

	Features	News Mats
New Jersey:		
Atlantic City, Jewish Record	x	x
Clifton, Times		x
East Rutherford, Enterprise	x	x
Flemington, Hunterdon Republican	x	x
Somerville, Messenger Gazette (2 a week)		x
Woodbridge, Woodbridge Pub. Company	x	
Penns Grove, Record	x	x
[fol. 3117] New Mexico:		
Clayton, News	x	x
Clovis, Curry County Times	x	x
Tucumcari, American	x	x
New York:		
Baldwinsville, Messenger	x	x
Brooklyn, Finnish paper (3 a week) ...		x
Calicoon, Sullivan County Democrat ...	x	x
Horsehead, Valley Reporter		x
Ithaca, American Agriculturist (Bi- Weekly)	x	
Liberty, Gazette		x
Mechanicsville, Hudson Valley Times ..	x	x
Monticello, Sullivan County News (2 a week)	x	x
Mineola, Nassau County Times	x	x
New York City, Amsterdam Star News.	x	
New York City, Hrvatski List (3 a week)		x
New York City, Irish World	x	x
New York City, Villager	x	
Rouses Point, North Countryman	x	x
Schenectady, Polish Weekly News	x	
Seneca Falls, Seneca Press Co.	x	x
Utica, Slovo Polske	x	
Whitehall, Times	x	x
North Carolina:		
Ahoskie, County Herald	x	
Canton, Enterprise	x	x

	Features	News Mats
Charlotte, Mecklenburg Times	x	
Elkins, Tribune	x	
Jacksonville, News and View (2 a week)	x	
Lenoir, News Topics (2 a week)		x
Lexington, Dispatch (2 a week)	x	x
Mooreville, Enterprise	x	x
Murfreesboro, News	x	
Mocksville, Enterprise	x	x
[fol. 3118] Newton, News Enterprise (2 a week)	x	x
North Wilkesboro, News World	x	x
Oxford, Public Ledger (2 a week)	x	x
Roxboro, Courier (3 a week)	x	
Sanford, Herald (3 a week)	x	
Shelby, Cleveland Times	x	x
Taylorville, Times	x	x
Waynesville, Mountaineer	x	x
Williamston, Enterprise (2 a week)	x	x
Winston-Salem, Union Republican	x	x
North Dakota:		
Bismarck, Capital (2 a week)	x	x
Minnewauken, Benson County Farmer's Press	x	x
Ohio:		
Barberton, Herald	x	
Bowling Green, Wood County Repub- lican	x	x
Cheviot, Western Hills Press	x	x
Deshler, Flag	x	
Hillsboro, Press Gazette (2 a week)		x
Jackson, Sun Journal & Register (3 a week)	x	x
South Euclid, Citizen	x	x
Waynesfield, Chronicle	x	x
Oklahoma:		
Chickasha, Star Publishing Company		x
Cordell, Beacon	x	x

	Features	News Mats
Oklahoma—(Continued)		
Duncan, Eagle	x	
Dawson, Bomber	x	x
Oklahoma City, Capital Hill Beacon (2 a wk.)	x	x
Wagoner, Record Democrat	x	x
Waurika, News Democrat		x
[fol. 3119] Oregon:		
Corvallis, Benton County Herald	x	x
Freewater, Times	x	x
Pennsylvania:		
Albion, News	x	x
Braddock, Free Press (2 a week)	x	x
Connellsville, Courier	x	x
Conshohacken, Reporter (2 a week) ...	x	
Carmichaels, Green County Post	x	
Gettysburg, Adams County Independent	x	x
Honesdale, Wayne County Citizen (2 a wk.)	x	x
Honesdale, Independent	x	x
Lehighon, Press	x	
Middleburg, Post	x	
Monessen, News Call	x	x
Montgomery, Mirror	x	x
Muncy, Luminary	x	x
Masontown, Klondike Bulletin	x	
Portage, Cambria Dispatch	x	x
Pittsburgh, National Word		x
Scranton, Obrana Pub. Company (2 a wk.)		x
Smethport, McKean County Miner	x	x
Union City, Times Enterprise (2 a week)	x	x
Zeliempole, News Beacon	x	x
Cambridge Springs, Enterprise News (2 a wk.)	x	x
Tunkahannock, Wyoming Countian	x	x
Point Marion, News	x	

	Features	News Mats
South Carolina :		
Gaffney, Ledger (3 a week)	x	x
Greenville, Observer	x	x
Lancaster, News (2 a week)	x	x
Laurens, Advertiser		x
Lexington, Dispatch News	x	x
Newberry, Observer (2 a week)	x	
Orangeburg, Observer (2 a week)	x	
[fol. 3120] South Dakota :		
Wessington Springs, Republican	x	x
Yankton, Public Opinion	x	
Howard, Miner County Pioneer	x	x
Tennessee :		
Greenville, News Bulletin	x	x
Knoxville, Industrial News	x	x
Lenoir City, News	x	
Marysville, Enterprise		x
Springfield, Herald News (2 a week) ...	x	x
Texas :		
Bowie, News	x	x
Brady, Heart 'Texas'	x	x
Dallas, Uncle Jake Sport News	x	x
Electra, Star	x	x
Gainesville, Free Press	x	x
Giddings, News	x	x
Gilmer, Mirror		x
Littlefield, County Wide News Argus ..	x	x
Pampa, Tribune	x	x
Pittsburgh, Gazette		x
San Marcos, Hays County Herald	x	x
West Czechoslovak Publishing Co.	x	x
Shamrock, Texan (2 a week)	x	x
Utah :		
Roosevelt, Standard	x	x

	Features	News Mats
Vermont:		
Ludlow, Tribune	x	
Bellows Falls, Times	x	
Springfield, Reporter (2 a week)	x	x
[fol. 3121] Virginia:		
Altavista, Journal Gazette	x	x
Danville, Herald	x	x
Farmville, Herald	x	
Galex, Gazette (2 a week)	x	
Luray Page, News and Courier (2 a week)	x	
Norfolk, Journal & Guide	x	
Rocky Mount, News Post	x	x
Washington:		
Chehalia, Advocate (2 a week)	x	x
Kelso, Tribune (2 a week)	x	x
West Virginia:		
Coalwood, Caretta News	x	x
Ripley, Herald	x	x
Williamson, Mingo Republican	x	x
Wisconsin:		
Reedsburg, Times Press	x	x
Rice, Lake Bulletin	x	
Superior, Co-Operative Pub. Ass'n	x	
* * * * *	*	*
Monthly Publications:		
Chicago, Ill., Child Life Magazine	x	
Rock Island, Ill., Modern Woodmen of America	x	
Schenectady, N. Y., General Electric ..	x	
Pittsburgh, Pa., Croation Fraternal Union of America	x	
Cheyenne, Wyo., Shop Talk	x	x

[fol. 3122] PLAINTIFFS' EXHIBIT No. 25

Mr. Lewin—Question No. 3—1941 expense of INP in furnishing pictures to others than U. S. daily newspapers.

Item #3.

In 1941 it cost I. N. P. to service other than U. S. daily newspapers as follows:

Domestic Clients	\$93,131.69
Foreign Clients	37,357.90

In the absence of direct costs applicable to each of these items the charges were allocated by the percentage relation of the income from each source to the total expenses of INP for 1941.

[fol. 3123] PLAINTIFFS' EXHIBIT No. 26

Mr. Lewin—Question No. 4—Number of INP customers in 1941 which were not U. S. daily newspapers.

The number of I. N. P. clients not daily newspapers in 1941 were:

Magazines	161
Advertising Agencies	40
Book Publishers	14
Weekly Papers	6
Mat Services	3
Miscellaneous (Ins. Co., Govt. agencies, etc.)	49
Foreign	59

[fol. 3124] PLAINTIFF'S EXHIBIT No. 28

Mr. Lewin—Question No. 6—Number of INS customers in 1941 which were not U. S. daily newspapers.

May 3, 1943.

No. 6—264 (includes radio stations; foreign clients; weekly, semi-weekly, tri-weekly, monthly, and Sunday only newspapers; individuals; government agencies; colleges).

W. B. G.

2566

[fol. 3125] PLAINTIFFS' EXHIBIT No. 29

Mr. Lewin—Question No. 7—Number of INS customers in 1941 which were radio stations.

May 3, 1943.

No. 7—182 (over the whole year).

W. B. G.

[fol. 3126] PLAINTIFF'S EXHIBIT No. 30

Mr. Lewin—Question No. 8—Proportions (percentages) of total 1941 INP revenues which were derived from (a) U. S. daily newspapers and (b) other customers of INP.

Item #8.

I. N. P. revenue in 1941 was proportioned as follows:

From U. S. daily newspapers	75.2%
Other Domestic Sales	17.7
Foreign Sales	7.1

[fol. 3127] PLAINTIFF'S EXHIBIT No. 31

Mr. Lewin—Question No. 9—Proportions (percentages) of total 1941 INS revenues which were derived from (a) U. S. daily newspapers and (b) other customers of INS.

King Features Syndicate, Inc.

Proportions (percentages) of total 1941 INS revenues which were derived from (a) U. S. daily newspapers and (b) other customers of INS.

(a) U. S. Daily Newspapers	69.40%
(b) Other customers	30.60%

[fol. 3128]

PLAINTIFF'S EXHIBIT No. 33

Mr. Lewin—Question No. 11—Total amounts paid INS stringmen in (a) 1941 and (b) 1942 in each state of the U. S.

State	1941	1942
Alabama.....	\$201.10	\$213.35
Arizona.....	385.40	337.60
Arkansas.....	526.00	579.50
California.....	1,345.05	916.10
Colorado.....	768.20	568.03
Connecticut.....	345.50	226.75
Delaware.....	160.00	150.00
Florida.....	1,015.00	980.00
Georgia.....	1,439.40	1,090.50
Idaho.....	48.00	37.50
Illinois.....	1,251.25	1,183.25
Indiana.....	1,390.50	864.00
Iowa.....	1,236.40	429.80
Kansas.....	510.00	480.00
Kentucky.....	790.10	342.50
Louisiana.....	275.25	286.00
Maine.....	64.00	75.00
Maryland.....	720.00	720.00
Massachusetts.....	796.00	975.67
Michigan.....	667.00	581.00
Minnesota.....	490.00	475.00
Mississippi.....	140.00	128.00
Missouri.....	1,250.75	1,008.75
Montana.....	46.00	42.20
Nebraska.....	485.50	628.25
Nevada.....	520.00	480.00
New Hampshire.....	60.00	80.00
New Jersey.....	240.70	520.10
New Mexico.....	210.15	280.00
New York.....	2,171.09	2,646.06
No. Carolina.....	122.00	110.00
No. Dakota.....	52.00	46.00
Ohio.....	2,035.86	1,543.93
Oklahoma.....	970.78	881.85
Oregon.....	618.75	662.25
Pennsylvania.....	1,605.50	1,196.00
Rhode Island.....	480.00	540.00
So. Carolina.....	96.00	92.00
So. Dakota.....	48.00	43.50
Tennessee.....	156.00	142.00
Texas.....	1,585.00	922.00
Utah.....	560.00	600.00
Vermont.....	55.00	65.00
Virginia.....	284.25	466.55
Washington.....	615.00	682.00
West Virginia.....	65.00	70.00
Wisconsin.....	320.00	310.00
Wyoming.....	58.00	46.00
	<hr/>	<hr/>
	\$29,275.48	\$25,743.89

2568

[fol. 3129]

PLAINTIFF'S EXHIBIT No. 34

12—Total amounts paid INS stringmen in Canada in (a) 1941 and (b) 1942.

(a)—1941—\$1,120.00
(b)—1942— 980.00

PLAINTIFF'S EXHIBIT No. 35

13—How many of the 1864 reporters, correspondents and stringmen of INS in August 1942 were

(a) full time reporters and correspondents—None
(b) part time reporters and correspondents—None
(c) stringmen —All—1864

The 207 foreign previously listed were all stringmen.

[fol. 3129a] PLAINTIFFS' EXHIBIT No. 34

Mr. Lewin—Question No. 12—Total amounts paid INS stringmen in Canada in (a) 1941 and (b) 1942.

(Copy)

12—Total amounts paid INS stringmen in Canada in (a) 1941 and (b) 1942.

(a)—1941—\$1,120.00
(b)—1942— 980.00

[fol. 3130] PLAINTIFFS' EXHIBIT No. 35

Mr. Lewin—Question No. 13—How many of the 1864 reporters, correspondents and stringmen of INS in August 1942 were (a) full time reporters and correspondents, (b) part time reporters and correspondents, (c) stringmen. Same information for the 207 foreign.

(Copy)

13—How many of the 1864 reporters, correspondents and stringmen of INS in August 1942 were

(a) full time reporters and correspondents—None
(b) part time reporters and correspondents—None
(c) stringmen—All—1864

The 207 foreign previously listed were all stringmen.

[fol. 3131] PLAINTIFFS' EXHIBIT No. 37

Mr. Lewin—Question No. 15—The names of all U. S. evening newspapers having a circulation of 10,000 or more subscribing to INS service on August 1, 1942 which did not also have the news services of UP or AP. (Note: We can only find 4 in that category, namely, Bayonne, N. J. Times; Wooster, O. Record; Newcastle, Pa., News; and Austin Tex. Tribune.)

May 3, 1943.

No. 15—Bayonne, N. J. Times; Wooster, Ohio, Record; New Castle, Pa. News; Austin, Texas, Tribune.

W. B. G.

[fol. 3132] PLAINTIFFS' EXHIBIT No. 38

Mr. Lewin—Question No. 16—The names of all U. S. morning newspapers having any circulation whatever which subscribed to INS service on Aug. 1, 1942 which did not also then have the news services of UP or AP. (Note: We can only find 4 in that category, namely, Indianapolis, Ind. Commercial; Winchester, Ind. News; Winchester, Ind. Journal Herald; Cleveland, O. Daily Legal News.)

May 3, 1943.

No. 16—Indianapolis, Ind. Commercial; Winchester, Ind. News & Journal-Herald; Cleveland, Ohio, Daily Legal News.

W. B. G.

[fol. 3133] PLAINTIFFS' EXHIBIT No. 39

Mr. Lewin—Question No. 17—How many customers of INP listed on Defendants' Exhibit 12 were receiving their pictures by (a) leased wire (b) mail and (c) messenger.

Item #17

The following customers received their service by

Wire	17
Messenger	13
Mail-Domestic	53
Mail-Foreign	59

The clients receiving service by wire are also included in the ones receiving it by mail (domestic) as only part service was sent over the Sound Photo System.

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[fol. 3134] PLAINTIFFS' EXHIBIT No. 40

Mr. Lewin—Question No. 18—Proportions (percentages) of the total INP revenues in 1941 derived from (a) pictures delivered by leased wire and (b) delivered by other means.

King Features Syndicate, Inc.

Proportions (percentages) of the total INP revenues in 1941 derived from (a) pictures delivered by leased wire and (b) delivered by other means

- (a) Pictures delivered by leased wire . . . 23.19%
- (b) Pictures delivered by other means . . 76.81%

[fol. 3135] PLAINTIFFS' EXHIBIT No. 42

Mr. Lewin—Question No. 20—Correct the list of newspapers furnished by Mr. Berkson last August in response to Government Question No. 2, purporting to list all newspapers obligated to INS as of August 1, 1942 to furnish local news to INS, so as to eliminate all papers, such as the Times-Herald of Washington, D. C. which declined so to contract (Note: I gathered from your testimony that all AP members, for example the Washington Post, should be eliminated).

Question No. 20

The Advance, Burlingame, Calif.
Post-Enquirer, Oakland, Calif.
News, Vallejo, Calif.
Democrat, Woodland, Calif.
Times, Ft. Lauderdale, Fla.
Tropics, Miami Beach, Fla.
Journal, Eldorado, Ill.
Republican, Marion, Ill.
Press, Marseilles, Ill.
Journal-Gazette, Mattoon, Ill.
Mail, Olney, Ill.
News, Alexandria, Ind.
World, Bloomfield, Ind.
Telephone, Bloomington, Ind.
Reporter, Greenfield, Ind.
News, Greensburg, Ind.

Times, Hammond, Ind.
Ledger, Noblesville, Ind.
News-Sentinel, Rochester, Ind.
Times-Gazette, Union City, Ind.
Democrat, Washington, Ind.
News-Telegraph, Atlantic, Ia.
Ledger, Fairfield, Ia.
News, Mt. Pleasant, Ia.
Journal, Nevada, Ia.
Cedar Valley Times, Vinton, Ia.
Times-Journal, Bowling Green, Ky.
Times, Beverly, Mass.
Item, Clinton, Mass.
News, Framingham, Mass.
Times, Gloucester, Mass.
News, Milford, Mass.
Newburyport News, Newburyport, Mass.
Chronicle, North Attleboro, Mass.
Times, Woburn, Mass.
Times, Detroit, Michigan
Leader, Mt. Clemens, Michigan
Times, Bayonne, N. J.
Courier, Camden, N. J.
American, Cohoes, N. Y.
Bulletin, Endicott, N. Y.
Examiner, Bellefontaine, Ohio
Crescent News, Defiance, Ohio
Reporter, Dover, Ohio
Times, Fostoria, Ohio
News-Republican, Kenton, Ohio
Journal, Lisbon, Ohio
Times, Martins Ferry, Ohio
Times, New Philadelphia, Ohio.
Leader, St. Marys, Ohio
Globe, Shelby, Ohio
News, Sidney, Ohio
Chronicle, Uhrichsville, Ohio
Citizen, Urbana, Ohio
Record, Wooster, Ohio
News, Eugene, Ore.
Gazette, Aliquippa, Pa.
Courier, Bristol, Pa.
Telegraph, Brownsville, Pa.

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Times, Chester, Pa.
Courier, Connellsville, Pa.
Intelligencer, Doylestown, Pa.
Times, Erie, Pa.
Sentinel, Lewistown, Pa.
News, McKeesport, Pa.
News, New Castle, Pa.
Journal, Philipsburg, Pa.
Spirit, Punxsutawney, Pa.
Record, Renovo, Pa.
Herald, Tyrone, Pa.
News, Vandergrift, Pa.
Times, West Warwick, R. I.
Times, Amarillo, Texas
Tribune, Austin, Texas
Cuero Record, Cuero, Texas

[fol. 3136] PLAINTIFFS' EXHIBIT No. 43

Mr. Lewin—Question No. 21—List of the U. S. newspapers subscribing to INS news service as of August 1, 1942 which had exclusive rights of publication in their territories (similar to Times-Herald).

INTERNATIONAL NEWS SERVICE

No Oral Instructions

Office Memorandum

April 26, 1943

To Mr. E. M. Gundy From Mr. Walter E. Moss

DEAR MR. GUNDY:

Replying to the attached memo.

Exclusive Contracts

Cincinnati, Ohio, Times Star.
Easton, Pa. Express.
Kankakee, Ill. Republican News.
New York City, Wall Street Journal (applies to ticket service only).
New York City, Greek Atlantic (applies to Greek paper only).

Minneapolis, Minn. Star.
 Miami, Fla. Herald.
 Harrisburg, Pa. Patriot News.
 Wichita Falls, Texas, Times & Record News.
 Washington, D. C. Times Herald.
 Scranton, Pa. Times.
 Salt Lake City, Utah, Telegram.
 Staten Island, N. Y., Advance.

Sincerely yours, Walter E. Moss.

WEM:CK.

[fol. 3137] PLAINTIFFS' EXHIBIT No. 44

Mr. Lewin—Question 22—List of the U. S. newspapers subscribing to INS news services under asset value contract respective amounts payable to them should INS be sold to their competitors.

