

ORIGINAL

Decision No. 52942

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ALEC K. PLOTKIN and WALTER PLOTKIN,)
Complainants,)

vs.

Case No. 5703

THE PACIFIC TELEPHONE AND TELEGRAPH)
COMPANY, a corporation,)
Defendant.)

Ray M. Davidow, for complainants.
Pillsbury, Madison & Sutro, and Lawler,
Felix and Hall, by L. B. Conant, for
defendant.

Alan G. Campbell, assistant city attorney
of the City of Los Angeles, for the
Los Angeles Police Department,
interested party.

O P I N I O N

The complaint herein, filed on December 9, 1955, alleges that prior to December 7, 1955, complainant Alec K. Plotkin was the subscriber and user of telephone service furnished by defendant at 4908 South Crenshaw Boulevard, Los Angeles, California, under numbers AXminster 2-0736 and AXminster 2-0754, and complainant Walter Plotkin was the subscriber and user of telephone service furnished by defendant at 4908 South Crenshaw Boulevard, Los Angeles, California, under numbers AXminster 2-0145 and AXminster 1-5704; that on or before the 7th day of December, 1955, the telephone facilities of complainants were disconnected by the defendant upon the complaint of the Administrative Vice Division

of the Los Angeles Police Department to the defendant; that the complainants have not been charged with any crime nor have they been arrested for any crime in connection with said telephones; that no proceedings are now pending against complainants for violation of any law; that complainants have made demand upon defendant to have said telephone facilities restored, but defendant has refused and does now refuse so to do; that complainants have suffered and will suffer irreparable injury to their business and to their reputations, and great hardship as a result of being deprived of said telephone facilities; that said telephone facilities were used by complainants in their business of communicating sports news; that without said facilities complainants cannot continue in said business and will be deprived of their earning a livelihood; that said business does not violate any of the laws of any governmental body; that complainants and others have been engaged in said business for a period of years; that complainants have a business license to so engage; and that complainants did not use and does (sic) not now intend to use said telephone facilities as an instrumentality to violate the law, nor in aiding or abetting such violation. The complainants pray that the said telephone facilities be restored and that defendant be permanently enjoined from interfering with or disconnecting the said telephone facilities.

On December 20, 1955, by Decision No. 52365, in Case No. 5703, this Commission issued an order directing the telephone company to restore service to complainants pending a hearing on the matter.

On December 30, 1955, the telephone company filed an answer the principal allegation of which was that the telephone company had reasonable cause to believe that the use made or to be made of the telephone facilities concerned was prohibited by law and that said services were being or were to be used as instrumentalities, directly or indirectly, to violate or to aid and abet violation of the law and that, accordingly, it was required to discontinue service to the complainants under the provisions of this Commission's order contained in Decision No. 41415, dated April 6, 1948, in Case No. 4930 (47 Cal. P.U.C. 853).

The matter was set for hearing in Los Angeles on February 14, 1956, before Examiner Kent C. Rogers. At that time and place the matter was called and, at the request of the complainants, continued to March 2, 1956, at 10 a.m. in Los Angeles. At the latter time and place the matter was called, evidence was presented by and on behalf of the complainants, the defendant, and the Los Angeles Police Department and the matter was continued to March 5, 1956, at Los Angeles for oral argument. On March 5, 1956, the matter was orally argued and submitted. It is ready for decision.

Walter Plotkin

Walter Plotkin testified as follows:

He subscribes to AXminster 2-0145 and AXminster 1-5074 at 4908 Crenshaw Boulevard, Los Angeles. This location is a two-story building and he has an office by himself. His brother, Alec Plotkin, has a separate office in the same building. Complainant's business is giving out sports and racing information.

