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YAEGER'S GAME:

HOW BANK NIGHT HELPED MOVIE EXHIBITORS FOLLOWING THE GREAT DEPRESSION

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Introduction

I love movie theaters. I realize this is a rather odd and casual way to begin what will inevitably be viewed as my defining work as a graduate student. However, I would argue that this simple four-word preface is a fitting introduction to my methodology behind this project. For me, going to the movies is more about the experience itself rather than a pure interest in the feature presentation. I have always admired and been completely fascinated with the architecture and overall style of every theater I've visited. From the eclipsed single screen and twin complexes to the modern behemoths that delight audiences with a veritable maze of entertainment choices, each location maintains its own method of showmanship which in turn fosters a constant flow of customers each week. But, what is it that is so seductive about an evening at the cinema? Certainly most of the credit can be allotted to the latest Hollywood feature, and the filmmakers that drive said vehicle. However, I would argue that the theater complex itself is also a factor for each film's success or failure. Whether they realize it or not, most moviegoers weigh certain criteria, such as location, atmosphere, admission cost, and customer service, before choosing which theater will win their business.

While many of my colleagues in the film studies program choose to critique and analyze the feature itself, I tend to examine the parts that make such a presentation possible. Since I maintain an unusually high appreciation for movie theaters, it seems natural that I would adopt exhibition studies as my key academic methodology. Within this realm, I can try to provide concrete evidence which suggests *how* audiences received their entertainment, *where* they enjoyed each weekly feature, *why* they returned to the cinema, *what* promotions attracted them, and *who* was responsible for putting it all together. While providing answers to these and other queries is no doubt beneficial to film studies as a whole, finding the research to help guide this process can be difficult. In order to deliver the best work, the scholar must be willing to devote their time and attention to various forms of archival materials, such as newspaper articles, legal records, personal correspondence, and other primary sources. However, as a student of history and a fanatic of the cinema, this extensive process is more a labor of love than a tedious experience.

While I consider myself to be an odd exception, this sometimes overwhelming approach to film might explain why exhibition studies is still in its infancy. Of course, I am indebted to the work of scholars, like Douglas Gomery, Kathryn Fuller-Seeley, Robert Sklar, and Gregory Waller, who have provided an academic blueprint to emulate and follow. Like myself, these authors choose to write articles and books about the history of film exhibition in America, and their research has been a vital part of my own pursuits. As I complete my work on this and all future projects, I hope to add just a bit more to the conversation that they and others have started.

The topic for this thesis was actually born from a book report I produced a couple years ago. The assignment was part of a film class which covered the earlier years of the motion picture industry. Naturally, I decided to look for something related to exhibition during this period and was lucky to find a primary text entitled *The Management of Motion Picture Theaters* by Frank Ricketson. This book, which was published in 1938, was essentially a manual for theater operators and discussed everything from a treatise on how ushers should maintain proper decorum to a comfortable setting for the air conditioning system. In a sense, Ricketson's manual presented a unique and personal glimpse into the daily life of a theater operator. As much as I enjoyed the text, there was one glaring omission that attracted my interest. In a section called "Constructive Stimlation," the author outlines how managers can attract more customers through various promotional tactics and giveaways. In his introduction, Ricketson argues:

> [Bank Night] was an innovation which helped lift the [motion picture] industry from the depression. [It] added literally hundreds of thousands of new theater patrons, and many showhouses which as a policy did not feature a giveaway opened their doors to it. (250)

Since the work was originally published in 1938, the author probably assumed that managers knew about Bank Night and did not feel it was necessary to elaborate beyond this statement. This aforementioned quote is the extent of his discussion on the topic. For modern readers like myself, however, this rather vague statement is not enough to provide any satisfaction. *What* was Bank Night? *How* exactly did it save the movie industry during such a horrific period in American history? *Why* did thousands of people participate in the promotion? *Where* did Bank Night originate, and *who* is responsible for its creation? Although Frank Ricketson, who I later discovered to be one of the key figures behind Bank Night, failed to provide these answers, I relied on information from Gomery, Fuller-Seeley, Sklar, Waller, and others. However, even their descriptions provided few clues regarding the promotion's true impact on American society during the 1930s.

With the help of certain scholarly texts, hundreds of newspaper articles, various court documents, excerpts from trade magazines, government records, and other primary sources, I have constructed an in-depth look at Bank Night from its creation to the successes and controversies that followed. It is a fascinating look at film exhibition, and how theater managers struggled to keep their doors open during one of the most difficult periods in motion picture history.

Chapter 1

Going Dark

Before the infamous stock market crash of October 1929, and before its disastrous effects spread all across the country, the motion picture industry thrived as America's biggest producer of popular entertainment. In the four years leading up to the catalyst for the Great Depression, weekly box-office reports continually reflected the public's growing fascination with the relatively new medium (Shindler 4). By 1925, nearly fifty-five million people attended their local neighborhood cinema or downtown palace each week. In 1929, two years after the introduction of "talking" pictures, 110 million Americans succumbed to the weekly movie-going habit (Fuller-Seeley, "Dish" 248). In fact, even as the economy faltered, many people escaped the real-world destruction, if only for two-hours, within one of the 23,000 movie theaters open for business (Reynolds 211). The film industry touted that its immunity to the devastating financial crisis was, in part, thanks to the addition of sound (210). In his first-hand chronicle of the period, historian Dixon Wecter confirms, "the initial thrill of the 'all-talking, all-singing' picture, particularly the delight of hearing voices of stars long adored in silent films, helped tide the industry over depression's first shallows…" (236).

Although the inclusion of sound in motion pictures provided temporary relief to the theater owners who were wealthy enough to equip their houses with the new technology, it doomed those locations that failed to make the transition (Butsch 110). In order to stay in business, thousands of theaters, many in small towns, reduced their presentations to once or twice a week (Fuller-Seeley, "Dish" 247). This meant that patrons with the movie-going habit needed to find an alternate location in order to obtain their weekly escape. Working class audiences, who once relied on their humble neighborhood cinema to provide their evening's entertainment, traveled to the nearest city where they enjoyed the latest Hollywood feature in a manner to which the middle-class patrons were already accustomed (Butsch 111). Small-town moviegoers gladly exchanged their overcrowded, dimly-lit theater for the extravagant and glowing complexes a few blocks away. These larger, more attractive movie houses presented more than just a movie. Ushers and other staff members provided personal service to each customer from the sidewalk to the auditorium. Large orchestras entertained audiences before, during, and after the program with familiar classical scores and Broadway medleys. Elaborate decorations and light fixtures blanketed the entire building, and properly maintained air conditioning systems insured a comfortable experience for everyone (Gomery 47-54; Fuller 99). Once small-town audiences witnessed the grandeur of the downtown movie palace, it was difficult to return to the less-than-glamorous theater in their respective rural town.

By the summer of 1930, the grim realities of the Great Depression started to cut through the mental safety net provided by the movie theater. Millions of Americans lost their jobs as the unemployment rate skyrocketed to over twenty-five percent. Even those who held part-time positions saw their ranks reduced by another quarter (Fuller-Seeley, "Dish" 246). Thousands of farmers struggled to maintain their crops through an unforgiving drought and inevitably lost the battle when agricultural prices hit bottom (Fuller-Seeley, "What The Picture" 188). And, the downtown bank that once provided financial shelter to cash-strapped individuals could no longer remain solvent (Borowsky 359). For those families lucky enough to maintain even a meager savings, it was painfully clear that major financial adjustments were necessary if they were to survive the turbulent times.