Copy

Franchise Contracts

	Asset Value
Albany, N. Y. Knickerbocker News	\$25,000.00
Albuquerque, N. M. Journal	30,000.00
Allentown, Pa. Chronicle	13,000.00
Akron, Ohio, Beacon Journal	25,000.00
Atlanta, Ga. Journal	35,000.00
Austin, Texas, American Statesman	25,000.00
Beaumont, Texas, Enterprise & Journal	57,610.00
Binghamton, N. Y. Press	11,000.00
Bridgeport, Conn. Post	15,000.00
Canton, Ohio, Repository	30,000.00
Cedar Rapids, Iowa, Gazette	40,000.00
Charleston, S. C. Post-News-Courier	15,000.00
Chattanooga, Tenn. News Free-Press	50,000.00
Cincinnati, Ohio, Enquirer	50,000.00
Dallas, Texas, Times Herald	199,188.60
Daytona Beach, Fla. News-Journal	4,500.00
Dubuque, Iowa, Telegraph Herald	30,521.55
Elizabeth, N. J. Journal	14,000.00
El Paso, Texas, Times	35,000.00
Eureka, Cal. Standard & Times	6,500.00
Fall River, Mass. Herald-News	7,500.00
Gary, Ind. Post Tribune	35,000.00

Franchise Contracts—(Continued)

	Asset Value
Greenville, S. C. Piedmont.....	10,000.00
Hammond, Ind. Times.....	20,000.00
Hartford, Conn. Times.....	20,000.00
Johnstown, Pa. Tribune-Democrat.....	25,000.00
Lansing, Mich. State Journal.....	20,000.00
Lowell, Mass. Sun & Citizen-Leader.....	11,000.00
Loraine, O. Journal and Mansfield, Ohio, News- Journal.....	10,000.00
Memphis, Tenn. Commercial Appeal.....	50,000.00
Miami, Fla. News.....	37,500.00
Mobile, Ala. Press Register.....	35,000.00
Nashville, Tenn. Tennessean.....	25,000.00
Nashville, Tenn. Tennessean.....	10,000.00
New Bedford, Mass. Standard Times.....	8,060.00
Omaha, Neb. World Herald.....	30,000.00
Pasadena, Cal. Star News.....	21,200.00
Passaic, N. J. Herald News.....	10,000.00
Peoria, Ill. Journal Transcript.....	35,000.00
Phoenix, Ariz. Republic & Gazette.....	18,000.00
Pontiac, Mich. Daily Press.....	22,510.00
Providence, R. I. Journal-Bulletin.....	65,000.00
Rochester, N. Y. Times Union & Democrat- Chronicle.....	93,000.00
Rockford, Ill. Register Republic.....	15,000.00
Sacramento, Cal. Bee.....	} 55,000.00 } 55,000.00
Fresno, Cal. Bee.....	
Modesto, Cal. Bee.....	
[fol. 3138] San Diego, Cal. Tribune-Sun-Union.....	50,000.00
San Jose, Cal. News.....	9,000.00
Santa Barbara, Cal. News Press.....	12,000.00
Savannah, Ga. News & Press.....	40,000.00
Scranton, Pa. Tribune-Scrantonian.....	24,000.00
South Bend, Ind. Tribune.....	30,000.00
Springfield, Ill. State Journal.....	22,500.00
Springfield, Mo. News Leader & Press.....	40,000.00
Stockton, Cal. Record.....	18,500.00
Toledo, O. Blade.....	17,573.40
Trenton, N. J. Times.....	12,500.00
Troy, N. Y. Record.....	17,500.00
Vallejo, Cal. Chronicle & Times Herald.....	9,000.00
Washington, D. C. Post.....	30,000.00
Waterloo, Iowa, Courier.....	32,880.00

Wilmington, Del. Journal & News	24,000.00
Youngstown, O. Vindicator	13,000.00
Zanesville, O. Signal	7,500.00

[fol. 3139] PLAINTIFFS' EXHIBIT No. 45

Mr. Lewin—Question No. 23—List of INP leased wire picture customers, other than Hearst papers, entitled to exclusive use of the pictures in their territories.

April 28, 1943

Sincerely, Frank J. Gilloon.

FJG:mj.

Answering your note of April 26:

#23—the following papers are entitled to the exclusive use of our Soundphoto service in their territories:

McKeesport, Pa., Daily News.

Toledo, Ohio, Blade.

Newark, N. J. Star-Ledger (cancels April 30).

Washington, D. C. Times-Herald.

Sincerely, Frank J. Gilloon.

FJM:mj.

[fol. 3140] PLAINTIFFS' EXHIBIT No. 46

Mr. Lewin—Question No. 24—List of INP picture customers receiving pictures by other means than leased wire, other than Hearst papers, entitled to exclusive use of the pictures in their territories. (Note: We suggest that at least Indianapolis, Ind. News and Portland Ore. Journal have such contracts.)

April 28, 1943

E. M. Gundy

Frank J. Gilloon

DEAR ED:

Answering your note of April 26:

#24—the following papers receive our pictures by mail and have exclusive rights to them in their respective territories:

Binghamton, N. Y. News.

Buffalo, N. Y. News.

Davenport, Iowa, Times.
Des Moines, Iowa, Reg. & Tribune.
Ft. Worth, Texas, Star-Telegram.
Indianapolis, Ind., News.
Louisville, Ky. Times.
Easton, Pa. Express.
St. Louis, Mo. Post-Dispatch.
Vallejo, Calif., Times-Herald & Chronicle.
Wichita, Kansas, Beacon.
Westchester Cty. Pub. Co., Yonkers, N. Y.

Sincerely, Frank J. Gilloon.

FJG:mj.

[fols. 3141-3143] PLAINTIFFS' EXHIBIT 2 Ch. for Id.

This Agreement, relating to the Chicago Tribune Press Service, made at Chicago, Illinois, on —, 19—, between the supplier of said service, the Chicago Tribune-New York News Syndicate, Inc., a Delaware corporation (hereinafter for brevity called "CTPS") and — (hereinafter called "Subscriber"), the publisher of the — (hereinafter called the "Subscriber's newspaper").

Witnesseth:

In consideration of the sum of One Dollar (\$1.00) by each of the parties to the other in hand paid, the mutual promises of the parties, and other good and valuable considerations, it is mutually agreed by and between the parties hereto as follows:

1. CTPS will, during the term beginning on —, 19—, and ending on —, 19—, contract for the maintenance of a leased wire service to the office of Subscriber and will maintain in the office of Subscriber a printer-telegraph machine suitable for the reception of news items and stories transmitted to Subscriber. CTPS will, during the term of this contract, transmit to Subscriber the regular news service prepared by CTPS for its subscribers, including news originating from the Chicago Tribune, the CTPS local staff at Chicago, Illinois, and at New York City, news filed from the Washington Bureau of the Chicago Tribune and New York News, and news from the Chicago Tribune and New York News foreign correspondents.

2. CTPS hereby grants to Subscriber the right to publish in the Subscriber's newspaper all of such news service transmitted to Subscriber by CTPS.

3. Subscriber agrees to furnish to CTPS, at the office of Subscriber, without cost to CTPS, all local news and special service from tributary news territory collected by Subscriber.

4. The obligations of CTPS are subject to the ability of wire companies to furnish facilities, and CTPS shall not be responsible for failure or delay in the transmission of such news service occasioned by act of any such wire company or any governmental agency, or by storms, strikes, acts of God, or the public enemy, or by any other cause whatsoever beyond its control.

5. CTPS shall in no event be liable for any loss or damage resulting from the publication of any news or other material received by Subscriber from CTPS.

6. Subscriber agrees that it will not furnish, or permit to be furnished by its employees or from its office, any portion of the news service received from CTPS, or any news tips therefrom, to any other person, corporation, publication or publisher, and that it will not, without the written consent of CTPS, make any use of said news service other than to publish it in the Subscriber's newspaper. The Subscriber also agrees to respect all release pledges on advance matter and to carry proper copyright lines on all copyrighted matter. It is understood that Subscriber shall not be required to carry a CTPS credit line on matter furnished it by CTPS, except when specially requested by CTPS.

7. Subscriber shall, during the term of this agreement, pay CTPS the sum of — Dollars (\$—), per week, all sums accruing in any one month to be due and payable on or before the tenth of the following month.

8. If the Subscriber fails to keep any of the agreements herein contained by said Subscriber to be kept, or if the Subscriber becomes insolvent, makes an assignment for the benefit of creditors, is adjudged a bankrupt, or a receiver of the property or business of the Subscriber is appointed, CTPS may suspend the transmission of the above described news service hereunder and at its election, may terminate

this contract. Such suspension or termination shall not prejudice any right of action of CTPS existing by reason of a breach of this contract.

9. Unless sooner terminated, as hereinabove provided, this contract shall be extended on the same terms for a further period of one year from and after the date upon which the period specified in paragraph 1 ends, unless either party shall give to the other party written notice by registered mail, at least thirty days prior to said date, of its desire to terminate this contract as of said date. In like manner, the contract shall be extended on the same terms for successive periods of one year each thereafter, unless either party shall give to the other party such notice at least thirty days prior to the end of the then current year.

10. No assignment of this contract, or of any rights hereunder, by operation of law or otherwise, shall be valid unless CTPS shall expressly consent, in writing, to such assignment.

11. This agreement shall not be binding until it shall have been accepted at Chicago, Illinois, or New York, New York, by CTPS, by its president, vice president, secretary, assistant secretary, treasurer, assistant treasurer, manager, or assistant manager, and such acceptance shall have been noted hereon.

12. The printed and written provisions hereof constitute the whole agreement between the parties and no oral modification thereof or addition thereto shall be binding upon said parties.

In Witness Whereof, this agreement has been executed by the duly authorized officers of the parties, on the day and year first above mentioned.

Chicago Tribune-New York News Syndicate, Inc.
(CTUS). By ————. Title: ————. ————
(Subscriber). By ————. Title: ————.

Accepted (Chicago, Illinois; New York City, N. Y.) ————,
19—. Chicago Tribune-New York News Syndicate, Inc.
By ————. Title: ————.

[fol. 3144] IN DISTRICT COURT OF THE UNITED STATES FOR THE
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES, Plaintiff,

v.

THE ASSOCIATED PRESS, et al., Defendants

Before: L. HAND, SWAN and AUGUSTUS N. HAND, *Circuit Judges.*

On motion by the plaintiff for summary judgment under Rule 56(a), in an action to enjoin a combination in restraint of interstate commerce in violation of the Sherman Act and the Clayton Act.

Charles B. Rugg, John Henry Lewin, for the plaintiff.

Timothy N. Pfeiffer, Morris Hadley, for the Associated Press, et al.

Robert T. Neill, for a special committee of the Associated Press members in smaller communities.

Weymouth Kirkland, for the Chicago Tribune, and Robert R. McCormick.

OPINION—Oct. 6, 1943

L. HAND, *C. J.*: This action comes before a special court, convened under §28 of Title 15, U. S. Code, upon a motion by the plaintiff for summary judgment. The complaint charged that the defendants had conspired to restrain and monopolize interstate commerce in violation of the Sherman [fol. 3145] Act and the Clayton Act, and prayed that they be enjoined. The particulars of the charge may be summarized as follows: (1.) a by-law, restricting membership in the Associated Press—which we shall call AP—to such applicants as a majority of all the members may elect, and then only upon conditions which we shall describe later; (2.) other by-laws, forbidding members of AP and their employees to communicate to anyone else any “spontaneous news”, so-called, communicated by them to AP, and forbidding AP to communicate its dispatches to non-members; (3.) the purchase by AP of the shares of a news picture company—Wide World Photos, Inc.—(this in violation of § 7 of the Clayton Act); (4.) an agreement of AP with the Canadian Press, a similar organization operating in Canada, by which each furnishes its

news exclusively to the other. The defendants have answered, and much evidence has been taken in the form of interrogatories, admissions under Rule 36, examinations before trial, and affidavits. Upon all of these the plaintiff has now moved for summary judgment. Although upon such a motion we are confined to such facts as are not disputed, or as to which the dispute does not raise any substantial issue, for reasons that will appear we hold that a trial will not be necessary. The case is therefore in posture for final disposition both as to those matters as to which we decide in the plaintiff's favor, and as to those as to which we decide in the defendants.'

AP is a New York corporation organized in 1900, the successor of an Illinois corporation of the same name. It is not a profit-making company, but strictly co-operative, paying its expenses by assessments levied upon its members, and never declaring any dividends, although it has accumulated large assets. Its purpose, as its charter declares, is "the collection and interchange, with greater economy and efficiency, of information and intelligence for publication in the newspapers" of its members. The news which it gathers is of two kinds, domestic and foreign; and originally it relied for the first largely upon the interchange of news between members, the association acting somewhat [fol. 3146] as a clearing house. News, gathered in this way on the spot—"spontaneous news"—is still sent by members to be properly edited at the central offices which then send it out at large. In recent years, however, although news so collected still remains an important part of its dispatches, AP has itself set up so many collecting agencies that the importance of such news has much diminished. Similarly as to foreign news. Originally AP obtained this from collecting agencies abroad whose dispatches it received and transmitted to its members after proper editing. As it has grown in size, however, it has set up its own foreign agencies like its domestic ones, and has come to depend less and less upon independent foreign news gatherers.

Since the plaintiff's chief attack is upon the by-laws, we must state these in some detail; especially those governing the admission of members, which are the turning point of the whole action, as will appear. The earlier Illinois corporation did not admit any applicant over the veto of existing members with whom the applicant was

competing (papers in the same "field" in the same city).

AP changed this by giving power to the members at large to overrule such vetoes by a four-fifths vote. Very recently, and after the Department of Justice showed signs of moving against it, AP reduced the vote necessary to overrule a veto, and at present applicants can be admitted by a bare majority vote of all the members at large. Admission is, however, subject to certain conditions which we shall describe later—relaxed in one respect after this action was brought. The plaintiff argues from this progressive retreat, and from the paucity of admissions in the past that—whatever AP's present surface complaisance—experience proves that the majority always, or at least usually, will yield to the inevitable pressure of members in the same "field" in the same city, to resist the admission of competing applicants. We agree that, even though the by-laws were valid on their face, evidence, drawn from past practice, might be strong enough to justify the inference that [fol. 3147] they would be administered substantially as though they had not been changed; but we ought to make no such assumption upon a motion for summary judgment, for we should be deciding a controversial issue on which the defendants would have the right to a trial. Therefore we disregard all the evidence as to admission of members in the past; not because that is not pertinent, but because it is not persuasive enough to put the issue beyond substantial question. Nevertheless, although the defendants are entitled to have us treat the by-laws as they read, they are not entitled to have us assume that those motives will not be operative in their enforcement which ordinarily actuate human beings similarly situated.

Article II of the by-laws divides members into two classes: "regular," and "associate." Only the "sole owner of a newspaper * * * shall be eligible." Every applicant must, in his or its application, describe the "field"—that is whether a morning, afternoon, or Sunday paper—in which his or its newspaper is published, and must specify the newspaper which is to receive the service. A member ipso facto ceases to be such when he ceases to own the newspaper described in his certificate, or when that newspaper ceases regular publication. A "retiring owner may, however, * * * assign his or its certificate of membership to the succeeding owner of such newspaper

and such succeeding owner shall thereupon become a member of the same class as the predecessor upon signing the roll of members" etc. "When a change shall be made in the ownership of any newspaper * * * the member may transfer his or its certificate of membership with his or its newspaper, and the new owner shall be constituted a member of the same class as the predecessor by virtue of such assignment."

Article III provides for the admission of members. The owner of any newspaper may be admitted by the affirmative vote of a majority of the "regular" members, voting in person or by proxy at a regular meeting, or at a special meeting called for the purpose. "Where there are one or [fol. 3148] more existing memberships in the field (morning, evening, or Sunday) in the city in which an applicant has been so elected, he or it shall not be admitted to membership" except upon the payment of "a sum equal to ten (10%) per cent of the total amount of the regular assessments received by the Corporation from members in the field (morning, evening, or Sunday) in the city in which the applicant has been elected to membership, during the period from October 1, 1900, to the first day of the month preceding the date of the election of the applicant." (Until an amendment was made in this by-law after the complaint was filed, it had provided that the sum must also not "be less than three times the current annual regular assessments"). In addition, "the applicant shall relinquish any exclusive right that he or it may have * * * to any news or news picture services * * * and when requested to do so by any member or members in the field in the city * * * shall require the said news or news picture services * * * to be furnished to such member * * * upon the same terms as they are made available to the applicant." The moneys paid by the applicant are to be distributed among the members "in the field in the city * * * in proportion to the regular assessments paid by them over the period from October 1, 1900." If any such member chooses to release ("waive") his share, the applicant's burden is reduced accordingly. An alternative method of admission is by the Board of Directors; but this is limited to "a field in a city where there is no existing membership," or, if there are one or more such memberships, to cases where the "members in such field and city shall have waived the payment, in whole or in part."

Article VII defines the rights of the members. The regular members alone may vote; associate members may attend meetings, but may not vote; each regular member has one vote by virtue of his membership, and additional votes—not more than forty for each member—reckoned at the rate of one vote to each \$25.00 of the corporation's bonds which he holds. The board of directors determines [fol. 3149] the nature and extent of the news service to be received by a member. "The news service of this Corporation shall be furnished only to the members thereof, or to newspapers owned by them and specified in their certificates of membership. A member shall publish the news * * * only in the newspaper, the language and the place specified in such member's certificate of membership and shall not permit any other use to be made of the news furnished."

Article VIII describes the duties and obligations of the members. "Each member shall take the news service of the Corporation and publish the news regularly in whole or in part in the newspaper named in the Certificate of Membership. Each member shall also promptly furnish to the Corporation * * * all the news of such member's district, the area of which shall be determined by the Board of Directors." "The news which a member shall furnish * * * shall be all such news as is spontaneous in its origin," but not any other news—especially no news "which has originated through deliberate and individual enterprise on the part of such member." "No member shall furnish * * * to any person who is not a member the news of the Corporation in advance of publication," or furnish any news to another member which AP is itself debarred from furnishing to that member. "No member shall furnish or permit anyone to furnish to anyone not a member of this Corporation, the news which he or it is required by the By-Laws to supply to this Corporation, or which he or it obtains from the Corporation or from any other member by virtue of his membership. Provided, however, that associate members may furnish or permit to be furnished to non-members, any news which they are required by the By-Laws to furnish to the Corporation."

At the present time, 1274 newspapers are members of AP, of which 303 are morning, and 887 evening, papers. Of these, ninety-nine hold bonds in the amount of \$1,000 or more, each of these having forty votes, as we have said. (These ninety-nine newspapers thus have nearly eighty

per cent of the voting power). After receiving the news from its own agencies and elsewhere; AP edits it and by [fol. 3150] teletype transmits it to the members and to them alone. In levying assessments upon members it divides the United States into areas determined by cities, with a surrounding territory generally of not more than ten miles. The entire levy is allocated "fundamentally upon a plan of distributing the total cost * * * in proportion to the population served by each member." Each allotment is then divided among all the members in the same "field" and city in proportion to their number, not to their circulation. In the course of its existence AP has accumulated tangible property, estimated by it at more than \$7,000,000—most of which is in the City of New York. In addition, it appraises its "good-will" and other intangibles at \$12,000,000.

Eighty-one per cent of the morning newspapers of the United States are members, and 59% of the evening newspapers; the aggregate of circulation of these newspapers is 96% of the total circulation of morning newspapers in the United States, and 77% of that of the evening newspapers. It has its own staff of 5394, to whom should be added those engaged in gathering news in the employ of associate news services and of members. All in all, there are over 100,000 persons engaged in gathering news which is transmitted to it. It has 290,000 miles of leased news wires connecting 727 cities, and ninety-four news bureaus in the United States; and it has offices in more than 250 cities in this country and elsewhere. Its annual budget is approximately \$12,000,000. There are sixty-four morning newspapers in the United States, having a circulation of over 50,000; all but one of these—the Chicago Sun—are members; and all but two of the morning newspapers having a circulation of between 25,000 and 50,000, are members. Aside from the news which it gathers from its members and through its staffs, it contracts with a number of individuals called "string men", who also gather news and send it on to the proper office, being paid only for what is accepted and printed.

There are a great many other news gathering associations of one sort or another in the United States; but of these, [fol. 3151] only two are comparable in size and efficiency with AP—United Press (which we shall call UP) and International News Service (which we shall call INS). UP is the larger: it is a corporation organized for profit, unlike

AP. It makes contracts with its customers at stated rates, and without any exclusive provision except that out of 981 domestic subscribers, it has entered into "asset-value" contracts with 215—scattered among 144 cities. This means that, if another paper wishes to secure UP service but will compete with the holder of an "asset-value" contract, the newcomer must pay to the holder the amount stated as the "asset-value" of his contract. For the year 1941 UP's expenses were nearly \$7,000,000; it maintained sixty-one news bureaus, and thirty-three foreign offices; it had 2885 employees, and received news gathered by the staffs of 584 domestic newspapers and 454 domestic radio stations; it had 176,000 miles of leased wires. Many newspapers—apparently over 300—which are members of AP, also subscribe to UP; it served 40% in number, and 64% in circulation of the daily morning papers written in English, and 45% in number and 65% in circulation of the evening newspapers. Of the sixty-four newspapers with a circulation of over 50,000, it served thirty-nine, and of the forty-six with a circulation of between 25,000 and 50,000, it served twenty-three. Upon this motion we must take it as in dispute whether the general opinion in the calling is that the service of UP is better than that of AP, or vice versa; many prefer the foreign and financial services of UP; some, even its domestic service. There have been instances of members of AP surrendering their rights and taking on UP service, and vice versa.

