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Civil Action No. — 19-163

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In the District Court of the United States for  
the Southern District of New York

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UNITED STATES OF AMERICA, PLAINTIFF

v.

THE ASSOCIATED PRESS, ET AL., DEFENDANTS

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COMPLAINT

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JOHN HENRY LEWIN,  
CHARLES H. WESTON,

*Special Assistants to the Attorney General.*

FRANCIS BIDDLE,

*Attorney General.*

THURMAN ARNOLD,

*Assistant Attorney General.*

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FILED

**In the District Court of the United States for  
the Southern District of New York**

CIVIL ACTION No. —

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

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  
GEORGE BAKER LONGAN  
ROBERT RUTHERFORD MCCORMICK  
ROBERT MCLEAN  
LEONARD KIMBALL NICHOLSON  
FRANK BRETT NOYES  
PAUL PATTERSON  
STUART HOFFMAN PERRY  
E. LANSING RAY  
EDWARD HUBERT BUTLER; and  
THE ADRIAN TELEGRAM  
THE A. S. ABELL COMPANY  
BULLETIN COMPANY  
THE CLEVELAND COMPANY  
THE CONSTITUTION PUBLISHING COMPANY

COWLES PUBLISHING COMPANY  
 THE EVENING STAR NEWSPAPER 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  
 TRIBUNE COMPANY  
 THE TRIBUNE PUBLISHING CO.  
 WORCESTER TELEGRAM PUBLISHING CO., INC.,  
 INDIVIDUALLY AND AS REPRESENTING A CLASS  
 CONSISTING OF ALL THE MEMBERS OF THE ASSO-  
 CIATED PRESS, DEFENDANTS

#### COMPLAINT

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

The United States of America, plaintiff, by its  
 attorneys, acting under the direction of the Attorney  
 General of the United States, brings this action  
 against the defendants and complains as follows:

#### JURISDICTION AND VENUE

1. This complaint is filed and this action is insti-  
 tuted against the defendants under Section 4 of the  
 Act of Congress of July 2, 1890, c. 647, 26 Stat. 209,  
 as amended, entitled "An Act to Protect Trade and  
 Commerce against Unlawful Restraints and Monopo-  
 lies", commonly known as the "Sherman Antitrust  
 Act", and under Section 15 of the Act of Congress of  
 October 15, 1914, c. 323, 38 Stat. 730, as amended,

commonly known as the "Clayton Act"; in order to  
 prevent and restrain continuing violations of said  
 defendants, as hereinafter alleged, of Sections 1 and 2  
 of the Sherman Antitrust Act and Section 7 of the  
 Clayton Act.

2. Defendant The Associated Press (hereinafter  
 sometimes referred to as AP) is incorporated under  
 the laws of the State of New York and is an inhabi-  
 tant of the Southern District of New York. It trans-  
 acts business within the Southern District of New  
 York and at various places throughout the world and  
 has its principal place of business at No. 50 Rocke-  
 feller Plaza, New York, New York, in the Southern  
 District of New York. It is engaged in the commer-  
 cial business of collecting and distributing news, in-  
 formation and intelligence in interstate and foreign  
 commerce.

3. The acts and conduct of the defendants and their  
 co-participants hereinafter referred to constitute a  
 combination and conspiracy in restraint of trade and  
 commerce in news, information and intelligence  
 among the several States, the monopolizing of a part  
 of such trade and commerce, an attempt to monopolize  
 a part of such trade and commerce, and a combination  
 and conspiracy to monopolize the same.

#### THE DEFENDANTS

4. Defendant The Associated Press is a coopera-  
 tive association of newspaper owners, incorporated in  
 the year 1900 under the Membership Corporations  
 Law of the State of New York.

5. Defendant Paul Bellamy is a resident of Cleveland, Ohio, and is, and has been since April 1934, a member of the board of directors of The Associated Press.

6. Defendant George Francis Booth is a resident of Worcester, Massachusetts, and is now, and has been since April 1941, a member of the board of directors of The Associated Press.

7. Defendant John Cowles is a resident of Minneapolis, Minnesota, and is now, and has been since April 1934, a member of the board of directors of The Associated Press.

8. Defendant William Hutchinson Cowles is a resident of Spokane, Washington, and is now, and has been since April 1911, a member of the board of directors of The Associated Press.

9. Defendant Edward King Gaylord is a resident of Oklahoma City, Oklahoma, and is now, and has been since April 1940, a member of the board of directors of The Associated Press.

10. Defendant Houston Harte is a resident of San Angelo, Texas. He is First Vice-President of The Associated Press and is now, and has been since April 1937, a member of its board of directors.

11. Defendant Josh L. Horne is a resident of Rocky Mount, North Carolina, and is now, and has been since April 1937, a member of the board of directors of The Associated Press.

12. Defendant Clark Howell, Jr. is a resident of Atlanta, Georgia, and is now, and has been since April 1937, a member of the board of directors of The Associated Press.

13. Defendant Joseph Russell Knowland is a resident of Oakland, California, and is now, and has been since April 1937 a member of the board of directors of The Associated Press.

14. Defendant George Baker Longan is a resident of Kansas City, Missouri, and is now, and has been since April 1933, a member of the board of directors of The Associated Press.

15. Defendant Robert Rutherford McCormick is a resident of Chicago, Illinois, and is now, and has been since April 1937, a member of the board of directors of The Associated Press.

16. Defendant Robert McLean is a resident of Philadelphia, Pennsylvania. He is President of The Associated Press and is now, and has been since April 1924, a member of its board of directors.

17. Defendant Leonard Kimball Nicholson is a resident of New Orleans, Louisiana, and is now, and has been since April 1933, a member of the board of directors of The Associated Press.

18. Defendant Frank Brett Noyes is a resident of the District of Columbia, and is now, and has been since 1903, a member of the board of directors of The Associated Press.

19. Defendant Paul Patterson is a resident of Baltimore, Maryland, and is now, and has been since April 1932, a member of the board of directors of The Associated Press.

20. Defendant Stuart Hoffman Perry is a resident of Adrian, Michigan, and is now, and has been since April 1933, a member of the board of directors of The Associated Press.

21. Defendant E. Lansing Ray is a resident of St. Louis, Missouri, and is now, and has been since April 1922, a member of the board of directors of The Associated Press.

22. Defendant Edward Hubert Butler is a resident of Buffalo, New York, and is now, and has been since April 1940, a member of the board of directors of The Associated Press. He is, and has been for many years, a member of The Associated Press and is engaged in publishing at Buffalo, New York, a daily newspaper entitled the "Buffalo Evening News", and in gathering and disseminating news in interstate commerce.

23. Defendant The Adrian Telegram is a corporation which is now, and has been for many years, a member of The Associated Press. It is engaged in publishing at Adrian, Michigan, a daily newspaper entitled the "Adrian Telegram", and in gathering and disseminating news in interstate commerce.

24. Defendant The A. S. Abell Company is a corporation which is now, and has been for many years, a member of The Associated Press. It is engaged in publishing at Baltimore, Maryland, a daily newspaper entitled "The Sun", and in gathering and disseminating news in interstate commerce.

25. Defendant Bulletin Company is a corporation which is now, and has been for many years, a member of The Associated Press. It is engaged in publishing at Philadelphia, Pennsylvania, a daily newspaper entitled "The Evening Bulletin", and in gathering and disseminating news in interstate commerce.

26. Defendant The Cleveland Company is a corporation which is now, and has been for many years, a member of The Associated Press. It is engaged in publishing at Cleveland, Ohio, a daily newspaper entitled "Cleveland Plain Dealer", and in gathering and disseminating news in interstate commerce.

