The Emergence of Oligopoly

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It was not only the Rich Man’s Panic of 1907, making it temporarily difficult to float further industrial securities, that brought an end to the Great Merger movement as the first phase of the Corporate Revolution. It was also the changing legal climate—the demonstrated willingness of the Roosevelt administration to enforce both the Sherman antitrust law and the prohibition of railroad rebates. The sugar refining industry, although its consolidation had long been completed, was not immune from these larger political and social influences. Henry Havemeyer, as president of the American Sugar Refining Company, found his efforts to regulate the industry increasingly hampered by fears of antitrust prosecution. Far more serious, the American was forced to plead guilty to charges of receiving illegal payments from the railroads. And this prosecution was only the beginning of the company’s legal troubles. Havemeyer, if he had been more sensitive to the newer trends, might have been able to better protect the empire he had so carefully built up. But he was just about the last member of his generation still active in the American’s affairs, and in the area of government relations he proved less adaptable than he had been when faced with the sugar beet threat.

By the fall of 1907 Henry Havemeyer, almost alone among those who had helped to organize the original sugar trust, was still associated with the successor to that consolidation—the American Sugar Refining Company. His older brother, Theodore, had died in 1897 at the age of sixty-three while serving as vice-president of the American. Although less forceful and less well known than his younger brother, Theodore had nonetheless exerted considerable influence in the company’s councils and, perhaps most important, on the company’s strong-willed president. His death deprived Henry Havemeyer of his closest and most trusted business associate.1

1 New York Times, April 27, 1897.
Also gone was F. O. Matthiessen who, along with Theodore Havemeyer, had directed the manufacturing end of the business since the original consolidation. In 1900 Matthiessen had become so bitterly opposed to the continuing price war with Arbuckle Brothers that he had resigned his various posts in the company. A year later he had died in Paris at the age of sixty-eight.\(^2\) Eight years earlier, in 1893, death had also overtaken Joseph B. Thomas, his place in the American Sugar Refining Company then being taken by his son, Washington B. Thomas.\(^3\) The ties of John E. Searles, Jr., and Lowell M. Palmer to the American had been severed also, but for different reasons. Searles had been forced to resign his various positions in the company in 1898 when his outside financial losses proved embarrassing to the American; Palmer had been forced to do the same in 1902 after questioning the propriety of Henry Havemeyer’s personal interest in the National Sugar Refining Company.\(^5\) Thus, of those involved in the original formation of the sugar trust, only Charles Senff, Havemeyer’s cousin, John E. Persons, his trusted legal counselor, and Arthur Donner, an old business associate and a partner in the formerly Havemeyer-controlled DeCastro & Donner refinery, were still connected with the American Sugar Refining Company, sharing the burdens of management.

But Henry Havemeyer still preferred to shoulder most of those burdens himself. He was justly famous for his quick temper and his insistence on having things done his own way. This autocratic temperament was conspicuous in his management of the American Sugar Refining Company. As Charles R. Heike, who succeeded Searles as secretary of the company, later testified, “It was really a one-man concern . . . .”\(^6\) Then, as an afterthought, he added: “There were some . . . strong men on [the board of directors]. Perhaps it was an exaggeration to call it a one-man concern. But, nevertheless, he [Havemeyer] was the dominating figure.”\(^7\) The testimony of others connected with the American painted a similar portrait.\(^8\)

The American had, by 1907, already taken on certain of the characteristics of what has since been described as the “modern” corporation or the “megacorp.”\(^9\) From the point of view of size alone, it was

\(^2\) Ibid., March 10, 1901.
\(^3\) Hardwick committee investigation, 1911, p. 1911.
\(^4\) New York Times, October 25, 1908.
\(^5\) Hardwick committee investigation, 1911, pp. 332–33, 340–42.
\(^6\) Ibid., p. 203.
\(^7\) Ibid., p. 212.
\(^8\) Ibid., p. 1914.
the sixth-largest industrial corporation in the United States. Only the United States Steel Company, the International Harvester Company, the International Mercantile Marine Company—all three being consolidations of other industries which J. P. Morgan or his partners had arranged—the American Tobacco Company, and the Standard Oil Company could claim more than the $140 million in assets which the American Sugar Refining Company held.\textsuperscript{10} Moreover, the American's stock had become widely dispersed among a large number of shareholders. There were over 9,200 separate owners of the company’s preferred shares and 9,800 separate owners of the common stock, the average holding being no more than forty-nine and forty-six shares respectively.\textsuperscript{11} The largest single block of stock owned by any one family represented less than 2.5 per cent of all the stock outstanding.\textsuperscript{12}

Strangely enough, Henry Havemeyer and the members of his family owned very few shares in the American Sugar Refining Company. Shortly after the original sugar trust was formed, Henry had disposed of most of his trust certificates on the open market. Because it was not at all certain that the consolidation would prove successful, or even that it would be able to withstand legal attack, he had preferred to realize whatever he could from the sale of the trust certificates and put the money into a more secure form of investment. His brother Theodore had done the same.\textsuperscript{13} This decision to dispose of the trust certificates led to an early separation of management from ownership—though few persons, even within the company itself, were aware that this had happened. By 1907, Henry Havemeyer held only 822

\textsuperscript{10} This has been determined by comparing Gardiner C. Means’s list of the largest industrial corporations in 1919 with Moody’s Manual for 1907. The Means list can be found in his “The Large Corporation,” pp. 38–39.

\textsuperscript{11} Hardwick committee investigation, 1911, pp. 2973–74.

\textsuperscript{12} This was a block of from 18,000 to 23,000 shares, held by Washington B. Thomas and other members of his family, out of 900,000 shares, both common and preferred, outstanding (ibid., pp. 2054–55).

\textsuperscript{13} This, however, did not preclude speculation in the American Sugar Refining Company’s stock from time to time (see pp. 98 and 173–74 above). The decision to transfer the family wealth out of the sugar refining industry (an attempt to emulate the successful examples of John Jacob Astor and Cornelius Vanderbilt) was later to be a source of great disappointment to the heirs of the two Havemeyers. “Both brothers,” the family biographer has written, “invested heavily in New York City real estate, which turned out badly, and they and their respective families would have been better off if they had retained their ownership of the stock of the American Sugar Refining Company” (Henry O. Havemeyer, Jr., Biographical Record of the Havemeyer Family, 1608–1943, p. 68). It was only in comparison with what the shares of American Sugar Refining Company stock were ultimately worth that the Havemeyer investment in real estate turned out badly.
shares of preferred stock and 137 shares of common stock in the company he headed, a merely nominal amount.  

But though the American Sugar Refining Company was beginning to display the characteristics of a more modern type of enterprise, Havemeyer continued to run it as if it were still a typical nineteenth-century proprietorship. In 1905, for example, he arranged for his son Horace to join him as an unpaid assistant, obviously with the intention of preparing him to take over one day as head of the company. Although he was only nineteen at the time, Horace had already spent two years in an unsalaried position learning the business. This attempt to assure a dynastic succession was not the only throwback to an earlier way of doing things. The elder Havemeyer also consistently refused to divulge any information as to the financial condition of the company—except what was required to obtain listing on the New York Stock Exchange—on the grounds that it was not in the interests of the company to do so. “In my report of a year ago,” he told the annual meeting of stockholders in 1904, “I made the point that a business corporation is an aggregation of individuals, and that there were obvious objections to giving to competitors information about corporate affairs, that is to say, the affairs of a union of individuals, which a partnership or individual is not compelled to make public in respect of its or his own affairs. . . . I repeat the statement as applicable to the present situation.”

