

ORIGINAL

Decision No. 43458

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

IRVIN MILLSTONE, copartner in
Leader Barber Shop,
Complainant,
vs.
THE PACIFIC TELEPHONE AND
TELEGRAPH COMPANY,
Defendant.)

CASE NO. 5023

IRVIN MILLSTONE, copartner in
Leader Barber Shop,
Complainant,
vs.
THE PACIFIC TELEPHONE AND
TELEGRAPH COMPANY,
Defendant.)

CASE NO. 5024

Ralph L. Welsh for Complainant. Pillsbury, Madison and Sutro, by John A. Sutro, and Lawler, Felix & Hall, by L. B. Conant, for Defendant. Warren Olney, on behalf of the Special Crime Study Commission on Organized Crime.

O P I N I O N

Complainant herein is a subscriber and user of telephone service furnished by defendant at 2319 Brooklyn Avenue, in the City of Los Angeles, which service consists of one coin-operated, semipublic wall telephone, with three extension hand-set type

telephones, under telephone number ANgelus 3-9043, and one individual message business hand-set type telephone under number ANgelus 1-0772.

There are two complaints in this matter, Case No. 5023 being concerned with the phone service under telephone number ANgelus 3-9043, and Case No. 5024 being concerned with the telephone service under number ANgelus 1-0772. However, other than the designation of the telephone numbers, the two complaints are identical. These complaints allege that, on or about March 31, 1949, complainant was advised by The Pacific Telephone and Telegraph Company that his telephone facilities were to be disconnected inasmuch as the telephone company had received information that these facilities were being used as an instrumentality to violate the law or in aiding and abetting such violation. Following receipt of this notice, the telephones actually were disconnected and, as a result, the complainant alleges that he has been injured.

The complaints further allege that the communication facilities concerned were not used as instrumentalities to violate the law nor in aiding and abetting such violation, but rather that they were used in the conduct of complainant's barber business. The prayers of both complaints request restoration of the communication facilities and that the defendant be temporarily and permanently enjoined from interference with, or disconnecting of, the telephone facilities above mentioned. The complaints further request a hearing in the matter.

The Pacific Telephone and Telegraph Company has filed an answer to each of these two complaints, these answers being identical except for the designation of the telephone numbers. These

answers constitute a general denial of the allegations in the complaints. They further allege that the defendant company had reasonable cause to believe the use being made of complainant's telephones was prohibited by law and that, as a result, the telephone company was required to discontinue the service under the decision of this Commission, No. 411415, dated April 6, 1948 (47 Cal. P.U.C. 853).

On April 19, 1949, this Commission issued its order granting temporary relief under the terms of which the telephone facilities were ordered restored to complainant pending a hearing and decision on the complaints, by this Commission (Decision No. 42747, dated April 19, 1949).

Public hearings were held in the matter on June 13 and 14, 1949, before Commissioner Huls and Examiner Syphers. On these dates evidence was adduced and on the last-named date the matter was submitted.

At the hearing, testimony was presented by the complainant to the effect that his business was that of a barber and that the Leader Barber Shop, where the telephones in question were located, is a partnership composed of Irvin Millstone and Albert Abrams. Complainant Millstone further testified that he had signed and verified the complaints in this matter and was aware of their contents.

A copy of the letter wherein complainant was advised by the telephone company that the communication facilities were being used as an instrumentality to violate, or to aid and abet the violation of, the law, and giving notice that the facilities would be disconnected, was received in evidence as Exhibit No. 1. Exhibits

Nos. 2 and 3 are cards of the telephone company describing the telephone facilities in question.

It was also developed by complainant, on his direct case, that the action of the telephone company was taken as the result of a letter addressed to it under date of March 1, 1949, by the counsel for the Special Crime Study Commission on Organized Crime for the State of California. A copy of this letter was received in evidence as Exhibit No. 4. This letter advises the telephone company of the existence of a large bookmaking syndicate with headquarters at 1747 - 1749 East Florence Avenue in Los Angeles. Accompanying the letter, according to the testimony, were two lists, one showing the telephones which were used by the syndicate itself and the second showing the telephones of the syndicate's agents. Two of the telephones on this second list were those of complainant herein.