27. Defendant The Constitution Publishing Company is a corporation which is now, and has been for many years, a member of The Associated Press. It is engaged in publishing at Atlanta, Georgia, a daily newspaper entitled "The Constitution", and in gathering and disseminating news in interstate commerce.

28. Defendant Cowles Publishing Company is a corporation which is now, and has been for many years, a member of The Associated Press. It is engaged in publishing at Spokane, Washington, a daily newspaper entitled "The Spokesman-Review", and in gathering and disseminating news in interstate commerce.

29. Defendant The Evening Star Newspaper Company is a corporation which is now, and has been for many years, a member of The Associated Press. It is engaged in publishing at Washington, D. C., a daily newspaper entitled "The Evening Star", and in gathering and disseminating news in interstate commerce.

30. Defendant The Kansas City Star Company is a corporation which is now, and has been for many years, a member of The Associated Press. It is engaged in publishing at Kansas City, Missouri, a daily newspaper entitled "The Kansas City Star", and in gathering and disseminating news in interstate commerce.

31. Defendant The Oklahoma Publishing Co. is a corporation which is now, and has been for many years, a member of The Associated Press. It is engaged in publishing at Oklahoma City, Oklahoma, a daily newspaper entitled "The Daily Oklahoman", and in gathering and disseminating news in interstate commerce.

32. Defendant The Register and Tribune Company is a corporation which is now, and has been for many years, a member of The Associated Press. It is engaged in publishing at Des Moines, Iowa, a daily newspaper entitled "The Des Moines Register", and in gathering and disseminating news in interstate commerce.

33. Defendant Rocky Mount Publishing Co. is a corporation which is now, and has been for many years, a member of The Associated Press. It is engaged in publishing at Rocky Mount, North Carolina, a daily newspaper entitled "Rocky Mount Telegram", and in gathering and disseminating news in interstate commerce.

34. Defendant Globe Democrat Publishing Co. is a corporation which is now, and has been for many years, a member of The Associated Press. It is engaged in publishing at St. Louis, Missouri, a daily newspaper entitled "St. Louis Globe-Democrat," and in gathering and disseminating news in interstate commerce.

35. Defendant San Angelo Standard, Inc., is a corporation which is now, and has been for many years, a member of The Associated Press. It is engaged in

publishing at San Angelo, Texas, a daily newspaper entitled "San Angelo Evening Standard," and in gathering and disseminating news in interstate commerce.

36. Defendant The Times-Picayune Publishing Company is a corporation which is now, and has been for many years, a member of The Associated Press. It is engaged in publishing at New Orleans, Louisiana, a daily newspaper entitled "The Times-Picayune," and in gathering and disseminating news in interstate commerce.

37. Defendant Tribune Company is a corporation which is now, and has been for many years, a member of The Associated Press. It is engaged in publishing at Chicago, Illinois, a daily newspaper entitled "Chicago Daily Tribune," and in gathering and disseminating news in interstate commerce.

38. Defendant The Tribune Publishing Co. is a corporation which is now, and has been for many years, a member of The Associated Press. It is engaged in publishing at Oakland, California, a daily newspaper entitled "Oakland Tribune," and in gathering and disseminating news in interstate commerce.

39. Defendant Worcester Telegram Publishing Co., Inc., is a corporation which is now, and has been for many years, a member of The Associated Press. It is engaged in publishing at Worcester, Massachusetts, a daily newspaper entitled "Worcester Telegram," and in gathering and disseminating news in interstate commerce.

40. The present members of The Associated Press other than those members specifically named parties



defendant are hereby sued as a class. They constitute a class of persons having identical interests in the subject matter of this action and are so numerous as to make it impracticable to bring them all before the court. In so far as the character of the right sought to be enforced against them by this action is several, the questions of law and fact affecting their several rights are common, and common relief is sought against them. The joinder of The Associated Press and of the members of The Associated Press hereinbefore specifically named as parties defendant will fairly insure the adequate representation of all other members of The Associated Press.

41. Various persons not made defendants herein participated with the defendants in the offenses hereinafter charged, and performed acts and made statements in furtherance of the effectuation thereof. These co-participants include all of the persons who have been members of The Associated Press and the individuals who from time to time acted as the representatives of such members in meetings and other activities of The Associated Press.

#### THE IMPORTANCE OF NEWSPAPERS

42. Newspapers supply a necessity and their business vitally affects the national interest. Public opinion largely motivates and determines both public policies and private actions in a democracy like the United States. Such opinion tends to be unified, and wisely and effectively exerted in the national interest, in proportion to the extent that it is based upon current, accurate and complete information of those

events and conditions throughout the world which are materially related to the concerns of this nation and its people. The extent of such information has increased with the growth in number, range and complexity of public issues and with their increasing interdependence upon conditions and happenings throughout the United States and other parts of the world. Recent events culminating in the present world-wide conflict have greatly accentuated the need for this type of information. Newspapers are the chief media for its dissemination. Many private actions of the people of the United States are likewise determined by newspaper reports of day-to-day events. Many business transactions are conducted in reliance upon such reports. The widest possible dissemination among the American people of fresh, accurate, and world-wide news of current events and conditions, through the instrumentality of newspapers, is therefore of vital importance to the national welfare.

43. The national policy in favor of freedom of the press requires that newspapers engaged in disseminating news be unhampered and unrestrained in selecting the particular news they choose to publish, in emphasizing it, and in expressing any accompanying viewpoint or opinion. A corollary of such national policy is that newspapers be unhampered by any artificial or unnecessary restraints, public or private, upon their choice of, and free competitive access to, the various sources of news, including agencies engaged in assembling and transmitting daily news reports of world events. It is a further corollary of such national policy that the public interest is promoted by the estab-

lishment, and continued availability to the public, of as many responsible newspapers, representing differing and varied points of view, as can successfully participate in the business of disseminating news and related comment.

#### THE IMPORTANCE OF NEWS-AGENCIES

44. No daily newspaper can exist in this country today without access to the service of a news-agency. By news-agency is meant an organization engaged in gathering and transmitting the news of the world to multiple newspapers which jointly contribute to the expense of this undertaking, whether by way of assessments of proportionate shares of the total expense or by way of a flat charge for the service. No single newspaper, however large and powerful, could independently and by means of its own staff gather and transmit currently the outstanding news events of the entire world. Not only would the cost of such undertaking be prohibitive and the end product—the news received—be inferior, but any such attempt, if generally undertaken, would result in wholly needless and wasteful duplications of wire and cable facilities and of trained personnel.

45. News-agencies, which are thus creatures of necessity born of the fundamental economics of the newspaper business, have operated in this country for more than a century. At least for the last fifty years, their absolute indispensability to the life of any newspaper has been universally recognized. Access to the service of a news-agency is therefore essential to the survival of any newspaper.

46. There are in this country today only three news-agencies. Furthermore, there are material differences in the character and extent of the services furnished by these three agencies. It is of primary concern to the individual newspaper, and may be determinative of its success or failure, that it have access to the service of the particular agency best adapted, or believed by it to be best adapted, to supply its own special news requirements. Denial of such access directly restrains interstate commerce in news to and from such newspaper and the agency to which it is denied access and likewise constitutes a burden and restraint upon the newspaper's own interstate circulation.

47. The business of gathering news on a world-wide basis and its transmission to the country's newspapers can be performed efficiently and economically by only a few such news-agencies, which necessarily tend to become large and powerful organizations with the ability to dictate and determine the character of news available to newspapers. The economic nature of the business of news-agencies is such that there is no present likelihood that any other organization comparable to any of the said three existing news-agencies will undertake to serve American newspapers with news gathered on a comprehensive basis.