It is an individual proprietorship. He and his brother are not partners. The telephones are in his own name. He does not have a "wire-service," that is "when you have a regular news service, a teletype machine in your office where the news comes right out into your office over a teletype machine." He gets the information he gives out by dialing the scratch sheet, by listening to the radio, and by calling the Los Angeles Examiner. By dialing the scratch sheet he secures racing information, the winners and the prices, in anywhere from 20 to 25 minutes after the race. He can get the same information concerning races at local tracks only from the Los Angeles Examiner. In addition, he listens to the radio. After a race, 20-25 minutes elapses before he has the information to relay over the telephone to his clients. He makes no effort to operate in secrecy and frequently policemen visit his premises. The police visited his premises on occasions over a period of about four months before the disconnect order came through. He was not arrested when the telephones were disconnected and no criminal charges have been brought. He has no personal knowledge of the activities of his customers and he never made any effort to determine what his customers do with the information given to them. The customers never volunteered any information. His business is disseminating racing information. He has never been convicted of bookmaking. He has no arrangement, association or relationship with people known to him to be bookmakers.

On cross-examination by the defendant's counsel the complainant, Walter Plotkin, testified as follows:

He charges his customers \$10 to \$15 per week. He charges what the market will bear. He secures his customers by word of

mouth. His telephones are listed in the telephone book under "Sports News." When prospective customers call he tells them how much the service will cost. His customers pay weekly in advance. He gives them an address where they can send the money. He sends out no bills. He keeps a list of paid customers so he can tell whether or not to give information. He never meets any of his customers. All his contacts are by telephone. When prospective customers call he gives them a code name. He never gets their correct names. He gives service to anyone who calls. He is in the business of giving out race results and does not think it is his business to question people that call him. He does not know who his clientele is and has come to the conclusion that people give him code names. He pays nothing for information. Anyone can call his three sources of information and secure race information free. The reason people pay him for this information is that "people may be too busy, maybe a doctor in his office, he doesn't want to listen to the radio, have the inconveniences of listening to the radio, they would rather call ---" him. People are willing to pay him \$10 to \$15 per week for race track information as a convenience. He has been in business approximately four years. In his opinion his business is not an aid to bookmaking activities.

On cross-examination by the attorney for the Los Angeles Police Department the complainant Walter Plotkin testified as follows:

He rents his office in his own name from a Dr. Gunther on a month-to-month basis. He has one employee, Louise Hathaway, working for him. She gives out race results. He gets his information from the three-named sources only at this address at the

present time. His brother has an office across the hall and he might hear his brother give out some usable information. He is familiar with his brother's business and presumes his brother has the same sources of information. He considers it an obligation to give his customers the correct information. He gives out over the telephone the numbers of the horses in a certain race at a certain track and the prices on the scratch sheet. He uses the National Scratch Sheet for information as to horses, tracks and races. When clients call he gives them the track odds and the horse. He also gives probable post time. He gets the probable post time from the scratch sheet. He can get some of the information from the radio. When prospective clients call he gives them names such as "John" or "Pete." He never asks the true name, address, telephone number or any other fact to identify the caller. He refuses service to nobody. He gets his money in advance. Customers always pay in cash. He has them mail the money to his home at 4513 Orchid Drive, Los Angeles. They enclose their code name on a slip of paper with the money. He keeps books at his home and has a code list of customers at the office. The fact that a name is on the list indicates that the customer is paid to date. He has four telephones in the office. Three of these are in rotary and are listed under one number. The other is an unlisted number. He secures racing information from two radio stations in Mexico. He cannot get the same information from the United States radio stations that he receives from the Mexican stations. The Examiner gives out race winners six or seven minutes after the races are run. At the present he has 15 customers but the number varies. He does not know the true name of any customer at present.

He has conducted similar operations at other locations over a period of four to five years. He originally worked for his father, Hymie Plotkin. He has been in business for himself about two and one-half to three years and had three places of business during that time. At 9626 $\frac{1}{2}$ South Century Boulevard he had an office in his own name but the telephone was in the name of Dr. Pierce. He does not know Dr. Pierce. Complainant was the subscriber and paid the bills. He has received racing information from a Mr. Guy Cale. Mr. Cale also called him for information concerning races. Neither paid the other. He has heard the name of Oscar Stuart. He might have had a cup of coffee with him. He has no one on his list of customers named Oscar Stuart. He knows a John Doukas. To his knowledge Doukas never receives racing information from him unless under a different name. He does not know John Doukas to take bets. He had a list of customers in his desk at 4908 Crenshaw Boulevard. The police had access to it and could see it. He does not recall any conversation with police concerning the list. He does not recall giving the names of his customers to the police. He has applied for a listing under Sports News Service in the classified telephone directory. He proposes to enlarge his business and get new clients.