As Americans judged the importance of each expense, entertainment seemed the logical item to exclude from the family budget. Attendance at baseball games and other sporting events dropped forty percent, and minor league organizations were all but wiped out as a result (Fuller-Seeley, "Dish" 246). The incredibly popular miniature golf courses that were once a 100 million dollar business closed up and "[left] the face of the nation pitted with greens made of dyed cottonseed" (Wecter 220). Even the "Great White Way" of New York City felt the strain as two-thirds of its theaters shut down (Fuller-Seeley, "Dish" 246). Instead of a night out, families stayed in the home and relied on each other for entertainment. They passed the time with card and board games, and programs on the radio provided hours of enjoyment at no additional cost (Wecter 219; Gomery 70).

The soap operas, dramas, and detective stories thrilled audiences each night and presented the biggest threat to the motion picture industry, which was by now no stranger to the entertainment crunch of the time. As Americans distanced themselves from their weekly movie-going habit, theater owners worried that the lack of business meant the end for their once profitable venues. In fact, the sudden slump was an unwelcomed additional burden for independently-owned houses who were already threatened by the vertically-integrated movie studios and their quest to dominate the industry. By the early 1930s, the five major Hollywood firms (Paramount, Warner Brothers, Fox, RKO, and Loews) owned 2,600 of the 23,000 theaters open at the time. While this number might not seem impressive, the studio-owned theaters represented three-quarters of the total box-office revenue each year (Shindler 4). The vast remainder of American cinemas were owned by families or private businesses and were generally located in working-class neighborhoods, smaller towns, and rural areas (Butsch 108). Many of these independent movie theaters, struggling with both the financial crisis and competition from the major studios, simply could not survive. By 1932, an estimated 8,000 cinemas closed for business, the majority of which were independents (Fuller-Seeley, "Picture" 188; Balio 15).

For those movie theaters that survived this first wave of ruin, it was clear that drastic changes were necessary in order to bring audiences back to their auditoriums. Instead of touting the luxurious atmosphere of their grand downtown movie palaces, owners changed their venues to accommodate every customer regardless of their income level (Butsch 110). All the major studio-owned theaters cut admission prices to as low as a dime in some locations. Fox Theaters even offered two-for-one deals on certain evenings to help boost their falling box-office receipts (Shindler 27). Cinemas opened their first concession stands and sold popcorn, candies, and soda in order to raise additional money. And, as a further cost cutting measure, theater owners fired their ushers and turned on the auditorium lights in-between each presentation, which allowed the patrons themselves to find their own seats (Butsch 111).

These changes temporarily helped ward off any financial disaster. However, for independent theaters, they provided further misery. Since the bigger cinemas reduced their admission to a rate comparable with small-town venues, owners and managers sought to employ a different incentive if they wanted to stay afloat (Balio 27). Theaters began offering a chance to win special prizes and goods with each paid admission. Audience members had an opportunity to take home everything from bicycles to vacuum cleaners and even larger prizes like cars and vacations (Shindler 27; Doherty 30-31).

Aside from these one-winner sweepstakes, managers handed out smaller items to each and every customer as they entered the door. This promotional idea was nothing new. In fact, nickelodeons gave away all sorts of gifts to their patrons, like pictures of their favorite movie stars, handkerchiefs, booklets, and stuffed animals. These goods rarely cost more than one or two cents each, and owners could easily recoup their expense through ticket sales (Fuller-Seeley, “Dish” 254). For a similar event to work during the Great Depression, the price for every special prize would need to be just as inexpensive. Managers and owners could not afford to spend more than what they could bring in on a slow weeknight. Luckily, their solution was not only cheap to produce and purchase, but it helped bring a new group of moviegoers to the cinema each week.

On either Mondays, which tended to be the slowest business day of the week, or Fridays, in order to compete with the new films opening at the larger houses, many of the smaller neighborhood theaters gave out special pieces of china with every paid admission. Each plate or cup only cost the theater owner a dime, and they usually purchased a thousand pieces (at a total cost of one hundred dollars) to prepare for every promotion (Gomery 71). As I mentioned earlier, owners could hardly afford such a steep expense. However, if the giveaway worked, they could easily bring in three times that amount at the box-office as patrons exchanged their twenty-cent ticket for a ten-cent novelty (71). The managers called their special promotion "Dish Night," and they waited to see how the public would respond.

The giveaways were a grand success. Audiences visited their local theater each week in order to obtain the special plate or cup available that evening. They returned for as long the promotion continued and helped increase box-office during the normally slow weekday presentations (Butsch 112). The women who attended "Dish Night" were simply determined to collect an entire set of china even if it was only one small piece at a time (112). Female patrons even travelled from theater to theater in order to determine which location had the better merchandise that particular evening (Kusell 190). In her article on this phenomenon, Kathryn Fuller-Seeley comments on the importance of “Dish Night” during the Great Depression:

> With pretty dishes on the table, a woman could have at least a few new consumer items in the house. Further, she got to know them well as she washed them up every night. Plates, cups and bowls were useful items, but they could also be beautiful objects, desirable enough to collect. For a poor woman, a matched set of new dishes could symbolize a return of the family’s former prosperity, or a step up the ladder toward gentility. (“Dish” 254)

Although many independent theaters included “Dish Night” as part of their weekly schedule, the larger, studio-owned theaters declined to extend such a promotion to their own customers. They felt that such a cheap gimmick would work for a few weeks or even months but then fade away after customers finished their collections (Kusell 190). Also, they and their corporate owners disliked the very notion of giveaways as it detracted from the quality of their on-screen product. If audiences attended the theater in order to obtain some trinket instead of a desire to see the featured movie, it somehow cheapened the entire filmic experience. Hollywood producers, along with some of the major motion picture journals of the period, such as *Motion Picture News* and *Exhibitors Herald*, believed that theater owners and managers needed to concentrate on the showmanship that once made the industry great (Fuller-Seeley, “Dish” 256). They were disgusted that money which should be spent on film rentals and other operational expenses was directed toward ten-cent dishes and other random goods (Butsch 112).

Regardless of the negative feedback from their competitors, independent theaters continued with “Dish Night” and other different promotions for as long as they could. When the giveaways no longer worked, owners reduced ticket cost on certain evenings and even admitted entire families for one special low price (Butsch 112). If that failed to bring people in, they hosted trivia contests and beauty pageants in order to attract patrons to their cinema (112). Independents even worked with local businesses and community organizations, such as 4H clubs, to support their cause and show a positive connection with their respective towns (112). Despite all of these efforts, however, independents eventually felt the sting of the Great Depression as box-office receipts continued to decline.

By the end of 1932, as Americans adjusted their entertainment budgets further, movie attendance dropped as much as thirty-five percent, which lead to the closure of hundreds more theaters across the country (Doherty 28). The once-popular giveaways were no longer enough to encourage moviegoers to continue their weekly habit. As Kathryn Fuller-Seeley argues, “the winter of 1932-33 was just about the toughest year in the history of the amusement business" ("Dish" 248). Even Sam Katz, famed showman and then Paramount executive, admitted to a group of theater managers that the industry's future was uncertain:

> Nothing would give me greater pleasure at this time than to be able to forecast an immediate return to prosperity. In all honesty, I cannot do it. There is no use kidding ourselves. We are not half-grown boys, but mature, seasoned men and we should look things square in the face. As I see it, we have not as yet come to the turn in the road. There is still a hard pull ahead of us. (Doherty 29)

While temporary admission price reductions and inexpensive gifts helped theater owners through a difficult financial period, these schemes were still not enough to keep audiences in the movie-going habit. By the beginning of 1933, estimated weekly attendance figures dropped to 50 million people, a decline of nearly fifty percent from previous years (Fuller-Seeley, "Dish" 248). The five major movie studios stopped construction on their elaborate downtown movie palaces in favor of smaller venues in close proximity to the already established independent theaters (Butsch 111). As it stood, the Hollywood giants did not view these privately-owned houses with any high regard. In fact, to the major studios who tried to control all aspects of the movie business from production to exhibition, the independents were "at the bottom of the [entertainment] hierarchy" and presented the only real hurdle to their domination of the industry itself (114). The disastrous economic effects of the Great Depression helped wipe out a third of America's smaller theaters, while the others barely held on thanks to their short-lived promotions (108). If the independents were to survive, they needed anything short of a miracle. Luckily, it arrived in March 1933.