48. The business of news-agencies in collecting news and distributing the same to newspapers is affected with a national public interest. This is true for the reasons hereinbefore alleged with respect to the public importance of newspapers and for the additional reason that the service rendered by news-agencies is in-



dispensable to the success of any individual newspaper. Furthermore, the national importance of the product of The Associated Press in particular; its purpose to continue a business which has been recognized as affected with a public interest; the number and character of the newspapers which it expressly holds itself out to serve; the requirement of large size and financial resources for its effective operation; its dominant bargaining position in comparison to any individual newspaper in need of its service; the extent of its coverage; the collective power of the group of newspapers which compose it; its tendency and growth toward achieving monopolistic power, enhanced by its exclusive contracts with its members and by the fact that others, in order to render the same service, would have to engage in wasteful duplication of its facilities; and its freedom from rivalry with many competitors, as hereinafter set forth, are factors which justify the requirement that The Associated Press serve newspapers needing or desiring its service without undue discrimination, and free from restraints imposed by it as hereinafter charged in the interests of its individual members. These factors, among others, render the particular restraints of trade and other activities charged herein undue and unreasonable.

#### THE ASSOCIATED PRESS

49. Defendant The Associated Press has at present approximately 1274 members, being individuals, corporations, partnerships, limited liability corporations, joint stock and other associations, owning newspapers

published throughout the various states and dependencies of the United States and in certain other parts of the world. These members have combined in and with The Associated Press for the cooperative collection, interchange and distribution of news, information and intelligence for publication in newspapers. The members publishing newspapers in the United States are severally engaged in the commercial business of collecting and distributing, in interstate commerce, news, information and intelligence for profit. The Associated Press acts as an instrumentality for the constant exchange between its said members, in the channels of interstate and foreign communication, of news, information and intelligence supplied to it by its respective members, and it also acts as a supplier to its members of news, information and intelligence gathered by its own activities.

50. The original Certificate of Incorporation of The Associated Press filed May 23, 1900; a statement of the subsequent amendments to the Certificate of Incorporation; the original by-laws of The Associated Press adopted September 19, 1900; a statement of all significant changes made in the by-laws between September 19, 1900, and April 20, 1942; and the by-laws now in effect, as last amended April 20, 1942, are attached hereto and made a part hereof, marked Exhibits A, B, C, D, and E, respectively.

51. In addition to its principal place of business located in The Associated Press Building, No. 50 Rockefeller Plaza, New York City, which it claims to be "known popularly as 'the news center of the

world' ", The Associated Press maintains offices in more than 250 cities of the world and 94 news bureaus in the United States alone, usually one in each state and two or more in some. Of these bureaus in the United States, seven have staffs of 50 or more full-time employees; five have staffs of 30 to 49; 26 have staffs from 10 to 29; and 56 have staffs of 9 or under. A total of approximately 100,000 persons contribute, directly or indirectly, to the carrying on of its business. Its own staff of 7,200 employees (1940 being full-time), including 2,500 correspondents located in foreign countries, is augmented by the staffs of all of its member newspapers and by the staffs of affiliated news-agencies in foreign countries. Its reporting staff at Washington, D. C., comprises approximately 150 reporters. Over 65,000 workers are employed to cover the AP news of national elections. For its financial news service alone, The Associated Press employs 200 writers, editors and statisticians. It leases a transatlantic cable and leases and operates a network of telegraph wires in this country connecting at least 727 domestic cities. Every twenty-four hours it distributes basic news reports of at least 1,000,000 words and also supplementary reports and services. Its news report supplied each day in Chicago to morning newspaper members consists of 273,000 words, to evening papers 246,000 words. In Washington its news reports consist of 276,000 words for both morning and evening members. In the year 1941, The Associated Press expended approximately \$12,000,000 (about \$3,450,000 in the United States alone) for the actual gathering and distributing of world news.

52. The Associated Press has entered into contracts with the leading foreign news-agencies such as Reuters Limited, The Press Association Limited, and the Telegraph Agency of the Union of Soviet Socialist Republics (Tass), whereby it has become entitled to receive the news gathered by these agencies, and under similar contracts it has become entitled exclusively to receive all the news gathered by its subsidiaries, Press Association, Inc., La Prensa Asociada and The Associated Press of Great Britain Ltd.

53. The income of The Associated Press consists almost entirely of weekly assessments levied upon its members according to a formula of assessment and payable in advance. This formula, while adjusted by the Board of Directors of The Associated Press to the type and amount of service received by each member, is based fundamentally upon the plan of distributing the total cost of AP's operation among its members in proportion to the population of the community served by each member. The amount of assessments is the same for each newspaper published in the same community and "field" (morning or evening), regardless of their respective circulations.

54. The principal sources of the domestic news which The Associated Press gathers and distributes are (1) its 1200-odd members, each of which collects, by its individual reporting staff, and transmits to The Associated Press the news of its locality, and (2) its offices and news bureaus, with their reporting staffs, maintained throughout the United States. The principal sources of its foreign news are (1) its bureaus and re-

porting staffs located normally in practically all countries and in all principal foreign cities, whose "contact with news sources everywhere interlaces the world", and (2) independent foreign news-agencies which supply The Associated Press with news under contract. This news is sent from these various sources, principally by telephone, telegraph or cable, to news assembly points established by The Associated Press at its main office in New York City and at division offices located in AP territorial divisions of the United States, known as the eastern, southern, central and western divisions. At each of these assembly points The Associated Press breaks down the news received, and classifies, edits and allots it for transmission to the other AP distributing offices and to its members. The Associated Press distributes such news from these assembly points to its members primarily over telegraph wires leased from the various telegraph companies and operated by The Associated Press as such lessee, although all instrumentalities of communication—wireless, telephone, mail and messenger—are sometimes utilized. 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 leased to relay the news distributed to the AP members located in the smaller cities and outlying districts. The primary wire circuits are continually available to The Associated Press throughout twenty-four hours a day to carry the important news report without interruption and parallel circuits are also leased to carry respec-

tively supplementary data—news pictures, financial news, sport news, news features, and the like.

55. While the news collected by The Associated Press generally appears in all newspapers published in foreign countries, in the United States, under restrictions imposed by the AP by-laws, only members of The Associated Press can obtain its news reports. It has itself recently published the following statement:

Through facilities which it has created, the news of America collected by The Associated Press appears in virtually every newspaper in the world outside of the United States. In the United States its domestic and world news appears in a select and exclusive group of newspapers which are members of the association.

56. Complete control over the affairs of The Associated Press is vested in a Board of Directors. The by-laws broadly vest in the Board "the control and management of all the affairs" of The Associated Press. They also specifically confer upon the Board the following powers:

(a) To select and fix the compensation of, and to remove or discharge, all officers, agents and employees of The Associated Press;

(b) To change from time to time the "nature and extent of the news service to any member", except that the Board shall not "omit" the news service to any member other than for "cause" as provided in the by-laws;

(c) To apportion all expenses among members "in such manner as it [the Board] may deem equitable"; to levy upon the members assessments for such ex-

penses and assessments for the accumulation of "a surplus fund for emergency purposes"; to change from time to time such apportionment and assessment—all such action by the Board being "final and conclusive", not subject to question by appeal to a meeting of members or otherwise;

(d) To permit withdrawal from membership (a member being liable, if such permission is refused, to pay assessments for two years after his notice of withdrawal);

(e) To impose upon any member found by the Board to have violated any provision of the by-laws a fine not exceeding \$1,000, or suspension from the privileges of membership (involving discontinuance of news service) or presentation of the violator to a meeting of members for expulsion—all such action by the Board being "final and conclusive", not subject to appeal or review;

(f) To "provide for all matters in respect to which no provision is made" by the by-laws.