This refusal to disclose any information as to the financial condition of the American Sugar Refining Company was part of a more general policy of ignoring all public criticism. But perhaps the most significant instance of Havemeyer’s failure to adapt to the changing nature of the company he headed was the single-handed manner in which he attended to all important matters. For example, in 1902, the American’s board of directors had appointed Havemeyer, Washington B. Thomas, Palmer, and Donner as a committee “to take charge of the purchase and management of beet sugar companies.” The committee never met. Havemeyer simply went ahead and arranged for the purchase of the various beet sugar companies himself, returning to the

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14 Hardwick committee investigation, 1911, pp. 220–21, 553–54.
15 Ibid., pp. 563, 3038.
16 One of the outstanding characteristics of the modern corporation, or megacorp, is that the management is chosen for its technical competence and previous service with the company rather than on the basis of family connections. This change in the selection of corporate management has significantly altered the nature of inheritance.
17 Hardwick committee investigation, 1911, p. 2957.
18 Ibid., p. 2952.
full board of directors for its approval only after the terms of a sale had already been worked out. "... [H]aving confidence in his judgment and sagacity," Thomas later testified in regard to his and his fellow directors' role in the beet factory acquisitions, "we all agreed to follow [Havemeyer's] suggestions." Other committees had been appointed in the past—such as the 1898 committee "to fix the price of refined sugars"—but most had met a similar fate, usurpation of their function by Havemeyer.12

While at times Havemeyer's fellow directors were troubled by the high-handed manner in which he ran the American Sugar Refining Company—though in general they deferred to his judgment—the stockholders themselves seemed not at all concerned. As long as the American continued to pay its customary dividend of 7 per cent on the preferred and common stock,21 they were content to leave the stewardship of the company to the elected officers. At least that was the impression created by the lack of opposition to the company's policies at the annual stockholders' meetings.22 In any case, the American seemed to have little difficulty in meeting its dividends once the price war with Arbuckle Brothers ended.23 Its market position seemed impregnable, its long-term prospects favorable. Then, quite suddenly, the sugar empire that Havemeyer had struggled so long to create began to show signs of too great a strain.

The first sign of trouble appeared in the West. Beginning in 1898, the American Sugar Refining Company had entered into a series of long-term contracts to purchase that part of the Hawaiian crop not otherwise committed to the Western Sugar Refining Company. This

19 Ibid., p. 1939.
20 Ibid., p. 1926.
21 Ibid., p. 2522-23. The preferred stock of the American had received dividends of 7 per cent annually ever since the company was formed. The common stock had received dividends of 8 per cent in 1891, 9 per cent in 1892, 22 per cent in 1893, 12 per cent from 1894 to 1899, 6.5 per cent in 1900, and 7 per cent from 1901 to 1907.
22 However, it should be noted that the meetings were seldom attended by more than a handful of persons (see the record of the annual meetings, ibid., pp. 2904ff). At least one major stockholder, Edward F. Atkins, did sell most of his stock in the American when he learned that the company intended to invest in the beet sugar industry. Atkins objected to the policy on the grounds that it would "compete with and injure the refining interests" (ibid., pp. 79-80). For more on Atkins, see pp. 307-8 below.
23 The fact was that the American Sugar Refining Company's shares had become a "widows and orphans" stock, its steady earnings recommending it to the managers of trusts and estates. This same characteristic was reflected in
had been done to take the edge off complaints from the independent Hawaiian planters that the Western, by limiting its meltings to 120,000 tons annually, was denying them the natural market for their product. While this arrangement provided the independent planters with an outlet for their sugar, the prices they received from the American were lower than what they thought they would have obtained had they been able to dispose of the sugar on the West Coast closer to home. Unhappy over this situation, the Hawaiian planters resolved to do something about it. When the contract with the American was renewed in 1905, they insisted on exempting from the terms of the agreement a total of 150,000 tons.

By withholding this amount the planters hoped to force Claus Spreckels to give them more favorable treatment, that is, to take a larger share of their sugar cane on more advantageous terms. They realized that the only chance of accomplishing this objective lay in confronting Spreckels with a concrete threat to his company's position. Thus, after the contract with the American was renewed, the attention of the Hawaiian planters centered at first on the possibility of using the 150,000 tons of uncommitted cane to produce "washed sugars—the Hawaiian equivalent of the semirefined Louisiana "plantation" sugars—which could then be sold in competition with the Western Sugar Refining Company's product.

One enterprise, the Honolulu Plantation Company had, in fact, already gone ahead with its plans to install a centrifugal machine on its property and was beginning, in January of 1905, to make the first shipments of semirefined sugar to the mainland. It was not long before the Honolulu company was joined by at least one other large cane grower. Still, selective price cuts made by the Western, together with the differential below refined sugar which the washed sugars had to be sold for, took most of the profit out of this type of operation.
The other independent Hawaiian planters, members of a previously formed Sugar Factors Association, turned their attention to the possibility of resuming operation of the converted flour mill at Crockett, California, once the lease to the Western Sugar Refining Company expired in 1906. Fully a year before that date, in March of 1905, the Sugar Factors Association formally acquired title to the property, then levied an assessment of $3 a ton on the sugar grown by all of its members to finance the enlargement and expansion of the refinery. The reorganized enterprise was known as the California & Hawaiian Sugar Company.

In the face of this double onslaught—the importation of washed sugars and the threatened reopening of the Crockett refinery—officials of the Western Sugar Refining Company became increasingly disposed to try to reach a settlement with the Hawaiian cane growers. But although negotiations between the two parties continued over the next nine months, an agreement proved impossible because of differences over three points—the specific mechanism for bringing the two refining interests together, the share of the market each group was to have, and the problem of controlling the influx of washed sugars to the mainland. On December 8, 1905, Havemeyer wired William Hannan, announcing that negotiations had broken off. A month later he wrote to J. T. Witherspoon in New Orleans, warning: "There will be a row on, on the Pacific Coast beginning about March 1st, between the sugar refining interests there. The Crockett refinery will open and refined prices will be low and will be reflected on the Missouri River." Others in the industry also expected that when the California & Hawaiian’s refinery opened, western sugar prices would fall.

Late in March, 1906, the Crockett refinery turned out its first sugars, but the anticipated price war with the Western failed to materialize. As the California & Hawaiian’s general manager later testified: "... we were in rather bad shape. The pipes in the refinery had corroded and rusted to such an extent that they were held together largely by the paint." The small quantity of granulated sugar that

27 Ibid., pp. 3374–78.
28 From a reading of the correspondence it is questionable how eager the members of the Sugar Factors Association were to reach an understanding. Hannan, for example, complained that the association had been "dilatory about bringing the matter to any final conclusion," and he questioned whether its members "really mean business" (ibid., pp. 3406, 3409).
29 Ibid., p. 3412.
31 George M. Rolph, United States v. American Sugar Refining Co. et al., pretrial testimony, 1912, p. 3926.
company was able to produce had almost no noticeable effect on prices in the face of the normally large spring demand for sugar.32 Both sides were glad for the respite; the California & Hawaiian's people wanted to get their refinery into better shape, while the Western's officials planned to continue the negotiations. Throughout that spring, before the competition grew more intense, Hannan tried to reach an agreement with representatives of the Sugar Factors Association but without success.33 Then Havemeyer decided to have a go at it himself.