On redirect examination Walter Plotkin testified that the reason he had telephones under the name of Dr. Pierce was that he did not know the exact law, that California courts had decreed that disseminating racing information in and of itself was legal. He would not, he said, break the law, and he cannot operate without a telephone.

Alec K. Plotkin

Alec K. Plotkin testified as follows:

He has his place of business at 4908 Crenshaw, the same building as his brother Walter Plotkin. They have separate offices. He has two telephones in rotary with a total of four instruments. The numbers are AXminster 2-0736 and AXminster 2-0754. He is in exactly the same business as Walter. He never got any information from Mr. Guy Cale. His telephones are listed in his true name. He has been in business for himself for about four years and has no employees. The business is his sole means of livelihood and he cannot operate without telephones. At present he has 22 customers. He has had 28. He charges \$10, \$15 or \$20 per customer, the same as his brother. He identifies his customers by numbers or names. He is paid in advance. He does not know any of his customers personally. He never met any of his customers at this location personally. He receives his payments at 1728 Laurel Canyon Boulevard, Los Angeles. That is his present residence. He has been visited by officers at the present location. They did not arrest him. When he first came into the area an officer named Ryan took him to the police station, checked him, and took him back to the office. The officer did not arrest him nor tell him to stop operating. Until the time of the disconnect order no one had told him to stop operating. He is not associated in any way with people known to be bookmakers but he does know some of them. As far as he knows, none of his customers are bookmakers. He never recognized any voice calling in as that of a bookmaker. He gives out information the same as his brother. He originally started in business with his father. He secures his customers

through other customers. He sends out no bills and serves anyone who calls. Policemen who identify themselves as such, call for information from time to time. None of them are his clients. He intends to continue the business unless his telephones are taken away.

On cross-examination by the attorney for the Police Department he testified to the following:

He went into the business with his father in 1947 and has had no other employment. When his father died he went into business for himself. He has no employees except occasionally he pays a friend five dollars to take over for about two hours. Outside of the furniture and telephones he keeps nothing but scratch sheets and a list of code names in the office. He lists his customers under code names or numbers. He gets his information that he gives to his customers solely from the scratch sheet, the Mexican radio stations and the Los Angeles Examiner. He does not have and never had any written agreements with his clients. He has operated at 48th and Western in Los Angeles under the name of Dr. Pearson. There is no such person to his knowledge. He has the same four telephone numbers in his name now that he had under the name of Dr. Pearson at the former address. These phones are now listed under Alec Plotkin doing business as Daily Sports Record. He never cared one way or the other why the customers wanted the service. He knew the name of one client, Roy Dean, an oil man, who paid by check. This is the only client who ever paid by check. He does not know offhand the name or identity of any other client. Each client calls in several times each day. They would call in about 24 times per day each. Not all call so frequently. If the radio gives the results some do not bother to

call. The clients call between 11:00 a.m. and 5:30 p.m. He gives information on the races that are listed in the scratch sheet. He does not care what the clients want the information for. That is their business. He would not operate the service if he thought it were used for illegal purposes. If he thought the customer were aiding and abetting bookmaking he would cut him off the list. He never made a statement that all of his clients were probably bookmakers. He never gave Officer Evans any information regarding customers. He never named his customers to Officer Evans or anyone else. He gives his customers the winners, what the horses pay and the probable post time. He has given the "off-time" but does not now. He used to get the "off-time" from his brother Walter but not now. He had a penthouse apartment at 1275 South Westchester Place under his own name from April 1954 through part of 1955. He put in a four-line rotary there under the name of Plotkin's News Service. There was another telephone in the apartment under the name of Charles Cahan, a previous tenant therein. The telephones were disconnected in April, 1955, on complaint of the Los Angeles Police Department. Charles Cahan was a gambler. Charles Cahan is not one of his customers to his knowledge. He knows Charles Cahan's brother, Joe Cahan. He has known Bernie Cohen for 15 to 20 years. He was not a client of complainant's father or complainant. He has never performed any service for Bernie Cohen or given to or received money from him. Complainant knows a Max Brownstein but is not too familiar with him. He has not heard of him for a couple of years. He was a building contractor and has never paid any money to him or received any money from him. On cross-examination by the attorney for the defendant