57. The Board of Directors, exercising such plenary power, has, in practice, proved to be self-perpetuating. The directors have, almost without exception, continued in office until death, sale of their newspaper interest, or other necessary reason for relinquishing the office. Apart from these circumstances, the Directors, at the end of each three-year term during the whole life of The Associated Press have been renominated and reelected; out of more than 200 cases in which a retiring director has been renominated, in only five cases has he failed of reelection (and in one such case he was elected the following year).

58. The average term of service of the Directors reelected in 1942 (apart from those representing cities of less than 50,000) is 14 years and the average service is 18 years, if a father-son successorship in office is regarded as continuous. On the latter basis, there have been two continuous directorships since 1900 and one since 1901. Nor was the situation different in the early years of the organization. The Directors elected or serving in 1902 served average terms of 15½ years and, counting a father-son successorship as continuous, of 17 years.

59. Bonds of The Associated Press were originally issued to members who had been stockholders of a predecessor corporation of the same name organized in 1892 under the laws of the State of Illinois in the same proportion in which they had held stock in that corporation, such stockholders being "the more important papers" of the organization though "some smaller papers in key positions" had been "allowed" stock. As a result of dissatisfaction expressed by members—as one put it, The Associated Press "is only mutual in name",—in 1928 a proposal was made and carried out to permit each member to subscribe for \$50 of bonds for each \$25 of his weekly assessment, and, regardless of the amount of the weekly assessment, a minimum subscription of \$100 and a maximum of \$1,000 was allowed. Notwithstanding this change, the larger newspaper proprietors, those holding not less than \$1,000 of bonds, own at present a majority of the outstanding bonds, and 42% of the present members do not hold any bonds at all.

60. The vote of the bondholders of The Associated Press, rather than the membership vote, has always completely controlled the selection of Directors. The bonds issued by The Associated Press give one vote for the election of Directors for each \$25 of bonds (provided interest has been waived), except that no one member can cast more than 40 votes on account of his bond holdings. The ratio of bondholder vote to membership vote was more than 4 to 1 for the years 1900 to 1923, inclusive; more than 3 to 1 for the years 1924 to 1927, inclusive; and more than 6 to 1 since 1927. At present it is approximately 8 to 1.

#### A DESCRIPTION AND COMPARISON OF EXISTING NEWS-AGENCIES

61. The three existing American news-agencies are The Associated Press, United Press Associations (hereinafter referred to as UP), and International News Service (hereinafter referred to as INS). The organization and general operations of The Associated Press have already been set forth in paragraphs 49 to 60, inclusive. Those of UP and INS are set forth in the four following paragraphs.

62. UP is a New York corporation, organized for profit, formed in 1907 by uniting three comparatively small news-agencies which had been operating for some years prior thereto under an agreement for division of territory and exchange of news. At this time, when AP was spending approximately \$2,500,000 for news gathering, UP's entire staff consisted of 12 persons, including the office force. Twenty years after its organization, approximately 90% of

UP's clients were afternoon papers and today a very high percentage of its newspaper subscribers are afternoon papers. At the present time every exclusively morning paper which UP serves and which has a daily average circulation of over 25,000 is, with one exception, a member of The Associated Press and receives its news service. The one exception is The Chicago Sun, to which reference will later be made.

63. In 1941 UP's total expenditures devoted to the actual gathering of news and its distribution to newspapers amounted to \$5,929,638. It employed a total of 1,326 full-time employees distributed among its principal office in New York City and 94 domestic and foreign bureaus. Of its 60 bureaus located in the United States, only 9 had staffs of over 9 such employees. Of these 9 bureaus, only 2 had staffs of over 29 employees—62 located in Washington, D. C. and 30 at Chicago, Illinois. A total of 438 full-time employees engaged in reporting and editing news composed the staffs of its 34 foreign bureaus. UP furnishes its news service to approximately 900 newspapers in the United States and to numerous radio stations and other concerns. It furnishes no news picture service. Its news report supplied each day in Chicago to morning newspapers subscribing for its service consists of 264,400 words, to evening papers of 126,000 words. In Washington its news report supplied to morning papers consists of 115,200 words and to evening papers of 93,600 words. Approximately 600 newspapers in the United States are obligated to supply UP with the local news of their respective territories but all of

them are free to furnish the same news to other news-agencies.

64. INS was originally furnished by International News Service, Inc., a New Jersey corporation organized in 1909 to supply a news service to newspapers owned or controlled by William Randolph Hearst. In 1934 this corporation was merged with King Features Syndicate, Inc., a New York corporation, and since that time the latter has furnished INS, operating the news service as a separate department of its own business. The expenditures of INS for news gathering and the number of papers served by it are now, and generally speaking always have been, less than one-half those of The Associated Press. Because of the relatively limited resources of INS, among other factors, newspapers in the larger cities do not ordinarily regard it as qualified to furnish a self-sufficient news service, although such papers frequently find it valuable as a supplementary news service. Of the approximately 300 newspapers published in the United States having a daily average circulation of over 25,000, there is not a single one served by INS which does not also receive AP or UP news service, or both. Furthermore, of the 17 American newspapers under the same ownership or control as INS, all but two receive AP news reports and those two receive UP reports.

65. In 1941 the total expenditures of INS devoted to the actual gathering of news and its distribution to newspapers amounted to \$2,371,379. It employed a total of 382 full-time employees distributed among its principal office in New York City and 31 bureaus. Of

its 31 bureaus located in the United States, only 3 had staffs of over 9 employees—29 located at Washington, D. C., 24 at Chicago, Illinois, and 10 at San Francisco, California. INS furnishes its service to approximately 325 newspapers in the United States. In certain of its contracts INS agrees with subscribers not to furnish its service to their competitors, and, under the provisions of certain other of its contracts, its subscribers are entitled to receive large money payments from competitors when granted INS service. Its news report supplied each day in Chicago, Illinois, and Washington, D. C. to morning newspapers subscribing for its service consists of 32,400 words and to evening papers 62,000 words. Approximately 77 newspapers in the United States are obligated to supply INS with the local news of their respective territories but all of them are free to furnish the same news to other news-agencies.

66. Of the news services supplied by these three, that of The Associated Press ranks in the forefront in public reputation and esteem. One reason for this is that The Associated Press exceeds its competitors in expenditures for collecting and transmitting news, in the length of news reports it furnishes, in physical facilities, in size of staff, in number and geographical distribution of news bureaus, in number and geographical distribution of newspapers supplying it with news of their localities and in the unique requirement hereinafter set forth that these newspapers must serve The Associated Press exclusively. A second reason is that the character of the organization of The Associated Press—a membership corporation composed of per-



sons representing every shade of economic, political, and religious opinion and every section of the country—is an invaluable guarantee that the promise and claim made by each news-agency—that it presents the news without any political or sectional bias—will in fact be fulfilled. A third reason is the good will resulting from the fact that in the mind of the general public the name “Associated Press” has long been regarded as synonymous with the highest standards of accurate, nonpartisan, and comprehensive news-reporting.

67. To the extent that many newspaper readers prefer or demand AP news, a newspaper which is denied such news is deprived of freedom in determining the character of its publication and freedom in determining those elements of the newspaper-reading public to which it will particularly address its appeal. To obtain the widest reader appeal and to insure adequate coverage on all news, many newspapers find it desirable to utilize the services furnished by both The Associated Press and UP, and are consequently handicapped if denied either. Restraints imposed by denial of AP membership and service are peculiarly burdensome because in that event the newspaper must rely on the services of UP alone or as supplemented by INS. Furthermore, it is forced to accept whatever terms are demanded by UP, the one other news-agency equipped to furnish a self-sufficient news service.

