

ORIGINAL

Decision No. 41415

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion )  
into the use being made of communications )  
facilities and instrumentalities for the pur- )  
pose of determining if such use, in any in- )  
stance, is in violation of law or is aiding )  
or abetting, directly or indirectly, a viola- )  
tion of law or is not in the public interest.)

Case No. 4930

F. V. Rhodes and Marshall K. Taylor, for California Independent Telephone Association; Marshall K. Taylor, for Associated Telephone Company, Limited, San Joaquin Associated Telephone Company, and Consolidated Telephone Company; Pillsbury, Madison & Sutro, by John A. Sutro and Francis N. Marshall, for Pacific Telephone and Telegraph Company; Pillsbury, Madison & Sutro, by Hugh Fullerton and Henry G. Hayes, for Western Union Telegraph Company, respondents. Fred N. Howser, Attorney General, for the State of California, John H. Hanson, Chief Investigator of the Special Crime Study Commission on Organized Crime, for the State of California; Roger Arnebergh, for the City of Los Angeles; Warren Olney, for State Commission on Organized Crime; Everett C. McKeage and Roderick B. Cassidy of the Commission's Staff, appearing for the Public Utilities Commission.

O P I N I O N

Public hearings in this matter were held, before Commissioner Huls and Examiner Syphers, on February 18 and 19, 1948, at Los Angeles, February 25 and 26, 1948, at San Francisco, and March 10, 1948, at Sacramento. On these dates evidence was adduced and on the last-named date the matter was submitted.

These hearings were initiated on the Commission's own motion after the Commission had informally considered the subject matter of the instant investigation and after the receipt of a  
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letter, dated December 12, 1947, from the Special Crime Study Commission on Organized Crime, alleging that organized bookmaking

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(1) Exhibit No. 2.

and the so-called "wire service" on which it depends are able to exist only because of their extensive use of the facilities of communications utilities.

The provisions of Section 337a of the Penal Code denounce bookmaking as a public offense.

At the hearing, testimony was introduced by the Attorney General of the State of California which included information showing the number of arrests for bookmaking, by counties, in the State, the number of telephones seized by police officers, the number of convictions for bookmaking, and various other information. These exhibits clearly indicate that there has been a large amount of bookmaking conducted in the State of California, particularly in the more populous counties such as Alameda, San Diego, San Francisco, and Los Angeles. Testimony was received from the Sheriffs of Imperial, Los Angeles, and Alameda Counties, from the Chiefs of Police of the Cities of Long Beach, Los Angeles, Fresno, Merced, and Stockton, from the U. S. Attorney for the Southern District of California, and from the District Attorneys of Los Angeles, San Diego, Stanislaus, Alameda, and Sacramento Counties, all of which testimony indicated that bookmaking is a major law enforcement problem. This testimony further indicated

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(2) As used in this report bookmaking refers to any arrangements for the taking of off-track bets on horse racing.

(3) Exhibit No. 3 showed this information as related to cases handled by District Attorneys throughout the State; Exhibit No. 4 showed the same information as to cases handled by Sheriffs' Offices; and Exhibit No. 5 showed the same information as to cases handled by Police Departments.

that bookmaking is a definite evil in that it promotes gangsterism, contributes to delinquency and nonsupport, and fosters, within the public itself, a disrespect for law enforcement. These officials were practically unanimous in stating that every effort should be made to stamp out bookmaking and they further stated that bookmakers were almost completely dependent upon the use of telephone and telegraph facilities. It was the conclusion of these law enforcement officials that one of the most effective methods of controlling bookmaking would be to curtail, or prohibit completely, if possible, the use, by bookmakers, of telephone and telegraph facilities.

Other testimony was presented at the hearing indicating, in some detail, the methods used by bookmakers in carrying on their business. It was developed that, while there is legalized pari mutuel betting at the race tracks in California, the operators and proprietors of these licensed tracks are not favorable to illegal bookmaking operations. They take the view that off-track bookmakers constitute "parasites" and are undesirable. Accordingly, it is the general practice at race tracks in California to prohibit any activities which would further illegal bookmaking. To this end all of the public telephones at the race tracks are locked approximately a half hour before the starting time of each race. In addition, any special activity which has for its purpose the gathering and disseminating of racing information, other than that gathered and disseminated by the regular newsgathering agencies, is prohibited. Only the authorized press services and newspapers have access to the track press boxes. The so-called specialized racing information services are barred.