he testified as follows: He uses code names or numbers so he will know who his customers are. He does not use real names as he has just followed the way it has always been done. He has no idea why code designations are used. He used the name "Dr. Pearson" at his 48th and Western Avenue address before he knew the business was legal. He felt the business was illegal so he put it under a different name. He came to the conclusion the business was legal so he put it in his own name. He does not know how his brother gets information concerning "off-time" but he does not get it very often. He knows nothing about his brother's business but he does not need "off-time" to conduct his business. His customers seldom ask for "off-time" and he has no idea why they want it. "Off-time" is secured from someone at the race track. He will be forced to terminate his business if he cannot have telephones. His business is his livelihood. He has never had any other business. He used to think the business was illegal as every time the police wanted to pull the telephones they pulled them. Every time he moved he told the police where he was. He did not call the police when he moved to 48th and Western and used the name "Dr. Pearson."

The Defendant's Evidence and Position

Exhibit No. 1 is a letter from the Chief of Police of the City of Los Angeles dated November 30, 1955, and received by the telephone company on December 2, 1955, requesting that all of complainants' telephone services at 4908 Crenshaw Boulevard, Los Angeles, be disconnected. The position of the telephone company was that as a result of the receipt of this letter it acted with reasonable cause as that term is defined in Decision No. 41415,

referred to supra, in disconnecting and refusing to reconnect the complainants' telephone services. The telephone company's supervising special agent testified that Alec Plotkin's telephone numbers at 4908 Crenshaw Boulevard are nonpublished and that Walter Plotkin's telephone numbers at that address, except AXminster 1-5074, are listed in the classified directory under the name Plotkin News and Sports in the classified heading of "telephone answering service." AXminster 1-5074 is an unpublished number.

Evidence presented on behalf of the
Los Angeles Police Department

Frederick L. Smith

Frederick L. Smith is a police officer formerly attached to the Wilshire Division vice squad. He testified to the following:

On November 12, 1955, he went to the complainants' premises at 4908 Crenshaw Boulevard at 4:30 p.m. with his partner, Officer Kubiak. They were admitted by Walter Plotkin and the witness observed Alec Plotkin at a desk in one room answering telephones and making notations on a National Daily Reporter scratch sheet. The telephones were constantly ringing. The witness answered the telephones on several occasions and in each instance the party calling would ask for the results of a late race. Several asked for the results of the seventh at Tanforan, and on one occasion a male voice stated in substance "Let's quit all this fooling around, after all I am paying for this service and I have customers waiting here and they want to know the results. Now let's have no more fooling around and give me the

results of the last up north." On some of the calls he gave the results of the 7th at Tanforan, which were listed in hand-penciled notations on the National Daily Reporter. These notations also indicated what horse had won by reference to the post position as listed in the scratch sheet, the "off-time," and the mutuel prices. He saw Mr. Alec Plotkin make notations on the scratch sheet and all of the handwriting on the scratch sheet appeared to be that of the same person. The witness answered telephones in Walter Plotkin's office also. On one occasion he gave the results of the 7th race at Tanforan and the "off-time" to an unknown male caller. He did not have much conversation with Alec Plotkin. Walter Plotkin said he felt the business was legitimate and wanted to know if the officers would arrest him at that time. He contacted his superior who advised him to contact the photo laboratory, have photos taken and make a report requesting that the telephones be removed.

Cross-examination by the Complainants' Attorney

Officer Smith testified that he was not familiar with Alec Plotkin's handwriting; that he saw him writing on the scratch sheet; that he did not see him write the "off-time"; and that he has no personal knowledge of the identity of any of Alec or Walter Plotkin's customers.