INS is a department of a larger corporation, organized for profit like UP—the King Features Syndicate, Inc.—which combines a "straight" news service, a news photograph service, and a "feature syndicate": *i. e.* furnishing comment upon the news, comic strips, stories, etc. INS alone incurred expenses in 1941 of \$2,600,000; it had 592 subscribers, of whom 338 were newspapers, and 182 radio stations; it maintained thirty-two domestic, and six foreign [fol. 3152] bureaus, and employed for newsgathering purposes over 2100 persons, including its "string men." In addition, some seventy-five newspapers, and a number of radio stations furnished it with local news. It maintained a leased wire system connecting 186 cities. Like UP, it also makes "asset-value" contracts with its subscribers. Some newspapers are members of AP and also have "asset-value" contracts with both UP and INS. This is true in twenty-six cities, in which there is either only one daily

paper or several owned in common; it is also true in eighteen other cities where the only morning or evening paper is in the same position. In such cases no newspaper can obtain any of the three services without a substantial payment to the papers already in possession. We insert in the margin,* a table of the cost of admission to AP in accordance with its present rule, requiring the payment of ten per cent of the aggregate past assessments paid in the assessing areas since 1900. The "asset value" of six of the UP contracts was under \$10,000; of twenty it was between \$10,000 and \$20,000; of fifteen, between \$20,000 and \$30,000; of six, between \$30,000 and \$40,000; of four, between \$40,000 and \$50,000; of one, between \$50,000 and \$60,000; and of one, between \$60,000 and \$70,000. There are no figures, so far as we can find, as to INS.

There are in this country, at least twenty to thirty other news agencies of various kinds; of these the most important are the Chicago Tribune-New York News Syndicate, the [fol. 3153] New York Herald Tribune Syndicate, and the New York Times News Syndicate. Each of these furnishes its service to any subscriber who meets its terms, but will ordinarily not furnish the service to two subscribers in the same city. It is not necessary to explain in detail the extent of these services; they are all substantial, but depend for the most part upon their own news gathering, as they are forbidden to distribute AP news by virtue of the AP by-laws. In competition with AP's picture service is Acme News Photos, Inc. There is so much dispute as to the rela-

	<i>Morning and Sunday</i>	<i>Evening</i>
New York	\$824,333.82	\$575,003.49
Chicago	334,250.46	342,310.35
Detroit	152,789.68	154,606.86
Los Angeles	228,126.82	134,709.80
St. Louis	182,323.42	186,882.23
Baltimore	169,163.78	148,658.13
Boston	253,680.16	218,917.92
Cleveland	144,865.63	131,474.18
Philadelphia	286,719.35	288,115.26
Pittsburgh	188,598.87	147,606.41
Washington, D. C.	118,930.08	88,293.20

tive efficiency of these two services that we must take it that Acme is at least the equal of AP. There have been a number of newspapers which have grown to very large size without AP service; the New York Daily News is an outstanding example, reaching a circulation of 1,200,000 before it became a member. The Chicago Sun,—which has never succeeded in becoming a member—in July, 1942, had attained a circulation of 327,000, and a Sunday circulation of over 400,000. Among others of very substantial circulation are the Cleveland Press, the Pittsburgh Press, the East St. Louis Journal, and the Harrisburg Evening News. Until 1937 the New York Daily Mirror, and until 1936 the New York Journal, each achieved extremely large circulations indeed, without membership.

In 1941 AP bought all the shares of Wide World Photos, Inc. This company had been furnishing news pictures to newspapers—both members of AP and others; and it was in competition with AP, which paid \$359,000 for its business in the western hemisphere and in all possessions of the United States. The seller—the New York Times—agreed not to sell news pictures in this territory for fifteen years; it had found the Wide World Photos, Inc., not a profitable undertaking, and that AP itself furnished adequate picture service. Six hundred and thirty-seven out of the 1274 members of AP took the AP picture service, which it rendered to members alone. At the time of the transfer, the Wide World Photos, Inc. had 127 customers in all parts of the world—sixty of whom were English language newspapers in the United States. Forty-three of these were members of AP and eighty-four were not: of the forty-three AP members, all but seven also took pictures from AP. After buying the share, AP changed the name of its picture service to “Wide World Features”, and advertised it as the most complete coverage of news photographs and features. The old Wide World service has now been discontinued as to every subscriber in the United States who is not an AP member, except the newspaper, “PM.” One of the important assets purchased was the “morgue” *i. e.* a large collection of pictures suitable for publication.

The Canadian Press is the Canadian counterpart of AP; its by-laws provide: “No member shall furnish news * * * of the Canadian Press nor his own local news to which the Corporation has exclusive rights, to any person in Canada who is not a member of the Corporation,

nor to any United States news agency or newspaper other than the Associated Press and its members." On November 1, 1935, AP and the Canadian Press agreed that the Canadian Press would furnish its news exclusively to AP outside of its own territory, and would prevent any of its members from furnishing its own news or local news to any newspapers or agencies other than AP and its members. The consideration for this promise was a similar promise by AP not to sell to anyone other than the Canadian Press in Canadian territory. On September 15, 1942, the Canadian Press had eighty-seven regular members and one associate member, and in February, 1943, there were at least seven daily newspapers in the Dominion of Canada which were not members of the Canadian Press. The aggregate circulation of members of that association was 2,305,203; and of those who were not its members, 116,583. UP has a wholly owned subsidiary, called the British United Press, which covers Canadian news. Its subscribers in Canada are fifty-three newspapers and thirty-nine radio stations; it exchanges news with UP. All Canadian radio stations which are subscribers to the British United Press must supply their local news to it. INS, The Chicago [fol. 3155] Tribune and the New York Times, also have newsgathering means in Canada.

The by-laws of AP are in effect agreements between the members: that one which restricts AP to the transmission of news to members, and that which restricts any member to transmitting "spontaneous" news to the association, are both contracts in restraint of commerce. They restrict commerce because they limit the members' freedom to relay any news to others, either the news they learn themselves, or that which they learn collectively through AP as their agent. The commerce which they restrict is interstate commerce. *Associated Press v. National Labor Relations Board*, 301 U. S. 103. However, as everyone now agrees, since the decisions of the Supreme Court in *Standard Oil Company v. United States*, 221 U. S. 1, and *American Tobacco Company v. United States*, 221 U. S. 106, restriction alone is not enough to stamp a combination as illegal; it must be "unreasonable" in the sense that the common-law understood that word; and that never has been, and indeed in the nature of things never can be, defined in general terms. Courts must proceed step by step, applying retroactively the standard proper for each

situation as it comes up, just as they do in the case of negligence, reasonable notice, and the like. As good a statement as any of the common-law upon the subject is that in the Restatement of Torts (§ 765, Vol. IV, Comment on Subsection 2): "Decision in each case depends upon a comparative appraisal of the values of the object sought to be accomplished by the actors' conduct, the effects of such conduct and of the object on competition and on business enterprise, and the opposing interests of the actors in freedom of action and of the person harmed in freedom of opportunity to do business." Again, "self-interest particularly a purpose to advance the business interest of the actors, may be a justification even though the harm caused by the refusal" (to deal) "is intended to be the means of advancing that interest."

There are some situations in which the liabilities have now become settled. No combination fixing prices is valid; [fol. 3156] it is no excuse that some such arrangement may be necessary to prevent destructive price wars or the like. Whatever doubts were thrown upon *United States v. Trenton Potteries Company*, 273 U. S. 392, by *Appalachian Coals, Inc. v. United States*, 288 U. S. 344, 375, and *Sugar Institute, Inc. v. United States*, 297 U. S. 553, 599, have been finally laid in *United States v. Socony-Vacuum Oil Co.*, 310 U. S. 150, 210-228. Again, if a combination effectively excludes, or tries to exclude, outsiders from the business altogether, it is a monopoly, or an incipient monopoly, and it is unconditionally unlawful. *Addyston Pipe & Steel Co. v. United States*, 175 U. S. 211; *Montague v. Lowry*, 193 U. S. 38; *Fashion Originators' Guild v. Federal Trade Commission*, 312 U. S. 457; *American Medical Association v. United States*, 317 U. S. 519. That is indeed the standard type of an illicit combination. A third instance is an attempt indirectly to extend the scope of a lawful monopoly: *e. g.* a patent or a copyright, beyond the terms of the grant, even though the sanction employed is no more than the monopoly itself. *Standard Sanitary Manufacturing Co. v. United States*, 226 U. S. 20; *Interstate Circuit, Inc. v. United States*, 306 U. S. 208; *Ethyl Gasoline Corporation v. United States*, 309 U. S. 436. Finally, a combination may be illegal because of the means used to effect purposes lawful in themselves; and the means may be unlawful although it would not be, if used by a single person. It is arguable that a boycott, for instance, is always

such a means: *i.e.* any use by a combination of its economic power to force a third person not to deal with another whom the combination wishes to coerce. At least, there is language in the books which lends itself to such a conclusion. *Loewe v. Lawlor*, 208 U. S. 274; *Duplex Printing Press Co. v. Deering*, 254 U. S. 443; *Bedford Cut Stone Co. v. Journeymen Stonecutters' Association*, 274 U. S. 37; *Fashion Originators Guild v. Federal Trade Commission*, *supra* (312 U. S. 457). It is unnecessary to enumerate more of those means which have been condemned; and indeed, since they are generally part of an effort to monopolize, it is not always easy to be sure that that has not been the basis of their condemnation.

But these settled instances are not exhaustive; they are only illustrations of a general doctrine, whose scope they do not measure. When a situation does not fall within one of them, a court is forced to weigh the advantages gained by the combination against the injury done to the public, and apparently in this connection the public is the "purchasers or consumers" whom the combination will deprive "of the advantages which they derive from free competition." *Apex Hosiery Co. v. Leader*, 310 U. S. 469, 501. It is not necessarily enough that a combined refusal to deal with others always has a weightier impact than that of an individual; as courts have frequently recognized that it must have. *Grenada Lumber Co. v. Mississippi*, 217 U. S. 433, 440; *Binderup v. Pathe Exchange, Inc.*, 263 U. S. 291, 312; *Federal Trade Commission v. Raymond Bros.-Clark Co.*, 263 U. S. 565, 573, 574. That is indeed a most important element, but alone it will not always serve; a combination may be within its rights, although it operates to the prejudice of outsiders whom it excludes. *Anderson v. United States*, 171 U. S. 604; *Appalachian Coals, Inc. v. United States*, *supra* (288 U. S. 344); *Matthews v. Associated Press*, 136 N. Y. 333. This is illustrated in addition by those decisions in which, although the court finally condemned a trade association, it went to great lengths to find its apparently innocent regulations a cover for price-fixing; the clear implication being that, without that element, the combination would have been lawful. *Eastern States Lumber Association v. United States*, 234 U. S. 600; *American Column & Lumber Co. v. United States*, 257 U. S. 377; *United States v. American Linseed Oil Co.*, 262 U. S. 371; *Sugar Institute, Inc. v. United States* *supra*, 597 (297

U. S. 553). On the other hand, in cases like *Anderson v. Shipowners' Association*, 272 U. S. 359; *Paramount Famous Lasky Corp. v. United States*, 282 U. S. 30; and *United States v. First National Pictures, Inc.*, 282 U. S. 44, although the combination did not try to fix prices, or altogether to exclude outsiders from the industry, but only to impose [fol. 3158] conditions upon their freedom of action, the injury imposed upon the public was found to outweigh the benefit to the combination, and the law forbade it. We can find no more definite guide than that.

Certainly such a function is ordinarily "legislative"; for in a legislature the conflicting interests find their respective representation, or in any event can make their political power felt, as they cannot upon a court. The resulting compromises so arrived at are likely to achieve stability, and to be acquiesced in: which is justice. But it is a mistake to suppose that courts are never called upon to make similar choices: *i. e.* to appraise and balance the value of opposed interests and to enforce their preference. The law of torts is for the most part the result of exactly that process, and the law of torts has been judge-made, especially in this very branch. Besides, even though we had more scruples than we do, we have here a legislative warrant, because Congress has incorporated into the Anti-Trust Acts the changing standards of the common-law, and by so doing has delegated to the courts the duty of fixing the standard for each case. Congress might have proceeded otherwise; it might have turned the whole matter over to an administrative tribunal, as indeed to a limited extent it has done to the Federal Trade Commission. But, though it has acted, it has left these particular controversies to the courts, where they have been from very ancient times.

As we have said, the crucial by-laws of AP are those which deal with the admission of members, for the fate of the others which the plaintiff challenges depends upon them. They give power to the directors to admit an applicant without condition of any sort and without the consent of any of the members, whenever he is publishing a paper in a "field" in a city in which there are no existing members: that is, in cases where the applicant is not competing with members directly, and does not propose to do so. So far the plaintiff does not object, for while it is true that such an applicant may still remotely compete, that competition may

be disregarded, as the defendants themselves disregard it. When however the applicant is competing in the same [fol. 3159] "field" in a city with existing members, the directors have no power to admit him except upon the consent ("waiver") of his competitors; and while these have no longer their former absolute veto, they retain what we may fairly call a conditional veto. They may require the applicant to get the vote of a majority of all regular members and to fulfill the entrance conditions which we have described. To put the power into the hands of the majority, of whom only a very few can be competitors of the applicant, certainly gives the appearance of liberalizing admission; and unquestionably it has somewhat done so. Indeed, there have at times been sharp election contests, whose conduct was incidentally not always edifying. But, although the change was some abatement of the competitors' earlier control, it by no means opened membership to all those who would be entitled to it, if the public has an interest in its being free from exclusion for competitive reasons, and if that interest is paramount. Although, as we have said, only a few members will have any direct personal interest in keeping out an applicant, the rest will not feel free to judge him regardless of the effect of his admission on his competitors. Each will know that the time may come when he will himself be faced with the application of a competitor; and that will be true even as to those in whose "field" no applicant has as yet appeared. Unless he supports those who now object to the admission of their competitor, he will not in the future be likely to get their support against his own. A by-law which leaves it open to members to vote solely as their self-interest may dictate, disregards whatever public interest may exist. It remains true that the situation may still be one of those in which, in the words of the Restatement, "self-interest * * * may be a justification even though the harm caused by the refusal is intended to be the means of advancing that interest"; but, the opposed interests must be assessed and balanced.

So much for the power of competing members to insist upon a vote of the majority. The conditions which they may exact when an applicant secures such a vote, are [fol. 3160] plainly designed in the interest of preventing competition. The first is the payment of ten per cent of all the assessments paid by members in the same "field"

for a period of over forty years; the payment to be distributed among those who have paid the assessments. This upon its face appears an exaction designed to compensate the applicant's competitors for the loss of their differential advantage, and incidentally to act as a deterrent. The defendants seek to justify it, however, upon the theory that it merely reimburses the competitors for that share in the capital assets which they must yield to him out of their collective interest. There are two answers to this. First, no such payment is required of an applicant who does not compete with any member, though he becomes equally a co-owner of the capital assets, and entitled to his share on any distribution. Second, the percentage was not in fact computed upon the value of the share in the capital assets to which an applicant becomes entitled on admission, even though we include in capital such questionable items as the employees' benefit fund (which, it would seem, could hardly be regarded as beneficial to members) or the value of the good-will (which, in part at any rate, must be dependent upon the power to exclude competitors). The evidence proves beyond doubt that, although the putative value of the assets, tangible and intangible, was a factor, the payments as a whole were also designed to compensate competitors for the loss in value of their membership, arising out of the applicant's improved position as a competitor. This was consistent enough with AP's position that membership is a purely personal privilege; but if that position be ill taken, the condition makes necessary the appraisal of the public interest. The other condition is that an applicant shall relinquish any exclusive right of his own to any news, and news picture, service; and shall "require" such service to be given on the same terms as he enjoys it, to any one of his competitors who demands it. To require him to relinquish his own exclusive rights may perhaps be "reasonable," but certainly it is not so to require him to secure similar rights to others. That may prove a complete bar to the admission of any applicant who is already a member of a news service not automatically open to all comers.

Is it permissible to treat membership in AP as a purely proprietary privilege? It is not a monopoly in the sense that membership is necessary to build up, or support, even a great newspaper. Such papers have been founded and have thriven without it; they have abandoned it, after they

have used it. Indeed, there appear to be some who think that UP is a better service, at least in some departments, perhaps in all. But monopoly is a relative word. If one means by it the possession of something absolutely necessary to the conduct of an activity, there are few except the exclusive possession of some natural resource without which the activity is impossible. Most monopolies, like most patents, give control over only some means of production for which there is a substitute; the possessor enjoys an advantage over his competitors, but he can seldom shut them out altogether; his monopoly is measured by the handicap he can impose. *Fashion Originators' Guild v. Federal Trade Commission*, 114 Fed. (2) 80, 85 (C. C. A. 2). And yet that advantage alone may make a monopoly unlawful. It would be possible, for instance, to conduct some kind of a newspaper without any news service whatever; but nobody will maintain that, if AP were the only news service in existence, the members could keep it wholly to themselves and reduce all other papers to such news as they could gather by their own efforts. The very virtues of the founders which had achieved their unique position, would force upon them hospitality to applicants. Nor need AP be even the best of all existing services; it might be enough that it was the largest and most popular, and that there was a substantial body of opinion in the calling which believed it to be the best. Its popularity is proved by the enormous preponderance of its members, both in number and in circulation; as well as by the fact that, out of nearly a thousand members of UP almost a third are also AP members. No decision of ours as to the relative merits of the two would convince those who may chance to prefer it; the grievance [fol. 3162] of being unable to choose his own tools is not assuaged, when a court finds that the user does not understand his interest. And so, even if this were a case of the ordinary kind: the production of fungible goods, like steel, machinery, clothes or the like, it would be a nice question whether the handicap upon those excluded from the combination, should prevail over the claim of the members to enjoy the fruits of their foresight, industry and sagacity. But in that event the only interest we should have to weigh against that of the members would be the interest of the excluded newspapers. However, neither exclusively, nor even primarily, are the interests of the newspaper industry conclusive; for that industry serves one of the most vital

of all general interests: the dissemination of news from as many different sources, and with as many different facets and colors as is possible. That interest is closely akin to, if indeed it is not the same as, the interest protected by the First Amendment; it presupposes that right conclusions are more likely to be gathered out of a multitude of tongues, than through any kind of authoritative selection. To many this is, and always will be, folly; but we have staked upon it our all.

News is history; recent history, it is true, but veritable history, nevertheless; and history is not total recall, but a deliberate pruning of, and culling from, the flux of events. Were it possible by some magic telepathy to reproduce an occasion in all its particularity, all reproductions would be interchangeable; the public could have no choice, provided that the process should be mechanically perfect. But there is no such magic; and if there were, its result would be immeasurably wearisome, and utterly fatuous. In the production of news every step involves the conscious intervention of some news gatherer, and two accounts of the same event will never be the same. Those who make up the first record—the reporters on the spot—are themselves seldom first hand witnesses; they must take the stories of others as their raw material, checking their veracity, eliminating their irrevelancies, finally producing an ordered version which will evoke and retain the reader's attention [fol. 3163] and convince him of its truth. And the report so prepared, when sent to his superiors, they in turn "edit," before they send it out to the members; a process similar to the first. A personal impress is inevitable at every stage; it gives its value to the dispatch, which without it would be unreadable. So much for those items which actually appear in all the larger news services, and which include all events of major interest. But these are not all: the same personal choice which must figure in preparing a dispatch, operates in deciding what events are important enough to appear at all; and about that men will differ widely; as we often find, when one service "carries" what others have thought too trivial; or may indeed have missed altogether.

For these reasons it is impossible to treat two news services as interchangeable, and to deprive a paper of the benefit of any service of the first rating is to deprive the reading public of means of information which it should

have; it is only by cross-lights from varying directions that full illumination can be secured. Nor is it an answer that the by-law challenged only applies to a "field," in which by hypothesis there is already an AP newspaper in which AP dispatches will appear. That is true, but the final product to the reader is not the AP dispatch simpliciter; but how and where it appears in the paper as it come before him. That paper may print it verbatim, or a summary of it, or a part of it. The last two are certainly as authentically new and original as the dispatch itself; they bear somewhat the same relation to it that it does to the first report, or that the first report does to the event or occasion. And, even though the whole dispatch be printed verbatim, its effect is not the same in every paper; it may be on the front page, or it may be in an obscure corner; depending upon the importance attached to it. The headlines may plangently call it to readers' attention, or they may be formal and unarresting. There is no part of a newspaper which is not the handiwork of those who make it up; and their influence is often most effective when most concealed.

But what, it is asked, are the limits of such a doctrine? Does it apply to the engagement of a single reporter by a [fol. 3164] single editor? Suppose the only source of information about momentous events in some remote region is a single exceptionally gifted correspondent: must any paper which engages him agree to admit all others on equal terms? Consistently, must we not recognize the overriding public interest in his reports, particularly since in such a case his employer will otherwise have a monopoly? The answer to such questions need not embarrass us: their pertinency presupposes that whatever is true in small matters, must be true in large; and the greater part of the law is founded upon a denial of exactly that; for in law differences in quantity again and again become decisive differences in quality. We need not therefore say how important the control of news in any supposititious case must be in order to demand relief; it is enough that in the case at bar AP is a vast, intricately reticulated, organization, the largest of its kind, gathering news from all over the world, the chief single source of news for the American press, universally agreed to be of prime consequence. Wherever may be the vanishing point of public concern with any particular source of information, that point is far beyond this service.