The testimony indicated that there has developed in the United States special racing news-gathering services. Among these are the Continental Press Service and the Pioneer News Service. According to the testimony, the Continental Press Service consists of a wire service which is leased from the Western Union and which has outlets at various cities throughout the United States; specifically, this press service has the following drops in California:

<u>Name of Subscriber</u>	<u>Address</u>	<u>Date Service Started</u>
Tejon News	1911 Edison Highway Bakersfield	5-12-45
Consolidated Publishing Co.	615 N. La Brea Ave., Los Angeles	5-12-45
Los Angeles Journalist	208 W 8th St. Los Angeles	5-12-45
George Zouganiles	181 Andreas Rd., Palm Springs	9-3-46
Arrowhead News	362 D Street San Bernardino	8-12-46
Colton News	211 Platt St. San Bernardino	8-12-46
Southwest News	919-4th Avenue San Diego	11-5-45
Krelling & Cohen	333 Montgomery St. San Francisco	5-12-45

This press service is a Morse wire and the drops consist of both sending and receiving telegraph sets.

The Pioneer News, having headquarters at 333 Montgomery Street, San Francisco, California, is a service consisting of a wire leased from Western Union, over which is operated teleprinter or ticker sets. These teleprinters are the same instruments as are used in reporting stock-market news and are located at various drops in California; specifically, these locations are:

<u>Name</u>	<u>Address</u>	<u>Date Service Started</u>	<u>Date Temp. Discon.</u>
Roy Simon	1910 Tuolumne St. Fresno	6-22-46	2-19-48
J. Bozeman	326 Virginia St. Vallejo	5-25-46	1-29-48
W. Musso	215 Georgia St. Vallejo	5-25-46	1-29-48
J. Farrell	216 Georgia St. Vallejo	5-25-46	1-23-48
Mint Smoke Shop	237 Georgia St. Vallejo	8-14-47	1-29-48
Del Kennedy	1160 Old Country Rd. Belmont	10-8-45	2-19-48
M. Magee	1617 Old Country Rd. Belmont	7-19-47	2-19-48
C. Atkin	145 Montgomery St. San Francisco	10-8-45	2-19-48
Pioneer News	127 Montgomery St. San Francisco	1-30-46	2-19-48
F. Masonie	145 Mason St. San Francisco	3-4-46	2-19-48
101 Service Station	Bayshore Highway Bayshore	1-31-47	4-16-47
Andy's Service	2637 Bayshore Highway Bayshore	8-16-47	1-30-48
Geneva Club	3201 Geneva Ave. Bayshore	11-17-47	2-19-48

It will be noted from an analysis of the above table that most of the drops of the Pioneer News Service were temporarily disconnected after the commencement of these hearings on February 18, 1948.

While the technical equipment of these two wire services, the Continental Press and the Pioneer News, are different in that one uses telegraph keys and the other uses teleprinters, still, in other respects, the basic method of operation is similar. Information as to this method of operation was produced at the hearing. Since the Continental Press and the Pioneer News are among those services which are barred from the race tracks, they use various unorthodox methods to obtain information. The most common of these

methods, according to the testimony, is to use "signalers" or "wigwaggers", individuals who attend the races at the track and, by a system of signals, relay information to confederates outside who, in turn, send the information to the wire services.

Exhibits Nos. 33 to 37, introduced in evidence, consist of photographs showing a phone installation and a telescope in a house within view of the Santa Anita Race Track. The equipment shown in the photographs was used by one Ed Coplansky who, apparently, employed a telescope to observe signals from wigwaggers within the track. The information so obtained was telephoned to a drop of one of the wire services. The phone used by Coplansky was one which illegally had been tapped into the phone line of the owner of a nearby house.

The apparent reason these specialized wire services go to such extremes to obtain information is that special information is needed by their clients in order to conduct successful bookmaking activities. According to the testimony the information sent out over the regular news services and published in the regular newspapers, and even the detailed description of the running of races given over the radio, do not supply sufficient details to permit successful bookmaking. A bookmaker needs the following information: (1) direct race odds and fluctuations in these odds; (2) the post time; (3) the exact off time within a matter of seconds; (4) a brief description of the race; (5) results of the race; (6) prices paid. In addition, a bookmaker needs information as to last-minute jockey changes and track conditions. These details are only furnished by the special racing wire service agencies.

As previously indicated, this detailed information is obtained at the race track by one device or another, then it is phoned to one of the offices of the wire service. At this office the information is placed on the wire and is immediately relayed to all of the drops of that particular wire service. Testimony was presented showing the operation of these drops. As soon as racing information is received it is called over a loud-speaker system. In front of the loud speaker are various phones, with the receivers off the hook, and, apparently, at the other end of these phones, bookmakers are listening for the information. Thus, in a matter of seconds, it is possible to get the information from the track to the bookmakers.

