

Learned Hand in *United States v. Associated Press*, 52 F. Supp. 362 (1943) when he said:

A newspaper serves one of the most vital of all general interests: the dissemination of news from as many different facets and colors as is possible. That interest is closely akin to, if indeed it is not the same as, the interest protected by the First Amendment; it presupposes that right conclusions are more likely to be gathered out of a multitude of tongues, than through any kind of authoritative selection. (52 F. Supp. at 372.)

Yet, the Supreme Court in affirming the decision of Judge Hand said:

Newspaper owners are engaged in business for profit exactly as are other businessmen who sell food, steel, aluminum or anything else people need or want. All are alike covered by the Sherman Act. The fact that the publisher handles news while others handle food does not afford the publisher a peculiar constitutional sanctuary in which he can with impunity violate laws regulating his business practice. (*Associated Press v. United States*, 326 U.S. 1, 7 (1945).)

It is the potentially conflicting interest of commercial competition and editorial competition that we have pondered in our consideration of the Newspaper Preservation Act.

The newspaper industry has for many years suffered from a curious paradox. While, in general, the newspaper business has been and continues to be relatively healthy and profitable, the vitality of competing ideas which is produced by editorial and reportorial diversity is being lost. Soaring costs, competition from other media, and the growth and insularity of the suburbs have caused countless newspaper failures and mergers across the country. Often where once there were two independent newspaper voices, a newspaper failure or merger has ended competition and tended to produce a stultifying monopoly on news and opinion.

For example, while between 1880 and 1968 daily newspaper circulation increased from 3,093,000 to 61,561,000 and the number of daily newspapers increased from 850 to 1,749, during the same period, the number of cities with two or more commercially competing dailies decreased from 239 to 45. In my own State of Ohio from 1930 to the present, the following daily newspapers, of substantial general circulation in cities of 100,000 or more have merged with another paper or have suspended publication:

Newspaper	City	Year of failure or merger
News.....	Canton.....	1930
Commercial Tribune.....	Cincinnati.....	1931
Sentinel.....	do.....	1933
Vindicator and Telegram.....	Youngstown.....	1936
Gross Daytoner Zolling.....	Dayton.....	1937
Times Press.....	Akron.....	1938
Journal and Herald.....	Dayton.....	1949
Times-Star and Post.....	Cincinnati.....	1958
Citizen and Ohio State Journal.....	Columbus.....	1959
News and Press.....	Cleveland.....	1960

Moreover, there have been no newspapers started to effectively replace these lost voices. Indeed, throughout the country, since the depression, there have been virtually no daily newspapers of general circulation successfully started in any

city of substantial size. Thus, unless dramatic action were taken, the public would have less and less competition in ideas.

The joint newspaper operating arrangement was created to cope with this problem. Through substantial cost-savings achieved by the execution of these joint agreements, newspapers were able to survive financially and were able to provide the public with diversity in viewpoints. In the capital city of Ohio, Columbus, two newspapers, the Dispatch and the Citizens-Journal, executed a joint newspaper operating agreement in 1959. Since then the arrangement has permitted one of the newspapers to recover from what appeared to be certain failure and has provided the people living in the Columbus metropolitan area with two distinct editorial and reportorial voices. However, the legality and continued existence of these arrangements all over the country have been threatened by the decision in *Citizens Publishing Co. against United States*, 394 U.S. 131 (1969). To negate this possibility, the Newspaper Preservation Act was proposed.

This legislation, along with its predecessor, the Failing Newspaper Act, has been thoroughly examined by both bodies. Thirty-three days of hearings have been held in the 90th and 91st Congresses. Over 5,200 pages of testimony and exhibits have been generated. During the House Judiciary Committee's consideration of this legislation, a wide range of testimony was heard. Various departments of the executive branch, publishers of newspapers of varying size, labor unions and academicians have provided suggestions on the scope and propriety of this legislation. Moreover, each of the 22 currently existing joint newspaper operating arrangements was examined in detail. The financial posture of each newspaper currently and at the time these joint operating arrangements were created was closely studied. As a product of this analysis, the bill that has been reported by the Judiciary Committee is considerably narrower and more precise than the legislation as it was first introduced or as passed by the other body.