Chapter 2

Striking Gold

Like many theater owners and managers across America, Charles Yaeger, a district supervisor for Fox Intermountain Theaters, constantly tried to develop new promotions and gimmicks in order to bring audiences back to his houses in Colorado and New Mexico. He reduced ticket prices, gave away groceries and other goods, hosted beauty pageants, and teamed up with community organizations in the hope that these events would help stimulate his dying box-office revenue (Borowsky 365). "I considered every giveaway I'd ever promoted," Yaeger stated in an interview with the *Saturday Evening Post*. "They all seemed lousy, and I dreaded to put the bee on local merchants any longer for merchandise. I knew I was getting in their hair" (Parkhill 21). While his boss, Frank Ricketson, expressed severe displeasure with the performance of his theaters, he desperately tried to develop something new to not only save the cinemas, but his job as well (21).

Yaeger was no stranger to the stress of the motion picture industry. His parents owned a small theater in Del Norte, Colorado called The Princess. His father served as general manager, while his mother worked as the cashier. Young Charles helped out his parents as the theater’s usher and, on certain occasions, ran the movie projector (Parkhill 20). In 1926, he traded his life in the film industry to one on the open road as a truck driver for the D & R company, owned by Dick Dickson and Frank Ricketson (21). Besides trucking, the duo also maintained thirty movie theaters in the Southwest, mainly in Colorado and New Mexico. In 1929, just before the October stock market crash, Dickson & Ricketson sold their houses to Fox, and they became part of the new Fox Intermountain chain (21).

While Dickson bowed out completely, Ricketson stayed on with the circuit as its general manager and was essentially still in charge of all the day-to-day business (Parkill 21; Borowsky 362). Since the company was in its infancy, there was a need to hire experienced staff to handle the many different tasks in order to run a successful theater chain. By this time, Ricketson was already familiar with Charles Yaeger as an employee of his trucking company. After learning of his family’s theater business and experience in the film industry, the manager asked Yaeger to work with Fox Intermountain as a booker (Parkhill 21). After only a few short months, Ricketson was so impressed with his new employee’s performance that he was promoted to district supervisor, a position responsible for all theaters in southern and western Colorado and New Mexico (Borowsky 365).

Before the disastrous winter of 1932, box-office receipts held steady at Yaeger's locations. In order to maintain a revenue stream, he followed the trends of other independent theater owners across America by implementing special prize raffles and other incentives. Also in line with some of the industry changes, Yaeger reduced the admission prices at his houses and even created something called "Prosperity Day," in which customers could purchase special discounted tickets in advance for a future weekday matinee (Borowsky 365). While these ideas worked temporarily, Yaeger knew that the public would not be pleased once admission prices returned to their normal rate. Plus, all of his promotions failed to promote any repeat business from customers.

By early 1933, Ricketson pleaded with Yaeger to develop some gimmick to save their dying enterprise. The young executive tried desperately to construct an event like no other before it. In a later interview with the *Rocky Mountain Sun*, Yaeger recalled the stressful situation and his moment of inspiration:

> We'd given away everything under the sun. I used to wake up nights trying to think of a new angle, something that would keep people coming to the theater week after week. One day—I remember I was shaving at the time—it hit me, just like that. Cold hard cash. That's what people want.

> And not just five dollars either, but something big enough for them to want it. (Borowsky 366)

For Yaeger, money was that one element that would help his promotional formula succeed. Instead of inexpensive plates or holiday hams, the cash-strapped families of the depression era could use these winnings to provide whatever was needed.

Of course, since his theaters were already on the brink of bankruptcy, Yaeger needed to insure that his new idea would not contribute to further financial losses for the company. He planned to test launch his cash giveaway at only one location under his direct supervision, the Egyptian Theater in Delta, Colorado. And, if it didn't work out, Yaeger would simply write off the expense as advertising cost (Parkhill 21). Since the Egyptian was a 725-seat house, he calculated the first cash prize should be equal to the cost of one-sixth of the auditorium, which was thirty dollars. That way, in order to break even for the night, the Egyptian only needed to fill those 120 seats. Also, in order for his special promotion to capture the community's attention, Yaeger planned to run the event once a week for eleven weeks with a special grand prize of seventy-five dollars at its conclusion (Borowsky 366). As with every other promotion that seemed to die off after a few weeks, Yaeger felt that this new gimmick would help attract audiences if only for two to three months (Parkhill 21).

After developing his grand idea, the young supervisor wasted little time promoting it to the public through advertisements in the local newspaper, flyers in various businesses, and other outlets (Borowsky 366). Yaeger called his creation "Gold Night" and claimed that it would be "an antidote to economic despair" (359). The *Delta County Independent* reported the event to its readers with the headline, "Egyptian Plans Big Prosperity Event For The City," which was immediately trumped by the article's first line: "Yellow gold is going to outshine any trace of depression" (359). While the community feverishly anticipated the grand event, Yaeger still remained skeptical of its success. He continued to develop the fine details for his promotion, which was to be introduced to the public on March 2, 1933 (366).

As B. R. Crisler comments in his article about Bank Night for *The New York Times*, the "game" was relatively ingenious in its simplicity. "It is better business," he writes, "to give away cash to a selected few of the paying customers on an 'off' night in order to fill the house with people…than it is to play to empty seats" (Crisler 5). While this was the preferred scenario, Yaeger's rules for "Gold Night" did not require any patron to purchase a ticket at all (Parkhill 21). The reason for this was two-fold. First, the idea of a free cash prize would be a universally appealing promotion since many Americans were no doubt short on money at the time. Second, since customers did not pay for an entry into the weekly sweepstakes, Yaeger believed “Gold Night” would avoid any charges under Colorado lottery laws which prohibited paid chances for jackpots (“Cinema: Bank Night”).

In order to win, patrons needed to visit the theater prior to the night of the drawing. The manager placed a special registration book in the lobby, and those persons who wished to participate in the “Gold Night” drawing submitted their name and address for consideration. Those names were then paired up with a number that corresponded with each signature line in the register. After completing this simple task, registered customers returned to the theater for the official drawing, which was purposefully held on the slowest business day of the week in order to attract more attention to the theater (Parkhill 82). Like the registration, no purchase of any kind was required to be present for the drawing. If the public did not want to be in the auditorium, they could easily hear the winning announcement over a loud speaker system either in the theater lobby or outside sidewalk (Borowsky 358).

Then, in the minutes before the main feature began, the management prepared everyone for the wildly anticipated moment. Employees pushed a large, steel drum on the stage which held hundreds of tickets with number combinations similar to those in the registration book. When the fanfare subsided, the manager picked a child from the audience, placed a blindfold over their eyes, and asked them to pull out the winning ticket from the container (Borowsky 357). The selected number was then matched up with its mate from the register, and the lucky winner's name was announced both in the theater and over the loud speakers. The chosen individual then had only a few minutes to appear on-stage and claim their cash prize (Parkhill 82). Once a winner appeared, the manager verified that his or her signature matched the one from the registration book and asked for confirmation of their identity from members of the audience. When these conditions were met, the winner was awarded their money (Kusell 190). However, if the selected person failed to emerge from the crowd, a portion of the cash prize was included as part of the next week's promotion (Parkhill 82). As Forbes Parkhill comments in his article for the *Saturday Evening Post*, "the impelling factor that [brought patrons] back…each week…[was] that horrible fear of being absent if [their] name [was] drawn" (82).