Examination by the Defendant's Attorney

Officer Smith testified that he went to the complainants' premises to investigate possible bookmaking activities; that he saw no bets placed; that he only found evidence of giving out of information concerning horse racing; that knowledge of "off-time" prevents a bookmaker from being "past-posted," that is, a wager

being placed on a race after it has been run; that such information is important only to bookmakers; that "off-time" information is difficult to get; that "off-time" information is secured by signals from inside the track; and that such activities occur frequently. In addition, he said, the bookmakers desire knowledge of scratchings, results and mutuel payments within a short time. He said he had no knowledge of the source of complainants' "off-time" and other information other than the Mexican radio stations. Neither the Examiner nor the scratch sheet gives "off-time." He believes that the Mexican radio stations give "off-time" at the same time they give the results of the races, that is, after the races have been run.

Re-cross-examination by Complainants' Attorney

The officer stated that no one knows the "off-time" until the race starts; that the two Mexican radio stations give the results on the quarter hour (each on the half hour, staggered 15 minutes apart); that he does not know how they get their information; that bettors are vitally interested in the position of the horse and what a horse paid; that the National Daily Reporter sells in all newsstands and drugstores; and that bookmakers want information in a relatively short time, less than 20 to 25 minutes.

Stewart A. Nelson

Stewart A. Nelson has been with the Los Angeles Police Department for 5-1/2 years. He was with the Administrative Vice Detail for three years. He testified that he is familiar with the methods of operation of bookmakers; that bookmakers and "past-posters" are interested in speedy information as to "off-time," "post-time," winners and mutuel payments; that a "past-poster"

is a person who engages in the practice of getting the results of races that have just been run and laying bets with bookmakers on those races; that in most cases they know the exact results of the race before they bet and in other cases they take chances on the horse that is leading in the stretch; that bookmakers accept bets on races that have been run; and that the result is that the person who has the information is betting on a sure thing. He further testified that bettors are interested in getting race results as soon as possible; that they are frequently people who make more than one bet a day with bookmakers on different races and are interested in knowing how they stand on bets made; that he knows of no one but bettors, "past-posters" and bookmakers who is interested in early information on the results of horse races; that the National Scratch Sheet gives the results of the races, the three winning horses in each race, and the amount of money paid; that this information can be secured from the scratch sheet by dialing its telephone number; that there is no charge, and anyone can do it. The same information, he said, can be secured from the Los Angeles Examiner, but he was not sure if the information is available as soon as from the scratch sheet. He said there are two Mexican radio stations, Tiajuana and Rosarita Beach, which broadcast on staggered one-half hour basis, so that racing information is broadcast every 15 minutes.

The officer further testified that he talked to each of the complainants at 4908 Crenshaw and at other locations in the immediate area; that at the given address he frequently talked to both plaintiffs about bookmaking and listened to incoming telephone

conversations; that he watched complainants make notations concerning the results of races; that he heard the race results being given out; and that, on one occasion, in the Spring of 1955, he obtained from Walter Plotkin a list of approximately 18 names of persons Walter said were his customers, the method by which these customers paid his charges, and descriptive comments about several of the customers. He has, he said, heard the radios in the office of each complainant tuned to the Mexican radio stations and has watched them dial between the two stations each 15 minutes. He said, he has watched both complainants dial the National Daily Reporter, has heard them ask for information concerning specific races and has seen them write down numbers indicating the winning horses and mutuel pay-offs. The witness also said he heard some names mentioned by Alec and Walter in response to incoming calls, and in several cases those names, usually first names, corresponded to a list of names which Walter had given him previously as representing the code names of his clients. In several instances, he said, Walter gave him other information concerning the clients' identities. The witness testified that Oscar Stewart, John Doukas, Jr., Walter Wdowiak, and Bea or Billie Oughton, persons named in Walter's list of clients, are bookmakers. He further testified that he arrested a colored woman, Ouida Sides, in a phone spot (a place from which to telephone race bets) and Walter said she was one of his accounts. On more than one occasion, the officer said, he made bookmaking arrests and asked Walter if the party arrested were one of his clients and Walter would remember that one of his clients stopped calling on the day of the arrest.

Cross-examination by Complainants' Attorney

The officer stated that he did not think persons handicapping the next day's races, publishers of tout sheets, horse breeders or horse owners were interested in early information concerning the results of races; that he never arrested either complainant although he believed they were violating the law relative to bookmaking; that it is his job to gather evidence; that Walter Plotkin made remarks to him to the effect that he hoped his clients would return after their arrests; and that Walter said some of his clients were bookmakers.