68. The goodwill attaching to the name “Associated Press” is due, in part, to the fact that there has been long and continuous operation under this

name. Not only has the defendant The Associated Press rendered service under this name since its incorporation in 1900, but at all times since 1848 the phrase “Associated Press” has formed part of the title of one or more active news-agencies (and defendants’ immediate predecessors used this phrase continuously since 1865). Within the past year The Associated Press has publicly represented, through a wholly-owned subsidiary, that AP’s “superior performance in all categories of the news” is “based on 93 years of experience and effort \* \* \* performance which has built up a tradition of reliability and integrity.”

69. For the above and other reasons, the ability of a newspaper to publish AP news is an important factor in winning and retaining reader acceptance, particularly in the case of a newspaper which has been newly launched. Conversely, a newspaper which is barred from AP news operates under a competitive disadvantage with AP members. At the present time every exclusively morning paper published in the United States having an average daily circulation of over 25,000 except The Chicago Sun (average week day circulation about 269,000 and average Sunday about 327,000) is a member of The Associated Press and receives its news reports.

70. The Associated Press is bound by contract to furnish its news exclusively to its own members. No one can become a member of The Associated Press without first agreeing to observe the requirements of its by-laws. Ever since its original incorporation



in 1900 the AP by-laws have provided, among other things, that every regular member must promptly furnish to The Associated Press, and must not furnish to anyone not a member of The Associated Press, "all the news of such member's district" which is "spontaneous in its origin." Of the 1247 members of The Associated Press in continental United States on March 1, 1942, all but 12, or over 99%, were regular members, so obligated by these exclusive-dealing agreements. These regular members are located in every state of the union, ranging from one in Nevada to 75 in Pennsylvania. A roster of the regular AP members in continental United States as of March 1, 1942, so obligated to furnish The Associated Press with news, with the names and places of publication of their respective newspapers and their AP representatives, is attached hereto and made a part hereof, marked Exhibit F. All of the 1235 regular members are obligated to furnish such news from their respective cities and the territory contiguous thereto within a radius of at least 30 miles; a large number are so obligated for a wider territory, at least 74 members being obligated for their cities and contiguous territory within a radius of 60 miles.

71. The effect of these exclusive-dealing agreements is to prevent UP and INS from obtaining local news of spontaneous origin from any of AP's regular members, and this exclusory agreement is binding even though the member may also be receiving UP or INS service, or both. The agreements not only bar UP and INS, and all newspapers not admitted to the AP

group, from these important news sources but create a situation where the staffs of more than 1200 domestic newspapers are constantly furnishing The Associated Press, without cost to it, news coverage all over the United States respecting unanticipated noteworthy events occurring in remote regions or small communities, such as airplane accidents, train wrecks, tornadoes, or mine disasters. The effect of these agreements is to "make each member paper reporter also a reporter for The Associated Press." To obtain news coverage as to such events, UP and INS must largely rely upon scattered part-time correspondence, called "string men." Thus, the exclusive-dealing provisions of the AP membership contract compel AP's competitors to employ more costly and less efficient and complete means for gathering domestic news events of spontaneous origin. These provisions have been and are an important factor contributing to the unsurpassed merit of AP's service as to coverage and speedy reporting of domestic news events. They supply a feature of AP service which is unique.

72. The importance which adheres to the exclusive-dealing obligations resting upon AP members by reason of their membership contracts is evidenced by the following excerpt from the annual report of its Board of Directors for the year 1916:

Each member binds himself in assenting to the by-laws, not only to pay his assessment, but to furnish The Associated Press, *and to it exclusively*, his local news. The latter contribution is quite as valuable as the weekly sum he pays as his share of the expenses of the organization.

73. The restraints imposed upon the interstate trade in news, and the circulation, of a newspaper denied membership in The Associated Press are not confined to those flowing from denial of access to its daily news reports. The Associated Press furnishes, exclusively to its members, a wirephoto picture service. It has the only network of news photo wire transmission in the world regularly maintained and transcontinental in character, sending news pictures "to member papers with telegraphic speed over a circuit 16,000 miles long." It owns picture transmitting devices protected by letters patent. In recent years picture news has become a major competitive factor in the newspaper business. The Board of Directors in its annual report for the year 1937 asserted that the AP picture service "maintained superiority in speed of delivery and quality of photographs on every major event during the year." AP's General Manager, in his report to the Directors for the year 1938, said that The Associated Press was the owner of the "world's greatest news photo service" and that "with twenty-four hour news photo wire equipment at hand, it is not likely that any competitor can compete in any serious way with The Associated Press News Photo Service." The Associated Press has also represented that it "supplies the fastest known dispatch of news pictures in mat form."

74. In addition to regular news reports and news pictures, The Associated Press supplies its members "with a complete feature budget, comprising news feature stories with and without illustrations, news cartoons, comic strips, and a full budget of departmental features."

75. The Associated Press claims that "it is the greatest clearing house for news in the world." During the past year it has, through a wholly-owned subsidiary, publicly represented that it surpasses "all other American news agencies combined" in each of the following respects:

- (a) In number of words in its daily news report;
- (b) In number of miles in this country of "leased news wires";
- (c) In expenditures made for "the actual gathering and distribution of world news";
- (d) In size of staff "contributing, directly or indirectly, to each day's news effort";
- (e) In operating "the only state-by-state news circuits in existence";
- (f) In volume of "state and regional news" furnished daily;
- (g) In number of cities in this country connected with "leased news wires";
- (h) In operating "the only leased news cable in the world";
- (i) In being "ahead" of other news agencies "on 82 percent of *all* important news events" during the past year.

76. If the services of all news-agencies were freely open to any newspaper willing to pay the cost or charge therefor, no premium would be paid in order to obtain any particular service. Since the sole value of an AP membership consists in the right which it gives to obtain AP service, the large sums which have been paid or offered for such membership evi-

dence the great competitive advantage conferred by AP service, at least in the judgment of many practical newspaper proprietors, and the corresponding restraint and burden imposed by the denial of such service. Within the last 10 years the controlling interests of a newspaper having an AP membership paid more than \$300,000 to acquire a second membership and suppress it. The sole purpose of this transaction was to prevent the newspaper's principal competitor from obtaining AP membership and service. Several newspapers have paid or offered to pay \$250,000 or more to obtain AP membership. A Special Committee appointed by AP's president to recommend changes in the AP by-laws stated in its report, mailed to all members shortly before the 1942 annual membership meeting:

In the early history of the Associated Press the limitation upon admission of additional members provided by the By-Laws brought about an enhancement in the values of Associated Press memberships. In metropolitan centers Associated Press memberships were often carried on the books of member newspapers at values upwards of a million dollars; and in the early '20's, transfers of such memberships were made upon considerations well into the hundreds of thousands.

#### THE OFFENSES COMMITTED BY DEFENDANTS AND THEIR CO-PARTICIPANTS

77. Throughout the period from the formation of The Associated Press in the year 1900 to the date of the filing of this complaint defendant The Associated Press and the defendant directors and members of

The Associated Press on that date, and the other defendants from the times they respectively became directors or members, have been continuously engaged in a combination and conspiracy in restraint of trade and commerce among the several States, in news, information and intelligence; they have been, and are now, parties to contracts in restraint of such trade and commerce; all in violation of Section 1 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies" commonly known as the "Sherman Antitrust Act." They have continuously during said period monopolized a part of such trade and commerce; have continuously attempted to monopolize a part of such trade and commerce; and have been continuously engaged in a combination and conspiracy to monopolize the same, all in violation of Section 2 of the said Sherman Antitrust Act. They have violated Section 7 of the Clayton Act. Defendants threaten to continue said offenses and will do so unless the relief hereinafter prayed for in this complaint is granted.