Complainant conducts a barber business, 90 per cent of which, according to his testimony, is by telephone appointment. The three extensions to the wall telephone are extensions to the barber chairs, of which there are eight. Six barbers work there normally and there is a telephone for each two barbers. The complainant specifically testified that he had never used the telephones in connection with bookmaking nor, to his knowledge, had anyone else so used them.

The defendant telephone company, for its direct case, relied upon the fact that it had received a letter (Exhibit No. 4) from the Special Crime Study Commission and that, in reliance upon the information contained therein, it had disconnected the telephone service. It further contended that such a letter constituted

reasonable cause to warrant the disconnection under the decision of this Commission, No. 41415, supra.

The Special Crime Study Commission entered an appearance at the hearing and, with the permission of the presiding Commissioner, presented testimony in these cases. The purpose of this testimony was to show that complainant's telephones were being used to violate the law.

In connection with this testimony, there were introduced Exhibits Nos. 5 to 30, inclusive. These exhibits constitute various records relating to the Guarantee Finance Company and the Guarantee Discount Company, both companies officing at 1747 - 1749 East Florence Avenue, Los Angeles, California. These records were presented and explained by a witness for the Special Crime Study Commission, who was a certified public accountant and also a member of the State Bar of California. Exhibit No. 5 consists of two sheets showing the names and addresses of various individuals. On the left-hand column of this sheet there is printed the nickname or some word designating each of the individuals under a column headed "House". One of the printed names under this column is "Irving" and opposite this name appear the name, address, and both telephone numbers of the complainant herein. Exhibits Nos. 7 to 12, inclusive, are records relating to transactions between the Guarantee Finance Company and "Irvin" or "Irwin" Millstone, both names being used. Exhibit No. 6 is a check of the Guarantee Discount Company payable to Irving Millstone, in the amount of \$1,000. Exhibit No. 13 is a sheet from the records of the Guarantee Finance Company showing payments made on the accounts described above on June 21 and 22, 1948. One item on this sheet shows a payment by

Millstone in the amount of \$95.00. These transactions were claimed by Millstone to be loans made by the Guarantee Finance Company to him; however, in the opinion of the witness, they relate to book-making activities. Exhibit No. 15 consists of 5 sheets entitled Agents' Index, and is a list of names and numbers. The 5th page of this exhibit shows, among others, the name "Irving" and the number 206. Exhibits Nos. 16 to 18, inclusive, are adjustment slips showing adjustments made by the Guarantee Finance Company to the account of "Irving". Exhibit No. 19 is a two-page sheet showing payments received by the Guarantee Finance Company on November 4 and 5, 1948, and on the first page there is shown an amount paid by "I. Millstone" of \$632.62. Exhibits Nos. 20 and 21 are large sheets showing columns of figures, each column headed by the name of some individual. On each of these sheets there is a column headed "Irving". Exhibits Nos. 22 to 24, inclusive, are sheets showing various figures and in the left-hand column of each sheet, which column is headed "House", are printed names similar to those shown on Exhibit No. 5. On two of these sheets the name "Irving" is printed in the column of names. Exhibit No. 25 is a deposit slip of Guarantee Discount Company for the Bank of America. On the back of this slip appear various notations, one of them showing the name "Irving". Exhibit No. 26 is another payment slip of the Guarantee Finance Company showing the account of "Irving" and the number 206. Exhibit No. 27 consists of 12 pages of columnar sheets with headings for cash, accounts receivable, and expenses, showing the names of various individuals involved in each of these accounts. On several of the pages the name "Irving" appears. According to the witness for the Special Crime Study Commission, Exhibit No. 28,

consisting of two pages, is a bookmaking sheet which sheet contains various figures, and in the left-hand column, headed "House", various names, most of which are printed. One of these printed names is "Irving". Exhibits Nos. 29 and 30 are checks from the Guarantee Finance Company to "Irwin Millstone" in the amount of \$300 and \$1,000, respectively.