During the last week of February 1933, Yaeger requested that his special "Gold Night" registration book be placed in the lobby of the Egyptian Theater. Despite all the press attention, he remained hesitant that this idea would bring patrons back to his theater. At the most, Yaeger anticipated that "Gold Night" would complete its eleven-week run and die off in the same manner as the other promotions he had tried (Borowsky 366). The Egyptian scheduled the first drawing on Thursday, March 2, 1933 before a screening of George Archainbaud's *The Penguin Pool Murder*, the first feature based on the Hildegard Withers mysteries (Borowsky 366). Although he created the special promotion, Yaeger was not able to attend that evening. Since his duties as district supervisor applied to other locations, he was in New Mexico overseeing operations at another theater (366). One might assume that his convenient departure may have also been a sign that Yaeger did not want to be there if his big night fell flat. Thankfully for him and for the independent theaters that would soon adopt the practice, it was exactly the opposite.

On the evening of March 2, Yaeger telephoned Egyptian Theater manager Harry Brown to inquire about the night's business. He prepared himself for disastrous news, but Brown's voice cracked with both elation and frustration. "The house is spilling over," Brown exclaimed. "We've grossed more tonight that we did all of last week. They're lining up at the door" (Borowsky 366). Needless to say, Yaeger was delighted to hear that his promotion had succeeded where others missed the mark. The lure of cash attracted more patrons back to the theater than the promise of a discounted plate or turkey dinner. He was confident that his “Gold Night” event would grow stronger each week and planned to extend it beyond its planned eleven-week life cycle. Also, based on its success at the Egyptian, Yaeger prepared to try it out at all of the theaters under his direct supervision. Chances are, if it worked for one, it would work for all.

Despite the reports of its success in every location it was held, Yaeger was never able to be at the theater to see the crowds first hand. That is, until the summer of 1933, when he made the trek to visit the West Theater in Trinidad, Colorado, a small community devastated by the Great Depression (Parkhill 21). On the night of the drawing, the horrific weather conditions nearly kept Yaeger away. However, as he approached the theater, he noticed a doubled line of people which stretched down the length of the street. They stood in the pouring rain and waited until the night’s winner was announced (Borowsky 367). After he witnessed the incredible effect that his promotion had on the community, Yaeger began to imagine the future possibilities for his new enterprise. “If [Gold] Night can sky-high receipts in one region,” he pondered, “why can’t it do the same elsewhere? What would theaters everywhere be willing to pay for such a grand business builder?” (Parkhill 21). With this thought in mind, Yaeger traveled to Fox Intermountain’s home office in Denver to meet with Frank

Ricketson and discuss a plan to introduce the Great Depression antidote to a nationwide audience (21).

Before they developed their full-blown business plan, Ricketson advised his colleague about trademark laws and the possibility of infringement on his intellectual property. The two completed and filed paperwork that protected both the name of the promotion and the event itself. During this stage, they also agreed to change "Gold Night" to the more appealing "Bank Night" since, according to its creator, "the prize money was to be deposited in the bank" (Parkhill 21). Aside from its new name, Ricketson and Yaeger developed a list of fourteen other alternate titles and planned to trademark them all in order to keep theaters from using their promotion without permission. They then filed the official paperwork with every state office that permitted this type of registration by name (21). Also, on November 16, 1933, the executives created a business outside of Fox Intermountain called Affiliated Enterprises, Inc., which was to be the home office for all Bank Night related business (*Affiliated v. Commissioner 1940* 390). Five days afterward, Yaeger dispatched an application to the United States Patent Office for his promotion and labeled it as a "Means for Conducting Prize Drawings" (*Affiliated v. Commissioner 1940* 393).

Although the government denied his request, Yaeger remained confident that Bank Night would be a great success for the new Affiliated Enterprises. On December 3, 1933, he resigned his position with Fox Intermountain in order to make Bank Night and its distribution his full-time priority (Parkhill 21). Ricketson remained with the theater circuit but partnered with Yaeger as Affiliated’s chief financial supporter. It was a risky move for both men. If Yaeger failed, his chances of finding another job during a period of widespread unemployment would be slim. Furthermore, Ricketson’s initial cash investment would be reduced to nothing, and it would be extremely difficult for him to rebuild any lost capital. Bank Night was a gamble that both men hoped would pay off.

Chapter 3

Growing A Business

In early January 1934, Charles Yaeger rented a small office space in Denver, which was to be the home base for Affiliated Enterprises, Inc. (Parkhill 21). He hired three people to help with the day-to-day clerical responsibilities and asked his wife, Clover, to work as the company's assistant manager (*Affiliated v. Commissioner 1940* 391). The group distributed information about Bank Night to theaters across America, and Yaeger patiently awaited any response from parties interested in purchasing the rights to his unique program. In order to keep his new company afloat, he projected that at least one hundred theaters needed to sign up for Bank Night before the year's conclusion. Since the news of Yaeger's initial success with the program was already well-traveled and well-received, Affiliated reached this minuscule goal in a month (Borowsky 367). In fact, by the end of 1934, over one thousand theaters signed up for the Bank Night promotion at a cost of fifteen dollars per night for smaller locations and seventy five dollars for larger houses (367; Reynolds 212).

In exchange for the required royalties, Affiliated Enterprises provided each location with various materials to promote and execute the Bank Night promotion. These included movie trailers which introduced the event's rules to their patrons, a register to house in the theater lobby for entry signatures, books to maintain records of participants and prize money, and a set of numbers to be used in the drawing itself (Reynolds 212). The rules for Bank Night remained relatively unchanged from their original inception in 1933. Theater managers were encouraged to keep the provided register in a central location where everyone, paying customer or not, could provide their name for consideration. In order to insure that there was only one signature per person, managers and other staff members verified that each one was unique via a system of cross-indexing. Each name was then assigned a number, which, in lieu of an actual name, would be announced as the winner on the night of each drawing. Once completed, the lucky patron was allotted a reasonable amount of time, usually between five and ten minutes[1], to arrive on-stage and claim their prize. Since there was no charge and no ticket requirement to participate in Bank Night, the designated winner did not need to be in the auditorium or anywhere around the theater to participate. However, if they failed to meet the deadline, the prize money carried over to the next drawing (Kusell 190).

[1] Although the Bank Night instructions recommended a time limit of five to ten minutes, the amount was left to the discretion of theater managers and owners.

Initially, the public response to Bank Night echoed the chaos that engulfed the Egyptian Theater. Independent theater owners across America breathed a collective sigh of relief as Yaeger provided them with a lifeline, and a way to compete with the studio-owned houses. As their member theaters profited, Affiliated Enterprises shared equal success as they collected royalties in excess of twenty-seven thousand dollars by the end of 1934 (*Affiliated v. Commissioner 1940* 393). In an effort to capitalize on this financial momentum, Frank Ricketson helped his business partners organize twenty-six regional offices to help fulfill the increased demand (Parkhill 21). By 1935, the company that began with only a handful of employees became a powerful entity in the motion picture industry.

As Affiliated Enterprises grew, entertainment reporters and film executives wondered if Yaeger would relocate his enterprise to either New York or Hollywood since these cities essentially comprised the movie business itself. He immediately dismissed all rumors and requests regarding Affiliated's departure from their home base in Denver. "If we move to New York, I'll be too far from the Rose Bowl football games," Yaeger argued. "If we go to Hollywood, I'll be too far from the World Series, and I haven't missed a series in years. Besides, I can't find a city as close to such swell trout fishing as Denver. We're doing okay here" (Parkhill 82). Although he elected to keep his distance from the movie studios in New York and California, industry executives monitored Yaeger's activities through various channels. While they recognized his success, the major studios did not approve of the Bank Night promotion because its member theaters were spending money on it rather than advertising and promoting the latest Hollywood feature (Borowsky 370).

