Y. Times, Aug. 22, 1920, at 14, col. 1.

85 *Cunningham v. Comm'r of Banks*, 144 N.E. 447, 452-3 (Mass. 1924).

echoed these sentiments, claiming the receivers were browbeating his client.

Ponzi's testimony revealed that, remarkably, he did not know many of the details of his operations including the names of his agents, accounts in several banks, and who had been authorized to write checks in his name. He explained that he left such matters to the 18 year old Miss Lucy Mell. Ponzi revealed, as an asset, his 1,575 shares in the Hanover Trust Company, which later turned out to be a liability rather than an asset to his estate.

He also estimated that \$7,500,000 had been paid out to investors between the July 26 halt in note sales and the closing of his business. Federal auditor Pride then took the stand, repeating his estimate of Ponzi's liabilities at \$7,000,000 and stating that he had uncovered no evidence of any trading on postal reply coupons.⁸⁶

On August 23, Ponzi's counsel filed a petition denying Ponzi's insolvency and seeking a jury trial on the issue. This move would invalidate proceedings thus far, but other than delay would have no impact on the inevitability of Ponzi's bankruptcy.⁸⁷ A hearing the next day brought some excitement for a standing-room-only crowd.

After being criticized for taking exorbitant retainers in the amount of \$25,000 each, Ponzi's attorneys Daniel H. Coakley and Daniel V. McIsaacs claimed they wanted all of Ponzi's assets to go to his creditors and challenged the receivers to similarly work without compensation. The receivers declined the offer and Receiver Edward A. Thurston remarked "If you thought this man had a million dollars left, do you suppose anybody thinks you would have got only \$25,000?"

Coakley responded, shouting: "You are a liar when you suggest anything like that," calling Receiver Thurston a liar three times. The receiver

responding: "Thank you."

On the stand, Ponzi discussed locations of various safety deposit boxes, and responded evasively to questions about his solvency. Miss Lucy Mell took the stand and testified that she only had knowledge of transactions within the office, not of Ponzi's outside dealings. When asked if there were any postal reply coupons in the office, she replied "Yes, one or two for samples." This response caused many to smile, Ponzi looking up from conversation with his wife and laughing.⁸⁸

The next day, Ponzi's receivers visited several banks, unearthing little of interest. The day after that, Ponzi, accompanied by two federal Marshals, guided the three receivers, on another excursion to various safety deposit boxes, as well as his Lexington home. The day's effort yielded \$11,370 in cash, \$2,000 in Liberty bonds, and 100,000 German marks.⁸⁹

On August 27, symbols of Ponzi's better days, his palatial Lexington home and his three cars, were seized. The home, occupied by Ponzi's wife and mother, was quiet and its shutters closed, the servants and guards dismissed. Mrs. Ponzi did not criticize authorities for seizing the home, but lamented that her "fair weather" friends had deserted her. Regarding her future she stated: "I am penniless and without friends, but, thank God, I am strong and can work." Her cars having been turned over to authorities, she took a street car to visit her husband in jail. She expected to be evicted from the home in the next few days, and would seek a small apartment.

On a lighter note, Daniels who had extorted \$40,000 from Ponzi in settlement of his partnership claim, would be forced by receivers to disgorge this money, and in a turnabout of fate, Daniels was on the receiving end of an injunction freezing his assets.⁹⁰

86 N.Y. Times, Aug. 22, 1920, at 14, col. 1.

87 N.Y. Times, Aug. 24, 1920, at 18, col. 6.

88 N.Y. Times, Aug. 25, 1920, at 15, col. 3.

89 N.Y. Times, Aug. 27, 1920, at 11, col. 3.

90 N.Y. Times, Aug. 28, 1920, at 13, col. 3.

In a report submitted September 3rd, Mr. Pride estimated that Ponzi had taken in \$9,814,884.70 and paid out \$7,824,650.77. The difference between these sums, \$1,990,325.53, if located, was thought to be adequate to pay 50 cents on the dollar of Ponzi's outstanding debts (less any profit).⁹¹

On October 5th, Charles Rittenhouse, auditor for the federal receivers, reported at a federal bankruptcy hearing that Ponzi had assets slightly exceeding two million. This total included the \$1,058,221 certificate of deposit, \$110,000 for his Lexington home, and his Hanover Trust Company shares estimated at \$200,000.⁹²

Ponzi had apparently withdrawn his demand for a jury trial in his bankruptcy proceedings, and he was adjudged bankrupt on October 25.⁹³ Although receivers worked diligently rounding up Ponzi assets, his creditors would receive a paltry 10 per cent. of their money by Christmas of 1921.⁹⁴ They would receive their fifth and final dividend from the receivers seven years later on December 19, 1928, having recovered a total of 37 per cent. of their original investment.⁹⁵

As the auditor's report suggested, the most significant repository of assets potentially available to receivers was the money paid to investors during the run. The mechanism by which lucky investors could be made to share their spoils with those who had lost all was the law of preferences in Bankruptcy, as defined by then § 60b of the Bankruptcy act.