The witness for the Special Crime Study Commission testified that, in his opinion, the Guarantee Finance and Guarantee Discount Companies' records show that these companies were engaged in the business of bookmaking and, further, that there was a definite connection between these two companies and the complainant in these cases. This connection stems from the various references in the companies' records to "Irvin", "Irwin", "Irving", "Millstone", and other seeming variations of complainant's name, and from financial transactions relating to bookmaking which are shown by the records to have occurred between the individuals designated as above, and the two companies. Furthermore, complainant, through his counsel, stated that he was willing to stipulate that, for the purposes of this hearing, there were bookmaking activities being carried on at the offices of the Guarantee Finance and Guarantee Discount Companies.

Exhibit No. 14 is a work sheet consisting of three pages showing items of receipt and expenditure. This exhibit was identified by a public accountant as a statement of the accounts, for income tax purposes, of his clients, Marvin Kobey, Philip Cobert, Harry Rockwell, and Albert Kogus. According to other testimony in the record, Marvin Kobey is president of the Guarantee Finance Company. On one of the exhibits previously referred to (Exhibit No. 30) appears the purported signature of Philip H. Cobert, and

other testimony indicates that these four individuals were the ones controlling and operating the Guarantee Finance Company.

In order to show the custody of the records previously discussed, the Special Crime Study Commission presented testimony that these records were obtained by a representative of the Commissioner of Corporations of the State of California, from the premises at 1747 and 1749 East Florence Avenue, which premises constitute the offices of the Guarantee Finance and Guarantee Discount Companies. The Special Crime Study Commission obtained these records from the agents of the Commissioner of Corporations.

Additional testimony was presented by an officer of the Los Angeles Police Department to the effect that the general reputation of the premises of the Leader Barber Shop is that bookmaking is carried on there, although another witness, a customer of the barber shop for many years, testified that he had never observed or known of any bookmaking there. Furthermore, this officer testified that about three days prior to February 25, 1949, he saw one Sam Dobkin enter the Leader Barber Shop several times during a two-hour period and exchange money and slips of paper with barbers and customers in the shop. On February 25, 1949, he saw this same Dobkin exchange money and notes, but on this occasion Dobkin went to a nearby restaurant and was talking on the telephone when the officer approached him. Dobkin dropped the telephone and attempted to run. The officer arrested Dobkin, and removed from his person betting markers and scratch sheets for that day and old sheets. Later, on March 4, 1949, the officer again observed two individuals exchanging money and notes on the premises of the Leader Barber Shop.

In addition to the testimony presented by the Crime Commission, an attorney for the telephone company who was called as a

witness by the complainant, testified that he was present when the original of the letter, previously referred to as Exhibit No. 4, and the accompanying lists of telephone numbers were delivered to the president of the telephone company by the counsel for the Special Crime Study Commission. He also testified that, on that occasion, the counsel for the Special Crime Study Commission advised the president of the telephone company and himself, orally, of the activities of a "large bookmaking syndicate" and of its agents. The letter from the Crime Commission, and the lists of phone numbers, in the opinion of the witness, showed a connection between complainant and this syndicate.

At the termination of the hearing the parties were granted permission to file briefs, the complainant having the privilege of filing an opening brief within ten days after receipt of transcript; the defendant having the privilege of filing an answering brief ten days thereafter, and the complainant having an additional five days thereafter to file a reply brief. These briefs and one from the Special Crime Study Commission, which Commission obtained special permission to file a brief, have been filed and the matter is now ready for decision.

After a careful review of all of the evidence and all of the matter contained in the briefs, it becomes apparent that there are two principal issues which we are called upon to determine: (1) did the telephone company, in removing the telephones of complainant herein, have reasonable cause as defined in Decision No. 41415, dated April 6, 1948 (47 Cal. P.U.C. 853); and, (2) has there been presented in this matter sufficient evidence to warrant a conclusion that the telephone facilities at complainant's

place of business were used for an unlawful purpose? As to the first issue, the first ordering paragraph of Decision No. 41415 becomes germane:

"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, regulations, 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."