He suggested a way of resolving the issues, but found his efforts to bring about a peaceful settlement stymied by two factors. One was the bitter hatred which members of the Factors Association felt toward the Spreckels family. The other was the question of how in detail the harmony of interests should be arranged. Havemeyer proposed that a new company be formed to handle the sales of both the Western and California & Hawaiian plants.34 But when representatives of the two companies met to consider the specific details of such an arrangement, they decided instead merely to divide the West Coast cane market between them according to fixed percentages, leaving each company free to market its own sugars as it wished.

When Havemeyer learned of this he became quite disturbed. "I have gone hurriedly over what you have written in reference to the negotiations," he wrote in reply to Hannan in February, 1907, "and it only leaves an unpleasant impression in my mind—not as to any percentage the Crockett people may be entitled to and which the Messrs. Spreckels may grant—but there is a legal way as well as an illegal way of bringing these things about." Unless the matter can be arranged in strict conformity with the law, Havemeyer continued, "we are entirely out of it and disavow any responsibility whatever."35

Although Havemeyer refused to have anything further to do with this output-limiting arrangement, on the grounds that it violated the Sherman antitrust law, the agreement appears to have been put into effect anyway. Early in October, 1907, just as the California sugar beet crop was being harvested, Willett & Gray's Weekly Statistical Sugar Trade Journal reported that the San Francisco market was "unsettled," with prices being cut ten cents a hundredweight.36 A week...

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33 United States v. American Sugar Refining Co. et al., pretrial testimony, 1912, p. 3926.
34 Ibid., pp. 3414, 3419-20.
36 October 3, 1907.
later, however, it reported an advance in prices of twenty cents a hundredweight, an unusually large jump for that time of year. "This is a full recovery of the recent declines in that market," the journal noted, "and indicates a renewal of harmonious actions on a normal basis."

Meanwhile, the American Beet Sugar Company had itself cited fears of antitrust prosecution to justify its unilateral abrogation of the commission agreement with the American Sugar Refining Company. One of the American Beet Sugar Company's influential stockholders, Henry R. Duval, had been questioning for some time the legality and desirability of paying the American Sugar Refining Company $\frac{3}{4}$ of a cent a pound to "supervise" the sale of its sugar. Although Cutting, who had negotiated the agreement, continued to insist on its value to the company, Duval was finally able to persuade the American Beet Sugar Company's directors to submit the commission agreement to special counsel for an opinion. The special counsel, Wayne McVeigh, U.S. attorney general under President Garfield and a distinguished member of the New York bar, agreed with Duval that the contract was of doubtful legality. On December 18, 1906, the American Beet Sugar Company's board of directors informed the American Sugar Refining Company that in light of McVeigh's opinion it would make no further payments under the commission agreement.

Havemeyer replied that it was hardly fair for the American Beet Sugar Company, having benefited from the agreement for four years, to terminate it arbitrarily without even compensating the American Sugar Refining Company. But, having appealed to the good faith of the American Beet Sugar Company's directors and found it wanting, Havemeyer preferred to let the matter drop rather than risk litigation. As it was, the only change in the relationship of the two companies was that the $\frac{3}{4}$ of a cent a pound which had previously flowed

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37 Willett & Gray's *Weekly Statistical Sugar Trade Journal*, October 10, 1907; see also Havemeyer to Hannan, March 5, 1907, reprinted in *United States v. American Sugar Refining Co. et al.*, pretrial testimony, 1912, p. 3422.


41 Ibid., pp. 7174–76.

42 At Havemeyer's request, the directors of the American Beet Sugar Company had McVeigh's law partner meet with Parsons, but nothing came of the conference (ibid., p. 7177); see also Hardwick committee investigation, 1911, pp. 2113–14.
into the treasury of the American Sugar Refining Company now remained in the coffers of the American Beet Sugar Company. Insofar as the marketing of the American Beet Sugar Company’s product was concerned, nothing changed; the division-of-markets arrangement remained in effect.

Far more serious than Havemeyer’s difficulties in controlling his burgeoning empire, however, were the threats by various groups independent of the American Sugar Refining Company to erect refineries in Baltimore and New Orleans. Already, one such independent plant, known as the Knickerbocker, had been built at Edgewater, New Jersey, across the Hudson River from New York City—although its financial backing was so weak that the refinery had as yet been unable to operate for more than one or two weeks during a sixteen-month period. But most serious of all were the increasing legal difficulties in which the American Sugar Refining Company and its officers found themselves.

A significant change had come over the federal government. In part, it simply reflected the youthfulness of President Theodore Roosevelt, who had been only forty-three years old when he succeeded William McKinley in 1901. But the change in Washington’s mood also reflected the chief executive’s views as to the proper role of government, views that differed sharply from those of his predecessor.

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44 Willett & Gray’s Weekly Statistical Sugar Trade Journal, October 17, 1907, and subsequent issues.
45 Ibid., April 19, May 17, and August 30, 1906. In Baltimore the Chesapeake Sugar Refining Company was incorporated on May 15, 1906, with an authorized capital of $1.5 million. Organized by a group of Baltimore businessmen interested in expanding the industry of their port, the company announced plans to erect a refinery that would produce 1,500 barrels of refined sugar daily.
46 This refinery, originally owned by the Knickerbocker Sugar Refining Company, had been started by a group of western wholesale grocers in 1901 and later had been taken over by an individual promoter (see p. 288 below). However, it had remained unfinished, with its outer shell in place but without machinery, until it was taken over by the Warner Sugar Refining Company in 1906. The refinery had then been fully equipped, and it sold its first sugar on June 28, 1906. Following these initial sales, however, the desperate financial condition of the Warner company’s owners had forced the refinery to discontinue production. Incidentally, those owners, members of the Warner family, had obtained the money for their sugar refining venture from the sale of a glucose factory at Waukegan, Illinois, to the Corn Products Company. See Willett & Gray’s Weekly Statistical Sugar Trade Journal, April 19, June 28, and October 4, 1906. For one reason why the Warner family may have been unable to operate their refinery profitably, see p. 294 below.
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Roosevelt came into office committed to the belief that government should play a positive role in regulating the economic life of the nation. Believing as he did that large aggregations of capital were a concomitant of social progress, he refused to condemn all such combinations outright. "... Nothing of importance is gained," he said, "by breaking up a huge interstate and international industrial organization which has not offended otherwise than by its size. ... Those who would seek to restore the days of unlimited and controlled competition ... are attempting not only the impossible, but what, if possible, would be undesirable." A moralist at heart, Roosevelt was inclined to draw a distinction between "good" and "bad" trusts. To deal with the latter, he believed that two measures were required, publicity for corporate activities and elimination of railroad rebates. Thus it was that during his first term of office Theodore Roosevelt concentrated his efforts on securing from a somewhat reluctant Congress passage of the Elkins Act, which for the first time provided stiff criminal penalties for railroad rebating, and of the Department of Commerce Act, which included a provision for the establishment of a Bureau of Corporations to collect and publish information on companies engaged in interstate commerce.