Finally, we are told that what we propose is equivalent to declaring that the business is "clothed with a public interest", and that that is beyond the powers of a court. There are decisions which so declare, although we do not consider as among them *Atchison, Topeka & Santa Fe v. Denver & New Orleans R. R. Co.* 110 U. S. 667, or *The Express Cases*, 117 U. S. 1. However, we could even assume *arguendo* that in the absence of any legislative action, courts will not undertake to say when any activity has enough public importance to demand their intervention. For, although any such conclusion is flatly contrary to the well-settled common law of contracts in restraint of trade, Congress, as we have said, has already acted, and it has acted by selecting the standard of the common-law as the measure of its will. Historically that standard can only be applied by assessing the public importance of the activity which by hypothesis has been restricted; and practically no other conceivable standard is rationally available. So far therefore as the [fol. 3165] conclusion, when the public aspect of the activity prevails, involves a declaration that it is "clothed with a public interest," in administering the Anti-Trust Acts courts must so declare, as they have independently of those acts declared from time immemorial. The unhappy metaphor itself is ordinarily used in cases where a legislature sets up a developed system of positive regulation, with whose administration it charges some agency created for the purpose. Obviously, that requires a legislative decision as prelude; and obviously, courts cannot discharge such duties. But there is no warrant for holding that the failure of Congress specifically to say that all activities are to be deemed so "clothed", whenever the courts find them to be, shall deny power to the courts to effect the legislative will. Indeed, the whole matter is a red herring which should no longer be allowed to break the scent. Since *Nebbia v. New York*, 291 U. S. 502, there cannot be any excuse for misunderstanding the matter—there has really been none since *Munn v. Illinois*, 94 U. S. 113. "If one embarks in a business which public interest demands shall be regulated, he must know regulation will ensue." "The phrase * * * can in the nature of things mean no more than that an industry, for adequate reasons, is subject to control for the public good." *Nebbia v. New York* *supra*, 534, 536 (291 U. S. 502).

We conclude therefore that the present by-laws of AP unlawfully restrict the admission of members; and that further enforcement of them should be enjoined. We shall not attempt to say what conditions may be imposed; we hold no more than that members in the same "field" as the applicant shall not have power to impose, or dispense with, any conditions upon his admission, and that the by-laws shall affirmatively declare that the effect of admission upon the ability of an applicant to compete with members in the same "field" shall not be taken into consideration in passing upon his application. It is of course true that the members may disregard the last provision in practice; but that is not to be assumed. At any rate, we think that the plain-[fol. 3166] tiff is entitled to that much positive assurance in the organic law; and it is as far as we can go.

The second charge is against the by-law which forbids the communication of news by AP to non-members, and of "spontaneous" news by members to non-members. The defendants answer as to the agreement not to disclose "spontaneous" news, that it is ancillary to the collection and transmission to AP of that news itself. News, they argue,—as its very name implies—has no value after it has once been published; if a member were free to impart "spontaneous" news to others who could use it before AP, the whole value of the grant would be gone. Even if a member were allowed to impart it to others who could use it simultaneously, its chief value would be gone, for that rests upon priority. As to the agreement that AP shall not impart news collected by it to non-members, similar considerations apply; they would lose all benefit of the expenses incurred in its collection unless they had priority. It is well settled, they continue, that a restrictive covenant necessary to the protection of property transferred is "reasonable." The most common one is an agreement not to compete with the buyer of a business, or of a professional practice, for a limited time and in a limited territory; but that, they insist, is only one example of the general doctrine, which many and various decisions support. We quite agree with all this: taken by themselves, and apart from the restrictions upon membership, both agreements would be valid; it is essential to the protection of the main purpose that the member who furnishes "spontaneous" news, or AP itself, shall not destroy the value of what is transferred by making it available to others, before it can be published. Nevertheless,

in all such cases the power must not be incident to a combination which, though bound to admit all on equal terms, does not do so. *United States v. Terminal Railroad Association of St. Louis*, 224 U. S. 383; *United States v. Great Lakes Towing Co.*, 208 Fed. Rep. 733; affirmed 217 Fed. Rep. 656. While the present by-laws as to admission are in force, these agreements are parts of an unlawful combination, and they must be enjoined until the primary wrong is remedied.

The third charge is the purchase of all the shares of Wide World Photos, Inc.; and—no intent to monopolize being shown—that charge necessarily rests upon section seven of the Clayton Act, and, so in turn, upon whether the existing competition between AP and Wide World Photos, Inc., was “substantial.” Plainly, it was not; AP did not sell its picture service to outsiders; so that the only possible competition of Wide World Photos, Inc., was in diverting from AP its members who might otherwise have taken AP’s picture service. There were however only seven AP members, who subscribed to Wide World Photos, Inc. and did not subscribe to AP service. In these circumstances we cannot see how the purchase could have suppressed any but the most trivial competition. This part of the complaint must be dismissed.

The fourth and last charge is the “cartel”, or agreement, between AP and the Canadian Press that Canadian Press dispatches shall go only to AP members, and that AP dispatches shall go only to Canadian Press members. So far as by this means AP secures to its own members exclusively all Canadian Press dispatches, the contract falls within the ban of the restrictive covenants challenged in the second charge. It is true that AP’s only covenant is not to give its dispatches to newspapers in Canada which are not members of the Canadian Press, and that the Anti-Trust Acts are directed only to the protection of American interests; nevertheless, that covenant is the consideration for securing to AP members a monopoly of the Canadian Press dispatches, and condemns the contract as a whole. We can see no reason, however, why, if admission to AP were properly liberalized, it should not make such an agreement, whatever effect it may have in Canada. How far the Canadian law might forbid its execution there, is obviously not for us to decide.

In conclusion it is perhaps proper that we should say a word about the freedom of the press, since that question has been mentioned in the briefs. The effect of our judgment [fol. 3168] will be, not to restrict AP members as to what they shall print, but only to compel them to make their dispatches accessible to others. We do not understand on what theory that compulsion can be thought relevant to this issue; the mere fact that a person is engaged in publishing, does not exempt him from ordinary municipal law, so long as he remains unfettered in his own selection of what to publish. All that we do is to prevent him from keeping that advantage for himself. The argument appears to be that if all be allowed to join AP, it may become the only news service, and get a monopoly by driving out all others. That is perhaps a possibility, though it seems to us an exceedingly remote one; but even if it became an actuality, no public injury could result. For, if AP were open to all who wished the service, could pay for it, and were fit to use it, it would be no longer a monopoly: a monopoly of all those interested in an activity is no monopoly at all, for no one is excluded and the essence of monopoly is exclusion. AP would then be only a collective effort of the calling as a whole. If other services were incidentally driven out, that would not be an actionable wrong.

A judgment may therefore be entered enjoining the defendants from continuing to enforce the by-laws regulating the admission of members in their present form, but leaving it open to them to adopt substitutes which will restrict admission, provided that members in the same "field" as the applicant shall not have power to impose, or dispense with, any conditions upon his admission, and that the by-laws shall affirmatively declare that the effect of admission upon the ability of an applicant to compete with members in the same "field" shall not be taken into consideration in passing upon his application. The judgment will also enjoin the enforcement of the restrictive by-laws forbidding members to communicate "spontaneous" news to non-members. (On the argument, the plaintiff declared that it did not object to the by-law which confines AP dispatches to its own members. We do not know whether it still would not object, if the admission provisions remained as they are. [fol. 3169] An injunction against the enforcement of that by-law will depend upon its choice.) The judgment will further enjoin performance of the contract, or "cartel",

with the Canadian Press. In all other respects the complaint will be dismissed. Such a judgment will finally dispose of all the issues raised in the action upon the facts as they now are. However, it is appropriate and fair to provide that, if AP sees fit to amend its by-laws, governing the admission of members, it may have leave to apply in this action for supplemental relief upon the new state of facts. Moreover, in view of the disorganization which meanwhile might take place, if the injunction were enforced against the restrictive covenants as to the communication of news and against the Canadian Press contract, we will stay those injunctions for a period of 120 days after the judgment has been entered. That should be time enough for the defendants to decide what changes, if any, they care to make as to admission. Finally, because the interests involved are so important and so large; because the injury done may be so great, if we turn out to be wrong; and because we are not agreed, the whole judgment will be stayed for a period of sixty days after it is entered, and subsequently for the pendency of any appeal to the Supreme Court, if one is taken within that period.

The plaintiff will submit proposed findings and a proposed judgment; and will serve the same upon the defendants, who will submit any substitutes they may wish within thirty days thereafter.

[fol. 3170]

DISSENTING OPINION

SWAN, Circuit Judge (dissenting):

I regret that I am unable to concur in the decision of the court. Since my argument has not convinced my brothers, its validity is subject to grave doubt; nevertheless, I feel constrained to state briefly my reasons for differing with them.

This suit is founded upon alleged violations of the Anti-Trust Acts. The defendants are charged with having agreed to monopolize or unreasonably to restrain interstate commerce. It seems self-evident, and is not, I think, doubted by the majority opinion, that two newspapers might appoint a common agent to gather news and edit news reports for their common and exclusive use without running foul of the statutes. Such a case is thought to be differentiated from the present by the size and efficiency of the A. P. organization. I agree that what is true in small

matters is not necessarily so in large matters; that difference in degree may produce difference in legal result. But to violate the anti-trust law the combination, whatever its size, must tend to monopolize or to restrain unreasonably interstate trade. Clearly the provisions of A. P.'s by-laws as to admission of members have had no tendency to create a monopoly in news gathering—witness the growth of U. P., I. N. S., and other news gathering agencies. Nor is there proof that they have stifled competition between member newspapers and other newspaper owners or prospective publishers. Not a single instance has been adduced where a newspaper failed because it lacked an A. P. membership or was not started because the intending publisher could not obtain one. On the contrary, numerous papers have attained great success without such membership. What, then, is the ground for holding that the by-law provisions have resulted in an unreasonable restraint of trade either in news gathering or in newspaper publishing? Solely the court's view that a news gathering organization as large and efficient as A. P. is engaged in a public calling, and so under a duty to admit "all 'qualified' applicants on equal terms."

[fol. 3171] The only authority advanced by the plaintiff in support of the proposition that news gathering is a public calling is a discredited decision in *Inter-Ocean Pub. Co. v. Associated Press*, 184 Ill. 438, 56 N. E. 822. This litigation involved not the present A. P., but an earlier Illinois corporation whose charter granted it a power of eminent domain. The decision is contrary to *Matthews v. Associated Press of New York*, 136 N. Y. 333, 32 N. E. 981, as was recognized in *News Publishing Co. v. Associated Press*, 190 Ill. App. 77. It was explained in a later opinion by the Supreme Court of Illinois, *People v. Forest Home Cemetery Co.*, 258 Ill. 36, 41, 101 N. E. 219, as resting upon the existence of the power of eminent domain. The Supreme Court of Missouri repudiated the doctrine of the *Inter Ocean* case in *State ex rel. Star Publishing Co. v. Associated Press*, 159 Mo. 410, 60 S. W. 91.

The business of gathering news is not one of those occupations which were recognized at common law as affected with a public interest. A. P. has never held itself out as ready to serve all newspapers. Nor has it been granted the power of eminent domain or any other public franchise which might justify imposing the duty to serve all appli-

cants without discrimination. If such a duty is to be imposed on news gathering agencies, I think it should be by legislative, rather than judicial, fiat. In *Atchison, T. & S. F. R. Co. v. Denver & New Orleans R. Co.*, 110 U. S. 667, the question arose whether the Atchison was obliged to make joint traffic arrangements with the Denver & New Orleans on the same terms as it had granted to another connecting railroad. The court held that in the absence of appropriate legislation there was no such duty, saying at page 685:

“Were there such a statute in Colorado, this case would come before us in a different aspect. As it is, we know of no power in the judiciary to do what the Parliament of Great Britain has done, and what the proper legislative authority ought perhaps to do, for the relief of the parties to this controversy.”

[fol. 3172] Again, in *Express Cases*, 117 U. S. 1, which held that the railroads need not in the absence of a statute furnish to all independent express companies equal facilities for doing an express business upon passenger trains, it was said (p. 29): “The regulation of matters of this kind is legislative in its character, not judicial.” The same thought was expressed by Mr. Justice Brandeis with respect to the very subject of news gathering in his dissenting opinion in *International News Service v. Associated Press*, 248 U. S. 215, at 267:

“Courts are ill-equipped to make the investigations which should precede a determination of the limitations which should be set upon any property right in news or of the circumstances under which news gathered by a private agency should be deemed affected with a public interest. Courts would be powerless to prescribe the detailed regulations essential to full enjoyment of the rights conferred or to introduce the machinery required for enforcement of such regulations.”

Similar views have been announced in cases involving stock exchanges, cotton warehouses, and stockyards. *American Live-Stock Commission Co. v. Chicago Live-Stock Exchange*, 143 Ill. 210, 32 N. E. 274; *Heim v. New York Stock Exchange*, 64 Misc. 529, 118 N. Y. Supp. 591; *Ladd v. South-*

ern Cotton Press & M. Co., 53 Tex. 172; *Delaware, L. & W. R. Co. v. Central Stock Yard & Transit Co.*, 45 N. J. Eq. 50, 17 A. 146, affirmed 46 N. J. Eq. 280, 19 A. 185. And I find nothing in *Nebbia v. New York*, 291 U. S. 502, to contradict this view. There the New York legislature had acted; it had set up elaborate administrative machinery to regulate the milk industry. The chief question for decision was whether enforcement of Section 312(e) of the statute denied the appellant the due process secured to him by the Fourteenth Amendment. In sustaining the legislation, Mr. Justice Roberts remarked that so far as due process is concerned a state is free to adopt whatever economic policy may reasonably be deemed to promote public welfare, and to enforce that policy by legislation adapted to its purpose; [fol. 3173] and he added (p. 537) that "The courts are without authority either to declare such policy, or, when it is declared by the legislature, to override it."

In the case of a business which was not recognized as a public calling at common law, I believe it is sound policy to leave to the legislature to determine whether the public welfare requires that all applicants be served without discrimination. This is particularly true where the duty to serve all comers does not depend upon the mere nature of the occupation, but upon the fact that the particular business has reached such a stage of size and efficiency as to give the persons whom it serves some competitive advantage over applicants whom it declines to serve. At once the question occurs to the mind whether U. P., I. N. S., the New York Times News Syndicate, or any of the other news gathering agencies must also serve all comers. The problem of when such a stage is reached is one of economic policy which should be settled by legislation, rather than having the answer plotted gradually by successive judicial decisions. Furthermore, although the decree we are to enter takes the form of an injunction, in substance we are assuming the legislative function of prescribing the terms and conditions upon which newspapers shall be admitted to membership. We do not, it is true, affirmatively order an amendment of the by-laws, but we give leave to apply for a lifting of the injunction after they have been amended. How the directors or members of A. P. are to determine in advance of adoption whether a proposed amendment will be satisfactory to the court I cannot see, unless we are in effect to supervise a revamping of the bylaws. Such re-

vamping will require many changes in the present setup and will present many problems which I fear the Court may be ill-equipped to decide.

Finally, the Anti-Trust Acts are not, in my opinion, a justification for imposing on A. P. the duty to serve without discrimination all newspaper applicants. The case principally relied upon by the plaintiff to show that the Sherman Act may be used to secure indiscriminate service to all comers is *United States v. Terminal Railroad Association* [fols. 3174-3175] of *St. Louis*, 224 U. S. 383. In that opinion Mr. Justice Lurton pointed out that in ordinary circumstances a number of independent companies might lawfully combine for the purpose of acquiring terminals for their common, but exclusive, use, but by reason of the peculiar topographical situation the terminals acquired by the Association gave it control of every feasible means of railroad access to St. Louis; and the decision was based in large measure upon that fact (p. 405). Although the Government urged that the Association be dissolved, the court directed, on account of the obvious advantages of a unification of terminal facilities, that the defendants submit a plan of reorganization which should make the Association the bona fide agent and servant of every railroad line desiring to use its facilities. I do not regard the case as apposite to the situation at bar. As already pointed out, the Terminal Association had obtained a complete monopoly. But A. P. has no monopoly in news gathering. The most that the plaintiff can urge is that a newspaper which is excluded from A. P. membership "operates under a competitive disadvantage with A. P. members." Even if this allegation of the complaint, which the answer denies, be accepted as proved despite the evidence that U. P. claims its service to be superior and many newspapers have preferred it, I think such handicap of competitors insufficient to establish a violation of the Anti-Trust Acts. The majority opinion intimates that in the case of ordinary goods it might not suffice, but holds that it does in the case of news reports. To my mind the nature of a news report, which is the intellectual product of him who makes it, points to the conclusion that he may choose to whom he will disclose it, rather than to the conclusion that he is under a duty to disclose it to all applicants.

For the foregoing reasons I am of opinion that the motion for summary judgment should be denied.

[fol. 3176] IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

Findings of Fact and Conclusions of Law

Pursuant to Rule 52 (a) of the Federal Rules of Civil Procedure, the Court hereby makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The Associated Press (hereinafter referred to as AP) is a non-profit cooperative association of newspaper owners, incorporated in 1900 under the Membership Corporations Law of the State of New York.

2. The members of AP are and have been for many years a combination of newspaper owners acting together for the purpose of using their news gathering facilities and the news gathering facilities of the combination supported by them to obtain news which is made available to the members of the combination and denied to newspaper owners who are not members.

3. AP acts as the common instrumentality or agency of its members for the constant exchange between said members of news supplied to AP by its respective members, and also acts as a supplier to its members of news gathered by its own activities.

Members of AP

4. As of March 1, 1942, AP had 1,234 regular members and 13 associate members in the United States, which were enterprises publishing newspapers for profit.

5. The associate members of AP differ from the regular members of AP in that associate members are not entitled to vote and are not obligated to furnish their local news of spontaneous origin exclusively to AP.

6. An owner of a newspaper may acquire membership in AP, pursuant to its by-laws, by election, or by acquiring, by purchase or merger, the ownership of a newspaper for which its prior owner already held a membership in AP.

7. The by-laws of AP constitute an identical contract between the members of AP and between AP and each of its members.

8. AP has never held itself out to serve all newspapers.

By-laws of AP

9. The AP by-laws relating to admissions and to the exclusive right to local news of spontaneous origin have been observed, carried out and applied in practice.

10. The original by-laws of AP adopted September 19, 1900, are correctly set forth in Exhibit C attached to the complaint.

11. The significant changes in the by-laws of AP made between September 19, 1900, and April 20, 1942, are correctly set forth in Exhibit D attached to the complaint.

12. The by-laws of AP as amended April 20, 1942, and as in effect when the complaint was filed are correctly set forth [fol. 3178] in Exhibit E attached to the complaint; in February, 1943, Subdivision (a) of Section 2 of Article III was amended and the proviso therein contained was eliminated.

Operations of AP

13. The services supplied by AP to its members consist of (1) news reports, (2) news pictures, and (3) features.

14. AP's revenue is derived from assessments levied upon its members. The entire levy is allocated fundamentally upon a plan of distributing the total cost of AP's operations in proportion to the population served by the members. Each allotment is then divided among all the members in the same city and field of publication (morning, evening or Sunday) in proportion to their number and not to their circulations.

15. The principal sources of the domestic news which AP gathers and distributes are (1) its 1,247 members, each of which collects by its individual reporting staff and stringmen, and transmits to AP, the news of its locality and (2) AP's 94 news bureaus, with their reporting staffs, maintained throughout the United States and (3) AP's string correspondents.

16. The reporting staffs of 1,247 newspapers in the United States gather local news of their vicinages respecting unanticipated noteworthy events, such as airplane accidents, train wrecks, tornadoes, or mine disasters, which news is furnished in each instance to the newspaper itself and, in turn, is made available to AP. The effect of this arrangement is to make each member newspaper reporter also a reporter for AP. The total number of such reporters is large—the 18 AP newspapers specifically named defendants had, in August 1942, 755 full-time reporters (an average of 42 each) and 2,349 string reporters (an average of 130 each). However, it is the member newspapers which send news to AP, not the members' reporters. AP is entitled only to local news of spontaneous origin and not other [fol. 3179] news reports and articles submitted by the reporter to his own paper.

17. The principal sources of AP's foreign news reports are (1) its foreign bureaus, of which it had 17 during 1942, (2) foreign news agencies which supply AP with news reports under contract, and (3) its foreign string correspondents.