78. By contracting to observe, and by observing, the by-laws of The Associated Press, as amended from time to time, and by performing the acts and engaging in the conduct hereinbefore and hereinafter alleged, defendants, and their co-participants have, during the 42 years of the existence of The Associated Press, continuously planned and acted together (a) to restrain the competitors of members of The Associated Press from obtaining access to AP's services,

(b) to restrain competitors of The Associated Press and non-members of The Associated Press from obtaining access to the local news gathered by AP members, (c) to monopolize for The Associated Press and its members the trade and commerce in the news gathered by The Associated Press through its own activities and in the local news gathered by each of its members, and (d) to foster and contribute to the formation by members of AP of monopolies of the business of disseminating news by newspapers in the various localities where they engage in business. In carrying out said offenses, defendants and their co-participants, in addition to the acts and conduct hereinbefore alleged, have performed the acts and engaged in the conduct hereinafter set forth. While the purposes and effects of their offenses have remained the same throughout the period aforesaid, certain changes have occurred in the means employed to effectuate them.

ACTION TAKEN TO CARRY OUT THE OFFENSES DURING THE YEARS 1900 TO 1928

79. The offenses had their origin in the Illinois corporation which was the predecessor of the defendant The Associated Press. Only proprietors of newspapers could be members of the Illinois corporation but its members were divided into two classes, "A" members and "B" members. The by-laws conferred upon each "A" member the right to veto the admission of any new member in the city in which such member's newspaper was published and in such additional territory contiguous thereto as might be specified in its membership contract.

80. In 1900 the Supreme Court of Illinois rendered a decision which, in the words of the Board of Directors of the Illinois corporation in a report to stockholders, held "that the business of the Associated Press has become so impressed with a public interest that it becomes our duty to admit to membership any newspaper applying, and that the rule enforced for many years \* \* \* providing for an alliance, offensive and defensive, between member and association, *was void as in restraint of trade.*" To evade the effect of this decision, the Board of Directors arranged for the reincorporation of their exclusive association as The Associated Press under the Membership Corporations Law of the State of New York, for transfer to it of all the assets of the Illinois corporation, and for continuation by it of the existing news service without hiatus.

81. The purpose and effect of organizing the New York membership corporation was to continue, upon substantially the same basis but in different guise, the offensive and defensive alliance between member and association which the Supreme Court of Illinois had condemned as an illegal restraint of trade. The president of the Illinois corporation reported that the New York corporation had "undertaken to admit all members of the Illinois corporation with rights and privileges as nearly as practicable exactly the same as those they now enjoy."

82. By virtue of the foregoing reorganization, the veto power held by certain members of the Illinois corporation was converted into a "right of protest."

The members of the defendant The Associated Press at their first meeting conferred upon all those previously enjoying veto powers "protest rights" exactly corresponding thereto. The by-laws of The Associated Press as set forth in Exhibit C provided that no applicant for membership representing a paper subject to any member's "protest right" could be elected by the Directors unless all applicable "protest rights" had first been waived. Where "protest rights" had not been waived, the only possibility of election lay in obtaining the affirmative vote of four-fifths of all the members of The Associated Press at the annual membership meeting or at a special meeting called for that purpose. The bars thus set up against giving competitors of members access to AP service represented, in the opinion of counsel for the incorporators, "the extreme limit to which an embodiment of the old veto power could be safely attempted."

83. Under the AP by-laws the Directors were free to elect any new member if no "protest right" was involved or if all applicable "protest rights" had been waived, but no standards were set up to govern the Board in acting upon membership applications.

84. The by-laws carefully provided for continuation of membership upon sale or other change in the ownership of any newspaper represented in membership. When this occurs, the purchaser or transferee becomes automatically entitled to succeed to membership, subject to giving his assent to the by-laws. In this way, any newspaper, however lacking in merit from the viewpoint of the public interest or of the

prestige of The Associated Press, can simply buy its way into AP membership if it can find a seller and is able and willing to pay the price. This circumstance demonstrates the total lack of connection between the restraints imposed by the defendants upon applicants for AP service and any criteria of the merits of the applicant, the public interest, or the effect the admission would have upon the business of The Associated Press.

85. Of the 603 original members of defendant The Associated Press, 278 were given "protest rights" when the corporation was organized. The "protest rights" could be invoked against applicants representing both morning and afternoon papers in all the 25 largest cities in the country except Newark, N. J. The "protest rights" had a wide territorial sweep. They usually embraced not only the city of publication of the protest holder but territory adjacent thereto. In over 100 instances the "protest right" covered territory within a radius of 60 miles of the city of publication and in one instance a radius of 150 miles.

86. The purpose of the provisions relating to "protest rights"—to bar competitors of members from access to AP service—has been effectively achieved. Both the members of The Associated Press and its Directors have continuously manifested the disposition to exclude, and by concerted action have in fact excluded, from AP service competitors of individual members. During the years 1900–1928, inclusive, more than 100 applications for membership subject to

outstanding "protest rights" were submitted to the vote of the members. In only six instances was there the requisite affirmative four-fifths vote. Moreover, in each of these six instances the favorable vote was due to special circumstances. No existing AP member holding a "protest right" published a newspaper in any of the cities in which the applicants' newspapers were published, which cities were comparatively small. In each case the Directors had concluded that admission to membership would result in "no substantial injury" to the protesting member or members and had therefore, as individuals, recommended election.

ACTION TAKEN TO CARRY OUT THE OFFENSES DURING THE YEARS 1928 TO 1942

87. In 1928 the AP by-laws were changed so as to provide that, in addition to the "rights of protest" originally conferred in 1900, every member should, after membership for five years, have a "right of protest" against election of a member representing a paper published in the same city and in the same "field", i. e., morning or afternoon. The provisions of the by-laws thus extending the "right of protest" to all members of five years' standing appear in Exhibit D.

88. After the principle of excluding competitors of members had thus been made as broad as the membership itself, the hopelessness of securing admission, as against a "right of protest", became so patent a deterrent that during the 13-year period, 1929-1941 inclu-

sive, only four applications involving "protest rights" were submitted to a vote of the members. Each of these four applicants failed of election.

89. The policy of excluding competitors of members from AP service has been followed by the Directors in passing upon applications for membership even where no "protest right" was involved. The Directors have always in such cases given careful consideration to the question whether the individual interests of any existing member would be adversely affected by election of a competitor and they have always denied election if they concluded that it would result in any "real injury" to any present member.

90. The economic self-interest of The Associated Press and of its members as a whole, as distinguished from the interests of its individual members to protect themselves against competition in their various territories, is in favor of expanding AP membership freely. The greater the number of members, the more complete the news sources on which the AP draws and the better the service it can provide. The greater the number of members, the smaller the pro rata cost to each. Nevertheless, The Associated Press has subordinated its own advantage to the advantage of its individual members. It has abdicated to other members of the combination its own corporate powers. Its practice of permitting any person to become a member of The Associated Press by simply buying up an existing membership permits no increase in the total number of members. It has restricted its growth to territories

not already preempted by existing members. These policies have tended to create a static AP membership and to limit the number of newspapers in the United States.