Roosevelt recognized, however, that new laws were of little value unless they were backed by officials willing and able to enforce them. He therefore made a conscious effort to appoint men of dedication, intelligence, and ability to positions with responsibility for dealing with business activities, and his success in this respect was one of his administration's more significant accomplishments. Among the many bright young men whom the president attracted to federal office was Henry L. Stimson, a thirty-eight-year-old corporation lawyer. Although New York's senior Republican senator had favored someone else for the post, Stimson was named by Roosevelt in January, 1906, as U.S. attorney for the Southern District of New York.

Stimson was, in terms of social and class background, cut from the same cloth as the president himself. It was significant that he had

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first come to Roosevelt's attention in 1897 when he successfully staged a revolt against the old-line Republican leadership on New York City's East Side (though the two men soon discovered that they also shared a love of outdoor camping). Stimson had not asked for the appointment as U.S. attorney, nor had he expected it; but when he traveled to Washington soon after the nomination was announced to discuss his new duties with Attorney General William H. Moody, he learned that the president had good reason for insisting on the appointment of someone other than the usual political sycophant.

Moody first told Stimson how important he considered the New York U.S. attorney's office, calling it and the Chicago office "the right and left arms of the Attorney General." He then explained that under Stimson's predecessor the New York office had fallen into a state of laxness and ineffectuality. Moody told Stimson that he wanted the office completely reorganized, that he expected the New York office to take a major role in attacking corporate abuses. The attorney general pointed out that as yet not a single prosecution under either the Sherman Act or the Elkins Act had been initiated in the Southern District of New York, although that was where the offices of most large corporations were located.

Moody then explained why an immediate reorganization of the U.S. attorney's office in New York was of such crucial importance. The administration, he told Stimson, had in its possession evidence that the American Sugar Refining Company was receiving illegal rebates from the major trunk-line railroads. Moreover, the evidence had come from William Randolph Hearst's New York American.

At the time of Moody's conversation with Stimson it seemed that Hearst might be the next Democratic candidate for president. Having used his inherited wealth to build a nationwide chain of widely read newspapers, Hearst was in the process of using that journalistic empire to drum his way into the White House. Through the personal publicity that these various papers afforded him, Hearst was able to portray himself as an unrelenting "foe of the trusts," while the editorial pages of his newspapers pilloried virtually every other politician, from President Theodore Roosevelt on down, for failing to take action against "the corporations."

Trading on his reputation as a "foe of the trusts," Hearst easily won
election to Congress in 1902, and on his arrival in Washington he promptly introduced bills to strengthen the Sherman antitrust law and to increase the power of the Interstate Commerce Commission.\(^{57}\) Three years later, having bolted the Democratic party, he narrowly missed being elected mayor of New York City while running as the candidate of the independent Municipal Ownership League. Hearst may well have been the demagogue his enemies thought him to be, but there was no doubting that his appeal to extreme national pride and fear of corporate power were winning him the support of many small businessmen and skilled laborers—precisely the groups whose loyalty Theodore Roosevelt hoped to win with his own "Square Deal" program.\(^{58}\) It was probably because of this reputation which Hearst and his newspapers enjoyed that Thomas P. Riley, after a falling out with Lowell M. Palmer in the fall of 1905, decided to go to the New York American with evidence he hoped would put his former employer in jail.

Realizing that the factor plans with the various wholesale grocers associations were of little value as a barrier to new competition, the American Sugar Refining Company had scrapped those agreements early in 1903.\(^{59}\) Then, following the example of the Standard Oil and American Tobacco companies,\(^{60}\) it had experimented with other devices designed to discourage entry. For a while it tried acquiring its own chain of retail outlets, as well as increasing its advertising expenditures, but neither expedient proved suited to the particular circumstances of the sugar trade.\(^{61}\) The most important competitive advantage which the American Sugar Refining Company had over potential rivals was still the combination of special concessions it received from the railroads.

\(^{57}\) Ibid., pp. 209-10. Hearst was soon criticized, not only for his frequent absences from Congress, but also for his failure to push actively for the enactment of the bills he had introduced.

\(^{58}\) Ibid., pp. 202-3; Oliver Carlson and Ernest E. Bates, Hearst, Lord of San Simeon, pp. 132-37; Blum, The Republican Roosevelt, pp. 55-57.

\(^{59}\) The factor plans were abandoned, according to Willett & Gray's Sugar Trade Journal, "because the grocers themselves have not adhered to the terms they themselves made. . . . The South has never, from its initiation years ago, abided by [the arrangement]. The West generally have [sic] been in and out of it. New England alone has adhered strictly to its terms, with New York and New Jersey following it closely" (January 8, 1903). Apparently the factor plan was retained only in Philadelphia; see United States v. American Sugar Refining Co. et al., pretrial testimony, 1912, pp. 12724-25.


Following the passage of the Elkins Act in 1903, the railroads had attempted to cancel the two-cents-a-hundredweight special allowance for "cartage" on the grounds that it was illegal. But after two months, during which time the American Sugar Refining Company refused to continue dividing the sugar traffic among the various lines according to the usual percentages, the railroads backed down and promptly paid the claims for refunds submitted to them through Palmer's office. Still, to protect themselves from possible prosecution, they insisted on publishing the two-cents-a-hundredweight allowance in their tariff schedules, referring to it as a "transfer" allowance and making it available to any sugar refining company capable of supplying its own lighterage services. Arbuckle Brothers qualified for this special allowance by shortly thereafter building its own terminal facilities, but for prospective new firms to do the same would have meant an additional capital expense. While it was true that the two-cents-a-hundredweight allowance now went to the Havemeyer-owned Eastern District Terminal, not the American Sugar Refining Company, the latter did continue to receive special rebates from the railroads whenever it found itself faced with an unusually competitive situation in one of its distant markets. It was the evidence of these special rebates—the correspondence between Palmer's office and the railroads—together with the records of the financial transactions which Riley turned over to the *New York American* and which the representatives of that newspaper then turned over to the U.S. Attorney general.

For the next several months Stimson was completely absorbed in reorganizing his office and in going through the documents received from Riley. Helping him sift through the evidence was Henry A. Wise, one of the few assistants under the previous U.S. attorney retained by Stimson. Because of the large number of documents and the cryptic manner in which the records of payment had been kept, this was a slow, difficult task; and only because Riley was available to explain the various notations were Stimson and Wise able to make any progress. Finally, however, the U.S. attorney and his assistant

63 Hardwick committee investigation, 1911, p. 2310.
64 Stimson Diaries, bk. 1, Stimson Papers. On February 1, 1907, an hour after he took the oath of office, Stimson met with Moody in New York, at which time he was introduced to Riley and two representatives of the *New York American*. A transcript of that meeting can be found in Department of Justice (JD) File No. 59–8–13, sec. 4.
65 Stimson Diaries, bk. 1, Stimson Papers.
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felt they understood the facts in the case well enough to begin presenting evidence to a grand jury. On March 6, 1906, subpoenas were issued directing officials of the major trunk-line railroads, the American Sugar Refining Company, and several leading wholesale grocery firms to appear in court to answer questions in regard to railroad rebates, thus for the first time revealing publicly the investigation by Stimson’s office. The New York American used the occasion to trumpet its own role in initiating the inquiry by printing on its front page a “complaint” signed by William Randolph Hearst accusing the railroads of granting secret rebates under the guise of an allowance for lighterage.66 Eighteen days later, indictments were handed down against the American Sugar Refining Company and the New York Central Railroad, the first of twenty-one such indictments to be issued by federal grand juries during the next twelve months.67