Testimony was presented by various police officers and sheriff's office employees as to visits they had made to these various wire service drops. In each of these places, according to the testimony, there are multiple phone installations. Instances were reported of as many as 26 phones in one room and other testimony presented by the telephone company showed the subscribers to these various phones. Photostatic copies of the telephone cards listing the names of these subscribers were received in evidence as Exhibits Nos. 38 to 79, inclusive, and 80 to 92, inclusive. A general examination of these cards discloses that, while there were several phones in one place, most of them were listed under various fictitious names, including such terms as secretarial services, process service, research companies, printing companies, welding works, and, also, the names of various individuals.

Apparently, multiple phone installations are a necessary part of the equipment used in disseminating racing information to

bookmakers. Testimony was presented indicating that, in some cases, these multiple phone installations result from unauthorized extensions of existing facilities, while in other cases they are made by the telephone companies.

Exhibits Nos. 16 to 27, inclusive, consist of photographs taken by a sergeant of the Los Angeles Police Department, showing the facilities at some of the wire service drops in Los Angeles. In each of these instances equipment consists of an instrument for receiving information over the telegraph wire and several phones for relaying this information to outside subscribers. These outside subscribers pay for this service at rates varying from \$4.00 per month to \$339.24 per month. There is set out below the rates paid by the eight subscribers to the Continental Press Service previously listed:

<u>Subscriber</u>	<u>Monthly Charge</u>
Tejon News	\$144.40
Consolidated Publishing Company	63.00
Los Angeles Journalist	4.00
George Zouganiles	72.27
Arrowhead News	65.93
Colton News	4.00
Southwest News	197.67
Krelling & Cohen	339.24

Additional testimony was presented by police officers as to raids they had made on various locations within the State of California. At some of these locations, including drops on the previously mentioned wire services, it was found that bookmaking was being carried on.

Testimony was received from representatives of the Western Union, setting out the manner in which these wire services are furnished. Arrangements for the Morse wire used by Continental Press were made in Cleveland, Ohio, and the charges for that lease



are paid at Cleveland. The Pioneer News lease, which started October 8, 1945, was arranged for by Stanley Cohen, and, apparently, the main office of Pioneer News is 333 Montgomery Street, San Francisco, California.

Respondent utilities in this case, so far as they were present at the hearing, indicated that their companies had no desire to furnish service for illegal uses and, almost unanimously, they indicated willingness to remove or refuse service whenever a bona fide law enforcement agency instructed them to do so. However, they further contended that they were not policemen and it was without the scope of their authority to attempt to specifically police their subscribers in an effort to determine whether or not the facilities were being used for illegal purposes.

Another problem concerns the question as to whether or not a utility may be held liable for damages in an action brought by a subscriber to or applicant for service in those cases where the utility has discontinued or refused to extend service to such subscriber or applicant and, in this connection, it is the position of the utilities that they should not be subjected to any rule which would force upon them such actions for damages. We are well aware of the position of the utilities in this matter. However, it is our view, in the light of the evidence adduced in this matter, that certain lawful steps can be taken by the utilities which will curtail the use of their facilities by bookmakers.

From the foregoing evidence, we find that bookmaking is being conducted throughout the State of California on a large scale and, in order to conduct successful bookmaking, the operators thereof must have information in excess of that which can be

obtained through regular news and radio channels. Accordingly, there has grown up a specialized wire service which has for its principal purpose the dissemination of detailed racing information within a matter of minutes after the occurrence of the actual events. This information includes details of the track conditions, betting odds, jockey changes, and other facts occurring immediately prior to the running of the race, a description of the running of the race and the results thereof. These wire services sell this information to bookmakers who, in turn, use it in conducting their business. We, also, find that successful bookmaking cannot be conducted without access to these wire services or without access to telephone facilities.

We further find that it is in the public interest to require communications utilities to refrain from furnishing or continuing to furnish any telephone or telegraph service that will be or is being used in furthering bookmaking or related illegal activities. The use of communications facilities in furtherance of bookmaking being illegal, it follows that such use is contrary and detrimental to the public interest. Additionally, the evidence shows that, as of January 31, 1948, there were held by the fifteen largest telephone companies operating in this State 241,248 applications for telephone service, that could not be filled because of lack of instruments, facilities and materials. This situation makes it imperative that all communications instrumentalities and facilities be employed in the public interest.