Despite this objection, Bank Night finally presented independent theaters with a way to battle their competition and keep their doors open week after week. The promotion delivered on its promise to be "an antidote" for the declining box office revenues, and theater owners heralded it as a grand success. However, as cinemas reaped their rewards, their respective communities experienced a different transformation. According to the *Saturday Evening Post*, the towns that hosted a Bank Night drawing were all but shut down on the evening of the theater's event:

> It's got to the point where nobody can schedule a basketball game, a church sociable or a contract party on Tuesday night, because everyone is down at The Gem hoping to cop a cash prize – usually standing in the street beyond the marquee because the theater is much too small. (Parkhill 20)

The *Motion Picture Herald*, a well-respected industry journal at the time, confirmed the chaos surrounding Bank Night with a less-than-complementary review. They labeled Yaeger's creation as a "veritable Frankenstein" controlled by several dozen police officers who reroute traffic around the theater in order to accommodate the large crowds that wait outside (Reynolds 213).

Although millions of Americans participated in the weekly Bank Night drawings, some city leaders and local business owners viewed the promotion as a menace (Reynolds 216). Still, Yaeger and Affiliated Enterprises continued to enlist thousands of locations as active customers. By mid-1936, A.G. Edwards, Affiliated's promotion and publicity manager, estimated that over four thousand theaters had implemented Bank Night at their locations ("In Excess" 12). In fact, the practice was such a financial success for independent theaters that the larger, studio-owned palaces eventually adopted it. Loew's Theaters, RKO, Fox, and Warner Bros. all signed up with Affiliated Enterprises for their share of the box-office business (Borowsky 368). By the end of 1936, weekly theater attendance had nearly doubled its 1933 estimates. Over eighty-one million Americans visited their local movie theater that year, and revenues were up a quarter of a million dollars from 1935 figures ("Cinema: Bank Night Bans"). There is little doubt that Bank Night was a major factor in this industry revival.

As their monthly royalties continued to skyrocket, Affiliated Enterprises, the small Colorado company which started with a simple idea, grew with them. Charles Yaeger hired several more staff members to help sort through the incoming checks and distribute the necessary promotional wares. The Bank Night group even started a special monthly newsletter that offered advice and successful strategies to their member locations (*Affiliated v. Commissioner 1940* 393). By mid-decade, over sixty percent of the theaters still in operation used some type of giveaway each week, whether it was Affiliated's gem or otherwise (Kusell 191). John Mannheim, representative for the Independent Theater Owners Association, noted that close to ninety percent of the houses that belonged to his organization relied on giveaways to sustain their operations (Crisler 5). The theaters that opted out of Yaeger's game chose instead to raffle various prizes, but Bank Night remained the most successful and the most profitable for all involved (Borowsky 368).

Both Charles Yaeger and Frank Ricketson were extremely proud of their creation and the safety net it provided to thousands of theater owners who would have otherwise drowned. In his book on how to properly manage a movie theater, Ricketson proclaimed Bank Night's promotional supremacy and offered his expert opinion on why it was necessary:

> A few years ago the giveaway was not considered show business. And even now, it is a racket that every exhibitor dislikes to employ. The depression and poor pictures have made it a necessary adjunct in certain types of theaters. Whether an improvement in pictures will eliminate this type of box office stimulation is a matter that the future will have to decide. My hunch is the giveaway racket is here to stay, or at least until ended by legislation. (249-250)

Unfortunately for Ricketson, Yaeger, and Affiliated Enterprise in general, the latter half of this proclamation was more prophetic than perhaps initially realized. For as Bank Night grew, so too did the complaints against it.

Some theater managers, who were ill-equipped to deal with the large crowds, argued that they could no longer properly accommodate those patrons who actually wanted to see the movie instead of solely participate in the night’s drawing (Washburn 165). “It makes the fan angry,” stated one independent exhibitor who worried that his theater was more of a gambling hall rather than a reputable cinema (165). “A squawk is bound to follow, possibly a shooting, and cries of fraud, all enough to drive [us] managers crazy” (165). Again, this claim eerily signaled events to come. In Minneapolis, the Bank Night chaos not only engulfed the town’s movie patrons but the theater owners themselves. The so-called "Chance Games War" began after a theater, owned by local businessman Harry Dickerman, was destroyed by a bomb. Although no official charges were leveled, other exhibitors were suspected of the crime because they were not happy with Dickerman's "unethical" giveways which continually escalated competition in the city. Before the unfortunate event, Mr. Dickerman apparently agreed to discontinue the promotional practices at his theater. But, he failed to honor this agreement (Fuller-Seeley, "Dish" 265).

In Kansas City, Mrs. Abe Baier, who owned the Lindbergh Theater, argued that Bank Night and all similar promotional gimmicks were nothing more than a nuisance. In fact, she was among the first theater owners to claim that Yaeger's game was against the law. In a heartfelt letter to the United States Postmaster General, Mrs. Baier contended that Bank Night was a growing national concern and, if left unchecked, would "lead to a most disastrous condition for [her] theater and a few others which do not wish to cheapen their operation by running lotteries…" (Fuller-Seeley, "Dish" 265). Baier added the fact that more theaters subscribe to Bank Night every month, and it would not be long until everyone was forced to rely on it (265). In fact, the promotion became so popular with theater owners that it was difficult to determine why some patrons visited their local movie house in the first place. In his article for

The New York Times, Thomas Pryor echoed Baier's concerns about Bank Night in regards to the audience at large. Since roughly half of all operating theaters participated in the scheme, Pryor questioned "if people really expect to be entertained by Hollywood's glamour children when they go to the movies or do they go with the idea of amusing themselves…" (150).

The notion that moviegoers attended the theater each week for a chance to win a quick cash prize instead of a true desire to see the on-screen feature became a primary concern for some film industry executives. In fact, Gradwell Sears, head of Warner's sales department, proclaimed that he would not book his studio's films in any theater that presented weekly games or promotions of any kind. Sears believed that Warner's features should be the key attraction for patrons, and theater managers would need to concentrate their marketing efforts solely on the movie and its "merits as an entertainment" (Pryor 150). David Loew, executive for Metro-Goldwyn-Mayer and its theater chain, also voiced his concern that Bank Night was stealing the spotlight away from the feature presentation. After he noticed that the smaller, independently-owned houses drew larger crowds with the promotion, Loew decided to implement Yaeger's game at his locations. However, after just three months, the studio executive decided to halt the practice and "[go] back to the picture business" (Reynolds 218).

Despite the critical opinions and negative publicity, Bank Night's parent company and its founders continually reaped the rewards of their creation. Yaeger and Ricketson welcomed the arrival of weekly royalty checks from various theater owners across America who paid as much as seventy-five dollars for each event. According to Internal Revenue Service records, Affiliated collected $348,323 in licensing fees by the end of 1935 and, after deducting operating expenses and payroll, cleared $159,173 (*Affiliated v. Commissioner 1940* 394). By 1936, these figures more than doubled (394). While Ricketson celebrated such a grand return on his investment, Yaeger spent his fortune almost as fast as he received it. He started a small theater chain of his own, established a movie trailer production studio, purchased printing facilities, and invested in real estate (Parkhill 20).

While Yaeger enjoyed his newly acquired wealth, Affiliated's legal team, which consisted of forty-one different attorneys in thirty cities, constantly defended the Bank Night name against infringement by theater owners who presented some variation of the promotion under a different title. According to Emmett Thurston, the head legal representative for the company, lawyers argued over seven hundred copyright suits at one time (Borowsky 370). In order to escape royalty fees, some theater operators presented the promotion under a different name such as “Prosperity Night” or “Cash Night” (*Affiliated v. Commissioner 1940* 391). However, since the concept remained intact, Thurston and his team claimed that these locations infringed upon Affiliated’s trademark as originally submitted in 1933. However, since Yaeger never received a government patent for his creation, and since he only filed for copyright on a state-by-state basis, some theater owners seized the opportunity to challenge the company’s position regarding naming rights.