In preparing his cases Stimson had made a crucial strategic decision. Rather than seek the conviction of any company for broadly violating the Elkins Act, he had decided to prosecute each individual instance of rebating separately. This decision was dictated in part by the complicated nature of the alleged offenses, the difficulty of tracing even for a single transaction the payment of rebates through the maze of corporate structures which had been erected. Although this method of procedure was considerably more time-consuming and tended to obscure the over-all pattern of rebating, it had one important advantage. It meant that the American Sugar Refining Company and the railroads accused of granting it special concessions would remain continually in the public spotlight as they were forced to defend themselves against first one and then another charge of illegal practices. In the eyes of the U. S. attorney general and his “right arm” in New York, it was this glare of unfavorable publicity which offered the most effective weapon against corporate abuses. As Moody had remarked earlier to Stimson, alluding to the recent state investigation of insurance companies, “We have had the lesson here in New York that, after

66 New York American, March 8, 1906. Needless to say, the “complaint” by Hearst had no legal significance. Moreover, the special allowance for “transfer,” since it was openly published, was less clearly a violation of the law than were the secret concessions the American Sugar Refining Company received to meet competition in selected areas. Only after lengthy proceedings did the Interstate Commerce Commission order an end to the special allowance for “transfer,” although the same payment (two cents a hundredweight) was reinstated as an allowance for lighterage when this was actually performed. See 14 ICC Reports 621; Hardwick committee investigation, 1911, pp. 1424ff.

all, publicity . . . is about the best remedy that modern conditions afford. We have seen this tremendous insurance power pulled down like a house of straw—not by any prosecution, but by public opinion."68 Although Stimson subsequently sought to broaden his line of attack by bringing a charge of conspiracy to violate the Elkins Act against the American Sugar Refining Company and the various railroad companies, Southern District Court Judge George C. Holt refused to sustain the indictment.69

Thus it was that the first case to come to trial involved a seemingly minor episode in the over-all scheme of special concessions, the granting of a rebate by the New York Central Railroad to the Detroit wholesale grocery firm of W. H. Edgar & Sons on 1,840,000 pounds of the American's sugar shipped from New York between December 2, 1902, and January 11, 1903. The rebate, which amounted to five cents off the published freight rate of twenty-three cents a hundred pounds, had been arranged for and handled by Palmer's office and was intended to enable the Edgar firm, one of the American's principal distribution outlets in the Midwest, to meet the local competition of beet sugar companies.70 But while the focus of the case had narrowed greatly, several major legal questions remained. These were the issues of whether or not, under the Elkins Act, a corporation could be held criminally liable for the acts of its officers; whether or not a payment made by a railroad, even if the payment could not be shown to have reached the shipper, was nonetheless a rebate; whether or not a rebate paid on goods shipped before the Elkins Act went into effect was illegal; and, finally, whether or not the shipper receiving a rebate, as well as the carrier paying the rebate, could be convicted under the law. It was because of this last question that the charge against the New York Central was tried first, beginning October 18, 1906.71 Stimson and Wise had prepared the government's case carefully, and after a two-day hearing the railroad was found guilty on all counts. After imposing an $18,000 fine, Judge Holt declared:

The case was a flagrant one. The transactions which took place under this illegal contract were very large; the amounts of rebates returned were considerable . . . amounting to more than one-fifth of the entire tariff charge

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68 Transcript of meeting between Moody, Stimson, and Riley on February 1, 1907, JD File No. 59-8-13, sec. 4, pp. 42-43.
69 Report, Stimson to Bonaparte, July 15, 1907, Stimson Papers, p. 13; Stimson Diaries, bk. 1, Stimson Papers.
71 Report, Stimson to Bonaparte, July 15, 1907, Stimson Papers, p. 13; Morrison, Turmoil and Tradition, p. 105.
for the transportation of merchandise from this city to Detroit. . . . Such a violation of the law, in my opinion, is a very much more heinous act than the ordinary common, vulgar crimes which come before criminal courts constantly for punishment. This crime was committed by men of education and of large business experience and whose standing in the community was such that they might have been expected to set an example of obedience to law, upon the maintenance of which alone in this country the security of their property depends. It was committed on behalf of a great railroad corporation, which, like other railroad corporations, has received gratuitously from the state large and valuable privileges . . . and which is charged with the highest obligation . . . not to carry on its business with unjust discrimination.72

To Elihu Root’s letter congratulating him for his successful prosecution, Stimson replied, “Ever since I began this work it has seemed to me that if we could stop rebating and keep the railroads open on equal terms to all shippers, and so prevent the large corporations from strengthening themselves behind illegal transportation favors, the most serious of our trust difficulties would be solved.” In line with Root’s advice to “press, press, press after the first conviction and to follow, follow that up by rapid and strong blows,” Stimson announced his intention to proceed next against the American Sugar Refining Company.73

Stimson, however, was not the only one who was receiving credit for the outcome of the case. William Randolph Hearst, in the midst of an election campaign to become the governor of New York on the Democratic ticket, was capitalizing on the news of the New York Central’s conviction to proclaim his own role in the affair—to the embarrassment of the Republican party chairman in New York.74 That official, Herbert Parsons, brother of the American Sugar Refining Company’s counsel, wrote to Stimson asking if it might not be possible to delay further action in the rebate matters until after the election. “I do not suggest that anything improper be done,” Parsons continued, “but if Government officers have any discretion therein,

72 United States v. New York Central Railroad, JD File No. 59-8-13, sec. 1. The quotation has been edited slightly for greater readability.
73 Root to Stimson, October 14, 1906; Stimson to Root, October 22, 1906; and Stimson to Moody, October 27, 1906; all in Stimson Papers.
74 Hearst, after making his peace with Tammany Hall, had secured the Democratic nomination for governor. His opponent in the bitterly fought contest was Charles Evans Hughes, who had been picked by Roosevelt to oppose Hearst because of his role in the New York insurance companies investigation. Roosevelt’s decision to send Elihu Root to Utica to deliver an election-eve speech denouncing Hearst as a demagogue is believed by some to have made the difference in Hughes’s narrow margin of victory, 58,000 votes of the 1.5 million cast (Swanberg, Citizen Hearst, pp. 242–52).
it seems to me it is their duty, in the public interest, to avoid a course which will play into the hands of a liar and which he will distort to his own selfish advantage.\textsuperscript{75} Although Stimson had earlier rejected a similar suggestion from Root with the comment that, "if I should once begin to allow my official conduct to be swayed by considerations such as those, I feel it would end by eventually leading me wholly astray,"\textsuperscript{76} the fact was that the first case against the American Sugar Refining Company did not come to trial until the middle of November, 1906.