The right of a person to utility services, such as telephone and telegraph, is not an inherent right but is due solely to the fact that the State, in the exercise of its police power, has seen fit, under the provisions of the Public Utilities Act,

to require the utility to serve the public without undue or unreasonable discrimination. It, therefore, must be concluded that the State, having the authority to compel a utility to render service, has the authority to impose conditions under which such service may be furnished or terminated. (See Partnoy v. Southwestern Bell Telephone Co., Missouri Public Service Commission, June 13, 1947, 70 P.U.R. (N.S.) 134.) It is established by statute in this State that a telephone or telegraph company is not required to accept messages which will "instigate or encourage the perpetration of any unlawful act \* \* \*." (Section 638, Penal Code.)

It is the positive duty of a communications utility to exercise vigilance to prevent the unlawful use of its instrumentalities and facilities. Such utility exercises a valuable and extraordinary privilege and, in turn, incurs corresponding obligations to the public. Surely, one of its highest obligations is to exercise vigilance to see that its instrumentalities and facilities are not used in aiding and abetting the commission of crime. We are not so naive as to believe that the operators of wire services, as discussed in this decision, can conduct their business of disseminating racing information without general knowledge as to the activities of their customers. The evidence in this case shows that some of the users of these wire services are engaged in bookmaking. The evidence further discloses instances of multiple telephone installations, which installations are aiding the activities of bookmakers. Therefore, we believe that any such installations should be scrutinized very carefully by the utilities furnishing the services and that additional installations should not be made without careful inquiry as to the nature of their use.

It is the conclusion of this Commission that communications instrumentalities and facilities should not be furnished to persons, who will use them for bookmaking or related illegal purposes; nor should they be furnished where there is strong evidence to indicate that the use will be for such illegal purposes. Neither should the furnishing of such instrumentalities and facilities be continued where reasonable cause exists for believing that such facilities are being so used. There is a duty resting upon communications utilities to refuse installations or to discontinue service when these conditions exist. There is a further duty on the utility to make reasonable inquiry as to the use of facilities and, in particular, this is true where the facilities are being installed in unusual circumstances.

O R D E R

The above entitled case having been instituted on the Commission's own motion, public hearings having been held therein, said case now being ready for decision, the Commission being fully advised in the premises and basing its decision upon the evidence of record in this case and upon the findings of fact contained in the foregoing opinion,

IT IS HEREBY ORDERED that any communications utility operating under the jurisdiction of this Commission must refuse to establish service for any applicant, and it must discontinue and disconnect service to a subscriber, whenever it has reasonable cause to believe that the use made or to be made of the service, or the furnishing of service to the premises of the applicant or subscriber, is prohibited under any law, ordinance, regulation, or other legal requirement, or is being or is to be used as an

instrumentality, directly or indirectly, to violate or to aid and abet the violation of the law. A written notice to such utility from any official charged with the enforcement of the law stating that such service is being used or will be used as an instrumentality to violate or to aid and abet the violation of the law is sufficient to constitute such reasonable cause.

IT IS FURTHER ORDERED that any person aggrieved by any action taken or threatened to be taken pursuant to the provisions of this decision shall have the right to file a complaint with this Commission in accordance with law. This remedy shall be exclusive. Except as specifically provided herein, no action at law or in equity shall accrue against any communications utility because, or as a result of, any matter or thing done or threatened to be done pursuant to the provisions of this decision.

IT IS FURTHER ORDERED that each contract for communications service, by operation of law, shall be deemed to contain the provisions of this decision, whether or not the same be actually included as a part of the application for such service, and the provisions of said decision shall be deemed in law to be a part of any application for communications service and the applicant for such service shall be deemed to have consented to the provisions of said decision as a consideration for the furnishing of such service.

The term "person", as used in this decision, shall include a subscriber to communications service, an applicant for such

service, a corporation, a company, a co-partnership, an association, a political subdivision, a public officer, a governmental agency, and an individual.

The term "communications utility," as used in this decision, includes a "telephone corporation" and a "telegraph corporation," as those terms are defined in the Public Utilities Act.

The Secretary is hereby directed to serve, by registered mail, a certified copy of this decision upon each communications utility operating under the jurisdiction of this Commission and upon each appearance of record herein.

This decision shall become effective after the expiration of twenty days from and after the date hereof.

Dated at San Francisco, California, this 6<sup>th</sup> day of April, 1948.

R. F. [Signature]

Justus F. [Signature]

[Signature]

Harold Huls

[Signature]

Commissioners