In late 1936, Affiliated Enterprises sued two such theater owners, one in Oklahoma and the other in Massachusetts, for presenting a variation of the Bank Night game without paying the required royalties to the creator. While the Colorado-based company believed these would be an open and shut case of trademark infringement, they actually placed a legal spotlight on Yaeger’s promotion that would eventually lead to its demise.

Chapter 4

Bank Night Goes To Court

In his *Saturday Evening Post* article, writer Forbes Parkill argued that, "it [was] almost inconceivable that anyone in the United States doesn't know how Bank Night works" (21). While it is true that, by mid-decade, the American public at large knew about and understood how the game worked, state judicial systems had yet to conduct their own inquiries about the promotion. However, as Affiliated Enterprises sought judgments against theater owners who failed to pay their weekly dues, the courts examined the finer details of Yaeger's scheme and questioned its legality. First, there was an issue regarding naming rights. Did Affiliated truly own the name Bank Night even though the company never received a patent? As mentioned earlier, the Colorado-based company applied for a trademark on a state-by-state basis. However, as the case of *Affiliated Enterprises vs. Gantz* demonstrates, Yaeger and company did not fully examine the limitations on such transactions.

In December 1936, Affiliated sued the owner of a small theater in Sand Springs, Oklahoma after he presented Bank Night to his patrons without officially subscribing to the plan. Emmett Thurman, who represented the Bank Night company, argued that the rightful owners of the promotion filed paperwork with the Secretary of State for Oklahoma which he believed mandated a legal trademark. Therefore, the accused was liable “for damages and profits realized from its use” (*Affiliated v. Gantz* 598). Three judges of the Tenth Circuit Court of Appeals reviewed the lawsuit along with the intricacies of Oklahoma trademark law. The Court found that Affiliated’s claim to sole ownership of the name Bank Night in the state of Oklahoma was invalid. According to statutes of 1931, trademark by name alone, which is what Yaeger originally intended, could only be obtained by manufacturers of specific goods, advertisements to help promote unions or other groups, and dairy products. Under these terms, the Bank Night promotion did not qualify for the trademark, and therefore the Sand Springs theater was not required to pay any royalties for its use (*Affiliated v. Gantz* 599). In addition to this verdict, the judges also questioned the nature of the Bank Night promotion itself. Over the course of the proceedings, the terms of the game were discussed in full including the fact that no paid admission was required to participate. In his concluding remarks, Circuit Judge Lewis stated, “this seems to be a subterfuge to escape the stigma of being a lottery” (*Affiliated v. Gantz* 399). While the Oklahoma case was not tried on these charges, the statement echoed the lawsuits to come across America.

Although the case only had ramifications in Oklahoma, another similar suit in Massachusetts definitively changed Affiliated's business plan for good. As before, Yaeger and company sought damages from a theater using the Bank Night method under the name "Parlay Cash Night" (*Affiliated v. Gruber* 960). And, as in the Oklahoma case, the judge declared that the theater owner did not violate any trademark by using a different name. "One cannot adopt a descriptive name as a trademark and thus bar others from using all names tending to describe the same article," stated First Circuit Judge Bingham in his opinion of the case (960). Bingham declared that such a copyright would essentially grant Affiliated Enterprises with a monopoly over Bank Night or any variation of that name. "If literary property could be protected under the theory that the name by which it is christened is equivalent to a trademark," Bingham added, "there would be no necessity for copyright laws" (961).

In effect, without this ruling, Yaeger and his team could continue to sue any theater owner if they attempted a similar promotion. However, there was one final statement which assured that these trademark suits would come to an end. Judge Bingham noted that Affiliated never received a patent for their idea, and it was therefore available to everyone without threat of infringement. He states:

> However good and valuable an idea, plan, scheme, or system is, the moment it is disclosed to the public without the protection of a patent, it becomes public property, and the fact that it has been made popular by advertising and the expenditure of effort, time, and money on the part of the originator does not alter the situation. (961)

Once this ruling was announced through newspapers and trade journals, theater managers across America understood that they no longer needed to pay Affiliated in order to use Bank Night (*Affiliated v. Commissioner 1940* 400).

The Gantz and Gruber cases forever altered the business practices of Affiliated Enterprises. The company could no longer rely on thousands of dollars each week from their member theaters. If they were to survive this blow, they needed a new direction. So, in early 1937, Yaeger and his team changed their name from Affiliated Enterprises, Inc. to Bank Night Theater Service. Since they still maintained a proper copyright over trailers and other material produced to market the promotion, the new service focused solely on these products and created a monthly publication to help theater managers and owners maximize the Bank Night experience (*Affiliated v. Commissioner 1944* 650). Even though they managed to restructure their business after the rulings, Yaeger's profits were reduced to more than half (650). At this point, the Bank Night Theater Service could not withstand any further accusations or detrimental legal decisions. Unfortunately for the company, one such accusation, which was originally addressed and debated upon in a May 1935 case, started to gain some momentum in various courts across America. Was Bank Night a lottery?

Because the Great Depression financially devastated many families, all forty-eight states enacted laws that specifically prohibited lotteries "in an effort to prevent the squandering and wasting of savings…" ("Consideration" 402). At this time, the United States defined a lottery in accordance with a description in *Webster's Dictionary*: "a scheme for the distribution of prizes by lot or chance, especially a scheme by which one or more prizes are distributed by chance among persons who have paid or promised a consideration for a chance to win them…" (*State* 951). Therefore, in order for Bank Night to be defined as a lottery and illegal under U. S. law, one must prove that a prize, a chance, and consideration are all present.

Both a cash prize and the chance to win said prize were unquestionably a part of Yaeger's promotion. However, it was rather difficult to determine if consideration, or the fact that something of value was exchanged in order to participate in the game, was present. In fact, when Bank Night was initially created, both Yaeger and Ricketson believed that their scheme would escape such charges since all participants played for free. But, as the game grew more popular and crowds became increasingly more difficult to control, it was only a matter of time until someone somewhere declared it to be against the law. In late 1935, such accusations were levied against Mr. James Wall, the owner of a small theater in Medford, Massachusetts, after local police determined his Bank Night promotion was nothing more than a ruse to increase theater profits. The ensuing court case, known as *Commonwealth v. Wall*, would not only be one of the first legal declarations of Yaeger's scheme as a lottery, other judges and attorneys across America would use it to demonstrate precedent.

Before local authorities investigated Wall's weekly game, they had received numerous complaints from concerned citizens who argued that, since the winner had only two minutes to claim their prize, the only possible way to win was to purchase a ticket and be inside the auditorium. If such a charge were true, it would confirm the presence of consideration and therefore meet all the requirements of a lottery. So, on December 11 and December 18 of 1935, undercover police officers purchased tickets to Wall's theater and observed how the owner conducted his Bank Night drawings. According to Yaeger's original rules for the promotion, the time allotted for the winner to claim their prize was at the discretion of each theater manager. In Wall's case, he advertised that "the winner must appear 'within a reasonable time'" instead of any precise minute amount (*Commonwealth*). Therefore, it was inevitably up to him to determine what constituted a "reasonable" time, and he could end the drawing with little to no advance warning. In fact, during the December 18 performance, officers noticed that dozens of unlucky patrons stood up after the drawing and made their way to the exits. However, before the group walked the full length of the aisle, Wall dimmed the lights and began the night's feature. In short, they discovered the public's accusations to be correct. In order to win, a person must be inside the theater in order to beat the mere seconds allotted to claim the cash (*Commonwealth*).