Preferences in Bankruptcy

Avoiding preferences in the distribution of the bankrupt's estate is a primary objective of bankruptcy law:

The policy and aim of bankrupt laws are to compel an equal distribution of the assets of

91 N.Y. Times, Sep. 3, 1920, at 2, col. 3.

92 N.Y. Times, Oct. 6, 1920, at 36, col. 3.

93 *In re Ponzi*, 268 F. 997 (D. Mass. 1920)

94 N.Y. Times, Dec. 22, 1921, at 18, col. 1.

95 N.Y. Times, Dec. 20, 1920, at 27, col. 2.

the bankrupt among all his creditors. Hence, when a merchant or trader, by any of the tests of insolvency, has shown his inability to meet his engagements, one creditor cannot, by collusion with him, or by a race of diligence, obtain a preference to the injury of others. In the absence of a bankruptcy law, the least suspicion of the insolvency of a debtor, his inability to meet obligations or the like, naturally cause the zealous creditor to institute attachment proceedings and perhaps cause liquidation of the debtor, who, left to his own resources and given reasonable time, would be able to avoid suspension and perhaps ruin.⁹⁶

As the discussion above indicates, preventing the ruinous run is perhaps the main purpose of the law of voidable preferences in bankruptcy. Yet, in a situation like this, the statutory admonition seems no more persuasive than a suggestion. In a mob situation like this, possession is indeed nine tenths of the law. Ponzi's note holders knew it is far better to have possession of the full amount due and wait for the receiver to try and retrieve part of it than to have nothing and wait for the receiver to recover from those in possession. Also, investors here had no reason to believe that, as a certainty, their money would be taken by receivers in bankruptcy. After all, even the Federal courts were divided on this issue.

There are legal hurdles the receiver must clear before recovering any preference, and the law governing this particular situation was not entirely clear until the Supreme Court reversed the lower courts and ruled in favor of Ponzi's receivers. Another hurdle faced by the receivers was the fragmentary nature of Ponzi's records, and doubtless many who had secured refunds, or even profits, were not revealed to the receivers, and benefited fully from their race of diligence.

And aside the time spent and giving up money

96 *Brandenberg on Bankruptcy* § 3 (4th ed. 1917).

received, there is no penalty for participating in the race of diligence:

A preference involves no element of moral or actual fraud. It is simply a constructive fraud established by law upon the existence of certain facts and prohibited by it. There is nothing dishonest or illegal in a creditor obtaining payment of a debt due him from a failing creditor; not in his attempting by proper and ordinary effort to secure an honest debt, though such act may afterwards become a constructive fraud by reason of the filing of a petition and adjudication in bankruptcy.⁹⁷

Section 60b of the Bankruptcy Act,⁹⁸ as it stood at the time of Ponzi's bankruptcy, provided:

If a bankrupt shall have made a transfer of any of his property, and being within four months before the filing of the petition in bankruptcy[,] the bankrupt be insolvent and the transfer then operate as a preference, and the person receiving it shall then have reasonable cause to believe that the transfer would effect a preference, it shall be voidable by the trustee and he may recover the property or its value from such person....⁹⁹

In the run on Ponzi, most of the statute's requirements were easily met. There was no question about his insolvency; he was insolvent from the day he opened. The run fell within the four month timeframe. Payments to investors depleted Ponzi's assets to the detriment of those not receiving payment, and clearly operated as preferences to those receiving the money. The remaining legal issue, then, became whether, when receiving money from Ponzi, the investor had "reasonable cause to believe" that Ponzi was

insolvent and would be unable to pay all investors in full.

The new § 60b, enacted in 1910, liberalized the requirements for finding of voidable preference. The receiver no longer had to prove that the bankrupt knew he was insolvent and intended to make a preferential payment, and that the creditor had reason to believe a preference was intended.¹⁰⁰ Under the new statute, the receiver need only establish that the creditor had "reasonable cause" to believe a preference was intended.

This legal standard reflects a very practical concept. As the Supreme Court later pointed out, everybody who participates in a run on an institution has a reasonable cause to believe a preference would result, as that is their whole purpose for standing in line: to get their money back before it runs out. Fundamental to the concept of a run is the belief that all who are owed will not be paid.¹⁰¹

The preference is not void, but rather voidable. The receiver must decide whether to pursue the matter. On February 18, 1921, Ponzi's receivers declared their intention to recover all moneys paid to investors, whether refunds or payment on matured notes, to be distributed equally among all Ponzi creditors. They stated \$5,000,000 had been paid to investors in the week or ten days prior to the closing of Ponzi's business.¹⁰²

Aside from that handful of investors who, through a sense of community obligation, surrendered up their Ponzi receipts voluntarily, legal compulsion would be necessary to recover the money. To clarify the legal obligations, receivers filed suits involving a small number of investors whose situations would be representative of hundreds of others.

97 *Brandenberg on Bankruptcy* § 925 (4th ed. 1917).

98 As amended June 25, 1910, c. 412, 36 Stat. 838, 842.

99 *Id.*

100 *Brandenberg on Bankruptcy* § 968 (4th ed. 1917).

101 *Cunningham v. Brown*, 265 U.S. 1, 11 (1923).

102 N.Y. Times, Feb. 19, 1921, at 17, col. 2.

In such one case, three investors admitted having doubts about Ponzi's solvency either after the July 26 announcement of the investigation or the August 2 expose by a former employee. On April 26, the District Court found that these investors, as they admitted, had reasonable cause to believe Ponzi was insolvent, and ordered them to turn their money over to the trustees. Although ruling against them, the court commended the investors for their candor.¹⁰³

Those who were perhaps less candid, and denied they sought refunds because of concerns about Ponzi's bankruptcy, presented a more difficult and probably more typical case. The trustees brought suit against six such note holders who had received refunds. Again, the stated objective of these cases was "to test, in the court of appeals, questions common to many hundred suits now pending and yet to be filed."¹⁰⁴

The defendants in this case, Ponzi note holders who had received refunds in the run following the August 2nd expose, claimed they had no reasonable cause to believe Ponzi was insolvent. Proceeding upon a complex and confusing theory involving rescission for fraud and constructive trust, the investors claimed their refunds were beyond the reach of § 60b. The District Court,¹⁰⁵ and First Circuit Court of Appeals adopted their theory and ruled against the receivers.¹⁰⁶

Adopting a simpler and more sensible rationale, the Supreme Court ruled in favor of the trustees on April 28, 1924:

On the morning of August 2nd, when news of Ponzi's insolvency was broadly an-

103 *Lowell v. Ashton*, 272 F. 536 (D. Mass. 1921).