Originally, the Failing Newspaper Act permitted virtually unchecked mergers and consolidations of newspapers. Such a broad provision would have virtually eliminated the possibility of editorial and reportorial competition in many cities across the country. However, the legislation, now denominated the Newspaper Preservation Act has been rewritten to exempt from the antitrust laws certain specified activities of joint newspaper operating arrangements only to the extent necessary to preserve and promote diversity in viewpoint. In addition, the prospective application of this exemption now is carefully circumscribed by requiring the consent of the Attorney General for any future joint newspaper arrangements. With such safeguards, the future availability of the antitrust exemption for newspapers in other cities should be limited only to those situations where a joint newspaper operating arrangement is demonstrably essential to prevent a newspaper failure and to

promote editorial and reportorial competition.

Mr. Chairman, the Newspaper Preservation Act has been the subject of thorough analysis. It has been substantially refined and improved. I urge its prompt enactment to insure the continued promotion and stimulation of competitions in ideas. A free society can have no greater calling.

Mr. KASTENMEIER. Mr. Chairman, I yield 5 minutes to the distinguished majority leader, the gentleman from Oklahoma (Mr. ALBERT).

Mr. ALBERT. Mr. Chairman, first of all, may I commend the distinguished gentleman from Wisconsin for the very able manner in which he explained this bill and its definitive concepts. I also commend our distinguished friend and able lawyer, the gentleman from Ohio (Mr. McCULLOCH), and the distinguished gentleman from Hawaii (Mr. MATSUNAGA), whose committee has made this bill in order by resolution, and join them in support of this bill.

Mr. Chairman, I can add very little to what has been said. One of the 22 cities in which newspapers are located which will be affected by this legislation is located in the State of Oklahoma but not in my congressional district. However, it is important to the entire State of Oklahoma that these two newspapers maintain their separate identity and their separate newsgathering and editorial policies.

This is very important to the eastern part of the State in which I live. This bill is not a partisan measure. More than 100 Members representing both parties have joined in sponsoring the legislation.

The purpose of this bill is to clear up the result, as the Members well know, of the Supreme Court decision which creates somewhat of an anomalous situation. Under existing antitrust laws total merger of two separately owned newspapers which includes combining all of their commercial, newsgathering and editorial operations is legal. This is allowed when one of the newspapers has failed, but, Mr. Chairman, certainly the inequity of such a law is evident. The basic need for editorial competition is a fundamental prerequisite for an informed citizenry. It lies at the very heart of the freedom-of-the-press provisions of the first amendment to the Constitution. The need for opposing opinions to be evidenced in newspaper editorials is paramount.

A 1968 survey reported that although 1,500 cities are served by a daily newspaper, 85.6 percent are one-newspaper towns. Another 150 cities are served by two dailies, but these are under single ownership. Therefore over 95 percent of the communities have newspapers that are controlled by a single owner.

This makes it abundantly clear that we need to maintain editorially competitive newspapers in the 22 cities affected by this act.

Mr. Chairman, the newspaper operating arrangement that is presently being threatened by antitrust suits has been in operation since 1933. And as the distinguished gentleman from Wisconsin (Mr. KASTENMEIER) pointed out, this practice

was not threatened until the Justice Department brought a suit in 1965.

Mr. Chairman, this act would allow these 22 newspapers to continue their own operations exempt from antitrust laws only as long as they do not violate other provisions of those laws. This act does not exempt these newspapers from unlawful conduct such as predatory pricing or other monopolizing practices.

Mr. Chairman, the purpose of our antitrust laws is to preserve competition. That is the identical purpose, as I understand it, of this legislation. This bill will prevent monopoly in one of the most important areas of our national life.

Mr. Chairman, if the Newspaper Preservation Act fails to pass, the voices of 22 newspapers that have given their readers the other side of every issue will be silenced. Remaining will be 22 newspapers that may offer only one point of view. This is monopoly at its worst.

I urge, therefore, Mr. Chairman, that this bill be adopted.

Mr. Chairman, I yield back the balance of my time.