Gordon D. Evans

This witness is a police officer who has been connected with the Administrative Vice Division of the Los Angeles Police Department for the past four and one-half to five years.

The witness testified that bookmakers usually have no other occupation; that they are in a position to be either "past-posted" or to cheat the better by taking bets on races already run; that in "past-posting" it is necessary to have as much knowledge of what has happened as possible at the earliest possible time; that there are various means of getting information quickly to clients of bookmakers or making it available to them so they can place another bet; that the bookmakers need information as soon as possible concerning "off-time", "post-time," results and payments; and that he has come across no one, other than bookmakers, off-track bettors and "past-posters," who has an interest in quick information concerning these items. He said that if the listed information was not available rapidly the bookmaking operations would be slowed

down. The officer stated that he knows both the complainants; that he has talked to Alec most frequently; that Alec has had his place of business at several different locations, the last and present of which is at 4908 Crenshaw Boulevard; and that Alec Plotkin gave him a list of the 24 clients he had on January 11, 1955, and to the best of his knowledge, the true names thereof. The officer testified that one of the clients was giving the same service as that furnished by the complainants, five were unknown to the witness, and each of the others was a known bookmaker with one or more convictions.

Cross-examination by Complainants' Attorney

The witness stated that he could not see why early information would help a handicapper or a tout sheet; that any person can tune in on the Mexican radio stations; that you can get "off-time" from these stations 15 to 20 minutes after a race; that Alec Plotkin never told the witness that he had seen any person take or give a bet; and that on at least two occasions Alec Plotkin gave the witness information which led to the arrest of bookmakers.

Examination by Defendant's Attorney

In response to question of the defendant's attorney the witness stated that there are no wire services in operation in Los Angeles at the present time; that Plotkins' services are the best available substitute for wire services that can be had in Los Angeles today; and that they render the same service as the wire services did only not so fast.

Re-cross-examination by Complainants' Attorney

On re-cross-examination the witness testified that the Plotkins' services were better than the Mexican radio stations in

that in "talking to bookmakers sitting at a phone spot, a radio turned on to race results while they are sitting there, and at their busy hours, their opinion was that they did not get the true race results and it was easier for them to call a number than to sit and listen over a radio to get the race results"; that because bookmakers were occupied they could not pay attention to the radio stations; that, other than "probable post," a bookmaker could get the service the Plotkins gave by having somebody sit and listen to the radio; and that "probable post" is listed in the daily scratch sheet. This last answer, the witness said, was based on the assumption that complainants' only sources of information were the radio, the scratch sheet and the newspapers. He said that neither the scratch sheet, the Examiner nor the radio give the "off-time." This witness stated that he saw nothing in the complainants' places of business to indicate they were giving "off-time."

Ira B. Dole

The parties stipulated that this witness, a sergeant attached to the Administrative Vice Division of the Los Angeles Police Department, was an expert on bookmaking and paraphernalia used in bookmaking.

He testified he has been on Administrative Vice for three and one-half years; that for three years of this period he has had the complainants under continuous observation; that during this period a Guy Cale, Pete Cuccia, Walter Plotkin and Alec Plotkin have been supplying race results and other information to bookmakers; that there was an additional service by Al. Leavitt and Valentine Janes concerning "past-posting" operations, relative to

one race daily on eastern tracks during the greater part of the time, seldom on western tracks, given to anyone interested in "past-posting"; and that this service was sold to bookmakers when they were interested in protecting themselves from "past-posting." The officer further testified that the service conducted by Guy Cale was investigated and it was found that he contacted a Reno location, the Turf Club, and Mr. Joe Holverstein in Reno and obtained racing information from that location; that he also contacted a Las Vegas phone number and obtained racing information from that location; that his long distance calls usually averaged two a day; and that Walter Plotkin was buying some of the information from Reno from Guy Cale. Whether or not this method of operation continues at present the witness could not say. The officer said that Alec Plotkin appeared to be on the receiving end of some of this information as recently as a year ago. The witness said that Alec Plotkin stated that he had been getting information from his brother, who was getting it from Guy Cale, who was getting it from Reno and Las Vegas, and Alec Plotkin was forwarding the information to Pete Cuccia. The witness said that in his experience he had learned of methods by which information can be gotten via the means of communication used by newspapers or the scratch sheet at an earlier time than that information will be released by the newspapers or the scratch sheet. The newspapers and scratch sheet, he said, rely on the Associated Press releases, and those releases go out to the concerned publications who subscribe to the press releases, for example, the National Daily Reporter scratch sheet has teletypes, a switchboard and a bank of girls available, the infor-