104 *Lowell v. Brown*, 280 F. 193 (D. Mass. 1922), *aff'd* 284 F. 936 (1st Cir. 1922), *rev'd* 265 U.S. 1 (1924).

105 *Lowell v. Brown*, 280 F. 193 (D. Mass. 1922).

106 *Lowell v. Brown*, 284 F. 193 (1st Cir. 1922),

nounced, there was a scramble and a race. The neighborhood of the Hanover Bank was crowded with people trying to get their money and for eight days they struggled. Why? Because they feared that they would be left only with claims against the insolvent debtor. In other words, they were seeking a preference by their diligence. Thus they came into the teeth of the Bankrupt Act and their preferences in payment are avoided by it.¹⁰⁷

The court disposed of the theory adopted by the courts below:

After August 2nd, the victims of Ponzi were not to be divided into two classes, those who rescinded for fraud and those who were relying on his contract to pay them. They were all of one class, actuated by the same purpose to save themselves from the effect of Ponzi's insolvency.¹⁰⁸

The court referred to the broader policy of the law of preferences:

It is a case the circumstances of which call strongly for the principle that equality is equity, and this is the spirit of the bankrupt law. Those who were successful in the race of diligence violated not only its spirit but its letter and secured an unlawful preference.¹⁰⁹

Next to the refunds secured by investors during the run, the most significant asset available to Ponzi's receivers was the \$1,058,221 in certificates of deposit issued by the Hanover Trust Company that Ponzi had turned over to the receivers. However, the receivers were not free to distribute this money to investors. The Commissioner of Banks also sought the certificates. As a shareholder of the insolvent Hanover Trust Com-

107 *Cunningham v. Brown*, 265 U.S. 1, 10 (1924).

108 *Id.*

109 *Id.*

pany, under Massachusetts law Ponzi was also liable to the depositors and other creditors of that institution. The matter was litigated, and on June 5, 1924, the Massachusetts Supreme court found that the receivers could distribute the value of the certificates of deposit to Ponzi creditors, but only after his liability as a shareholder of the bank were set off against the note.¹¹⁰ This calculation was to be made by a single justice, and on July 12, \$456,146 of the total was made available to the receivers and distributed to creditors.¹¹¹ This represented about one-third of the \$1,500,000 ultimately recovered and distributed to Ponzi creditors.¹¹²

Frequent visitors to the courtroom, Ponzi's receivers in bankruptcy litigated a variety of other matters involving the estate. One such case involved an agent seeking to recover commissions he had earned selling Ponzi notes to investors. The man, claiming a good faith belief that Ponzi's scheme was legitimate, had invested his commissions in Ponzi notes. When he sought to enforce his claim against Ponzi's estate, the District Court found that the agent's services were not valuable, acting instead to increase Ponzi's insolvency, and hence the agent could not recover against the estate.¹¹³ In another case, Ponzi's estate in bankruptcy was found to be subject to a 6 per cent. tax on earnings levied by the State of Massachusetts.¹¹⁴

Federal Criminal Prosecution

The criminal complaint which formed the basis of Ponzi's federal arrest set out the elements of a mail fraud case.¹¹⁵ The complaint alleged that Ponzi devised a scheme to defraud investors by claiming he could pay 50 per cent. interest every

forty-five days on their notes, when in fact he was not able to pay such interest and intended to keep their money.

The complaint further alleged that, for the purpose of executing his scheme,¹¹⁶ he mailed investors letters about their notes. This second element was included because, unlike common-law fraud, the essence of a mail fraud charge is not the fraudulent scheme itself, but rather the use of federal mails in furtherance of that scheme.¹¹⁷

On August 19, Ponzi was brought from jail for a hearing before Federal Commissioner Hayes.¹¹⁸ The Federal Building was surrounded by a crowd intent on seeing Ponzi, and the hearing was held in its largest courtroom. When the courtroom doors were opened, people pushed past bailiffs and scrambled for seats.

This court appearance found Ponzi relaxed and cheerful. Hands casually in pockets, he nodded to friends and well-wishers. Ponzi sat through an unrelated hearing, and when his own turn came, he waived examination and agreed to no change in bail. The hearing was brief, and Ponzi was remanded to the East Cambridge Jail until his case could be heard in the September term of the Federal District Court. Ponzi reported receiving \$5,000 in his cell from hopeful investors, and again promised he could recoup his losses if allowed an extra 60 days.¹¹⁹

On October 1st, a federal grand jury returned two forty-three count indictments, the longest in years, against Ponzi,¹²⁰ and on November 30 he made a deal with the prosecutors, pleading guilty to a single count. Having dismissed all counts but one, Assistant United States Attorney Shea urged the imposition of the maximum sentence,

110 *Cunningham v. Comm'r of Banks*, 144 N.E. 447 (Mass. 1924).

111 N.Y. Times, Jul. 12, 1924, at 4, col. 5.

112 N.Y. Times, Dec. 20, 1928, at 27, col. 2.

113 *In re Ponzi, Claim of Viscariello*, 15 F.2d 113 (D. Mass. 1926).

114 *In re Ponzi*, 6 F.2d 324 (D. Mass. 1925).

115 U.S.C. § 10385 (Crim. Code, § 215).

116 N.Y. Times, Aug. 13, 1920, at 1, col. 3.

117 *Brady v. United States*, 24 F.2d 405 (8th Cir. 1928).