91. The purpose and effect of the policy which the members and Directors have enforced have been to protect the AP members against competition, by denying to their competitors access to the AP news service and by denying to them access to the news gathered by any of its 1200-odd members and participation in the interchange of news carried on among AP members through it as a medium.

#### RECENT ACTION TAKEN TO CARRY OUT THE OFFENSES

92. Early in the year 1942, the Government notified The Associated Press in writing that it regarded the exclusion of applicants from AP service, based upon no other standards except the competitive effect upon the business of individual AP members, to be violative of the antitrust laws. At the 1942 annual membership meeting, the members of The Associated Press, following such notification by the Government, materially amended Article III of the by-laws, which deals with admission of members, as appears from Exhibit E. The Board of Directors in proposing such amendment adopted the following preamble which was read at the membership meeting:

WHEREAS, the Department of Justice has declared, through a series of communications to the officers of this corporation and in personal interviews following an examination of

the By-Laws of The Associated Press, that they are in violation of the provisions of the Sherman Anti-Trust Law.

AND WHEREAS, this corporation through its officers and directors, has been placed on notice that certain changes must be made in its method of electing members or that it will incur the risk of proceedings in the courts which, if successful, could have the effect of bringing about the dissolution of the corporation, thus jeopardizing the existing rights of all members and impairing the value of their newspaper properties, therefore

BE IT RESOLVED, that this Board of Directors, having in mind the protection and the best interests of the entire membership, and in order to attempt to meet the objections raised by the Department of Justice, unanimously adopted the following amendments to the corporation's By-Laws which it recommends to the entire membership for ratification.

93. The amended by-laws, while in form they eliminate the prior "right of protest" against the admission of any new member competitive with an existing member, in substance achieve the same result by means even more objectionable than the abolished "right of protest." The by-laws, both before and after the 1942 amendment, make a sharp distinction between membership applications which do not affect the competitive interest of any existing member and those which do. In the former case, that is, where there is no existing membership in the "field" (morning, evening or Sunday) and city in which the applicant publishes



its newspaper, the by-laws, both before and after the recent amendment, authorize the Directors to elect to membership. But where there was an existing membership in such "field" and city, under the earlier by-laws any member competitive with the applicant could bar election by the Directors, by exercising (i. e., by failing to waive) his "protest right." Under the amended by-laws any such competitive member can likewise bar election by the Directors by similar exercise of the "right", which the by-laws give him, to receive a large money payment from the applicant. Thus not only do the amended by-laws continue the previous inducement to block election by the Directors, namely, the members' self-interest in protecting themselves against competition, but they add a new inducement for causing such result, namely, the self-interest in not foregoing a large money payment. Under the amended by-laws the previous simple "right of protest" is converted into the precise equivalent of the "right of protest" plus the "right" to exact a money payment as well.

94. Under the earlier by-laws the barrier against admission to membership of an applicant competitive with any existing member was the requirement that he obtain the affirmative vote of four-fifths of the members voting on the question of admission. This barrier, as previously stated, proved to be practically insurmountable. Under the amended by-laws the barriers against admission to membership are three-fold and equally prohibitive. They are—

(1) That the applicant obtain the affirmative vote of a majority of the regular members voting on his membership application;

(2) That the applicant pay a large sum of money to the AP members competitive with him;

(3) That if the applicant has any exclusive right to a news or news-picture service, he shall, if any competitive AP member so requests, compel the person or corporation supplying this service to furnish it on the same terms to such AP member.

95. The affirmative majority vote required to elect a new member if he is competitive with an existing member tends to constitute a prohibitive condition on admission to membership and thus serves to effectuate the combination and conspiracy to which AP members have been parties from the time of the organization of The Associated Press—to deny to competitors of the individual members access to AP service. One factor which tends to make this condition prohibitive in practice is the mutual self-interest of the members, or their imagined mutual self-interest, in preventing any breach of the principle that exclusion of competitors from AP service is one of the privileges attaching to AP membership. Another important factor contributing to the prohibitive effect of this condition is the capacity and opportunity to influence votes which the affected member or members may exercise, either by virtue of the ties created through long association in a common enterprise or by virtue of direct and tangible inducements or pressures.

96. The second barrier against admission to membership which the by-laws erect is the requirement that the applicant pay a large sum (which ordinarily would prove prohibitive) to the AP members competitive with the applicant. The amended by-laws provide that if there are one or more existing memberships in the field and city of publication the applicant, even if he has received the required affirmative majority vote, shall not be admitted to membership until he shall have complied with the following requirement:

The applicant shall pay to this Corporation 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, provided, however, that such payment shall in no case be less than three times the current annual regular assessments.

97. The by-laws further provide that any amount paid to The Associated Press under the above provision shall be distributed by it among its members in the field and city in which the applicant is elected, in proportion to the regular assessments of such members since October 1, 1900. According to figures supplied the Government by The Associated Press, the respective amounts which are payable thereunder to competitors in order to obtain AP membership and

service for a morning paper, or AP membership and service for an evening paper, are as follows as of July 1, 1942, for the 11 largest cities of the country:

	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.....	233,923.29	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

98. The money payments for the benefit of competitors required by the amended by-laws cannot be justified as being simply recompense for values which these competitors have contributed to The Associated Press. The AP news which they have received constituted full and commensurate return for such contributions as they have made to it (by furnishing local news or by payment of annual assessments). The value attaching to the exclusory feature of AP membership is the product of the unlawful provisions of the membership contract, and the requirement of payment to competitors contained in the present by-laws thus represents an attempt by defendant members to profit by their own wrong. In so far as The Associated Press, by accumulating a reserve, has assets in excess of liabilities, it has never demanded of new members that they make a proportionate contribution. In any event, such contribution could not properly be computed arbitrarily, without reference to actual net

worth, nor could it properly be demanded on behalf of the particular competitors of the new member, but only on behalf of all AP members alike.

99. The third barrier against admission to membership which the by-laws erect is the provision that if there are one or more existing memberships in the field in the city of publication the applicant, even if he has received the required affirmative majority vote and has paid over, for the benefit of competitors, the amount stipulated by the by-laws, shall not be admitted to membership until he shall have complied with the following requirement:

The applicant shall relinquish any exclusive right that he or it may have, by contract or otherwise, to any news or news picture services that are being made available to the applicant at the time of the filing of his application for membership, by any other person, firm or corporation, and, when requested to do so by any member or members in the field in the city in which the applicant has been elected to membership, the applicant shall require the said news or news picture services, or any of them, to be furnished to such member or members, upon the same terms as they are made available to the applicant.

100. Under the above provision an applicant, if he has any exclusive right to a news or news-picture service, may be barred from membership unless he is able to induce the person or corporation furnishing such service to supply the same upon equal terms to competitive AP members. An AP member who avails himself of the benefit resulting from enforce-

ment of this requirement is under no reciprocal obligation, if he himself has any exclusive right to a news or news-picture service, to make this available to the applicant for admission.

#### RECENT EXCLUSION OF APPLICANTS FOR MEMBERSHIP

101. The combination and conspiracy and other illegal concerted action hereinbefore described were not materially altered or in any respect abandoned as the result of the change in the by-laws at the 1942 annual membership meeting, which change, as previously stated, was made in the light of possible proceedings by the Government attacking the legality of the by-laws. Defendants continued their policy and practice of excluding competitors of AP members from AP service solely because of the competition offered. At this meeting, after the by-laws had been changed, they applied this policy by rejecting by a vote of more than two to one, three applications for membership which were then submitted to the vote of the members. The vote on one was 684 opposed, 287 favorable; the vote on the other two, presented by the same applicant, was 514 opposed, 242 favorable.