This case involved an incident of rebating that differed from the one considered in the trial of the New York Central. The American was charged with receiving a rebate of six cents off the published freight rate of twenty-one cents a hundred pounds on shipments over the New York Central's lines to Cleveland for reconsignment to points beyond and one of four cents off the published rate on shipments to Cleveland itself. Although the total amount of such rebates was unknown, it was charged that at least one payment of $26,141.81 had been made on April 2, 1903, as part of the illegal arrangement. The specific instance of alleged rebating was different, but the outcome of the trial was the same. The American was found guilty and fined $18,000.\textsuperscript{77} Stimson then made preparations to begin trying the next case.

At this point the attorneys for the American realized that it was pointless to continue contesting the government's charges. Approaching Stimson, they asked if it would be possible to arrange a deal. "I told them," Stimson reported to Moody, "that in case they should abandon their defiant attitude and plead guilty, thereby saving the Government the expense of prosecution, and affording to the public the example of this great corporation admitting its guilt, and naturally promising to avoid such practices in the future, my own disposition would be to treat them much more leniently than if they continued to force me to try out the cases." But he warned the lawyers for the

\textsuperscript{75} Parsons to Stimson, October 20, 1906, Stimson Papers. There is no evidence that the fraternal relationship ever had any bearing on the prosecution of the rebate cases. In his Diaries, bk. 1 (\textit{ibid.}), Stimson does mention that when he was in Washington immediately after his appointment as U.S. attorney, he attended a social gathering at the White House and that "in the course of the evening T.R. very nearly made an ominous break by beginning to talk to me about the proposed prosecution of the Sugar Trust—in the presence of Parsons who was counsel for the company." It is not entirely clear from the diary entry whether it was John or Herbert Parsons to whom Stimson was referring.

\textsuperscript{76} Root to Stimson, October 4, 1906, and Stimson to Root, October 8, 1906, Stimson Papers.

American that "the fine must be of sufficient magnitude to avoid any possible criticism on the part of the public." The attorney general agreed with Stimson's decision to end the pending cases without further litigation, although he realized that "every single case which is tried hurts the company altogether out of proportion to any punishment which can be inflicted upon it." 

After several conferences between Stimson and attorneys for the American, it was agreed that the company would plead guilty to the remaining indictments against it, and be fined an additional $150,000. On December 11, 1906, this arrangement was carried out, thus bringing to an end the prosecution of the American Sugar Refining Company for receiving illegal rebates. While certain of the other defendants continued to fight the government's charges, Stimson had for the most part accomplished his objectives. In addition to resolving certain unsettled questions in regard to the Elkins Act in a way that was most favorable to the government, he had taught the railroads and one of their large industrial customers a painful lesson. Although the fine levied against the Standard Oil Company four months earlier by Judge Kenesaw Mountain Landis for illegal rebating had been spectacularly larger (the penalty on being found guilty on 1,461 counts having been set at $29,240,000), everyone expected—correctly, as it turned out—that the fine would be declared excessive by a higher court. Stimson, while obtaining a more modest penalty, had secured the "sugar trust's" complete surrender, without even the possibility of an appeal. Now it would be possible to test whether publicity of wrongdoing and elimination of rebating were sufficient to remedy the alleged abuses of large corporations. Meanwhile, the American Sugar Refining Company and its officers found themselves confronted by legal prosecution of another sort.

Adolph Segel was an Austrian immigrant who had made a career of promoting industrial enterprises, then selling them to others. He had already built a match factory and a soap-rendering plant and had succeeded in selling them at a profit to other firms in those industries when, in 1894, he decided to promote a sugar refinery. Organizing the United States Sugar Refining Company, he purchased a tract of land

78 Stimson to Moody, November 28, 1906, Stimson Papers.
79 Moody to Stimson, November 29, 1906, ibid.
80 Stimson to Moody, December 11, 1906, ibid.
in Camden, New Jersey, and proceeded to erect a plant capable of turning out 1,500 barrels of sugar daily. When the refinery was completed, Segel sat back to wait for an offer from the American Sugar Refining Company.  

He did not wait long. In the fall of 1895, shortly after the Camden refinery was completed, Segel received a call from John Dos Passos representing the American Sugar Refining Company. Dos Passos asked Segel how much he wanted for his plant, and Segel mentioned a figure of $1.4 million. Later, however, following the financial panic of 1896, Segel agreed to settle for half that sum, but even this amount provided him with a profit of between $50,000 and $100,000 on the transaction. After this successful venture, Segel went on to organize companies and build plants which he successfully unloaded on the steel, shipbuilding, and asphalt combinations. Then, in 1901, he decided to have another go at the American Sugar Refining Company.  

This time Segel made plans to build a plant capable of turning out 3,000 barrels of sugar daily. Choosing a site across the river from the Camden refinery, he organized the Pennsylvania Sugar Refining Company in Philadelphia to undertake the project. This second refinery was completed in the fall of 1903 at a cost of $1,075,000 (exclusive of the land) and was then stocked with nominal quantities of bone black, anthracite coal, and raw sugar, all with the purpose of making it appear that the plant was about to begin operating. Once more Segel sat back to wait for an offer from the sugar "trust."  

An offer, however, failed to materialize. Officials of the American Sugar Refining Company had, for some time, been following the progress of the Pennsylvania refinery, and they knew from their informants that Segel was having trouble raising sufficient working capital to get his plant into operation. They decided to bide their time, having been told that if they waited long enough they probably would be able to acquire the property through foreclosure proceedings. The fact was that Segel, at a time of financial stringency, had overextended himself. He was in the midst of several projects, including the construction of a 600-room apartment house in Philadelphia, none of which could be completed without the funds he hoped to receive from the sale of the Pennsylvania refinery. And as time went

82 Hardwick committee investigation, 1911, p. 1328; United States v. American Sugar Refining Co. et al., pretrial testimony, 1912, p. 8534.
83 United States v. American Sugar Refining Co. et al., pretrial testimony, 1912, p. 5202.
84 Ibid., pp. 5397, 5525-34.
85 Ibid., pp. 12719-20, 5187-89, 5193-203.
by, and not even the hint of an offer came from the American, Segel became increasingly desperate.

Finally he turned to George Kissel, a financier of sorts, for assistance. Examining Segel's business affairs, Kissel concluded that his client needed at least $1.25 million to avoid immediate bankruptcy. It is not clear from the record whether the idea originated with Kissel or with Segel, but, in any case, they decided to go to the American to ask for a loan of that amount. Meeting with Havemeyer, and later with Parsons in New York, Kissel was able to work out the following arrangement: The American Sugar Refining Company would lend Segel the sum he requested for one year at 6 per cent interest. In return, Segel would turn over to the American as collateral $1 million in bonds which had been issued to finance construction of the Philadelphia apartment house and, in addition, $500,000 in bonds and 26,000 shares of common stock in the Pennsylvania Sugar Refining Company. The common shares, tendered in the form of a trust arrangement, were sufficient to give the American control of the company, and it was agreed, moreover, that Havemeyer would have the right to appoint four men of his own choice to the seven-member board of directors. Finally, until the loan was repaid, the Pennsylvania refinery was not to be operated except with the consent of the lender. To avoid the latter's direct involvement, the entire arrangement was to be made through Kissel, who would act as agent for the American Sugar Refining Company.