118 The Federal Commissioner was the forerunner of the current U.S. Magistrate Judge.

119 N.Y. Times, Aug. 20, 1920, at 4, col. 2.

120 N.Y. Times, Oct. 10, 1920, at 9, col. 2.

reminding those assembled of the extent of Ponzi's fraud: "It is true Mr. Ponzi did collect about \$10,000,000. It is also true he paid back about \$8,000,000, leaving a difference of about \$2,000,000 between what he took in and what he returned."¹²¹

In imposing the maximum five year sentence for a mail fraud count, Judge Hale added his own stern pronouncement: "The defendant conceived a scheme which on his counsel's admission did defraud men and women. It will not do to have the public, the world, understand that such a scheme as his through the United States' instrumentality could be carried out without receiving substantial punishment."¹²² With his wife sobbing on his shoulder, Ponzi wrote: "Sic Transit Gloria Mundi," (thus passes worldly glory) on pad of paper and passed it to reporters.¹²³

Ponzi's case heard in the Supreme Court

Despite Ponzi's federal incarceration, the State of Massachusetts proceeded with Larceny charges. Because Ponzi was in the custody of a federal correctional facility, Judge Fessenden of the Massachusetts superior court issued a writ of habeas corpus, on April 21, 1921, directing that the master of the House of Correction produce Ponzi in state court where he could stand trial for state charges.¹²⁴

Federal authorities initially resisted this request, but later, at the direction of the United States Attorney General, withdrew the objection and directed Sheriff Earl P. Blake, master of the Plymouth House of Correction, to produce Ponzi in state court.¹²⁵ He was arraigned there on May 3, but refused to plead on the grounds that he was

a federal prisoner.¹²⁶

On May 23, he filed a writ of *habeas corpus* in Federal District Court alleging that as he was a federal prisoner, the state had no jurisdiction to try him.¹²⁷ The district court denied the writ the next day, and Ponzi appealed to the First Circuit Court of Appeals. Ponzi would not be produced in state court pending his appeal, and on June 2 the First Circuit denied the Massachusetts Attorney General's motion to expedite the appeal, which would be considered in the Fall.¹²⁸

The First Circuit certified the issue as a question of law to the Supreme Court on November 29.¹²⁹ Oral arguments before the high court were held on March 8 and 9, 1922, and the Supreme Court ruled against Ponzi on March 27. Discussing the issues raised by a state and federal court both proceeding against a defendant, Chief Justice Taft, writing for the court, stated:

We live in the jurisdiction of two sovereignties, each having its own system of courts to declare and enforce its laws in common territory. It would be impossible for such courts to fulfill their respective functions without embarrassing conflict unless rules were adopted by them to avoid it

The chief rule which preserves our two systems of courts from actual conflict of jurisdiction is that the court which first takes the subject-matter of the litigation into its control, whether this be person or property, must be permitted to exhaust its remedy, to attain which it assumed control, before the other court shall attempt to take it for its

121 N.Y. Times, Dec. 1, 1920, at 9, col. 2.

122 *Id.*

123 *Id.*

124 *Ponzi v. Fessenden*, 258 U.S. 254, 255 (1922).

125 *Id.*, at 256.

126 N.Y. Times, May 4, 1921, at 21, col. 3.

127 *Ponzi v. Fessenden*, 258 U.S. 254, 256 (1922).

128 N.Y. Times, Jun. 2, 1921, at 26, col. 2.

129 Pursuant to section 239 of the Judicial Code (Comp. St. § 1216).

purpose.¹³⁰

In the case at bar, the federal District Court first took custody of Ponzi. He pleaded guilty, was sentenced to imprisonment and was detained under United States authority to suffer the punishment imposed. Until the end of his term and his discharge, no state court could assume control of his body without the consent of the United States.¹³¹

This principle was the basis of Ponzi's objection, but he took it a step further, alleging that the United States did not have the authority to waive its exclusive jurisdiction over Ponzi. The court responded: "There is no express authority authorizing the transfer of a federal prisoner to a state court for such purposes. Yet we have no doubt that it exists and is to be exercised with the consent of the Attorney General."¹³²

Regarding Ponzi's claim that he could not get a fair trial under such circumstances, Justice Taft responded:

One accused of a crime has a right to a full and fair trial according to the law of the government whose sovereignty he is alleged to have offended, but he has no more than that. He should not be permitted to use the machinery of one sovereignty to obstruct his trial in the courts of the other, unless the necessary operation of such machinery prevents his having a fair trial. He may not complain if one sovereignty waives its strict right to exclusive custody over him for vindication of its laws in order that the other may also subject him to conviction of crime against it.¹³³

On May 12, the Supreme Court directed the First

130 *Ponzi v. Fessenden*, 258 U.S. 254 at 259, 260 (1922).

131 *Id.* at 261.

132 *Id.*, at 261-262.

133 *Id.*, at 260.

Circuit to take further proceedings to implement its ruling, and the First Circuit affirmed the District Court's decree, denying Ponzi's writ on June 6.¹³⁴ With the constitutional question resolved against him, Ponzi requested a trial date for his 22 Massachusetts larceny indictments on July 14.¹³⁵

State Criminal Prosecution

On September 11, 1920, shortly after his arrest on federal charges, a Suffolk County Grand Jury had returned twelve larceny indictments against Ponzi, totaling 68 counts.¹³⁶ Ten indictments charging accessory before the fact of larceny were also returned.¹³⁷ The case was delayed while the constitutional issues surrounding the state trial were being resolved, and did not reach trial until October 23, 1922.

At this trial, only twelve of the twenty-two indictments were presented. Ponzi objected, requesting a single trial on all indictments, but the trial proceeded only on the twelve indictments, giving the state prosecutors a significant tactical advantage.

At the trial, Charles Rittenhouse, an accountant employed by the receivers of Ponzi's bankruptcy estate, testified that \$9,582,591 was invested in Ponzi's scheme reflecting notes with a face value of \$14,374,755. When the business shut down, \$4,263,652 of investment was outstanding, having a face value of \$6,396,353.¹³⁸ These figures probably present the most accurate financial picture of Ponzi's business when it closed. Testimony also revealed that three quarters of the Boston Police force had been investors.¹³⁹ Whether this impacted their deliberations is not known, but the jury found Ponzi not guilty on December 1.