Week after week, hundreds of moviegoers filled Wall's theater and the sidewalk outside of it. And, week after week, the cash prize remained unclaimed. The owner continued to reap record profits while the customers that provided it left empty-handed.[2] However, by May 1936, Wall's shrewd business tactics warranted the undivided attention of justices on the Massachusetts Supreme Court. After local authorities completed their investigation and determined that the theater was operating an illegal lottery under the guise of Bank Night, the

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[2] Although no similar charges were leveled against the Coleman Theater in Miami, Oklahoma, recent photographs of actual Bank Night winner announcements confirm that some locations did not award a cash prize each week. In regards to the Coleman, a total of 19 people (out of the 100 drawn) collected their winnings for the entire year of 1936.

Court agreed with their assertions and determined that Yaeger's promotion was against state law. Although Wall's attorney argued that patrons could enter the weekly sweepstakes without cost, the justices stated that "…a game does not cease to be a lottery because some, or even many, of the players are admitted for free, so long as others continued to pay for their chance" (*Commonwealth*).

Furthermore, the Court took note of the short time frame that Wall prescribed for winners to appear on-stage. In his final written opinion on the case, Justice Qua wrote:

> An important feature of the plan was the necessity that the person whose number was drawn should appear at once and claim the deposit. The time allotted for appearance was entirely within the control of the defendant. No definite time seems to have been fixed. A participant inside the theater would have the advantage of immediate presence in place of comfort. (*Commonwealth*)

While it was admirable that patrons could enter a Bank Night drawing without any initial cost, Qua concluded that "the object of the defendant was to fill the theater, not the lobby or the sidewalk" (*Commonwealth*).

Although the Court essentially defined Bank Night as a lottery, they stopped short of banning the practice outright in Massachusetts. The *Commonwealth v. Wall* case was specifically aimed at a sole defendant and the unfair manner in which he conducted his weekly drawings. Regardless of any statewide declaration, however, the case and its ruling provided an essential reference point for other attorneys who wished to rid their communities of what had quickly become a problem in their respective towns. In June 1936, their crusade to expel Bank Night gained further momentum after a report by the Federal Council of Churches of Christ in America labeled the promotion as an "incitement to gambling" ("Further"). And, as similar complaints continued to mount in various communities across America, the United States Post Office decided that, since the promotion is under such scrutiny, "any publications or advertisements pertaining to Bank Night drawings were deemed 'unmailable under Section 601[3] of the Postal Laws and Regulations'" ("Bank Night – Moviegoers' Mirage"). In effect, this meant that theaters could no longer advertise their drawings in any newspaper, magazine, or other publication subject to distribution via mail.

Despite the controversies and the looming charges against them, thousands of theaters continued with business as usual.

[3] According to United States Post Office regulations, "no newspaper, circular, pamphlet, or publication of any kind containing any advertisement of any lottery, gift enterprise, or scheme of any kind offering prizes dependent in whole or in part upon lot of chance, or containing any list of the prizes drawn or awarded by means of such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes, shall be deposited in or carried by the mails of the United States or be delivered by any postmaster or letter carrier."

Bank Night drawings continued each week and no doubt contributed to the increased attendance figures for the year 1936 ("Film Book"). In fact, according to the *Film Daily Year Book*, the number of operating theaters in the United States increased by more than seven hundred since their 1934 estimates ("Film Book"). As Tino Balio concludes in his widely recognized synopsis of the period, Bank Night and other similar promotions "kept more theaters open during the Depression than any other device" (28). "[It] was," as Forbes Parkhill describes in his *Saturday Evening Post* article, "an oxygen tent for the gasping motion picture exhibitors, who, during Depression depths, had been disastrously dunked in a sea of red ink" (20). However, there were still those who wished to suffocate Bank Night's success and would not wait for a court case to do so.

Chapter 5

Defining A Lottery

Although Yaeger's promotion was initially received by independently owned theaters in small town markets, Bank Night was also a grand success in larger cities like Chicago. In fact, by the end of 1936, only fifty of the three hundred theaters in the Illinois metropolis did not present the weekly cash giveaway to their customers ("Chicago Police"). And, since some movie houses adopted the practice earlier than others, a December 1936 *Christian Science Monitor* article estimated that nearly six million dollars had been awarded to various customers over a two-year period with some individual prizes as high as $2,750 ("Theater"). While these amounts no doubt attracted the attention of Chicago's cash strapped citizens, they also troubled groups like the Better Business Bureau (BBB) who, in November 1936, issued a warning that the promotion was against a "sound business practice" ("Chicago To Enforce").

Although theater managers respected the BBB's status and authority, they were reluctant to make any changes to their weekly operations. However, by December, the fight against Chicago's Bank Night dilemma found a new champion in Police Commissioner James P. Allman, who yielded more legal power than the business organization and was definitely capable of halting the giveaway permanently. Allman studied the BBB's complaints and was aware of certain court cases, like *Commonwealth v. Wall*, that defined Bank Night as a lottery. However, Chicago courts remained undecided on the issue, and theater managers were free to present the promotion without any threat of prosecution. That is, until Allman decided enough was enough ("Theater").

On December 26, 1936, acting on complaints and information from Mayor Edward J. Kelly's so-called "Corporation Council," headed by Mr. Barnett Hodes, Police Commissioner Allman ordered all theaters to stop Bank Nights or any similar promotion effective immediately ("Theater"). Both Hodes and Allman agreed that, since the drawings equated to a "chance distribution of money," they were against section 1901 of Chicago's city code ("Fight"). Still, even after the commissioner issued his edict, many theater managers still remained unmoved. In fact, the two hundred and fifty locations had a combined total of $100,000 to giveaway during the busy holiday week ("Fight"). Furthermore, Affiliated Enterprises advised their client theaters that Bank Night remained a legal practice and contained "no elements of lottery" ("Chicago Police"). Allman disagreed with Affiliated's assertions and threatened to arrest any and all managers who continued the promotion ("Chicago Police").

On December 27, one day after he issued his order, the police commissioner dispatched officers to arrest sixteen theater managers who continued their drawings despite any warning ("Fight"). It was painfully clear that Allman's crusade to rid Chicago of Yaeger's creation was indeed very serious. Soon after these first arrests, both the Balaban & Katz theater chain, which maintained a strong presence in the city, and the Warner Brothers theater chain volunteered to end Bank Night at their locations ("Chicago To Enforce"). If more communities across America followed Chicago's lead, it would certainly lead to more problems for these nationally recognized companies.

Despite their gesture of goodwill, sixteen managers were jailed for violating city code. Although they were only held for a few hours and each posted bail of $100, the theater employees remained adamant that their promotions were completely legal and petitioned the city to stop any further arrests ("Fight"). While those against the giveaways found a friend in Police Commissioner Allman, the managers relied on Alderman Walter J. Orlikoski to defend their cause. Orlikoski did not view Bank Night as harmful. In fact, he believed that the game actually helped some of Chicago's poverty stricken citizens with a free chance to win a large cash prize ("Chicago To Enforce"). After the arrests, the alderman encouraged his fellow city council members to repeal section 1901, which would end the conviction of theater managers and allow the Bank Night drawings to continue. Shortly after Orlikoski's announcement, Mayor Kelly argued that he was never in favor of Police Commissioner Allman's actions and ordered him to issue summons instead of taking individuals into custody ("To End").

While the mayor's proclamation was hailed by theater operators as a victory, it was simply too little, too late. By the first of January 1937, Illinois Attorney General Otto Kerner "declared the giving away of premiums or prizes was in effect a lottery and violated state law" ("Chicago To Enforce"). Armed with Kerner's new declaration, the Chicago BBB and other civic groups petitioned Superior Court Judge C. Neimeyer to ban Bank Night inside the city limits ("Movie"). By February, Neimeyer ruled that Bank Night and other similar prize drawings were illegal ("Movie"). News of this decision spread beyond the city itself and provided powerful evidence for other individuals and groups across America who felt the weekly cash giveaways were immoral and unethical.