18. News gathered by AP is sent from these various sources, principally by telephone, telegraph or cable, to news assembly points established by AP at its main office in New York and in AP's territorial divisions of the United States, and at these assembly points is broken down, classified largely edited and rewritten, and redistributed by AP to other AP distributing offices and to its members. AP distributes such news from these assembly points to its members primarily over telegraph wires leased from public utilities and operated by AP. Trunk telegraph wires carry the news from the various assembly points to the principal cities of the United States and serve directly the AP members located in those cities. Regional and state wire circuits are utilized to relay the news distributed by AP to the members located in the smaller cities and outlying districts.

19. During the year 1942, AP had 1,940 full-time employees in the United States to whom it paid compensation amounting to \$5,737,491.21; 67 full-time employees in foreign countries to whom it paid compensation amounting to \$284,304.31; and 3,454 part-time reporters or stringmen to

whom it paid compensation amounting to \$205,929.91. AP's total operating expenses in 1942 amounted to \$11,305,577.84.

20. AP has accumulated tangible property estimated by it as having a value of more than \$7,000,000. In addition, its good will and other intangible property are appraised at a value of more than \$12,000,000.

21. In recent years, picture news has become a major competitive factor in the newspaper business.

[fol. 3180] 22. AP renders to its members an important news-picture service for which AP expended in the year 1941 \$1,680,447.60. This service included the Wirephoto service, whereby newsphotos, maps, charts, and other illustrations are sent to AP members with telegraphic speed over a circuit 16,000 miles long.

23. The service of features supplied by AP to its members includes news feature stories, with and without illustrations, news cartoons, comic strips, crossword puzzles and other feature material.

24. AP's wholly owned subsidiary Press Association, Inc., sells to radio stations bulletin news furnished to it by AP.

25. Many members of AP have at various times contributed news reports and services beyond their obligations to do so under the by-laws of AP and at their personal expense, in order to enable AP to improve the quality and coverage of its news reports and services.

26. AP has for many years furnished to its members news reports which embody the highest standards of accurate, non-partisan and comprehensive news reporting.

27. AP does not prevent or hinder non-member newspapers from obtaining access to domestic and foreign happenings and events.

28. There have been 1,890 additions to the membership of AP since 1900.

29. A large part of the value of news lies in its exclusiveness, reliability, and newness.

Interstate Operations of AP and Newspapers

30. AP, in collecting and disseminating news and news pictures, is engaged in interstate and foreign commerce.

31. Most of AP members regularly receive and publish in the state in which their newspapers are published news [fol. 3181] transmitted to them by AP from other states and regularly deliver local news to AP in the state in which their newspapers are published for transmittal to other states. Many AP members sell their newspapers, in the ordinary course of business, in states other than those in which they are published. Many AP members sell their newspapers in the state in which they are published for sale and delivery in other states.

32. The Chicago Sun, a newspaper published by Marshall Field in Chicago, Illinois, regularly obtains news reports from bureaus and correspondents located in different parts of the United States and foreign countries and regularly sells and delivers its newspapers from the State of Illinois to purchasers in other states. The Washington Times-Herald, a newspaper with morning and evening editions, is owned and published by Eleanor Medill Patterson in Washington, D. C., and sold throughout the District of Columbia.

Importance of Newspapers

33. Newspapers supply a necessity and serve one of the most vital of all general interests: the dissemination of news from as many different sources, and with as many different facets and colors as is possible.

34. The widest possible dissemination among the people of the United States of fresh, accurate, and world-wide news of current events and conditions is of vital importance to the national welfare, and newspapers are the chief media for its dissemination.

35. Newspapers accord to news dispatches which they receive different treatment as to the portions thereof which they publish, the time of publication, position in the composition of the newspaper, emphasis, related comment, headlines and the like.

[fol. 3182] Character and Importance of News Agencies

36. There are many news gathering organizations of one sort or another in the United States of which only

three, AP, United Press Associations (hereinafter referred to as UP) and International News Service (hereinafter referred to as INS), are comparable in size, scope of coverage and efficiency. There are in the United States at least 20 to 30 other news agencies which furnish substantial news reporting services. The most important of these are the Chicago Tribune-New York News Syndicate, the New York Times News Syndicate and the New York Herald Tribune Syndicate.

37. It is practically impossible for any one newspaper alone to establish or maintain the organization requisite for collecting all of the news of the world, or any substantial part thereof; aside from the administrative and organization difficulties thereof, the financial cost is so great that no single newspaper acting alone could sustain it.

38. At the present time, access to the news reports of one or more of AP, UP or INS is essential to the successful conduct of any substantial newspaper serving the general reading public.

Operations of UP

39. UP is a corporation organized in 1907 engaged for profit in furnishing news reports to newspapers subscribing for its service at rates agreed upon with its respective subscribers and stipulated in their respective subscription contracts.

40. UP, NEA Service, Inc. (hereinafter called NEA), Acme Newspictures, Inc. (hereinafter called Acme), and United Features Syndicate, Inc. (hereinafter called UFS) are under common control and supply the following services: (1) news reports, (2) news pictures, and (3) features.

[fol. 3183] 41. The principal sources of the domestic news reports which UP gathers and distributes are (1) 560 domestic daily newspapers, 24 domestic semi-weekly newspapers, and 457 domestic radio stations obligated by contract to furnish local news of spontaneous origin to UP, (2) its 61 news bureaus with their reporting staffs, maintained throughout the United States, and (3) its string correspondents.

42. The principal sources of UP's foreign news reports are (1) its foreign bureaus, of which it had 33 in 1942, (2) foreign news agencies which supply UP with news reports under contract, (3) a large number of foreign newspapers and radio stations which are subscribers to UP, and (4) its foreign string correspondents.

43. News gathered by UP is sent from these various sources, principally by telephone, telegraph, or cable, to news assembly points established by UP, and at these assembly points is broken down, classified, largely edited and rewritten, and distributed by UP to other UP distributing offices and to its subscribers. UP distributes such news from these assembly points to its subscribers, primarily over telegraph wires leased from public utilities. Trunk telegraph wires carry the news from the various assembly points to the principal cities of the United States and serve directly the UP subscribers located in those cities. Regional and state wire circuits are utilized to relay the news distributed by UP to the subscribers located in the smaller cities and outlying districts.

44. During the year 1942, UP had 797 full-time employees in the United States to whom it paid a compensation of \$2,378,308.43; 529 full-time employees in foreign countries to whom it paid a compensation of \$567,041.65; and 2,088 part-time reporters or stringmen to whom it paid a compensation of \$75,041.03. UP's total operating expenses for the year 1942 amounted to \$6,065,412.42.

45. UP's affiliate, NEA, and NEA's subsidiary, Acme Newspictures, Inc., hereinafter called Acme, both organized for profit, supply features and news pictures, including newsphotos, maps, charts, and other illustrations to newspapers by wire, mail and other methods appropriate to particular deliveries. NEA and Acme had 385 full-time employees in 1942.

46. The expenditures of NEA and Acme in connection with their services in 1941 were \$2,563,402.46, divided approximately evenly between features and pictures.

47. UP's subsidiary, UFS, organized for profit, supplies features, including feature mats, proof sheets, background maps, comics, cross-word puzzles, and other feature

material to newspapers. UFS had 75 full time employees in 1942.

48. The expenditures of UFS in connection with its feature service were approximately \$1,223,139.00.

49. In 1942, the employees, excluding string men, of UP, UFS, NEA and Acme, totaled 1,786.

50. In 1942, the combined expenditures of UP, UFS, NEA and Acme totaled \$10,033,502.04.

51. As of September 30, 1941, UP had in the United States 150 daily morning English language newspaper subscribers, 695 daily evening English language newspaper subscribers, 17 Sunday only English language newspaper subscribers, and 119 other newspaper subscribers, a total of 981 newspaper subscribers in the United States. In addition, UP had 391 foreign newspaper subscribers, or a total of 1,372 domestic and foreign newspapers subscribers.

52. In 1942, 1,060 newspapers received the picture service from or originated by NEA and Acme; 1,075 newspapers subscribed to the UFS feature service, of which 916 were domestic newspapers.

53. At the time of its organization in 1907, UP had 369 subscribers all of which were evening newspapers, and its total expenditures in that year were approximately \$250,000.

[fol. 3185] 54. The continuous expansion of the use of UP news reports by newspapers and other subscribers is shown by the following table:

<i>Year</i>	<i>UP Total Expenditures</i>	<i>Total Number of Newspaper and Other Subscribers</i>
1907.....	\$ 251,560.39	369
1913.....	651,750.49	496
1918.....	1,166,706.15	716
1923.....	2,306,699.14	901
1928.....	3,664,472.23	1,114
1933.....	3,615,886.09	1,182
1938.....	5,298,765.94	1,693
1941.....	6,647,863.61	1,991

55. The 1,991 subscribers of UP shown for the year 1941 included 1,399 newspapers, 471 radio stations, and 121 other subscribers to UP news services.

Operations of INS

56. INS, organized in 1909, is a department of King Features Syndicate, Inc., a corporation engaged for profit in furnishing news, news pictures and news features to newspapers. INS furnishes news reports to newspapers subscribing for its service at rates agreed upon with its respective subscribers and stipulated in their respective subscription contracts.

57. The principal sources of the domestic news reports which INS gathers and distributes are (1) 74 domestic newspapers, (2) its 31 news bureaus in the United States, with their reporting staffs, and (3) its string correspondents. It also receives information from time to time from 182 domestic radio stations.

58. The principal sources of INS's foreign news reports are (1) its foreign bureaus, of which it had 6 in 1942, (2) foreign news agencies which supply INS with news reports [fol. 3186] under contract, and (3) foreign newspapers and radio stations which are subscribers to INS, and (4) its foreign string correspondents.

59. News gathered by INS is sent from these various sources, principally by telephone, telegraph, or cable, to news assembly points established by INS, and at these assembly points is broken down, classified, largely edited and rewritten, and distributed by INS to other INS distributing offices and to its subscribers. INS distributes such news from these assembly points to its subscribers, primarily over telegraph wires leased from public utilities. Trunk telegraph wires carry the news from the various assembly points to many of the principal cities of the United States and serve directly the INS subscribers located in those cities.

60. The news picture service of International News Photo (hereinafter called INP), the news picture department of King Features Syndicate, Inc., includes news-photos, maps, charts and other illustrations which are sent by INP to its subscribers by wire, mail and other methods appropriate to particular deliveries.

61. The feature service of King Features Syndicate, Inc., includes feature mats, proof sheets, background maps, comics, cross-word puzzles and other feature material.

62. As of September 30, 1941, INS had 338 domestic newspaper subscribers and 182 domestic radio station subscribers.

63. During the year 1942, INS had 272 full-time employees in the United States to whom it paid a compensation of \$959,045.06; 41 full-time employees in foreign countries; 1,864 part-time reporters or stringmen to whom it paid a compensation of \$25,743.89. The total operating expenses of INS for the year 1941 amounted to \$2,622,744.45.

64. In 1941, the combined expenditures of King Features Syndicate, Inc., including its news service (INS), its picture service (INP) and its feature service were \$9,434,376.65.

[fol. 3187] Relative Position of AP Among News Agencies

65. Of the 1,853 English language daily newspapers of general circulation published in the United States in 1941, 1,769 with a total daily average circulation of over 41,861,577 received the news reports of one or more of AP, UP and INS, whereas the evening newspapers in the United States not receiving the reports of any of these three news agencies numbered 77 with a total circulation of 187,975 and the morning newspapers in the United States not receiving the reports of any of these three news agencies numbered seven with a total circulation of 30,839.

66. AP is a vast, intricately reticulated organization, the largest of its kind, gathering news from all over the world, the chief single source of news for the American press, universally agreed to be of great consequence.

67. There are differences between the respective news reports sent out by AP, UP and INS, since the facilities and opportunities of the news agencies for collecting news and transmitting it speedily differ and personal choices are involved in selecting events for news coverage and in preparing and editing accounts of the same event.

68. Most of the larger newspapers, as well as many smaller ones, find it desirable to, and do, subscribe to more

than one of the news services of AP, UP, and INS. During 1942, 342 AP members also subscribed to UP and 164 AP members also subscribed to INS. As of September 30, 1941, more than 600 domestic newspapers which were subscribers of UP were not members of AP.

69. Of the three news agencies, AP, UP and INS, AP ranks in the forefront in public reputation and esteem.

70. The growth of news agencies has been fostered to some extent as a result of the restrictions of The Associated Press' services to its own members, but other restrictions imposed by The Associated Press have hampered and impeded the growth of competing news agencies and of newspapers competitive with members of The Associated Press.

[fol. 3188] 71. Some newspapers in small, medium-sized and large cities have obtained large circulations in proportion to the population of the area served by them (a) without utilizing AP service, (b) by utilizing UP service alone, and (c) by utilizing INS service alone.

72. Some newspapers in small, medium-sized and large cities which are not members of AP successfully compete with newspapers which are members of AP.

73. Many newspapers prefer the foreign and financial news service of UP to the foreign and financial services of AP. Some newspapers prefer the domestic news service of UP to the domestic news service of AP.

74. There have been instances of members of AP surrendering their rights and taking on UP service, and vice versa.

75. The New York Daily News, a morning tabloid, with the largest circulation in the United States (over 2,000,000 daily and over 3,000,000 Sunday) established itself long before it became a member of AP. Prior to becoming a member of AP, it had achieved an average daily circulation of approximately 1,200,000.

76. The New York Daily Mirror, a morning tabloid, established in 1924, did not become an AP member until 1937. Prior to becoming a member of AP it used the reports of UP and INS exclusively. The Mirror's circulation was established and continued to grow during the years when it

relied upon these services exclusively. Its average daily circulation in 1936 was 603,621. Its Sunday circulation grew from 593,799 in 1932 to 1,340,911 in 1936.

77. The New York Journal established and maintained for years the largest circulation of any evening paper in the United States. From 1900 to 1937 it was not an AP member. Its circulation in 1936 before becoming an AP member was 620,902.

78. Cleveland Press, an evening newspaper, established in 1878, has consistently led the field in Cleveland both in [fol. 3189] circulation and advertising lineage. In 1942 the Cleveland Press had a circulation of 254,734 as against 128,011 for the Cleveland News, its AP competitor. It had advertising lineage of 11,809,000 during the same year as against 6,459,000 for the Cleveland News. The Cleveland Press is not now and never has been a member of AP. It uses the services of UP exclusively.

79. The Pittsburgh Press, an evening newspaper, established in 1884, has had a consistent record of success in competition with its AP rival, the Pittsburgh Sun Telegraph. It not only successfully competes but has a larger circulation by over 65,000. In advertising lineage it surpasses all newspapers in Pittsburgh. It has used UP and the Acme picture service exclusively.

80. The East St. Louis Journal used the news reports of UP until 1935. It used the news reports of INS from October, 1933 until November, 1938. Between January, 1935, and June, 1938, it used the news reports of INS exclusively. From November, 1938, to April, 1941, it used the news reports of Transradio Press exclusively. During each of these periods the paid circulation of the East St. Louis Journal increased. Its circulation in 1942 was 12,896.

81. The Harrisburg, Pa., Evening News is published in the City of Harrisburg, having a population of 83,893. The Evening News has never been a member of AP, nor has it sought such membership. It has operated at a profit since 1919, and in every year since 1923 its circulation has exceeded the circulation of the Harrisburg Telegraph, its AP competitor. Its circulation in 1942 was 64,038 as against 40,181 for the Telegraph.

82. The Chicago Sun began publication on December 4, 1941, and since that time has utilized the news service of UP. The circulation of the Chicago Sun in January, 1943, was the eleventh largest among all morning newspapers in the United States, and, excluding tabloid morning newspapers, the eighth largest. Its daily circulation in July, 1942, was 327,000, and its Sunday circulation was over [fol. 3190] 400,000. The daily circulation of the Chicago Tribune in September, 1941, was 1,065,000 and its Sunday circulation was 1,144,000. The Chicago Tribune began publication in 1848.

83. The circulation of the Washington Times-Herald had risen from 180,000 in 1939 to over 200,000 in 1942. It utilizes the news service of UP and INS but not AP.

84. AP exceeds UP in number of domestic newspaper subscribers, in domestic expenditures for collecting and transmitting news reports, in utilization of domestic physical facilities, in size of domestic staff, in number and geographical distribution of domestic news bureaus and in number and geographical distribution of domestic newspapers supplying it with news reports of their localities. AP exceeds INS in number of subscribers, in expenditures for collecting and transmitting news, in the length of news reports furnished, in physical facilities, in size of staff, in number and geographical distribution of news bureaus and their staffs, and in number and geographical distribution of newspapers supplying it with news of their localities.

85. The newspapers which are members of AP are 81% in number and 96% in circulation of the daily morning newspapers; those which are subscribers of UP are 40% in number and 64% in circulation of the daily morning newspapers; the newspapers which are members of AP are 59% in number and 77% in circulation of the daily evening newspapers published in the United States; those which are subscribers of UP are 45% in number and 65% in circulation of such daily evening newspapers.

86. Of the 373 daily morning English language newspapers published in the United States as of October 1, 1941, with a total circulation of 16,519,010, 304 as of March 1, 1942 (with a total circulation of 15,849,132 as of October 1, 1941), were members of AP; 152, with a total circulation of

10,701,498, were subscribers of UP; and 55, with a total circulation of 4,149,929, were subscribers of INS.

[fol. 3191] 87. Of the 1,480 daily evening English language newspapers published in the United States with a total circulation of 25,561,381, 887 as of March 1, 1942 (with a total circulation as of October 1, 1941, of 19,616,674) were members of AP; 664, with a total circulation of 16,781,020, were subscribers of UP; and 206, with a total circulation of 8,608,183, were subscribers of INS.

88. As of March 1, 1942, 302 daily morning English language newspapers, with a total circulation of 15,849,132, were regular AP members, obligated by contract to furnish their local news of spontaneous origin exclusively to AP.

89. Of the 64 daily morning English language newspapers in the United States having an average daily circulation in excess of 50,000, 63 were members of AP and 39 were subscribers of UP; of the 46 with an average daily circulation of between 25,000 and 50,000, 44 were members of AP and 23 were subscribers of UP; of the 17 daily morning English language newspapers with circulations of 200,000 or more, 16 were members of AP and 12 were subscribers of UP.

90. Daily morning English language newspapers which are regular members of AP are located in every state of the United States except Nevada and Wyoming.

91. As of August 1, 1942, 56 daily morning English language newspapers published in the United States, with a total circulation of 835,706, were subscribers of UP and not regular members of AP.

92. As of August 1, 1942, 52 daily morning English language newspapers published in the United States (of which three had an average daily circulation in excess of 50,000 and 11 had an average daily circulation in excess of 10,000) were obligated by contract to furnish their local news of spontaneous origin to UP and were not regular members of AP.

[fol. 3192] 93. As of August 1, 1942, 6 daily morning English language newspapers published in the United States, with a total circulation of 18,627, were subscribers of INS and not regular members of AP.

94. As of August 1, 1942, three daily morning English language newspapers published in the United States (each of which had an average daily circulation of less than 10,000) were obligated by contract to furnish their local news to INS and were not regular members of AP.

95. As of March 1, 1942, 877 daily evening English language newspapers published in the United States, with a total circulation of 18,812,988, were regular members of AP, obligated by contract to furnish their local news of spontaneous origin exclusively to AP.

96. Of the 95 daily evening English language newspapers in the United States having an average daily circulation of 50,000 or more, 72 were members of AP, 73 were subscribers of UP and 39 were subscribers of INS; 22 were members of AP and not subscribers of UP and 23 were subscribers of UP and not members of AP. Of the 19 daily evening English language newspapers in the United States having an average daily circulation of 200,000, or more, 16 were members of AP, 15 were subscribers of UP and 7 were subscribers of INS; 4 were members of AP and not subscribers of UP, and 3 were subscribers of UP and not members of AP.

97. As of August 1, 1942, 412 daily evening English language newspapers published in the United States, with a total circulation of 4,980,109, were subscribers to UP and not regular members of AP.

98. As of August 1, 1942, 408 daily evening English language newspapers published in the United States (24 of which had an average daily circulation in excess of 50,000 and 73 of which had an average daily circulation in excess of 10,000) were obligated by contract to furnish their local news of spontaneous origin to UP and were not regular members of AP.

[fol. 3193] 99. As of August 1, 1942, 91 daily evening English language newspapers published in the United States, with a total circulation of 1,508,227, were subscribers of INS and not regular members of AP.

100. As of August 1, 1942, 71 daily evening English language newspapers published in the United States (2 of which had an average daily circulation in excess of 50,000 and 12 of which had an average daily circulation in excess

of 10,000) were obligated by contract to furnish their local news to INS and were not regular members of AP.