86 Ibid., pp. 5348-49, 5413.
87 On July 6, 1905, Parsons wrote to Havemeyer as follows: “Mr. Kissel was Segel's broker, on Segel's behalf made the proposal…” (ibid., pp. 5651-52). It may have been that the idea to go to the American Sugar Refining Company for the loan was Kissel's alone. Segel's lawyer in the matter, Thomas B. Harned, later testified that in return for agreeing to help Segel in his financial plight, Kissel had stipulated that Segel should not object to the source from which the funds were obtained (ibid., pp. 5348-49). On the other hand, it is quite clear that Kissel and Segel later worked hand in hand to try to get American to buy out Segel's interest in the Pennsylvania refinery (see p. 287 below). As a seasonal greeting, Kissel wrote the following to Segel in December of 1905: “I send you this little pencil merely to enable you to write checks at all times of the day and night, which you can do if you hang it on your watch chain. With it accept my best wishes for a good Christmas and the best of New Years. May you succeed in making the Bellevue Stratford look like 30 cents, make sugar cane grow in North Broad Street and smash the U.S. Steel Trust with small briquettes…” (United States v. American Sugar Refining Co. et al., pretrial testimony, 1912, pp. 5689-90). Given Segel’s way of doing business, the secretiveness with which he carried on his affairs and the instinctive habit he had of disclosing less than the full truth even to his closest business associates, it was possible that he had first suggested the plan of going to the American Sugar Refining Company to borrow money and then failed to tell Harned of this fact.
88 Ibid., pp. 5211-16.
When Kissel had worked out the preliminary details of this agreement, he had Segel join him in New York, insisting that he bring an attorney with him. When informed of the clause requiring the refinery be kept idle until the loan was repaid, the lawyer, Thomas B. Harned, advised his client to turn down the proposition. "Suppose this money were being advanced by the Sugar Trust," Harned was asked, "could you not then understand the objection to allowing you to open the refinery?" Later, just before Segel committed himself to the arrangement Kissel had worked out, his lawyer took him aside and asked, "Mr. Segel, are you borrowing this money from the American Sugar Refining Company?" "It is not a matter of any importance where I am getting the money," Segel replied, pointing out that he had a note for $250,000 coming due that very day. On December 30, 1903, a formal contract embodying the above provisions was entered into, the loan from the American coming through a week later.

Havemeyer's motive in agreeing to this arrangement was not to ruin Segel, even though the latter had proved himself to be quite a nuisance. If such had been his objective, he could have accomplished it far more easily by refusing to make the loan to Segel. What had induced Havemeyer to go along with the proposition was the fear that, if Segel failed, the Pennsylvania refinery—a completely new plant equipped with the latest machinery—might fall into the hands of some other group with the financial resources to operate it successfully. By making the loan and stipulating that the refinery was not to be run until the principal and interest had been repaid, Havemeyer could be certain that the American would not be faced with competition from the Pennsylvania refinery for at least another year and a half.

Havemeyer's actions in this respect were no different from the other efforts he had made through the years to discourage the establishment of additional sugar refineries. The motive had been the same when he and the other officials of the American agreed to buy the first Segel refinery, knowing at the time they purchased it that it would never be used. For, at that time, the American already owned one

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89 Ibid., p. 5309.
90 Ibid., pp. 5350–52, 5389–90.
91 Ibid., pp. 5211, 5310–12.
92 Parsons later wrote to Havemeyer as follows: "The [American Sugar Refining] Co. did not think then, it does not believe now, that Segel or any one else can run the present refinery to a profit. Similar attempts have been tried before and have failed. But the attempt could do harm. To the extent of making the loan, the Co. yielded" (ibid., pp. 5651–52). In addition to the year that the loan was due to run, another six months would have been required—coinciding with the peak summer demand—to get the idle refinery in shape for high rates of production.
newly built refinery which it was forced to keep idle. Under pressure from the minority stockholders in the Baltimore Sugar Refining Company, the American had agreed in 1893 (soon after it acquired its two-thirds interest in the Baltimore company) to share in the cost of rebuilding its refinery, which only recently had been destroyed by fire.93 However, since its own plants were capable of meeting the current demand at lower per-unit costs, the American refused to allow the Baltimore refinery to operate once it was rebuilt. This led to considerable friction with the minority stockholders, and the American was able to avoid a legal suit only by buying them all out.94 The desire to prevent the installation of a redundant refining capacity was also the reason why, shortly after the loan was made to Segel, Havemeyer and his associates did their best to dissuade certain of the Louisiana planters from erecting an independent refinery in the New Orleans area, threatening that, if the planters went through with their plans, the American would cease to buy raw sugar from them.95

None of these actions were, in themselves, clearly illegal—especially not as the law was then generally interpreted. But to ease any doubts in this regard, John E. Parsons cited the case of the Mogul Steamship Company.96 “The highest court in England,” he wrote to Havemeyer, “decided in that case that shippers in the Chinese trade could combine to freeze out a competitor, and without responsibility [under the law], as long as they did not resort to means which in themselves were criminal.”97

As for Segel, even the $1.25 million loan from the American Sugar Refining Company failed to bail him out of his financial difficulties. Despite a boast that he would be able to repay the money in ten days with income from his other investments, he barely succeeded in mak-

93 See pp. 172-73 above.
94 United States v. American Sugar Refining Co. et al., pretrial testimony, 1912, pp. 9202–15, 9228. After 1903 the refinery was dismantled, having been operated for less than two months in all the time since its completion, and its parts were distributed among the American’s other plants (ibid., pp. 9217–27).
95 Ibid., pp. 7486–949.
97 United States v. American Sugar Refining Co. et al., pretrial testimony, 1912, p. 5676. The Mogul Steamship line, after being driven out of the Far Eastern trade by means of a “fighting ship”—i.e., a ship competing in the same trade and offering to carry cargo at greatly reduced rates, the losses from which were shared by those seeking to drive the intruder out of business—had sued the members of the shipping conference that sponsored the “fighting ship” but failed to collect damages in a civil suit ultimately decided by Great Britain’s House of Lords; see Donald Dewey, Monopoly in Economics and Law, p. 136.
ing the first three quarterly installments on the interest.\textsuperscript{98} Realizing that he would never be able to pay the full note when it came due, Segel began to connive with Kissel to force the American to buy the Pennsylvania refinery from him outright.