134 *Ponzi v. Fessenden*, 280 F. 1022 (1922).

135 *Commonwealth v. Ponzi*, 152 N.E. 307, 308 (1926).

136 N.Y. Times, Sep. 12, 1920, at 3, col. 6.

137 *Commonwealth v. Ponzi*, 152 N.E. 307, 308 (1926).

138 N.Y. Times, Nov. 7, 1922, at 4, col. 4.

139 N.Y. Times, Nov. 23, 1922, at 31, col. 2.

For reasons which are not known, it was nearly two years before Ponzi was brought to trial, on November 6, 1924, for five of the untried indictments. In this trial, the jury disagreed on four of the indictments and the judge directed a verdict of not guilty on the fifth. Massachusetts prosecutors had a third shot at Ponzi on February 18, 1925, trying him on four indictments, and finally found a sympathetic jury which returned a guilty verdict on all counts on February 26.

Three of the indictments were placed on file. Ponzi was sentenced on the fourth indictment which was based on transactions with an investor named Bodenstab. The first count was larceny of \$1,000 on July 8, 1920. The second was larceny of \$600 on July 16, 1920, and the third, larceny of \$400 on July 20, 1920. Based on these three larceny convictions, Ponzi was adjudged a “common and notorious thief.”¹⁴⁰ Ponzi appealed this conviction to the Massachusetts Supreme Court.¹⁴¹

Massachusetts Superior Court Judge Sisk sentenced Ponzi to a seven to nine year prison term as a “common and notorious thief,” on July 11, 1925, but stayed the sentence and released Ponzi while his appeal was pending.¹⁴²

Ponzi and the Charpon Florida Land Syndicate

His arrest and bankruptcy clearly marked the end of Ponzi’s salad days. From this point on, events and law enforcement agencies conspired against him and assured that he would never again achieve a comparable degree of wealth and notoriety.

While Ponzi was languishing in a federal correctional facility in the early 20’s, speculators in

Florida seized upon real estate as a moneymaking scheme which would ultimately prove more enduring than trade in postal reply coupons. In Miami alone, the land boom increased the assessed value of property 560 percent between 1921 and 1926.¹⁴³ This speculation provided many opportunities for overreaching, and gave rise to a familiar phrase for another species of fraud: “Swamp land in Florida.”

Ponzi answered Florida’s siren call, arriving in Jacksonville on September 28, 1925, as the boom was beginning to fade. As his name had become synonymous with fraud, he used the alias Charles Borelli. Once his presence and true identity were revealed, he announced plans to recoup his fortune, through the subdivision of real estate, and repay all investors. He would advertise nationally, selling lots at an affordable ten dollars each.¹⁴⁴

The Massachusetts District Attorney’s office, purportedly on procedural grounds, petitioned Judge Sisk on November 16 to vacate Ponzi’s stay of sentence.¹⁴⁵ Judge Sisk, stood by his earlier decision and dismissed the petition on November 18.¹⁴⁶ Ponzi complained about the motion, claiming to be the victim of unnamed “hostile interests,” but one hardly need resort to conspiracy theory to see why prosecutors wanted him behind bars.

Ponzi not only missed the land boom, but his luck was such that he arrived in Florida just as authorities began a campaign of investigations aimed at discouraging speculative land dealings.¹⁴⁷ Ponzi, his wife, and Mr. and Mrs. Calcadonio Alviati, formed the Charpon land syndicate, quickly attracting the attention of investigators.

On January 14, 1926, Mr. Alviati was charged

140 (Convicted of three distinct larcenies at same sitting of court) Mass. Ann. Laws ch. 266 § 40 ((Law. Co-op. 1992).

141 *Commonwealth v. Ponzi*, 152 N.E. 307, 308 (1926).

142 N.Y. Times, Jul. 12, 1925, § II at 1, col. 4.

143 Tebeau, *A History of Florida* (1971) at 384.

144 N.Y. Times, Nov. 8, 1925, § II at 2, col. 4.

145 N.Y. Times, Nov. 11, 1925, at 27, col. 2.

146 N.Y. Times, Nov. 19, 1925, at 20, col. 2.

147 Tebeau, *A History of Florida* (1971) at 386.

in Boston with violating the Massachusetts Blue Sky law¹⁴⁸ while engaged in sales activities on behalf of the land syndicate.¹⁴⁹ By January 16, Alviati was convicted and sentenced to six months in prison.¹⁵⁰

In February the Duval County Grand Jury returned a four count indictment against Ponzi, his wife, and Mr. and Mrs. Alviati. They were charged with violating Florida law regulating persons and associations doing business under a declaration of trust; offering securities for sale without filing a declaration of trust; selling units of indebtedness without a permit from the State Controller; and doing business without paying a \$150 license fee.¹⁵¹

Investigation revealed more details about Ponzi's pyramid land scheme. His syndicate purchased, at \$16 an acre, 100 acres of land in Columbia County. It had been designated the Rosa Maria tract. Each acre would be subdivided into twenty-three lots. With a \$10 price per lot, Ponzi would yield \$214 profit per acre. Ponzi claimed that under his pyramiding plan, an initial \$10 investment would yield \$5,300,000 in two years. And, of course, pictures of the land revealed that some of the lots were under water.¹⁵²

After the indictments were returned, Judge George Cooper Gibbs issued capiases (writs of arrest) for the Ponzi's and Alviatis. Mr. Alviati

was in Boston at the time, out on appeal of a six month sentence.¹⁵³ Ponzi was in Tampa at the time of the indictment and drove to Jacksonville. The authorities, assuming he would travel by train, missed his arrival.¹⁵⁴ While Florida authorities continued searching for Ponzi, he retained counsel and met with reporters.