101. 112 AP member newspapers have established the practice of furnishing to the nearest AP bureau duplicate reports of all local news gathered by the staff of such member. In the offices of 581 of the members, AP has stationed its own employees who have access to the local news of the newspapers and have charge of seeing that such news is obtained by AP.

102. Of the 64 exclusively morning English language newspapers published in the United States which had an average daily circulation of over 50,000, all, except the Chicago Sun, are members of AP. All but two of the morning newspapers having a circulation of between 25,000 and 50,000 are members of AP.

103. INS has four morning newspaper subscribers which do not also receive the service of UP or AP, and four evening newspaper subscribers with circulations of 10,000 or more which do not also receive the services of UP or AP.

104. Out of approximately 300 newspapers in the United States having a daily circulation of 25,000, none subscribes to INS which does not also receive the service of UP or AP or both.

105. There are 496 cities in the United States in which none of the daily English language newspapers published therein is a member of AP.

[fol. 3194] RESTRICTIONS UPON ACCESS TO COMPETING
NEWS SERVICES

106. UP has entered into "asset value" contracts with 215 of its subscribers, scattered among 144 cities of the United States, whereby if another newspaper wishes to obtain UP service but will compete with a holder of an "asset value" contract, the newcomer must pay to the holder the amount stated as the "asset value" of his contract.

107. UP has entered into no asset value contracts covering morning papers in New York, Chicago, Washington, Philadelphia, Detroit, Los Angeles, Cleveland, Balti-

more, St. Louis, or Boston and no such contracts covering evening papers in New York, Washington, Philadelphia, Detroit, Cleveland, Baltimore, St. Louis, Boston or Pittsburgh.

108. INS has entered into "asset value" contracts with 64 of its subscribers, scattered among 62 cities, whereby, if another newspaper wishes to obtain INS service but will compete with a holder of an "asset value" contract, the newcomer must pay to the holder the amount stated as the "asset value" of his contract.

109. The "asset value" of 7 of the INS contracts was under \$10,000; of 18 it was between \$10,000 and \$20,000; of 13 it was between \$20,000 and \$30,000; of 13 it was between \$30,000 and \$40,000; of 3 it was between \$40,000 and \$50,000; of 7 it was between \$50,000 and \$60,000; of 1 it was between \$60,000 and \$70,000; of 1 it was between \$90,000 and \$100,000; and of 1 it was \$199,188.60.

110. INS has entered into contracts with 13 of its newspaper subscribers whereby such subscribers are exclusively entitled to the news services of INS in their respective territories.

111. AP members publishing the only newspapers published in 17 cities of the United States are also parties to [fol. 3195] "asset value" contracts with both UP and INS. In nine other cities where all the newspapers in each of such cities are under the same ownership the AP member owner has "asset value" contracts also with both UP and INS. In 18 other cities either the only morning or the only evening newspaper published therein has the exclusive right to AP service and also "asset value" contracts with UP and INS.

FACTS SURROUNDING FORMATION OF AP

112. AP was organized in 1900 as the immediate successor of a former Illinois corporation of the same name (hereinafter referred to as AP of Illinois) as a result of the decision of the Supreme Court of Illinois in *Inter-Ocean Publishing Company v. Associated Press* 184 Ill. 438 (1900).

113. AP was organized to take over the business of AP of Illinois and to admit all members of AP of Illinois with rights and privileges as nearly as practicable exactly the same as those they enjoyed in AP of Illinois.

114. The most radical change made in the by-laws of AP when first adopted as compared with the by-laws of AP of Illinois was the conversion of an unqualified veto power of certain members over the admission of an applicant which competed with such members into a "right of protest" which, when exercised, had the effect of preventing the Board of Directors of AP from electing the applicant, but which could be overruled by the affirmative vote of four-fifths of all of the members of AP.

115. Over 90 per cent of the stockholders and members of AP of Illinois became members of AP in 1900.

116. Out of 603 original members of AP, 278 had possessed veto rights over the admission of competing applicants to AP of Illinois, and they were given "protest rights" in AP in defined territories ranging from a given city to a territory within a radius of 150 miles.

[fol. 3196] CERTAIN RECENT AMENDMENTS TO AP BY-LAWS

117. Under Section 2(a) of Article III of the by-laws of AP as in effect from April 1942 to February 1943, the respective amounts which applicants elected to membership in AP were required to pay their AP member competitors in order to obtain AP membership were as follows as of July 1, 1942, for the 11 largest cities of the United States:

City	Morning	Evening
New York	\$1,432,142.73	\$1,095,003.21
Chicago	416,631.90	595,772.31
Philadelphia	391,173.12	427,918.20
Detroit	273,929.91	300,702.16
Los Angeles	493,266.24	156,652.37
Cleveland	200,721.33	204,561.66
Baltimore	209,199.75	293,248.83
St. Louis	233,932.29	271,802.49
Boston	336,759.45	310,025.82
Pittsburgh	191,703.24	185,195.79
Washington, D. C.	184,421.49	182,974.50

118. Under Section 2(a) of Article III of the by-laws of AP as amended in February 1943 and now in effect, the respective amounts which applicants elected to membership in AP are required to pay their AP member com-

petitors in order to obtain AP membership are as follows for the 11 largest cities in the United States:

City	Morning and Sunday	Evening
New York	\$824,333.82	\$575,003.49
Chicago	334,250.46	342,310.35
Detroit	152,789.68	154,606.86
Los Angeles	228,126.82	134,709.80
St. Louis	182,323.42	186,882.23
Baltimore	169,163.78	148,658.13
Boston	253,680.16	218,917.92
Cleveland	144,865.63	131,474.18
Philadelphia	286,719.35	288,115.26
Pittsburgh	188,598.87	147,606.41
Washington, D. C.	118,930.08	88,293.20

[fol. 3197] 119. The amounts payable under Section 2(a) of Article III of the AP by-laws were not in fact computed upon the value of the share in the capital assets of AP to which a new member becomes entitled on admission.

120. No payment is required of an applicant for AP membership who does not compete with any existing AP membership although such applicant upon admission becomes equally a co-owner of the capital assets of AP.

121. Prior to April 20, 1942, AP never demanded of new members that they make any contribution to AP members or to AP.

ADMISSION TO AP BY ACQUIRING EXISTING MEMBERSHIPS

122. Thirty-five present members of AP, including the owners of The New York Daily News, The New York Sun, The New York Telegram, The New York Daily Mirror, The New York Journal-American and The Chicago Herald-American acquired their memberships pursuant to Section 4 of Article III of the AP by-laws, by acquiring, by purchase or merger, the ownership of newspapers from prior owners already members of AP.

123. In Metropolitan centers AP memberships have often been carried on the books of AP member newspapers at values upwards of \$1,000,000 and in the early twenties trans-

fers of such memberships were made for considerations well into the hundreds of thousands of dollars.

124. The owner of The Chicago Herald-American acquired its present morning membership in AP for a consideration of \$1,300,000.00.

125. The owner of The Chicago Sun offered to pay \$250,000.00 to purchase the morning AP membership of The Chicago Herald-American.

[fol. 3198] Bond Holder Vote

126. In 1942, out of 1,247 members of AP in the United States, there were only 99 newspaper corporations which held bonds of AP in the face value of \$1,000 or more, with the accompanying 40 extra votes for directorships attached to each such holding.

127. In only two instances since 1900 has the bondholder vote differed from the popular vote on the election of directors.

128. The bond holder vote is not permitted to vote on the admission of new members, but each member has only one vote on the admission of members.

129. Every holder of AP bonds has waived his right to receive interest thereon, and has thereby become entitled to the voting rights accompanying said bonds.

130. The bond holder vote rather than the membership vote completely controls the selection of AP directors.

131. In each of the years 1937-1942 the number of votes for each nominee for director cast by members because of their bond holdings greatly exceeded the member votes.

132. With respect to 45 of the 70 nominees for directorships during these years the bond holder vote was ten or more times as great as the membership vote.

The Canadian Press

133. In 1935, AP entered into an agreement with The Canadian Press which is still in effect and which has been observed and performed by the parties thereto.

134. The contract between AP and The Canadian Press, dated November 1, 1935, is correctly set forth in Exhibit

No. 1, attached to plaintiff's interrogatories propounded to AP.

[fol. 3199] 135. On September 15, 1942, The Canadian Press had a total of 87 regular members and one associate member, with a total daily average circulation of 2,305,203.

136. As of February, 1943, there were seven English language Canadian daily newspapers, with a total daily average circulation of 116,583, which were not members of The Canadian Press.

137. A wholly-owned subsidiary of UP, British United Press, operates in Canada and covers Canadian news. There are 53 Canadian newspapers and 39 Canadian radio stations which are subscribers to the news service of British United Press. UP and British United Press exchange their news reports. All Canadian radio stations which are subscribers to the service of British United Press are obligated to supply their local news to it.

138. INS, the Chicago Tribune, and the New York Times also have news-gathering facilities in Canada.

139. Many AP members maintain correspondents in Canada and have exchange of news report arrangements with Canadian newspapers.

Acquisition of Wide World Photos, Inc.

140. In 1941, AP for a consideration of \$359,025.58 acquired the entire capital stock of Wide World Photos, Inc., a New York corporation owned by the New York Times.

141. The contract between AP, The New York Times Company and Wide World Photos, Inc., for the purchase by AP of the capital stock of Wide World Photos, Inc., dated July 25, 1941, is correctly set forth in Exhibit No. 40, attached to plaintiff's first request for admissions addressed to the defendants.

142. At the time of this acquisition, Wide World Photos, Inc. had 127 customers (including 60 English language newspapers published in the United States) located in all [fol. 3200] parts of the world, of which 49 were members of AP and 78 were non-members.

143. Before this acquisition, AP had operated its own news picture service and AP, International News Photos,

an affiliate of INS, Acme News Pictures, Inc., an affiliate of UP, and Wide World Photos, Inc., were the four largest news photographic services in the United States.

144. 637 out of 1247 members of AP subscribed to AP's newspicture service.

145. Of the 49 AP members subscribing to the newspicture service of Wide World Photos, Inc., all but seven also took newspictures from AP.

146. Wide World was organized primarily for the purpose of furnishing newspictures for use by the New York Times. In order to reduce the cost of such pictures to the New York Times, Wide World sold newspictures to newspapers and others.

147. At the time of its acquisition by AP Wide World owned a library or morgue of newspictures in excess of one million in number, which was considerably more adequate than that of the Associated Press. Members of AP had complained of the inadequacy of its background pictures and it was consequently interested in acquiring such a morgue.

148. In every year the expenses of Wide World exceeded its income, and the New York Times considered that its cost to it was excessive.

149. The New York Times had decided to discontinue the operations of Wide World but was willing to sell it to The Associated Press.

150. By this acquisition AP augmented its newspicture service by making available to AP members a general type of newspicture which it had available theretofore only in small volume.

[fol. 3201] 151. There was no substantial competition between AP and Wide World at the time of the acquisition of Wide World by AP.

CONCLUSIONS OF LAW

I. The defendants by promulgating and agreeing to observe and by observing and applying By-laws of The Associated Press, whereby members of The Associated Press publishing newspapers in the same territory and in the same "field" (morning, evening or Sunday) as an applicant, publishing a newspaper in the United States of Amer-

ica or its territories, for membership in The Associated Press may impose, or dispense with, any conditions upon the admission of such applicant, and whereby the defendants, in passing upon an application of such applicant for membership, may take into consideration the effect of admission upon the ability of such applicant to compete with members of The Associated Press in the same territory and "field," have violated an act of Congress approved July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies."

II. The defendants, by promulgating and agreeing to observe and by observing and applying Article VII, Section 4, of the By-laws of The Associated Press withholding the news reports of The Associated Press from newspapers published in the United States of America or its territories, owned by persons other than members of The Associated Press, taken in connection with the by-laws and agreements described in Conclusion I hereof, have violated an act of Congress approved July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies."

III. The provisions of the by-laws of AP that AP should furnish its news reports to member newspapers only, taken by themselves and apart from the by-laws and agreements described in Conclusion I, are reasonable and are not in violation of the Anti-trust Statutes of the United States.

[fol. 3202] IV. The defendants, by promulgating and agreeing to observe and by observing and applying the provision of Article VIII, Section 6, of the By-Laws of The Associated Press that, "No member shall furnish, or permit anyone to furnish to anyone not a member of this Corporation the news which he or it is required by the By-Laws to supply to this Corporation", restricting the members of The Associated Press and persons in their employ from furnishing local news of spontaneous origin gathered by them to persons other than The Associated Press and its members, taken in connection with the by-laws and agreements described in Conclusion I hereof, have violated an act of Congress approved July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies."

V. The provisions of the by-laws of the defendant AP that each regular member furnish exclusively to AP local

news of spontaneous origin, taken by themselves and apart from the by-laws and agreements, described in Conclusion I, are reasonable and are not in violation of the Anti-trust Statutes of the United States.

VI. The defendant, The Associated Press, by entering into an agreement with The Canadian Press dated November 1, 1935, whereby The Associated Press obtains the exclusive right to receive the news reports of The Canadian Press and its members, and the defendants, by observing and performing said exclusive provisions of said agreement, taken in connection with the by-laws and agreements described in Conclusion I hereof, have violated an act of Congress approved July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies."

VII. The provisions of said contract between the defendant AP and The Canadian Press, taken by themselves and apart from the by-laws and agreements described in Conclusion I, are reasonable and are not in violation of the Anti-trust Statutes of the United States.

[fol. 3203-3204] VIII. The acquisition by The Associated Press of the capital stock of Wide World Photos, Inc., did not substantially lessen competition and was not in violation of an act of Congress approved July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," or of Section 7 of an act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes."

IX. AP does not monopolize or dominate the furnishing of news reports, news pictures, or features to newspapers in the United States.

X. AP does not monopolize or dominate access to the original sources of news.

XI. AP does not monopolize or dominate transmission facilities for the gathering or distribution of news reports, news pictures, or features.

Dated New York, N. Y., this 13th day of January, 1944.
Learned Hand, Augustus N. Hand, Thomas W. Swan,
Circuit Judges sitting as the District Court.

[fol. 3205] IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff,

against

THE ASSOCIATED PRESS, *et al.*, Defendants

JUDGMENT

This cause having come on for hearing before the Court upon a motion by the plaintiff for summary judgment, counsel for the parties having been heard, and the Court having determined, upon consideration of the pleadings, depositions, and admissions on file, together with the affidavits filed by the plaintiff and the defendants, that there is no genuine issue between the parties as to any material fact, and the Court having filed its opinion herein on the 6th day of October, 1943, and its findings of fact and its conclusions of law on the 13th day of January, 1944.

It is hereby ordered, adjudged and decreed as follows:

I

A. That the defendants, by promulgating and agreeing to observe and by observing and applying By-laws of The Associated Press, whereby members of The Associated Press publishing newspapers in the same territory and in the same "field" (morning, evening or Sunday) as an applicant, publishing a newspaper in the United States of [fol. 3206] America or its territories, for membership in The Associated Press may impose, or dispense with, any conditions upon the admission of such applicant, and whereby the defendants, in passing upon an application of such applicant for membership, may take into consideration the effect of admission upon the ability of such applicant to compete with members of The Associated Press in the same territory and "field", have violated an act of Congress approved July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies," and

B. That Article III, Sections 1-3, inclusive, of the By-laws of The Associated Press, presently in force, are declared and adjudged to be illegal, and are hereby cancelled, and The Associated Press, its officers, directors, agents,

representatives and employees, and each of its members, their officers, directors, agents, representatives, and employees, be, and each of them are, perpetually enjoined and restrained from agreeing to observe and observing said by-laws, and from promulgating, agreeing to observe and observing any new or amended by-laws having a like purpose or effect in respect of admission to The Associated Press of applicants publishing newspapers in the United States of America or its territories; provided, however, that nothing herein shall prevent the adoption by The Associated Press of new or amended by-laws which will restrict admission, provided that members in the same city and in the same "field" (morning, evening or Sunday), as an applicant publishing a newspaper in the United States of America or its territories, shall not have power to impose, or dispense with, any conditions upon his admission and that the by-laws shall affirmatively declare that the effect of admission upon the ability of such applicant to compete with members in the same city and "field" shall not be taken into consideration in passing upon his application.

[fol. 3207]

II

A. That the defendants, by promulgating and agreeing to observe and by observing and applying Article VII, Section 4, of the By-laws of The Associated Press withholding the news reports of The Associated Press from newspapers published in the United States of America or its territories, owned by persons other than members of The Associated Press, taken in connection with the by-laws and agreements described in Paragraph I hereof, have violated an act of Congress approved July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies," and

B. That Article VII, Section 4, of the By-laws of The Associated Press, presently in force, taken in connection with the by-laws and agreements described in Paragraph I hereof, is declared and adjudged to be illegal, and is hereby cancelled, and The Associated Press, its officers, directors, agents, representatives and employees, and each of its members, their officers, directors, agents, representatives and employees, be, and each of them are, enjoined and restrained from agreeing to observe and observing said by-

laws, and from promulgating, agreeing to observe and observing any new or amended by-laws having a like purpose or effect, in respect of newspapers published in the United States of America or its territories.

III

A. That the defendants, by promulgating and agreeing to observe and by observing and applying the provision of Article VIII, Section 6, of the By-laws of The Associated Press that, "No member shall furnish, or permit anyone to furnish to anyone not a member of this Corporation the news which he or it is required by the By-laws to supply to this Corporation," restricting the members of The Associated Press and persons in their employ from furnishing [fol. 3208] local news of spontaneous origin gathered by them to persons other than The Associated Press and its members, taken in connection with the by-laws and agreements described in Paragraph I hereof, have violated an act of Congress approved July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies," and

B. That the said provision in the first sentence of Section 6, Article VIII of the By-laws of The Associated Press, presently in force, taken in connection with the by-laws and agreements described in Paragraph I hereof, is declared and adjudged to be illegal, and is hereby cancelled, and The Associated Press, its officers, directors, agents, representatives, and employees, and each of its members, their officers, directors, agents, representatives and employees, be, and each of them are, enjoined and restrained from agreeing to observe and observing said by-laws, and from promulgating, agreeing to observe and observing any new or amended by-laws or agreements between The Associated Press and any members thereof having a like purpose or effect.

IV

A. That the defendant, The Associated Press, by entering into an agreement with The Canadian Press dated November 1, 1935, whereby The Associated Press obtains the exclusive right to receive the news reports of The Canadian Press and its members, and the defendants, by observing and performing said exclusive provisions of said

agreement, taken in connection with the by-laws and agreements described in Paragraph I hereof, have violated an act of Congress approved July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies," and

B. That the said exclusive provisions of said agreement between The Associated Press and The Canadian Press [fol. 3209] dated November 1, 1935, taken in connection with the by-laws and agreements described in Paragraph I hereof, are declared and adjudged to be illegal, and are hereby cancelled, and The Associated Press, its officers, directors, agents, representatives, and employees, be, and they hereby are, enjoined and restrained from performing and observing the said exclusive provisions of said agreement, and from entering into any other agreement with The Canadian Press having a like exclusive provision.

V

That leave is hereby granted the defendants to apply to this Court for modification or termination of Paragraphs IIB, IIIB and IVB hereof, upon furnishing satisfactory proof that they have amended the By-laws of The Associated Press in conformity with Paragraph I hereof.

VI

That jurisdiction of this cause is retained for the purpose of enabling the plaintiff or the defendants to apply to the Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this judgment, for the modification or termination of any of the provisions thereof, for the enforcement and compliance therewith, and for the punishment of violations thereof.

VII

That that portion of the complaint challenging as illegal the acquisition by The Associated Press of the capital stock of Wide World Photos, Inc., and praying that The Associated Press be required to divest itself of said stock and of all interest in Wide World Photos, Inc., be and it is hereby dismissed.

[fol. 3210]

VIII

That the operation of Paragraphs II, III and IV of this judgment be stayed for a period of one hundred and twenty days after the date upon which this judgment is entered, and that the entire judgment be stayed for a period of sixty days after the date upon which this judgment is entered, and subsequently for the pendency of any appeal to the Supreme Court of the United States, if an appeal is taken within said period of sixty days from the date upon which this judgment is entered.

Dated New York, N. Y., this 13th day of January, 1944.

Learned Hand, Thomas W. Swan, Augustus N. Hand,
Circuit Judges sitting as the District Court.