First he tried to bluff, offering in June, 1904, to repay the loan in its entirety, hoping that by so doing he might induce the American to make an offer for the plant.\textsuperscript{99} When this stratagem failed, he took a different tack. Claiming that he had not known the source of the funds he borrowed, that he had been tricked into agreeing not to operate his refinery until the loan was repaid, Segel threatened to bring suit against the American. He even retained Samuel Untermyer, already noted for his role in the New York insurance companies investigation, to represent him in the matter.\textsuperscript{100}

On Segel's behalf, Untermyer urged the American Sugar Refining Company to allow the Pennsylvania refinery to operate so that the $1.25 million loan could be repaid out of revenues. "Mr. Segel and his personal counsel feel, and I agree with them," Untermyer wrote to Parsons, "that Segel should not be forced by the fact of the refinery being closed, to sacrifice the property..."\textsuperscript{101} But Parsons, on behalf of the American, refused, pointing out that to allow the refinery to operate would endanger the value of the security being held against the loan. For it was true that, if the refinery was operated and thereby went into debt to the suppliers of raw materials, these obligations would take precedence over the American's outstanding claims. However, the more important reason (although Parsons did not mention it) was that allowing the Pennsylvania refinery to operate was tantamount to the American's taking money out of one pocket and putting it into another, for any sugar sold by the Pennsylvania refinery would be sold primarily at the American's expense. Untermyer subsequently proposed that the Pennsylvania refinery be allowed to operate, but with the American Sugar Refining Company itself supervising production and with output limited to 1,000 barrels a day, or one-third of the refinery's capacity. Parsons turned down this suggestion also, whereupon Untermyer withdrew from the case.\textsuperscript{102}

In the meantime, to put additional pressure on his creditor, Segel had invested in two sugar refining properties located across the

\textsuperscript{98} United States v. American Sugar Refining Co. et al., pretrial testimony, 1912, pp. 5350-52, 5577-600.
\textsuperscript{99} Ibid., pp. 5552-61, 5563-64.
\textsuperscript{100} Ibid., pp. 5647-51.
\textsuperscript{101} Ibid., pp. 5654-55.
\textsuperscript{102} Ibid., pp. 5631-33, 5651-52, 5654-55.
Hudson River from New York City. One was the Knickerbocker Sugar Refining Company's plant, which he had been able to pick up from its bankrupt promoters for approximately $350,000. Spending another $100,000 to install a vacuum pan and several bone-black filters, Segel made it appear that the newly built refinery was ready to begin operations. The other property in which Segel invested was a proposed Metropolitan Sugar Refining Company plant, to be located just south of the Knickerbocker refinery; he spent $20,000 to have plans drawn up and the site prepared for construction. In the back of Segel's mind there supposedly was a scheme to link both refineries with the Federal Sugar Refining Company in order to confront the American with a major rival.103

By this time it was June, 1905, and both the final interest payment and the principal on the $1.25-million loan were six months overdue. Although Havemeyer was disposed to sell the Pennsylvania company bonds and common shares being held as security, he was dissuaded from doing so by several considerations. For one thing, he still wished to avoid having some outside group take over and operate the refinery. For another, if the American itself were to assume control, it undoubtedly would come under pressure from the Pennsylvania company's minority stockholders, just as it had earlier been challenged by the Baltimore Sugar Refining Company's minority stockholders, to allow the refinery to run.104 Faced with this dilemma, Havemeyer preferred to let the matter ride, with Segel continuing to owe the principal and final interest payment on his loan and with the Pennsylvania refinery continuing to remain idle.105

Then, a year later, in the summer of 1906, the "bubble" burst. It turned out that the bonds pledged as security for the $1.25 million loan had belonged, not to Segel, but to the Real Estate Trust Company of Philadelphia. Segel had merely "borrowed" them temporarily. Moreover, the Pennsylvania refinery was but one of several losing ventures in which the Real Estate Trust Company and its president, Frank K. Hipple, had been involved with Segel. Realizing that his company faced imminent ruin and that he himself would be held criminally responsible, Hipple on the night of August 27 placed a pistol in his mouth and pulled the trigger. The next day, following a

103 Ibid., pp. 5546-51, 5668.
104 Ibid., pp. 5600-607; see also p. 216, n. 101, above and n. 94 of this chapter.
105 The fact that the loan had been made in the name of Kissel, who acted for unnamed parties (i.e., the American), was a further complication persuading officials of American not to press for sale of the security (Ibid., pp. 5606-7).
rush of depositors to withdraw their funds, the Real Estate Trust Company was forced into bankruptcy.  

George H. Earle, Jr., a Philadelphia lawyer with extensive experience in reorganizing companies, was subsequently appointed as receiver for the bankrupt firm. Examining the books of the ruined company, Earle quickly spotted the large loans to the Pennsylvania Sugar Refining Company and various other of the Segel-run enterprises. Later, after being appointed receiver for the Pennsylvania company as well, he uncovered the arrangement between Segel and the American whereby the Pennsylvania refinery had been prohibited from running. When questioned by Earle, Segel claimed that he had not known when he borrowed the money that the funds came from the American Sugar Refining Company; and Harned, at Segel's request, supported this story. Earle then came to the conclusion that the ruin of the Real Estate Trust Company of Philadelphia had been caused by the sugar "trust"; and after trying unsuccessfully to persuade the president and attorney general of the United States to bring suit under the Sherman Act, he initiated his own civil action under that law to collect treble damages from the American Sugar Refining Company.

In his annual report to the stockholders on January 9, 1907, Henry Havemeyer mentioned both the rebate cases and the civil suit by Earle. The officers of the American, although still convinced of their company's innocence, had agreed to settle with the government in the matter of rebates, he said, "in the interest of the stockholders," who were the ones hurt by such proceedings. He then added: "The officers of the company will continue to do what they can to prevent in the future any claim that the company does not comply with the interstate-commerce act. Whether it will be able in every case to anticipate just what about doubtful points will be ultimately decided by a court remains to be seen." As for the suit by Earle—"a receiver of the Pennsylvania Sugar Refining Company, one of the schemes of Adolph

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106 Ibid., pp. 5204-5; Hardwick committee investigation, 1911, pp. 1217-21, 1237.
107 Hardwick committee investigation, 1911, pp. 1217-23.
108 United States v. American Sugar Refining Co. et al., pretrial testimony, 1912, p. 5504. Harned subsequently revealed the truth, but by then Earle had become convinced that the original story was the more accurate one.
Segel"—Havemeyer told the stockholders that he had been advised "that there is no legal foundation for any such proceedings." ¹¹⁰

Despite these various legal difficulties, the American Sugar Refining Company's vital interests had not yet been significantly affected. The fines paid to the government in the rebate cases, although quite large in the context of the times, had done little to impair the company's basic financial strength. As for the private antitrust suit initiated by Earle, company officials had no reason to revise their opinion that it would ultimately be defeated.¹¹¹ Then, a far more serious legal problem arose. Federal agents, making a surprise visit to the Brooklyn docks of the Havemeyer & Elder refinery on November 20, 1907, uncovered evidence of widespread fraud in the collection of sugar customs.¹¹² Stunned by the news, officials of the American immediately offered their full co-operation to the government in its investigation.¹¹³ Eight days later, while having Thanksgiving Day dinner with his family, Henry Havemeyer became ill, complaining of acute indigestion. Within the week he died of a heart attack.¹¹⁴

¹¹⁰ Hardwick committee investigation, 1911, pp. 2967–68.
¹¹¹ Earle was at first reluctant to push his suit, for he hoped that he would still be able to persuade the federal government to bring action against the American Sugar Refining Company (see pp. 300–301 below). Finally, giving up that hope, he went ahead on his own, and the trial was set for November 19, 1907. On that date, however, the case was postponed when Earle decided to amend his complaint. See New York Times, November 20, 1907.
¹¹² Harold J. Howland, "The Case of the Seventeen Holes." This is one of the most complete accounts of the sugar frauds. For the history of the article itself, see p. 297 below.
¹¹³ William Youngs, U.S. attorney for the Eastern District of New York, to Bonaparte, November 27, 1907, Department of Justice (JD) File No. 121616, pt. 1.
¹¹⁴ New York Times, December 5, 1907.