After a 36 hour search, Ponzi and his wife were arrested in his attorney's Jacksonville office. The unfortunate and long-suffering Rosa fainted a few minutes after her arrest and was revived by Sheriff's deputies and newspapermen. He was released on \$5,000 bond, Rosa on a \$500 bond. Ponzi moved to quash the indictment and a hearing date was set for April 1.¹⁵⁵

At the Postal Inspector's request to the U.S. Attorney's office, Ponzi was again charged with mail fraud on February 24. He surrendered himself to the Federal Commissioner and was released without bail. The preliminary hearing date was set for March 4.¹⁵⁶ At a second hearing on March 17, the Commissioner dismissed the mail fraud charge. Ponzi's counsel claimed that the prosecution failed to prove the specific intent to defraud required by penal law.

Testifying at the hearing, Ponzi provided many details as to the operation of his syndicate, and claimed Department of Justice officials had approved his plan. He sold "units of indebtedness" promising 200 per cent. return in 60 days, but retained the right to pay such returns with either cash or real estate. He made his first sale on November 9, 1925, and had collected \$7,000 from investors before the mail fraud charges were filed. He had started to subdivide two more tracts, but put all business activities on hold until federal and state charges could be resolved.¹⁵⁷

Ponzi did not fare as well with the state of

148 Blue Sky laws sought to prevent promoters from selling credulous investors "acres of blue sky." The Massachusetts law was the *Sale of Securities Act*, 1921, Mass. Acts 499. Section 8 of the act prohibited sale of securities without registration, and section 15 provided a maximum penalty of a \$5,000 fine and/or two and one half years' imprisonment.

149 N.Y. Times, Jan. 15, 1926, at 14, col. 6.

150 N.Y. Times, Jan. 27, 1926, at 7, col. 2.

151 For a discussion of Florida Blue Sky laws then in force, see Cowan, *Manual of Securities Laws* at 160-69 (1923).

152 N.Y. Times, Feb. 10, 1926, at 12, col. 6.

153 N.Y. Times, Feb. 9, 1926, at 3, col. 2.

154 N.Y. Times, Feb 11, 1926, at 12, col. 2.

155 N.Y. Times, Feb. 24, 1926, at 7, col. 6.

156 N.Y. Times, Feb. 26, 1926, at 4, col. 3.

157 N.Y. Times, Mar. 18, 1926, at 40, col. 6.

Florida. On April 2, a Duval Court of Criminal Records jury found Ponzi guilty of failure to file a declaration of trust with the Secretary of State and of selling certificates of indebtedness without permission, after deliberating for one hour and three minutes. He was released, on the same \$5,000 bond, while his attorney moved for a new trial.¹⁵⁸

On April 21 he was sentenced to one year of hard labor in the State Penitentiary at Raiford, and was freed on \$1,500 bond while his appeal to the State Supreme Court was pending. Judge James M. Peeler denied Ponzi's motion for a new trial but gave him sixty days to prepare an appeal. Ponzi's attorneys claimed the declaration of trust was simply a power of attorney and not covered under the state law. The prosecutors nolle prossed (dismissed) charges against Mrs. Ponzi and Mrs. Alviati.¹⁵⁹

On May 28 the Supreme Court of the State of Massachusetts upheld Ponzi's Larceny conviction.¹⁶⁰ Judge Fosdick of the Superior Court in Boston then ordered Ponzi to appear before his court for sentencing. On Tuesday, June 1, Ponzi had failed to appear and the judge issued a default warrant. Ponzi telegraphed Judge Fosdick from Jacksonville that evening claiming he had only heard of the order the day before and requested ten more days to appear: "Am under bond here and need consent to leave the state. Also must settle my affairs. Please wire me your orders collect." The Judge then withdrew the warrant and gave Ponzi until Monday, June 7, to appear.¹⁶¹

By June 12, rumors were circulating that Ponzi had fled the country. While not overly concerned, Boston authorities began preparing police circulars bearing Ponzi's likeness and criminal record. Immigration authorities had begun watching him

after he telegraphed Judge Fosdick from Jacksonville.¹⁶² The circulars were sent out on June 22, with Ponzi still at large. The circular listed aliases Ponzi had used including Charles Ponci, and Carlo and Charles P. Bianelli. He was described as: "Forty-four years of age; height 5 feet 2 inches; hair dark chestnut mixed with gray; eyes, brown; occupation, thief."¹⁶³

Flight by Sea

At this point, Ponzi abandoned his policy of cooperating with authorities which had afforded him such leniency in the past. In Tampa, Florida, he boarded a ship bound for Italy.¹⁶⁴ The vessel apparently stopped at Port Houston, Texas, where Ponzi attracted the attention of Texas authorities. The ship left that port on June 25, with Ponzi eluding capture.

Sheriff Binford of Texas requested Ponzi's Bertillon measurements,¹⁶⁵ sending Deputy Police Superintendent Hall of Boston a telegram: "Do you want Charles Ponzi? Advice return wire quick, advise fingerprint classification and if any reward." The Sheriff was notified that no reward was offered.¹⁶⁶

The lack of financial incentive did not deter the Sheriff's quest for justice, and a procedure that could charitably be described as irregular,¹⁶⁷ was used to capture Ponzi. Judge P. J. Morrow of the Texas Court of Criminal Appeals gives this

162 N.Y. Times, Jun. 13, 1926, at 15, col. 3.

163 N.Y. Times, Jun. 23, 1926, at 30, col. 3.

164 *Ex parte Ponzi*, 290 S.W. 170, 171 (Tex. Crim. App. 1927).

165 An early method of identifying criminals based on measurement of physical aspects of the suspect including height, weight, length of arms and legs, and length and width of skull. This was superseded by the more accurate fingerprinting process.