mation comes in to that office via teletype and that information at the specific time of release by the person in charge of it is allowed to go out over the telephones to anyone who calls the number of the scratch sheet. The newspapers and the scratch sheet release the information about 25 minutes after post-time, the officer said, but the information is available to newspaper and scratch sheet personnel 10 to 15 minutes prior to release time, and parties at the tracks have the information immediately. The witness said that frequently the information gets out ahead of release time. The officer did not know if this was the situation at present but he stated there have been times when it was so.

Cross-examination by Complainants' Attorney

On cross-examination the witness stated that the bookmaker, not the handicapper or the printer of "tout sheets," would secure an advantage by subscribing to the service in that he is usually busy answering a couple of telephones with both hands and he cannot tie up his telephone lines or his time; that time is of the essence to bookmakers and split seconds count; that Guy Cale got information on an average of two times a day by placing telephone calls; that he received information within 10 to 12 minutes after a race had been run; and that he relayed it to various subscribers including the complainants.

Argument

The attorney for the complainants argued, inter alia, that disseminating racing information is not illegal in and of itself (citing People vs. Brophy, 49 Cal. App. 2d 15), and that certain factors should be present before it is found that a person

providing a service similar to that rendered by the complainants is guilty of aiding and abetting bookmaking (citing People vs. McLaughlin, 111 Cal. App. 2d 781).

The attorney for the Los Angeles Police Department based his argument in support of an order discontinuing the complainants' telephone service upon Decision No. 41415, his interpretation of that decision being that the Commission intended to include any use of telephones which furthers violations of the law.

Findings and Conclusions

The record herein shows that the complainants provide information concerning the results of horse races, off-time, mutuel prices, and post positions, to their clients; that most of this information is available to the general public through legal channels of communication; that some of the information furnished by the complainants was obtained through sources not available to the general public; that many of complainants' clients are or have been known bookmakers; and that only bookmakers, "past-posters" and bettors are interested in speedy information concerning such things as race results, off-times, mutuel prices, post positions and late scratches.

In Decision No. 41415, dated April 6, 1948, in Case No. 4930, we found 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. ...

"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 powers, 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. ...

"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."

The order of Decision No. 41415, referred to supra, contains the following:

"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."

Upon the evidence of record herein it appears, and we find, that the telephone company's actions were based upon reasonable cause, as that term is defined in Decision No. 41115, referred to supra. We further find that the telephone services here involved were and are being used and will be used by the complainants as an instrumentality directly or indirectly to violate or to aid and abet the violation of the law. Inasmuch as the complainants intend to continue in the same line of business if the service is ordered permanently reinstated, the order herein refusing service will be made permanent.

O R D E R

The complaint of Alec K. Plotkin and Walter Plotkin against The Pacific Telephone and Telegraph Company having been filed, a public hearing having been held thereon, the Commission being fully advised in the premises and basing its decision upon the evidence of record,

IT IS ORDERED that the complainants' request for restoration of telephone service be denied and that the said complaint be and it hereby is dismissed. The temporary interim relief granted by Decision No. 52365 in Case No. 5703, is hereby set aside and vacated.

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

Dated at San Francisco, California,
this 94th day of April, 1956.

Peter E. Mitchell
President
Justus F. Cramer
Bartholomew
Max Doolley
Ch. Hardy
Commissioners

PETER E. MITCHELL
President
JUSTUS F. CRAMER
BARTHOLOMEW
MAX DOOLEY
CHAS. HARDY
Commissioners