Perhaps one of the most vocal opponents to Bank Night on a national level was New York City License Commissioner Paul Moss, who exclaimed that "cheap ballyhoo" was a constant distraction for most moviegoers and a stain on the motion picture industry in general ("Bank Nights' Assailed"). "Instead of sound [and] constructive showmanship," Moss stated in an editorial for

Boxoffice Magazine, "the owners and managers of the industry are utilizing the dangerous practices commonly found in fly-by-night state fairs and circuses" (4). The commissioner believed that the drawings detracted from the moviegoing experience itself and cheapened the production values of any Hollywood feature (4).

Moss viewed Bank Night and other like promotions no different than any dangerous disease that, when left unchecked, would lead to a "chaotic condition":

> It is a natural conclusion that if a theater starts a certain method of increasing their patronage, that his competitor will try to outdo him, and where the first theater would give away a plate, the second would give away two, and so on, until finally theatres became merchandise distributors rather than places of entertainment. (4)

He concluded his damning remarks with his opinion regarding the legality of such operations. Moss warned that theater managers and employees should not be surprised if they "wake up some morning" to protests by local civic groups and threats of prosecution because their promotions were too close to gambling (Moss 16).

One week after *Boxoffice* published Moss's rant, they extended the same courtesy to Milton C. Weisman, counsel for the Independent Theater Owners' Association, for his rebuttal. Weisman emphatically denied the commissioner's charge that Bank

Night was essentially a lottery. "Since the price of admission is not raised on nights the game is played," he stated, "the patron parts with nothing additional for the privilege of winning a prize. When it is unnecessary even to purchase a ticket of admission to win a prize, obviously no consideration is paid" (12). Furthermore, Weisman took issue with Moss's claim that the promotion somehow degraded the evening's entertainment:

> Due to the shortage of adequate product, being forced to play what is available long after the product has been shown at the local circuit theatre (with not much difference in price), independent exhibitors have been forced to either find some means of attracting patronage or closing their theaters 'during alterations.' They have found these games to be the answer to the problem. (12)

In his concluding remarks, Weisman accused "the forces of law and order" of using Bank Night prosecutions as a way to win favor with local voters (12).

While Moss and Weisman volleyed in the pages of a motion picture industry trade magazine, Yaeger's scheme garnered further national attention. By June 1937, courts in Texas, Connecticut, and New York labeled Bank Night as a lottery and therefore illegal in their respective states (Reynolds 218; "Outlaws"). Some theater owners in Indiana actually welcomed such regulation in their state because they wanted to dispose of the cheap gimmicks in favor of good entertainment (Reynolds 218). Their sentiment echoed Milton Weisman's belief that Bank Night and other similar games "[would] stop when the industry comes to a realization, as it certainly must, of the necessity of giving the independent exhibitor a better 'run' for his money" (12). In reality, however, these theaters needed Yaeger's promotion in order to survive the turbulent decade. Once America started to recover from the Great Depression, and once theater owners stabilized their profits, it was apparent that Bank Night was no longer a necessity.

By early 1938, Bank Night was all but extinct. In January, Oregon outlawed the promotion and Vermont followed two months later ("'Bank Nights' Dropped"; "Change"). As in the *Commonwealth v. Wall* case, defendants in the Vermont trial argued that Bank Night could not be a lottery because no consideration was present since patrons were allowed to participate without cost. However, the Vermont Supreme Court adopted the position that "'the fact that a ticket of admission is not required is not sufficient to save the scheme known as Bank Night…from being a lottery'" ("Change"). While states like Kentucky, Rhode Island, Florida, and New Jersey would eventually follow suit and ban Yaeger's promotion completely, these court decisions did not deliver the final knockout blow to Affiliated

Enterprises. Instead, that unfortunate honor was awarded to a much larger opponent.

Since the latter half of 1936, the United States Post Office grew increasingly familiar with Affiliated's operations and the Bank Night scheme they promoted. In fact, postal workers from across America attended weekly drawings and complained that they, or no one else present for that matter, ever won the prize ("Mails"). Initially, any advertisement or mention of Yaeger's promotion was barred from the mail service. However, after postal inspectors investigated the Denver-based company further, they determined that Affiliated grossed more $1,250,000 over a two-year period ("Mails"). While Yaeger's attorneys claimed that ninety percent of their income covered their operating costs and was not technically profit, the Postmaster's department noted that the cash was from theater managers and owners who wanted to purchase a Bank Night license ("'Bank Nights' Barred"). In effect, that license contributed to the construction of an illegal lottery.

Attorney Peter John Connolly, who represented the office of Postmaster General James Farley, determined that "compulsory registration of participants was a technical 'consideration' and therefore Bank Nights were lotteries" ("'Bank Nights' Barred"). Based on this opinion, Farley ordered both incoming and outgoing mail service to Affiliated Enterprises closed effective April

15, 1938. The stoppage would keep any further licenses or other promotional material from being purchased or distributed and therefore end Yaeger's business completely ("Mails"). The plan worked. Since they could no longer communicate effectively with their member theaters or collect any further income, Affiliated Enterprises closed (*Affiliated v. Commissioner 1940* 395). Although some theaters still presented Bank Night to their customers, managers could no longer rely on any information from the man who started it.

Over the next few months, Yaeger's game, either through legislation or choice, slowly exited the American landscape. While it may appear like an unfortunate conclusion, Bank Night had all but served its purpose. The game helped thousands of theaters and theater owners keep their doors open to the public, and it allowed thousands upon thousands of movie patrons a chance to remedy their financial woes. As for the promotion's creators, Frank Ricketson remained in the film industry as an executive for Fox Intermountain Theaters. And, aside from managing his many other business ventures, Charles Yaeger remained out of the public eye and never missed an opportunity to attend a World Series game ("Charlie").

Conclusion

The story of Bank Night serves as a prime example of why exhibition studies is such an important and necessary element of any film discipline. While motion pictures themselves have long been and will continue to be the focus of film scholarship, a full case study of any individual film must include a description of how this film was presented to the public and should examine how factors of exhibition and promotion aided in either the success or failure of the movie itself. For example, anyone who chooses to examine any feature during the era of Bank Night would be remiss in excluding Yaeger's promotion from their discussion. It provides a clear reason why box office receipts increased during a time of such financial hardship. Furthermore, with this new information, some scholars may question if moviegoers attended the theater because of a true interest in the film or because they wanted to win some money. This is but one example of how exhibition studies can help provide a complete history of motion pictures.

Of course, it is important to extend some concession. In years past, it would have been incredibly difficult to include many of the facts and figures necessary to piece together a study of film exhibition. Many of these records were not readily available, and those who endeavored to find such documents either needed to visit a distant archive or sift through rolls of microfilm. Today, it is relatively easy to obtain digital versions of studio records, trade magazines, court documents, newspaper articles and more through various online databases. While the Internet provides some new key information, however, there is still no replacement for the library itself and the valuable information within. This may explain why few film students select exhibition studies as their focus. It does require an extreme amount of time and attention to complete, but the scholarship is worth any investment.

I believe this thesis delivers an unprecedented description of the Bank Night promotion and its effect on film exhibition during the 1930s. While other film scholars have addressed Yaeger's game in their own works, their stories conclude after only a few paragraphs and do not fully explain the impact it had on the motion picture industry. I hope that this thesis not only provides more information for future scholars to digest but also inspires them to expand on this and other topics even further. There is still much more to be said and much more work to be done.

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