166 N.Y. Times, Jun. 27, 1926, § II at 19, col. 3.

167 Though irregular, the number of reported cases indicate it was not uncommon.

158 N.Y. Times, Apr. 3, 1926, at 4, col. 6.

159 N.Y. Times, Apr. 22, 1926, at 3, col. 2.

160 *Commonwealth v. Ponzi*, 152 N.E. 307 (Mass. 1926).

161 N.Y. Times, Jun. 3, 1926, at 9, col. 3.

remarkable account:

According to the testimony, [Ponzi], at Tampa, Fla., boarded a freighting vessel known as Sic Vos Von Vobis, which was under Italian registration, flying the Italian flag, and apparently manned by Italian subjects. [Ponzi] was employed for service on the vessel which was bound for Italy, but which stopped at New Orleans, La. While there, one George Lacy, a deputy sheriff of Texas, who, having no papers for the arrest of [Ponzi] and no connection with the constabulary of the state of Louisiana, arranged with a custom house officer at New Orleans to induce some person in authority on the vessel to send [Ponzi] ashore.

The custom house officer went aboard the vessel and requested the second officer in charge to send [Ponzi] to the custom house for the purpose of having papers touching the cargo authenticated. The second officer directed [Ponzi] to go to the custom house, and accompanied him thereto. Upon their arrival at the custom house, [Ponzi] was forcibly taken in custody by George Lacy, who afterwards took him to a hotel and then brought him to the city of Houston, Tex., where complaint was made charging him as a fugitive from justice.¹⁶⁸

While this capture was characterized by the court as an unlawful kidnapping, there is no record of whether Deputy Lacy was ever charged (or decorated) for his crime.¹⁶⁹ Grasping at straws, Ponzi appealed to now President Calvin Coolidge for clemency, but the former Governor of Massachusetts during Ponzi's postal coupon scheme ignored this appeal.¹⁷⁰

Alfred R. Shrigley, Assistant Attorney General of Massachusetts, phoned Texas authorities and

arranged for an extradition hearing, arriving in Houston on July 6.¹⁷¹ A hearing was held before Texas Governor Miriam "Ma" Ferguson on July 10. "Ma" Ferguson was known to be the proxy of her husband, a previous Governor of Texas, who could no longer hold office due to an impeachment. It was noted that this was Governor Ferguson's first case heard without her husband's presence, who was out making speeches for his wife's upcoming, reelection campaign (she lost the primary).

Governor Ferguson stated that if extradition was granted, it would not be until after the Texas primaries on July 24. Rather than simply examine the extradition papers for proper form and completeness as the law prescribed, she inquired into the nature of Ponzi's criminal activities and the circumstances of his arrest, requesting a brief from Mr. Shrigley covering these matters. Mr. Shrigley objected, but nonetheless complied. He had good reason to be concerned. Governor "Ma" Ferguson "was to be remembered primarily for one thing: the most extensive use of executive clemency in Texas history."¹⁷²

Ponzi did not appear in person at the hearing, as he had refused to travel from Houston handcuffed to Police Inspector John F. Mitchell of Boston. Ponzi's counsel argued that Ponzi was kidnapped from an Italian ship and hence this matter was not within the jurisdiction of the state but was instead a matter of international law, and that theft was not an extraditable offense according to the treaty between the United States and Italy.

United State Senator Morris Sheppard of Texas sent a telegram, which was read in open court, stating that he had referred the matter of Ponzi's kidnapping to the Secretary of State and the Ital-

171 N.Y. Times, Jul. 7, 1926, at 16, col. 6.

172 "Ma' Ferguson pardoned, furloughed, or otherwise freed 2,000 convicts in 20 months, in some cases before the convict even reached the penitentiary." Ferehnbach, *A History of Texas and The Texans* (1968) at 646-47.

168 *Ex parte Ponzi*, 290 S.W. 170, 171 (1927).

169 *Id.*, at 173.

170 N.Y. Times, Jul. 5, 1926, at 26, col. 1.

ian ambassador.¹⁷³ The hearing was continued until a later date,¹⁷⁴ and on August 2nd Governor Ferguson granted the extradition request. Ponzi, still jailed in Houston, stated that he would file a writ of habeas corpus with the district court in Houston. If this writ were not granted in the district court, he promised he would appeal to the Court of Criminal Appeals and State Supreme Court, if necessary. He was released, pending appeal, on a \$12,000 bond.¹⁷⁵

On June 30, Ponzi sent a telegram to President Coolidge, and followed up with a July 12 letter to Assistant Attorney General Luhning. These remarkable and paranoid epistles could, in the minds of some, indicate that reality may have exceeded Ponzi's grasp at that point.

Judge Charles Ashe of the district court refused Ponzi's writ of habeas corpus explaining: "I had started to pronounce judgment yesterday. At that time no cases had been cited upholding the constitutionality of the indictment as returned. After the hearing this morning I am satisfied with the Supreme Court decisions on the matter of valid indictments."¹⁷⁶ Ponzi's attorneys gave immediate notice of appeal to the Texas Court of Criminal Appeals, which would be meeting in October.¹⁷⁷ Mrs. Ponzi and her mother-in-law sailed for Italy September first in a bid to enlist support from Premier Benito Mussolini.¹⁷⁸ This is the last we shall hear of the long-suffering Rosa Ponzi. It is not known if they got back together when he returned to Italy. She was not mentioned at the time of his death.

173 There is no indication how this prominent politician became involved in Ponzi's case. The telegram may have merely been a perfunctory gesture.

174 N.Y. Times, Jul. 11, 1926, at 12, col. 1.

175 N.Y. Times, Aug. 3, 1926, at 9, col. 3.

176 N.Y. Times, Aug. 6, 1926, at 17, col. 3. (Judge Ashe was probably referring to *Ker v. Illinois*, 119 U.S. 436 (1886).