[fol. 3211] IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

PETITION FOR A DIRECT APPEAL TO THE SUPREME COURT OF
THE UNITED STATES

To The Hon. Learned Hand, Circuit Judge for the Second
Circuit; The Hon. Thomas W. Swan, Circuit Judge for
the Second Circuit; The Hon. Augustus N. Hand, Circuit
Judge for the Second Circuit:

Now come The Associated Press, Paul Bellamy, George Francis Booth, John Cowles, William Hutchinson Cowles, Edward King Gaylord, Houston Harte, Josh L. Horne, Clark Howell, Jr., Joseph Russell Knowland, Robert McLean, Leonard Kimball Nicholson, Frank Brett Noyes, Paul Patterson, Stuart Hoffman Perry, E. Lansing Ray, Edward Hubert Butler, The Adrian Telegram, The A. S. Abell Company, Bulletin Company, The Constitution Publishing Company, Cowles Publishing Company, The Evening Star Newspaper Company, Forest City Publishing Company, The Kansas City Star Company, The Oklahoma Publishing Co., The Register and Tribune Company, Rocky Mount Publishing Co., Globe Democrat Publishing Co., San Angelo Standard, Inc., The Times-Picayune Publishing Company, The Tribune Publishing Co., and Worcester [fols. 3212-3213] Telegram Publishing Co., Inc., defendants

herein and feeling themselves aggrieved by each and every part of the final judgment, order and decree of the District Court entered herein on the 13th day of January, 1944 (except paragraphs VII and VIII thereof), do hereby appeal from each and every part of said final judgment, order and decree (except paragraphs VII and VIII thereof), to the Supreme Court of the United States because of errors prejudicial to defendants which are set forth in the assignment of errors presented and filed herewith, and pray that their appeal be allowed and that citation be issued as provided by law and that the record on appeal be made and certified and sent to the Supreme Court of the United States, in accordance with the rules of that Court.

And your petitioners further pray that an order be made fixing the amount of security which your petitioners shall give and furnish upon such appeal.

Dated: March 9, 1944.

John T. Cahill, Thurlow M. Gordon, 63 Wall Street,
New York, N. Y.; Morris Hadley, Timothy N.
Pfeiffer, 15 Broad Street, New York, N. Y., Coun-
sel for above-named Defendants.

[fol. 3214] IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

ASSIGNMENT OF ERRORS

Come now The Associated Press, Paul Bellamy, George Francis Booth, John Cowles, William Hutchinson Cowles, Edward King Gaylord, Houston Harte, Josh L. Horne, Clark Howell, Jr., Joseph Russell Knowland, Robert McLean, Leonard Kimball Nicholson, Frank Brett Noyes, Paul Patterson, Stuart Hoffman Perry, E. Lansing Ray, Edward Hubert Butler, The Adrian Telegram, The A. S. Abell Company, Bulletin Company, The Constitution Publishing Company, Cowles Publishing Company, The Evening Star Newspaper Company, Forest City Publishing Company, The Kansas City Star Company, The Oklahoma Publishing Co., The Register and Tribune Company, Rocky Mount Publishing Co., Globe Democrat Publishing Co., San Angelo Standard, Inc., The Times-Picayune Publishing Company,

The Tribune Publishing Co., and Worcester Telegram Publishing Co., Inc., defendants herein, and file the following assignment of errors upon which they shall rely in the prosecution of the appeal to the Supreme Court of the United States herein petitioned for from each and every part of the order, judgment and decree (except paragraphs VII and VIII thereof) of the statutory three-judge District [fol. 3215] Court of the United States for the Southern District of New York entered on the 13th day of January, 1944.

The District Court of the United States for the Southern District of New York erred:

1. In concluding as a matter of law and in holding and adjudicating that the defendants, by promulgating and agreeing to observe and by observing and applying By-laws of The Associated Press (hereinafter called AP) whereby members of AP publishing newspapers in the same territory and in the same field'' (morning, evening or Sunday) as an applicant for membership in AP may impose or dispense with conditions upon the admission of the applicant, and whereby defendants in passing upon an application may consider the effect of admission upon the ability of the applicant to compete with members, have violated the Sherman Act.

2. In concluding as a matter of law and in holding and adjudicating that the defendants, by promulgating and agreeing to observe and by observing and applying Article VII, Section 4 of the AP By-laws providing that its news reports shall be furnished only to members, when taken in connection with AP By-laws relating to admission to membership or with the promulgation or observance thereof, have violated the Sherman Act.

3. In concluding as a matter of law and in holding and adjudicating that the defendants, by promulgating and agreeing to observe and by observing and applying the provision of Article VIII, Section 6 of the AP By-laws requiring its members to furnish local news of spontaneous origin gathered by them exclusively to AP, when taken in connection with AP by-laws relating to admission to membership or with the promulgation or observance thereof, have violated the Sherman Act.

4. In concluding as a matter of law and in holding and adjudicating that AP by entering into an agreement with [fol. 3216] The Canadian Press under which AP has the exclusive right to receive the news reports of The Canadian Press and its members, when taken in connection with AP by-laws relating to admission to membership or with the promulgation or observance thereof, has violated the Sherman Act, and in concluding as a matter of law and in holding and adjudicating that the defendants by observing and performing said exclusive provisions of said agreement, when taken in connection with AP by-laws relating to admission to membership or with the promulgation or observance thereof, have violated the Sherman Act.

5. In declaring and adjudging to be illegal and in cancelling Article III, Sections 1 to 3 of the By-laws of AP, and in enjoining AP, its officers, directors, agents, representatives and employees, and each of its members, their officers, directors, agents, representatives and employees, from agreeing to observe and observing said By-laws and from promulgating, agreeing to observe and observing any new or amended by-laws having a like purpose or effect in respect of admission of applicants to AP.

6. In declaring and adjudging to be illegal and in cancelling Article VII, Section 4 of the By-laws of AP, and in enjoining AP, its officers, directors, agents, representatives and employees, and each of its members, their officers, directors, agents, representatives and employees, from agreeing to observe and observing said By-law and from promulgating, agreeing to observe and observing any new or amended by-laws having a like purpose or effect.

7. In declaring and adjudging to be illegal and in cancelling the provision of Article VIII, Section 6 of the By-laws of AP requiring its members to furnish local news of spontaneous origin gathered by them exclusively to AP, and in enjoining AP, its officers, directors, agents, representatives and employees, and each of its members, their officers, directors, agents, representatives and employees, from agreeing to observe and observing said By-law and [fol. 3217] from promulgating, agreeing to observe and observing any new or amended by-laws having a like purpose or effect.

8. In declaring and adjudging to be illegal and in cancelling the exclusive provisions of the agreement with The Canadian Press whereby AP obtains the exclusive right to receive the news reports of The Canadian Press and its members, and enjoining AP, its officers, directors, agents, representatives and employees, from performing and observing the said exclusive provisions of said agreement and from entering into any other agreement with The Canadian Press having a like exclusive provision.

9. Although it correctly found that the growth of news agencies has been fostered as a result of the restrictions of AP services to its own members, in erroneously finding that there were other restrictions imposed by AP which have hampered and impeded the growth of competing news agencies and of newspapers competitive with members of AP.

10. Although it based its decision on the invalidity of certain AP By-laws *per se*, in nevertheless entering an erroneous finding that the AP By-laws relating to admissions and to the exclusive right to local news of spontaneous origin have been observed, carried out and applied in practice.

11. In subjecting the press and AP to such regulation and control as to violate the First Amendment to the Constitution.

12. In holding that the public interest requires AP or its members to serve those whom they do not wish to serve.

13. In basing its decision upon a discriminatory legal theory applicable only to the press, in violation of the First Amendment to the Constitution.

[fol. 3218] 14. In assuming a legislative power in requiring AP and its members to serve those whom they do not wish to serve, in violation of Article I, Section 1 and Article I, Section 8, Paragraph 18 of the Constitution.

15. In requiring AP and its members to serve those whom they do not wish to serve, and in depriving them of the right to determine the terms upon which their service shall be available, in violation of the Fifth Amendment to the Constitution.

16. In subjecting AP and its members, in their collection and distribution of news reports, news pictures and features, to federal regulation and control, in violation of the Ninth Amendment and the Tenth Amendment to the Constitution.

17. In granting an injunction in paragraph I of the judgment of vague and uncertain scope, contrary to Rule 65 (d) of the Federal Rules of Civil Procedure.

18. In granting any part of the Government's motion for summary judgment.

19. In not denying the Government's motion for summary judgment.

20. In holding that there was no genuine issue between the parties as to any material fact.

21. In entering judgment against the defendants, or any of them.

22. In not entering summary judgment against the plaintiff.

23. In not dismissing all of the complaint on the merits.

Wherefore, petitioners pray that that part of the final order, judgment and decree entered herein on the 13th day of January, 1944 appealed from be reversed and that such [fols. 3219-3220] other and further relief be granted as to the Court may seem just and proper.

John T. Cahill, Thurlow M. Gordon, 63 Wall Street,
New York, N. Y.; Morris Hadley, Timothy N.
Pfeiffer, 15 Broad Street, New York, N. Y., Coun-
sel for the above named Defendants.

Dated: March 9, 1944.

[fol. 3221] IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

ORDER ALLOWING APPEAL

Defendants, The Associated Press, Paul Bellamy, George Francis Booth, John Cowles, William Hutchinson Cowles, Edward King Gaylord, Houston Harte, Josh L. Horne,

Clark Howell, Jr., Joseph Russell Knowland, Robert McLean, Leonard Kimball Nicholson, Frank Brett Noyes, Paul Patterson, Stuart Hoffman Perry, E. Lansing Ray, Edward Hubert Butler, The Adrian Telegram, The A. S. Abell Company, Bulletin Company, The Constitution Publishing Company, Cowles Publishing Company, The Evening Star Newspaper Company, Forest City Publishing Company, The Kansas City Star Company, The Oklahoma Publishing Co., The Register and Tribune Company, Rocky Mount Publishing Co., Globe Democrat Publishing Co., San Angelo Standard, Inc., The Times-Picayune Publishing Company, The Tribune Publishing Co., and Worcester Telegram Publishing Co., Inc., having filed a petition for appeal to the Supreme Court of the United States from each and every part of the final judgment, order and decree entered herein on January 13, 1944 (except paragraphs VII and VIII thereof), and having filed their assignment of errors, it is

Ordered, that an appeal by the petitioners in the above entitled cause to the Supreme Court of the United States [fol. 3222] from each and every part of the final judgment, order and decree heretofore filed and entered herein on January 13, 1944 (except paragraphs VII and VIII thereof), be and the same is hereby allowed, and that the record on appeal be made and certified and sent to the Supreme Court of the United States in accordance with the rules of that Court, said appeal being hereby made returnable forty (40) days from the date hereof;

Ordered Further, that the bond on appeal, to be approved by this Court, is fixed at the sum of \$750.

Dated at New York, New York, this 9th day of March, 1944.

— United States Circuit Judge for the Second Circuit. Thomas W. Swan, United States Circuit Judge for the Second Circuit. Augustus N. Hand. United States Circuit Judge for the Second Circuit.

[fols. 3223-3225] Bond on appeal for \$750.00 approved.
Omitted in printing.

[fol. 3226] IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

PRÆCIPUE

To the Clerk of the United States District Court for the
Southern District of New York:

You are hereby requested to make a transcript of the record to be filed in the Supreme Court of the United States, pursuant to an appeal allowed in the above entitled cause on behalf of The Associated Press, Paul Bellamy, George Francis Booth, John Cowles, William Hutchinson Cowles, Edward King Gaylord, Houston Harte, Josh L. Horne, Clark Howell, Jr., Joseph Russell Knowland, Robert McLean, Leonard Kimball Nicholson, Frank Brett Noyes, Paul Patterson, Stuart Hoffman Perry, E. Lansing Ray, Edward Hubert Butler, The Adrian Telegram, The A. S. Abell Company, Bulletin Company, The Constitution Publishing Company, Cowles Publishing Company, The Evening Star Newspaper Company, Forest City Publishing Company, The Kansas City Star Company, The Oklahoma Publishing Co., The Register and Tribune Company, Rocky Mount Publishing Co., Globe Democrat Publishing Co., San Angelo Standard, Inc., The Times-Picayune Publishing Company, The Tribune Publishing Co., and Worcester Telegram Publishing Co., Inc., and to include in such transcript of record the following, and no other papers and exhibits, to wit:

1. Plaintiff's complaint and exhibits thereto A through F inclusive.

[fol. 3227] 2. Answer of defendant The Associated Press and certain other defendants, individual and corporate.

3. Answer of defendants Tribune Company and Robert Rutherford McCormick.

4. Expediting certificate filed by plaintiff pursuant to the Expediting Act of February 11, 1903, as amended.

5. Designation of three judges to hear the case.

6. Plaintiff's request for admissions filed January 6, 1943 and exhibits thereto 1 to 8 inclusive, 10 to 43 inclusive, and the text of exhibit 9.

7. Responses of defendants The Associated Press, et al., to plaintiff's request for admissions.

8. Plaintiff's second request for admissions and exhibits thereto 1-A, 1-B, 1-C, 2-A, 2-B, 2-C, 3-A, 3-B, 4-A, 4-B, 4-C, 5-A, 5-B, 5-C, 5-D, 6-A, 6-B and 6-C.

9. Responses of defendants The Associated Press, et al., to additional requests for admissions and exhibits thereto A, B, C, D, E and F.

10. Answers of defendants Tribune Company and Robert Rutherford McCormick to plaintiff's first and second requests for admissions.

11. Interrogatories of plaintiff to be answered by defendant The Associated Press and exhibits thereto 1 to 8 inclusive, and 10 to 13 inclusive.

12. Interrogatories of plaintiff to be answered by defendants Tribune Company and Robert Rutherford McCormick.

13. Answers of defendant The Associated Press to the interrogatories addressed to it by plaintiff.

14. Answers of defendants Tribune Company and Robert Rutherford McCormick to the interrogatories addressed to them by plaintiff, and exhibits thereto 1 to 18 inclusive, including exhibit 14A.

15. Interrogatories of plaintiff served upon defendants the Bulletin Company and Robert McLean, plaintiff's exhibits 1, 1a, 1B, 1C, 1D and 2 attached thereto, answers of defendants the Bulletin Company and Robert McLean to the interrogatories served upon them by plaintiff, and defendants' exhibits thereto A, B, B(1), B(2), B(3) and C.

16. Stipulation dated February 27, 1943 and exhibits thereto A, B, C and D.

17. Interrogatories on behalf of defendant The Associated Press, exhibits thereto 1 and 2, answers of plaintiff to those interrogatories, exhibits 1, 2-A and 2-B to those answers and, as printed by defendants The Associated Press, et al. for the benefit of the District Court, exhibits 3-A, 3-B and 5 to those answers, description of exhibits 4-A, 4-B, 6 and 7 to those answers.

18. Requests by defendant The Associated Press for admissions by the plaintiff, exhibits thereto A, B, C, D, E, F,

G, H, I, J, K and L, responses of plaintiff to such requests for admissions, and exhibits A, B and C to such responses.

19. Motion for summary judgment filed by plaintiff May 25, 1943.

20. Affidavits filed by plaintiff in support of its motion for summary judgment, exhibit 1 to the affidavit of Thomas J. Barry, exhibits 5, 6, 7, 8, 9, 12 and 14 to the affidavit of Marshall Field, exhibit A, B-1, B-2, C-3 and C-4 to the affidavit of Guy Raynor Hill, exhibits 1 to 8 inclusive to the affidavit of Alfred McClung Lee dated May 10, 1943, exhibit [fol. 3229] 1 to 14 inclusive to the affidavit of Alfred McClung Lee dated May 22, 1943, exhibits A, B, C and D to the affidavit of John Henry Lewin, exhibits A and B to the affidavit of N. S. MacNeish, exhibit A to the affidavit of J. A. McNeil, exhibits 1 and 2 to the affidavit of Thomas M. McNicholas, exhibits A and B to the affidavit of John J. Padulo, exhibits 1 to 6 inclusive to the affidavit of Harold L. Schilz dated May 24, 1943 and exhibits D, E, F, G, H, I and J to the affidavit of Edwin Moss Williams dated May 12 1943.

21. Affidavits filed on behalf of defendants Tribune Company and Robert Rutherford McCormick in opposition to the motion for summary judgment, exhibits 1 and 2 to the second affidavit of Robert Rutherford McCormick, exhibits 1 and 2 to the affidavit of William Donald Maxwell, exhibits A and B to the affidavit of Arch Ward and exhibits A, C and D to the affidavit of W. J. Byrnes.

22. Affidavits filed by defendants The Associated Press, et al. in opposition to motion of plaintiff for summary judgment (two volumes), exhibit 1 to the affidavit of Kent Cooper, exhibits A and B to the affidavit of Daniel J. Shiller dated June 19, 1943, exhibits 1 and 2 to the first affidavit of Edwin M. Williams dated June 17, 1943, exhibits 1 to 11 inclusive to the second affidavit of Edwin M. Williams dated June 17, 1943, exhibits 1 to 6 inclusive, including exhibit 5-a, to the affidavit of Fred S. Ferguson, exhibit 1 to the affidavit of Earl J. Johnson, exhibit A to the affidavit of William Mapel, exhibit 1 to the affidavit of Harold L. Cross, exhibits A, B, C, D and E to the affidavit of F. A. Resch, exhibits A, B and C to the affidavit of William W. Duson exhibit 1 to the affidavit of Paul Patterson, exhibit [fol. 3230] 1 to the affidavit of Vance C. McCormick, exhibit

One to the affidavit of V. Hummel Berghaus, Jr., exhibits A and B to the affidavit of Paul Miller, exhibit A to the affidavit of Mary Bauer, exhibit 1 to the affidavit of J. A. McNeil, exhibits A and B to the affidavit of Einar B. Paust, exhibits A and B to the affidavit of Timothy N. Pfeiffer, and exhibit 1 to the affidavit of Robert R. Booth.

23. Counter affidavits filed in support of plaintiff's motion for summary judgment, and exhibits A, B, C and D to the affidavit of John Henry Lewin.

24. Notice of defendants The Associated Press, et al. to take depositions upon oral examination.

25. Narrative statement of examinations before trial filed herewith, and the following exhibits filed in connection therewith: exhibits introduced by defendants in connection with examinations held in New York, 1, 2, 3, 4, 5, 6A, 6B, 8, 9, 10, 11, 12, 13, 14, 15, 16, 16A, 17, 22, 23, 25, 26, 27, 28, 30, 31, 32, 35, 38, 39, 40, 41, 42, 44, 45, 46, 48, 49, 50, 51; exhibits introduced by defendants in connection with examinations held in Chicago, 1, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15 to 33 inclusive; exhibits introduced by plaintiff in connection with examinations held in New York, 1, 2, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 17A, 18, 19, 20, 21, 22, 43, 44, 45, 46; and exhibit 2 introduced by plaintiff in connection with examinations held in Chicago.

26. Opinion of the District Court filed October 6, 1943, together with the dissenting opinion of Judge Swan.

27. Findings of fact and conclusions of law filed by the District Court on January 13, 1944.

28. Final judgment of the District Court filed January 13, 1944.

[fol. 3231] 29. Petition for appeal.

30. Assignment of errors.

31. Jurisdictional statement (including appendices A to D inclusive).

32. Order allowing appeal.

33. Citation on appeal.

34. Bond on appeal.

35. Statement calling attention to the provisions of Supreme Court Rule 12(3).

36. Proof of service.

37. This praecipe and service thereof.

Said transcript is to be prepared as required by law and the Rules of this Court and Rules of the Supreme Court of

the United States, and is to be filed in the office of the Clerk of the Supreme Court.

Dated: April 3, 1944.

John T. Cahill, Thurlow M. Gordon, 63 Wall Street,
New York 5, N. Y.; Morris Hadley, Timothy N.
Pfeiffer, 15 Broad Street, New York 5, N. Y.,
Counsel for the Above Named Defendants.

Copy of the above praecipe and narrative statement of examinations before trial received this 4th day of April, 1944.

Charles H. Weston, A, Lawrence S. Apsey, A,
Special Assistants to the Attorney General.

[fols. 3232-3233] [Title Omitted]

AFFIDAVIT OF SERVICE

STATE OF NEW YORK,
County of New York, ss.:

RICHARD HERMAN, being duly sworn, deposes and says:

1. I am over the age of eighteen years and not a party to this action.

2. On the 4th day of April, 1944, at or about 2:45 P. M. of that day, I served the annexed praecipe upon Charles Fahy, Solicitor General of the United States, Washington, D. C., by depositing a true and correct copy thereof in the post office box regularly maintained by the United States Government at 63 Wall Street, New York, New York, enclosed in a postpaid, sealed wrapper addressed to said attorney at the address above given.

Richard Herman.

Sworn to before me this 5th day of April, 1944.
Mario Lorenti, Notary Public, New York County
N. Y. Co. Clk's No. 293. Reg. No. 438-L-5. Kings
Co. Clk's No. -83. Reg. No. 334-L-5. Commission
expires March 30, 1945.

[fols. 3234-3237] Citation in usual form, filed March 9, 1944, omitted in printing.