102. The first of these applications for membership had been filed in September 1941 by Marshall Field as the sole owner of a morning paper to be published in Chicago (which began publication December 4, 1941, under the name of The Chicago Sun). Two AP members holding "protest rights" in the morning field in Chicago, the defendant Tribune Company, publisher of the Chicago Daily Tribune, and the Illinois Publishing & Printing Company, publisher of the Chicago

Herald-American, refused to waive their "protest rights." The Associated Press advised the applicant that in this situation the Board of Directors had, under the by-laws, no authority to elect and that the application would be referred to the next annual membership meeting to be held on April 20, 1942.

103. In connection with this application for membership the applicant informed The Associated Press that it was "absolutely necessary to acquire an AP membership in order that the contemplated newspaper shall be in a position to serve the interests of the people of Chicago with maximum effectiveness and shall be able to compete with other newspapers having AP services." He transmitted to The Associated Press an opinion of his counsel that "the power given to the members of the AP to exclude persons from its unique facilities" is in violation of the federal anti-trust laws. He also transmitted to it a copy of a letter in which he had offered to pay \$250,000 in cash for the AP morning membership held by the Illinois Publishing & Printing Company for its newspaper Chicago Herald-American but which it did not utilize except for its Sunday edition.

104. The owner of The Chicago Sun is a responsible person, qualified in all respects to be a member of The Associated Press and possessed of sufficient resources to pay assessments and to assume all of the legitimate obligations of AP membership. By the denial of the application The Chicago Sun has been seriously handicapped and restrained in the conduct of its business.

105. Exclusion from AP membership denies to The Chicago Sun access to AP's news-picture service as well as to its news reports. This has proved a great competitive disadvantage not only because of the merits of this service but also because exclusive regional contracts made with competing newspapers by the only two other services furnishing newspapers with national coverage in news pictures have prevented The Chicago Sun from obtaining news pictures from these other agencies.

106. At the time that The Chicago Sun began publication, as well as for two years prior thereto, The Chicago Daily Tribune, which has the second largest circulation of any American newspaper, was the only daily morning newspaper published in Chicago, except the specialized Chicago Journal of Commerce (average circulation in 1941, 21,170). This newspaper therefore had, prior to the advent of The Chicago Sun, a monopoly of the morning field not only in the second largest city in the country but also in that large area of the Middle West which is tributary to Chicago in respect to morning delivery of a metropolitan newspaper. There was therefore available to newspaper readers in this important territory only one morning metropolitan paper. No alternative choice was offered this vast reader audience however deficient or biased such newspaper might be, or might be thought to be, in its treatment of the news and in the viewpoint set forth in its news and editorial columns. Defendants' combination serves to perpetuate these unwholesome

monopoly conditions to the extent that withholding AP's news service from the Chicago Daily Tribune's competitor prevents that competitor from winning circulation among members of the public who, justifiably or not, prefer to read a newspaper which receives AP news.

107. The two other applications for membership which were presented at the 1942 annual meeting were filed in November 1941 by Eleanor Medill Patterson as sole owner of the Washington Times-Herald. One was filed on behalf of the morning edition and the other on behalf of the evening edition of that paper. The member holding right of protest in the morning field, the partnership Eugene Meyer & Co., publisher of The Washington Post, and the member holding right of protest in the evening field, the defendant The Evening Star Newspaper Company, publisher of The Evening Star, failed to waive their protest rights. The applications were, as required by the by-laws under these circumstances, referred to the next annual membership meeting and they were then, as previously stated, rejected by an adverse vote of more than two to one. This action restrained The Washington Times-Herald in the conduct of its business. In addition, the effect of defendants' combination is that in the capital of the country (and the 11th largest city) there is only one paper in the morning and only one paper in the evening which can offer its readers the news service which The Associated Press proclaims to be superior to any other news service.

#### THE ACQUISITION OF WIDE WORLD PHOTOS, INC.

108. In the year 1941 The Associated Press acquired the capital stock of Wide World Photos, Inc. (now Wide World News & Photos, Inc.) a New York corporation, which was then, and for a number of years prior to that time had been, engaged in furnishing news pictures in interstate commerce to newspapers which were not members of The Associated Press and also to certain AP members, in competition with The Associated Press. Thereupon, The Associated Press augmented its own news picture service furnished only to AP members and discontinued the news picture service of Wide World Photos, Inc. available to non-members of The Associated Press, except as required to carry out existing contracts. For example, The Federated Press, an organization furnishing the only daily labor news service in this country, and having more than 125 newspaper clients, which had been receiving Wide World picture service for six years, was cut off from this service by this action of The Associated Press. The effect of this acquisition was substantially to lessen competition between The Associated Press and Wide World Photos, Inc., to restrain interstate commerce in news pictures and to tend to create a monopoly in The Associated Press of such interstate commerce in news pictures. Said acquisition was in violation of Sections 1 and 2 of the Sherman Antitrust Act and Section 7 of the Clayton Act.

## DEMANDS FOR RELIEF

WHEREFORE PLAINTIFF DEMANDS JUDGMENT AS FOLLOWS:

I. That the acts of the defendants hereinbefore described constitute a combination and conspiracy in restraint of interstate trade and commerce in violation of the Act of July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies";

II. That the acts of the defendants hereinbefore described constitute a monopolization of a part of interstate trade and commerce, an attempt to monopolize the same and a combination and conspiracy to monopolize the same in violation of the said Act of July 2, 1890;

III. That the defendants and each of them, and each and all of their respective agents and employees, and all persons acting or claiming to act on behalf of them or any of them, be perpetually enjoined from further engaging in or carrying out said combination and conspiracy in restraint of interstate trade and commerce, said combination and conspiracy to monopolize a part of said interstate trade and commerce, said monopolization and attempt to monopolize, or from doing any act in furtherance thereof, or from engaging in any similar combination or conspiracy, monopolization or attempt to monopolize having the same general purpose and effect;

IV. That each and every provision of the by-laws of The Associated Press which imposes any condition, limitation, or requirement upon admission to member-

ship in The Associated Press is illegal, null, and void, and in violation of said Act of July 2, 1890, except provisions of said by-laws to the extent that they require every member to be the sole owner of a newspaper, or require that every applicant for membership, before becoming a member, file proof of such ownership and proof of the "field" in which his or its newspaper is published (i. e., morning, afternoon, Sunday and/or weekly), or that the applicant sign the membership roll of The Associated Press and assent in writing to its by-laws (other than the provisions of such by-laws herein adjudged to be illegal);

V. That each and every provision of the by-laws of The Associated Press which prohibits a member from furnishing to anyone not a member of The Associated Press news which he or it is required by the by-laws to supply to The Associated Press is illegal, null, and void, and in violation of said Act of July 2, 1890;

VI. That the defendants and each of them, and each and all of their respective agents and employees, and all persons acting or claiming to act on behalf of them or any of them, be perpetually enjoined from further carrying out any provision of the by-laws of The Associated Press which is herein adjudged to be illegal, and from making, becoming a party to, or carrying out any subsequent provision of such by-laws of like character, effect, or purpose to any provision of such by-laws which is herein adjudged to be illegal;

VII. That the acquisition by The Associated Press of the stock of Wide World Photos, Inc. is illegal,

null and void, and in violation of Sections 1 and 2 of said Act of July 2, 1890, and of Section 7 of the Act of October 15, 1914, known as the Clayton Act, and that The Associated Press be required to divest itself of said stock and of all interest in Wide World Photos, Inc.;

VIII. That the plaintiff have such other, further, general and different relief as the case may require and the court may deem proper in the premises;

IX. That the plaintiff recover its taxable costs.

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