177 *Id.*

178 N.Y. Times, Sep. 2, 1926, at 4, col. 3.

On September 20, three Boston law officers left for Texas, hoping to bring Ponzi back in October.¹⁷⁹ Victims of wishful thinking, they would arrive about four months before Ponzi's return. A few days later, on the 23rd, Mayor Oscar Holcombe of Houston refused Ponzi's offer of a warranty deed to 26 lots in Columbia, Florida to aid victims of the hurricane which had devastated Florida coastlines four days earlier. The Mayor added: "This is a very poor time for Ponzi to attempt to gain publicity at the expense of those suffering from the ravages of the hurricane."¹⁸⁰

The Texas Court of Criminal Appeals affirmed the district court's dismissal of Ponzi's writ on October 27.¹⁸¹ Ponzi moved for a rehearing and this motion was denied by the court January 26, 1927. In spite of his earlier promise, he uncharacteristically let the matter rest and did not appeal to the Texas Supreme Court. He finally left Texas on February 12 and began serving his Massachusetts prison term on February 16.¹⁸² He would be

179 N.Y. Times, Sep. 21, 1926, at 30, col. 3.

180 N.Y. Times, Sep. 24, 1926 at 11, col. 2.

181 *Ex parte Ponzi*, 290 S.W. 170 (1927).

The fact that Ponzi's illegal arrest did not require his release under the U.S. Constitution may be surprising to those familiar with the exclusionary rule preventing the use of illegally seized evidence in criminal prosecutions. While there is no question the illegal arrest violates the prisoner's Fourth and Fourteenth amendment rights, the remedy in such a case is to proceed against the kidnapper, not to release the prisoner. See generally, LaFave, *Search and Seizure* § 1.9 (2d ed. 1987). Although the Supreme Court has expanded the constitutional protections of criminal defendants in many respects since the 1920's, this rule, known as the *Kerr-Frisbie* doctrine (*Ker v. Illinois*, 119 U.S. 436 (1886), *Frisbie v. Collins*, 432 U.S. 519 (1952), still current: *U.S. v. Alvarez-Machain*, 504 U.S. 655 (1992)).

182 N.Y. Times, Feb. 13, 1927 § II, at 2, col. 2.; N.Y. Times, Feb, 16, 1927, at 8, col. 4.

eligible for parole in October of 1931.¹⁸³

Deportation to Italy; golden years

On September 28, 1927 with Ponzi still in a Massachusetts prison, the Immigration Bureau issued a deportation order for Ponzi. The warrant, however, would not be executed until he was released in 1934.¹⁸⁴ The basis of his deportation order was a federal law that allowed deportation of individuals having been convicted of a crime involving moral turpitude.¹⁸⁵ Ponzi challenged the order, claiming that moral turpitude involved a crime against chastity, and did not apply to his larceny conviction.

Mrs. Anna C. M. Tillinghast, United States Immigration Commissioner for Boston, replied in a letter that turpitude was “an act of baseness, vileness or depravity in the private and social duties which man owes to his fellow-men or to society in general, contrary to the accepted and customary rule of right and duty between man and man.”¹⁸⁶

Another writ of habeas corpus was denied on June 3, 1932.¹⁸⁷ On February 14, he was released from Massachusetts prison and arrested by federal authorities as an undesirable alien. Having exhausted his funds, he was unable to raise bail.¹⁸⁸ Ponzi appealed the Immigration Bureau’s ruling to the Federal District Court in Boston which upheld the deportation warrant on July 30, 1934.¹⁸⁹ He left the United States for Italy that year.¹⁹⁰ In July of 1935 he requested permission of the

United States consulate to visit the country,¹⁹¹ and in September of that year he was reported to have been hit by a truck in Italy, receiving only minor injuries.¹⁹²

Authorities may have been concerned that Ponzi had not abandoned his love for the Land of Opportunity. In September of 1939 the FBI interviewed a California man but concluded that he “did not resemble the photograph of Ponzi in any respect.”¹⁹³

Ponzi emigrated to Brazil sometime before World War II. The dates here are vague, leaving room for conjecture as to his activities and country of residence in the late 1930’s. Nearly destitute when he arrived in Brazil, he eked out a living teaching English, receiving unemployment compensation in slack times. He reported this most ambitious scheme was an attempt to swindle the Soviet Union out of 2 billion dollars by promising to smuggle gold, adding: “What a joke on the communists that would have been.”

His declining years brought infirmity, with paralysis on his left side and partial blindness. He spent his final days in the charity ward of a Rio de Janeiro hospital, and died on January 15, 1949 at the age of 67. A legal agent claimed Ponzi’s body and buried him using \$75 Ponzi had saved from a Brazilian government pension.¹⁹⁴

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183 N.Y. Times, Dec. 21, 1939, at 23, col. 4.

184 Ponzi v. Ward, 7 F.Supp. 736, 737 (1934).

185 Immigration Act of February 5, 1917 § 19 (USCA, tit. 8 § 155); *Ponzi v. Ward*, 7 F. Supp. 736, 737 (1934).

186 N.Y. Times, Dec. 21, 1930, at 23, col. 4.

187 N.Y. Times, Oct. 21, 1930, at 47, col. 1.

188 N.Y. Times, Feb. 15, 1934, at 40, col. 3.

189 Ponzi v. Ward, 7 F.Supp. 736 (1934). To the best of my research, this is Ponzi’s final appearance in American appellate reports.

190 N.Y. Times, Jan. 19, 1949, at 56, col. 3.

191 N.Y. Times, Jul. 5, 1936, at 6, col. 4.

192 N.Y. Times, Sep. 5, 1936, at 6, col. 4.

193 Los Angeles office FBI report dated September 26, 1939, file no. 87-327.

194 N.Y. Times, Jan. 19, 1949, at 56, col. 3.