[fol. 3238] IN THE DISTRICT COURT OF THE UNITED STATES,
FOR THE SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

PETITION OF TRIBUNE COMPANY AND ROBERT RUTHERFORD
McCORMICK FOR APPEAL TO THE SUPREME COURT OF THE
UNITED STATES

* * * * *

[fol. 3239] To The Honorable Learned Hand, the Honorable Thomas W. Swan and the Honorable Augustus N. Hand, Circuit Judges for the Second Circuit:

Now come Tribune Company, an Illinois corporation, and Robert Rutherford McCormick, defendants herein, and feeling themselves aggrieved by the final judgment of the District Court (except Paragraphs VII and VIII thereof) entered herein on the 13th day of January, 1944, pray an appeal therefrom (except said Paragraphs VII and VIII), jointly and severally, to the Supreme Court of the United States. The particulars wherein they consider the final judgment erroneous are set forth in their assignment of errors filed herewith. Wherefore, your petitioners pray that their appeal to the Supreme Court of the United States for the correction of the errors complained of be allowed and granted and that the record on appeal be made and certified and sent to the Supreme Court of the United States in accordance with the rules of that Court.

[fols. 3240-3241] Your petitioners further pray that an order be made fixing the amount of security which your petitioners shall give and furnish upon such appeal.

Dated: March 9, 1944.

Weymouth Kirkland, Howard Ellis, A. L. Hodson,
George T. Townley, J. Howard Carter, Attorneys
for Tribune Company and Robert Rutherford McCormick.

[3242] IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

ASSIGNMENT OF ERRORS

Now come the defendants Tribune Company a corporation, and Robert Rutherford McCormick, by Weymouth Kirkland, Howard Ellis, A. L. Hodson, George T. Townley and J. Howard Carter, their attorneys, and, having filed their petition for appeal herein, say the court committed errors to their prejudice as follows:

Assignments re Judgment Paragraph I A

The holding of the court that the defendants here violated an Act of Congress approved July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies" (herein called the Sherman Act)

"by promulgating and agreeing to observe and by observing and apply By-laws of The Associated Press, whereby members of The Associated Press publishing newspapers in the same territory and in the same 'field' (morning, evening or Sunday) as an applicant, publishing a newspaper in the United States of America or its territories, for membership in The Associated Press may impose, or dispense with, any conditions upon the admission of such applicant, and whereby the defendants, in passing upon an application of such applicant for membership, may take into consideration the effect of admission upon the ability of such applicant to compete with members of The Associated Press in the same territory and 'field' (Judgment ¶ I A; Conclusions of Law ¶ I).

is erroneous in the following particulars:

1. Said by-laws of AP constitute an agreement between AP and each of its members ancillary to AP's sale of its services (news reports, news pictures and features) to its members that AP will not sell its services to any other publisher in the territory and field of a member

(A) unless such other publisher be elected to membership by a majority of voters voting at a membership

meeting and upon election pays certain moneys to the member or members in the field and gives assurance that any news report and news pictures for which he shall have exclusively contracted shall be furnished to the member or members in the field at the same rate and upon the same terms as furnished to him,

(B) or unless such other publisher, upon waiver of said money payment, be elected to membership either by the members at a members' meeting or by the Board of Directors when no meeting of the members is in session and upon election gives assurance that any news reports and news pictures for which he has exclusively contracted shall be furnished to the member or members in the field at the same rate and upon the same terms as furnished to him;

and as ancillary restraints, said by-laws are reasonably limited in time and space, designed to protect the members in the enjoyment of the services purchased from AP, not tending toward monopoly, not unduly restrictive of competition, not injurious to the public interest and licit on principles of common law.

[fol. 3244] 2. It is a reasonable restraint of trade for AP to sell its services to a purchaser upon condition that it will not sell them to any other publisher in the city and field of the purchaser, or will not sell them save with consent of the purchaser, or, the purchaser not consenting, save upon other agreed terms and conditions not unlawful in themselves.

3. AP and the defendants have not monopolized or attempted to monopolize any part of interstate commerce as was properly held by the court in its Conclusions of Law (§§ IX, X and XI); and AP and the defendants have not restrained trade in any respect save by those reasonable contractual restrictions designed to protect, without injury to the public interest, the purchasers of AP's services in the enjoyment of that which they have purchased.

4. The said contractual by-law restrictions on admission of applicants in the field of a member are ancillary to and conditions of the sale of AP's services to the member and as such are not unreasonable per se, not unreasonable under the facts found by the court, and not unreasonable

under the facts established in the record on Motion for Summary Judgment.

5. This holding will coerce AP and the defendants, under penalties, to impart prior to general publication the news reports, news pictures and features of AP to those to whom AP desires not to impart the same and to whom AP would not impart the same save for this holding of the court, thus abridging the defendants' freedom of speech and of the press guaranteed by the First Amendment to the Federal Constitution, there being no clear and present danger to the maintenance of effective government or of orderly society or to interests which the state may lawfully protect.

6. This holding in contravention of the First Amendment discriminates against the newspaper press by preventing [fol. 3245] an agency of the press, performing an indispensable function, from selling news reports, news photos and features under those normal, usual, reasonable protective contractual restraints under which all other industrial producers are allowed to sell their products.

7. This holding discriminates against the newspaper press in contravention of the First Amendment by denying to newspaper publishers the right to be governed or influenced by competitive motives and considerations which always have been and still are allowed and required of all other industries.

8. This holding will require AP to furnish its services to all applicants therefor who will pay their share of the cost and, because of the prestige of AP, the excellence of its service, its size and the rendition of its services at cost and not for commercial profit, will substantially increase the number of AP members, will tend to drive other news-agencies from the industry, and will tend toward monopoly in contravention of the Sherman Act and of AP's right not to be or become a monopoly.

9. This holding is not warranted by the facts found by the court.

10. This holding is based upon Finding of Fact 70 as follows:

“The growth of news agencies has been fostered to some extent as a result of the restrictions of The Asso-

ciated Press' services to its own members, but other restrictions imposed by The Associated Press have hampered and impeded the growth of competing news agencies and of newspapers competitive with members of The Associated Press."

which is erroneous in that the undisputed evidence does not warrant the finding that the other restrictions imposed [fol. 3246] by AP, singly and together, have hampered or impeded, or unreasonably hampered or impeded, the growth of competing news-agencies or of newspapers competitive with AP members.

11. The defendants are entitled to findings of fact concerning which there is no genuine issue between the parties, which are unmentioned in the findings of the court, but which if found for defendants would render this holding unwarranted, to-wit:

(a) Competition for exclusivity of news reports, news pictures and features is the chief arena of competition among news-agencies and newspapers: anything which lessens competition for exclusivity *pro tanto* lessens competition among newspapers and news-agencies.

(b) News reports, news pictures and features are customarily bought and sold by agencies and by newspapers on an exclusive basis or on other bases designed to protect a purchaser in his territory and field in the enjoyment of the services purchased.

(c) The news events of the world are equally open at the source to existing news-agencies or to any one desiring to start a news-agency.

(d) A small number of metropolitan newspapers can feasibly establish, maintain and operate an organization for collecting and disseminating all of the news of the world.

(e) Some of the existing news-agencies, smaller than AP, UP or INS, could feasibly and expeditiously be enlarged to furnish a fully adequate service covering domestic and foreign news.

(f) There are in the United States a large number of agencies which furnish news picture services adequate to meet the requirements of a newspaper.

(g) There are in the United States a large number of feature services, several of which are superior to AP's feature service.

[fol. 3247] (h) AP and the defendants have not promulgated or observed since 1915 any by-laws, rules, resolutions or agreements which prohibit or hinder the members of AP from purchasing or otherwise obtaining the news services, news picture services or feature services of any other agencies.

(i) Corporate action of AP respecting the admission of members (i. e. the determination to furnish its services) is properly taken by the majority of members of AP voting at a membership meeting or by such officers and directors of AP to whom such members may have delegated such authority.

(j) AP, in fixing the requirement that an applicant publisher pay a sum to be distributed to the member or members in the same field and locality equal to 10% of the total regular assessments paid by such member to AP, considered the following factors: 1. The value of the savings the applicant will realize as a result of obtaining AP service substantially at cost; 2. the expense of an existing member in offsetting the injury which will be sustained by his loss of exclusive AP service, and 3. the interest which the applicant will receive in the assets of AP;—and such payment is a fair and reasonable measure of such factors.

(k) The requirement is reasonable that an applicant publisher who desires to obtain AP services upon the same terms as AP furnishes such services to a member in the same field and locality, shall give assurance that any news and news picture services for which he has exclusively contracted shall be furnished to such AP member upon the same terms as such services are furnished to him.

(l) There is no showing that any newspaper has failed because it lacked an AP membership or was not

started because the intending publisher could not obtain one.

(m) AP's by-laws imposing limitations on the admissibility of applicants in the fields of members have [fol. 3248] not hampered or impeded the growth of other news-agencies but to the contrary have fostered the growth of such agencies.

(n) There is no clear and present danger to the maintenance of effective government or of orderly society or to interests which the state may lawfully protect should AP not be ordered to impart its news reports prior to general publication to those to whom it wishes not to impart the same.

12. The defendants are entitled to a trial of genuine issues of fact unmentioned in the findings of the court but which if found for the defendants would render this holding unwarranted.

Assignments re Judgment Paragraph I B

The cancellation and injunction of the court

“B. That Article III, Sections 1-3, inclusive [being the by-laws relating to admission of applicants] are declared and adjudged to be illegal, and are hereby cancelled, and The Associated Press, its officers, directors, agents, representatives and employees, and each of its members, their officers, directors, agents, representatives and employees, be, and each of them are perpetually enjoined and restrained from agreeing to observe and observing said by-laws, and from promulgating, agreeing to observe and observing any new or amended by-laws having a like purpose or effect in respect of admission to the Associated Press of applicants publishing newspapers in the United States of America or its territories; *provided, however,* that nothing herein shall prevent the adoption by The Associated Press of new or amended by-laws which will restrict admission, provided that members in the same city and in the same ‘field’ (morning, evening or Sunday), as an applicant publishing a newspaper in the United States of America or its territories, shall not [fol. 3249] have power to impose, or dispense with,

any conditions upon his admission and that the by-laws shall affirmatively declare that the effect of admission upon the ability of such applicant to compete with members in the same city and 'field' shall not be taken into consideration in passing upon his application." (Judgment ¶ I. B.)

is erroneous in the following particulars:

13. Said cancellation and injunction are predicated solely upon the erroneous holding that AP's by-laws restricting admission of applicants in the fields of members are unlawful, to which holding these defendants have assigned errors No. 1 to 12.

14. Said cancellation and injunction inconsistently and unnecessarily include by-laws relating to admission of applicants not in the fields of members, namely, the first sentence of Section 3 of Article III:

"Applicants for membership may also be elected by the Board of Directors, when no meeting of the members of the Corporation is in session, in a field in a city where there is no existing membership at the time the application is filed."

15. Said injunction, contrary to Rule 65(d) Civil Procedure for District Courts of the United States, is not specific in terms and does not describe in reasonable detail the act or acts sought to be restrained.

16. Said injunction, contrary to Rule 65(d) aforesaid, does not make it reasonably clear whether or not the defendants will be in contempt of the injunction if they should not amend the by-laws of AP relating to the admission of applicants in the fields of members but on the contrary should continue operating without admitting any applicants in the fields of members and without adopting any by-laws relating thereto.

[fol. 3250] 17. Said injunction, contrary to Rule 65(d) aforesaid, does not make it reasonably clear whether or not the defendants will be in contempt of the injunction if they should amend the by-laws of AP respecting the admission of applicants in the field of a member (as authorized in the proviso above set forth) and should

(a) any member, notwithstanding the affirmative declaration in the new and amended by-laws to the con-

trary, in passing on the admission of an applicant in the field of a member, deliberately take into consideration the prohibited competitive situation; or should any member do so after vainly trying to eradicate all traces of the prohibited consideration from his mind;

or should such new and amended by-laws

(b) permit members in the field of the applicant to vote on his admission;

(c) permit any members to vote on the admission of any applicant in the field of any member;

(d) permit the directors to vote on the admission of an applicant in the field of a member or not in the field of a member;

(e) fail to provide for the automatic admission of all applicants who shall meet preannounced reasonable standards of eligibility;

(f) provide for the payment of an admission fee by each applicant in the field of a member to reimburse the member in applicant's field for loss or dilution of his exclusivity in AP services;

(g) exact from each applicant in the field of a member the relinquishment of his exclusive rights, if any, to the news reports and news pictures of any other news-agency enjoyed by him;

(h) impose eligibility requirements of applicants considered reasonable by the defendants but considered arbitrary by the court.

[fol. 3251] 18. Said injunction permits the defendants to amend the by-laws of AP and to impose restrictions on the admission of applicants in the fields of members but requires those passing on applications to eradicate from their minds competitive considerations which it is impossible for them wholly to eradicate from their minds.

19. The practical effect of said injunction is to compel AP to amend its by-laws relating to the admission of applicants in the fields of members so that AP will be required to furnish its services indiscriminately to whomsoever the government shall from time to time desire.

Assignments re Judgment Paragraph II A

The holding of the court that the defendants have violated the Sherman Act

“by promulgating and agreeing to observe and by observing and applying Article VII, Section 4, of the By-laws of The Associated Press withholding the news reports of The Associated Press from newspapers published in the United States of America or its territories, owned by persons other than members of The Associated Press, taken in connection with the by-laws and agreements described in Paragraph I hereof” (Judgment ¶ I; Conclusions of Law ¶¶ II and III).

is erroneous in the following particulars:

20. It is predicated solely upon the erroneous holding that AP's restrictions on admissions of applicants in the fields of members are unlawful, to which these defendants have assigned errors No. 1 to 12.

21. The requirement that newspapers obtaining the services of AP shall become members and shall agree to observe and be bound by its by-laws is nothing more than a requirement that the terms upon which the services are to [fol. 3252] be rendered and received shall be embodied in a written contract.

22. It is reasonable for AP, a non-profit cooperative association incorporated under the Membership Corporations Law of the State of New York, to agree with its members not to sell its services to nonmembers.

Assignments re Judgment Paragraph II B

The cancellation and injunction of the court

“B. That Article VII, Section 4, of the By-laws of The Associated Press, presently in force [withholding AP's services from nonmembers], taken in connection with the by-laws and agreements described in Paragraph I hereof, is declared and adjudged to be illegal, and is hereby cancelled, and The Associated Press, its officers, directors, agents, representatives and employees, and each of its members, their officers, directors, agents, representatives and employees, be, and each of

them are, enjoined and restrained from agreeing to observe and observing said by-laws, and from promulgating, agreeing to observe and observing any new or amended by-laws having a like purpose or effect, in respect of newspapers published in the United States of America or its territories" (Judgment ¶ II B).

is erroneous in the following particulars:

23. Said cancellation and injunction are predicated solely upon the erroneous holding that AP's by-laws withholding its news reports from newspapers owned by persons other than members of AP are unlawful, to which holding these defendants have assigned errors No. 20 to 22.

24. Said cancellation and injunction conflict with and are fatally contradictory of the holding of the court that the by-law withholding AP's services from nonmembers is [fol. 3253] lawful apart from the restrictions on membership (Conclusions of Law ¶ III; Judgment ¶ II A) in that, the restrictions on membership having been cancelled, said by-law withholding AP's news service from nonmembers now stands alone.

25. Said cancellation and injunction are predicated solely upon the continued existence and observance of the aforesaid restrictions on admissions but such injunction will continue permanently despite the nonexistence and nonobservance of said restrictions (which restrictions have been cancelled, Judgment ¶ I) unless defendants amend the by-laws to admit applicants on terms satisfactory to the court (Judgment ¶ V).

Assignment re Judgment Paragraph III A

The holding that the defendants have violated the Sherman Act

"by promulgating and agreeing to observe and by observing and applying the provision of Article VIII, Section 6, of the By-laws of The Associated Press that, 'No member shall furnish, or permit anyone to furnish to anyone not a member of this corporation the news which he or it is required by the By-laws to supply to this Corporation,' restricting the members of The Associated Press and persons in their employ from

furnishing local news of spontaneous origin gathered by them to persons other than The Associated Press and its members, taken in connection with the by-laws and agreements described in Paragraph I hereof” (Judgment ¶ III A; Conclusions of Law ¶¶ IV and V).

is erroneous in the following particulars:

26. It is predicated solely upon the erroneous holding that AP’s by-laws restricting admissions of applicants in [fol. 3254] the fields of members are unlawful, to which these defendants have assigned errors No. 1 to 12.

Assignments re Judgment Paragraph III B

The cancellation and injunction

“That the said provision in the first sentence of Section 6, Article VIII of the By-laws, of The Associated Press, presently in force [restricting sale of local news of spontaneous origin solely to AP or its members], taken in connection with the by-laws and agreements described in Paragraph I hereof, is declared and adjudged to be illegal, and is hereby cancelled, and The Associated Press, its officers, directors, agents, representatives, and employees, and each of its members, their officers, directors, agents, representatives and employees, be, and each of them are, enjoined and restrained from agreeing to observe and observing any new or amended by-laws or agreements between The Associated Press and any members thereof having a like purpose or effect” (Judgment ¶ III B).

is erroneous in the following particulars:

27. Said cancellation and injunction are predicated solely upon the erroneous holding that the by-law restricting the sale of local news of spontaneous origin solely to AP or its members is unlawful, to which these defendants have assigned error No. 26.

28. Said cancellation and injunction conflict with and are fatally contradictory of the holding of the court that the by-law restricting the sale of local news of spontaneous origin solely to AP or its members is lawful in and of itself alone (Conclusion of Law ¶ V; Judgment ¶ III A) in that, the restrictions on membership having been can-

celled, said by-law respecting local spontaneous news now stands alone.

[fol. 3255] 29. Said cancellation and injunction are predicated solely upon the continued existence and observance of the restrictions on admission but such injunction will continue permanently despite the nonexistence and non-observance of said restrictions (which are now cancelled, Judgment ¶ I) unless defendants shall amend the by-laws to admit applicants on terms satisfactory to the court (Judgment ¶ V).

Assignment re Judgment Paragraph IV A

The holding that the defendants have violated the Sherman Act

“by entering into an agreement with The Canadian Press dated November 1, 1935, whereby The Associated Press obtains the exclusive right to receive the news report of The Canadian Press and its members, and the defendants, by observing and performing said exclusive provisions of said agreement, taken in connection with the By-laws and Agreements described in Paragraph I hereof” (Judgment ¶ IV A; Conclusions of Law ¶ VI and VII).

is erroneous in the following particulars:

30. It is predicated solely upon the erroneous holding that AP's said restrictions on membership are unlawful, to which holding these defendants have assigned errors No. 1 to 12.

Assignment re Judgment Paragraph IV B

The cancellation and injunction

“The said exclusive provisions of said agreement between The Associated Press and The Canadian Press dated November 1, 1935, taken in connection with the by-laws and agreements described in Paragraph I hereof, are declared and adjudged to be illegal, and [fol. 3256] are hereby cancelled, and The Associated Press, its officers, directors, agents, representatives, and employees, be, and they hereby are, enjoined and restrained from performing and observing the said

exclusive provisions of said agreement, and from entering into any other agreement with The Canadian Press having a like exclusive provision" (Judgment ¶ IV B).

is erroneous in the following particulars:

31. Said cancellation and injunction are predicated solely upon the erroneous holding that said AP-Canadian Press contract is unlawful, to which holding these defendants have assigned error No. 30.

32. Said cancellation and injunction conflict with and are fatally contradictory of the holding of the court that the AP-Canadian Press contract is lawful apart from the aforesaid restrictions on membership (Conclusions of Law ¶ VII; Judgment ¶ IV A) in that, the restrictions on membership having been cancelled, said AP-Canadian Press contract now stands alone.

33. Said cancellation and injunction are predicated solely upon the continued existence and observance of the aforesaid restrictions on admissions, but such injunction will continue permanently despite the nonexistence and non-observance of said restrictions (which restrictions have been cancelled, Judgment ¶ I) unless the defendants amend the by-laws to admit applicants on terms satisfactory to the court (Judgment ¶ V).

Miscellaneous Assignments

34. In holding that the business of news-agencies and of newspapers constitutes "trade or commerce" within the meaning of the Sherman Anti-trust Act.

35. In holding, in contravention of the due process clause of the Fifth Amendment, that the business of news-agencies [fol. 3257] and newspapers is "affected with the public interest" to the extent that news-agencies are engaged in a public calling required to serve all comers on equal terms.

36. In holding, without legislative processes or comprehensive enactment, that the business of AP is "affected with the public interest" to the extent that AP, when considering whether it shall or shall not sell its services to an applicant in the field of a member, must not consider the effect of such sale on its established customers in that field.