Considerable point has been made as to whether the Special Crime Study Commission on Organized Crime is a law enforcement agency and, consequently, whether or not its counsel would be an "official charged with the enforcement of the law" as set out in Decision No. 41415, supra. A determination of this question is not important here since notification by an "official charged with the enforcement of the law" is not the only basis for a conclusion that a communication utility's action in disconnecting service is based upon "reasonable cause", and in this matter there appear to be other grounds. Obviously, Decision No. 41415 does not preclude the telephone company from receiving information from any reliable source, whether or not such a source be technically described as a law enforcement agency. In the instant case the company's action came as a result of receiving a letter from the Special Crime Study Commission on Organized Crime and also as a result of conversations

between the president and the attorney of the defendant telephone company and the attorney for the Special Crime Study Commission. Since the Special Crime Study Commission was created by an executive order of the Governor of the State of California, to assist the Board of Corrections, and since it is operating under State-appropriated funds, its actions are clothed with sufficient official sanction to justify the telephone company in placing reliance upon them. Therefore, it is our opinion and we now find that the defendant telephone company exercised due care in taking the action it did, and in the light of this case we find that this action was based upon reasonable cause as such term is used in Decision No. 41415, supra.

We come now to the second issue. From the evidence in this case we hereby find that bookmaking was carried on at the offices of the Guarantee Finance and Guarantee Discount Companies, and we further find that this complainant conducted transactions with these companies in connection with bookmaking. We cannot ignore the fact that when the complainant was asked whether or not the allegation in his complaint to the effect that the communication facilities at his place of business "were not used as an instrumentality to violate the law, nor in aiding and abetting such violation," was true, the complainant refused to answer on constitutional grounds, claiming that to answer the question might tend to incriminate him. In addition, we are impressed with the testimony of the police officer to the effect that the general reputation of the complainant's place of business is that bookmaking is carried on there.

We hereby find that complainant was engaged in bookmaking at the premises in which his said barber shop was located and that

bookmaking was engaged in at said barber shop.

Therefore, our specific question is: Can we infer from complainant's connections with bookmaking activities, that his telephones were used for purposes of bookmaking in violation of Section 337a of the Penal Code of California? In Decision No. 41415, supra, we made the following statements: "We, also, find that successful bookmaking cannot be conducted without access to these wire services or without access to telephone facilities". It was disclosed at the hearing that the places of business of the Guarantee Finance and Guarantee Discount Companies were more than three miles from the location of complainant's barber shop. In view of the location of these places, in view of the nature of the business of bookmaking, as set out in Decision No. 41415, supra, in view of the many bookmaking transactions shown by this record to have been consummated between complainant and the Guarantee Finance and Guarantee Discount Companies, and in view of the notations of the telephone numbers of complainant's telephones on the records of the Guarantee Finance and Guarantee Discount Companies, we find that it is reasonable to infer that the telephones of complainant were used in these bookmaking transactions, and accordingly we hereby find that the telephone facilities and instrumentalities used by the complainant at his said barber shop were used as instrumentalities to aid and abet the violation of the law, to wit, the violation of Section 337a of the Penal Code.

It should be pointed out that the evidence indicates that complainant has discontinued the service he had under ANgelus 1-0772, and that the only remaining service consists of the wall telephone and the three extensions under number ANgelus 3-9043.

O R D E R

The complaints of Irvin Millstone, copartner in the Leader Barber Shop, against The Pacific Telephone and Telegraph Company having been filed, public hearings having been held thereon, said cases now being ready for decision, the Commission being fully advised in the premises and basing its decision upon the evidence of record in these cases, and the findings herein,

IT IS HEREBY ORDERED:

That the complainant's request for restoration of telephone service be denied and that the said complaints be, and they hereby are, dismissed. The temporary interim relief granted by Decision No. 42747, dated April 19, 1949, is hereby set aside and vacated.

IT IS FURTHER ORDERED:

That, upon the expiration of one hundred eighty (180) days after the effective date of this order, The Pacific Telephone and Telegraph Company may consider an application for telephone service from the complainant herein on the same basis as the application of any new subscriber.

The effective date of this order shall be twenty (20) days after the date hereof.

Dated at San Francisco, California, this 25th day of October, 1949.

R. E. [Signature]
Justice F. [Signature]
[Signature]
[Signature]
[Signature]
COMMISSIONERS