Mr. McCULLOCH. Mr. Chairman, I yield such time as he may consume to the gentleman from Pennsylvania (Mr. JOHNSON).

Mr. JOHNSON of Pennsylvania. Mr. Chairman, I am a cosponsor of the Newspaper Preservation Act, and I urge its passage.

One of the 10 counties in my district is the county of Venango, and two of the largest cities in the county are Oil City and Franklin. The population of the county is 60,514, according to the 1970 census.

There is published for Oil City a daily newspaper called The Derrick, and there is published for Franklin a daily newspaper known as the News-Herald.

For many years these two daily newspapers published independently in a separate plant, but in 1956, because of rising costs and other factors, these two newspapers found it necessary for survival that they both publish from the same plant, using the same printing presses and printers. They also have a joint circulation department and a joint advertising staff. But that is where the community of interest ends. They compete fiercely for the news, and keep their editorial and news staffs entirely separate and isolated.

I feel that both newspapers make a valuable contribution to the economic, social, and intellectual life of the county and their respective communities. If these two newspapers were now forced to separate entirely and duplicate most of their efforts, one of the papers could well fold, and Venango County, Pa., would be a one newspaper county. This would not be a beneficial result as far as this county is concerned. There is no semblance of an organization in restraint of trade as contemplated by the Sherman Act in this instance. In fact this arrangement of which I speak is entirely the opposite.

It has been pointed out that the best interests of this Nation require a free press, wide dissemination of the news, and the opportunity for the news media to operate at a reasonable profit.

This bill makes all these possible. I urge you to vote yes on H.R. 279.

Mr. McCULLOCH. Mr. Chariman, I yield to the gentleman from Minnesota (Mr. MACGREGOR) 5 minutes.

Mr. MACGREGOR. Mr. Chairman, let me say at the outset that the gentleman from Wisconsin (Mr. KASTENMEIER) is deserving of great credit for his candor in responding to the inquiry of the gentleman from Iowa (Mr. Gross).

I do appreciate, may I say to the gentleman from Wisconsin, his candor in admitting that the passage of the so-called Newspaper Preservation Act would amount to the sanctioning of such conduct as price fixing, profit pooling, and market allocation.

I urge those who may be undecided on this bill to refer to the hearings before our subcommittee so as to see just how the public interest would be damaged by the adoption of this legislation. I specifically refer you to page 254 of serial No. 8 of the printed hearings on the bill, H.R. 279.

There you will find testimony contained in a statement by Stephen Barnett, professor of law, University of California, Berkeley, Calif. May I quote him briefly:

I would like now to focus on the situation in San Francisco, and to tell you how the joint operating combination has been working there. That combination would be legalized and perpetuated by this bill, so the citizens of the San Francisco area have a significant stake in what this Committee does. I think you should know what kind of arrangement you would be forcing us to live with—probably forever. Also, the situation in San Francisco, where the joint-operating agreement is only four years old, affords a particularly good opportunity to isolate the effects of such an arrangement, and thus to get a graphic idea of the impact this bill would have—or, conversely, the impact a return to newspaper competition might have—in cities across the country.

Now listen to these statistics about how advertising rates were jacked up and manipulated after the execution of the joint operating agreement in San Francisco, and I continue to quote from Professor Barnett's testimony:

At the Senate hearings in July 1967, J. Hart Clinton, publisher of a suburban evening paper, the *San Mateo Times*, described and documented the way the *Chronicle* and *Examiner* had changed their advertising rates immediately after the merger. As he showed (and no one has challenged his data), the basic "open" display ad rate for space in the *Chronicle* was all but doubled as a result of the merger—from \$1.20 per line in January 1965 to \$2.32 per line effective October 1. (pp. 647, 654) This whopping increase could not be justified by the gain in the *Chronicle's* circulation resulting from its new morning monopoly, for that gain was only about 33 percent. (p. 656) The obvious explanation was, rather, that with advertisers now dependent on the *Chronicle* as the city's only morning paper, the *Chronicle's* ad rate was set as high as the monopoly traffic would bear.

The *Examiner*, meanwhile, still faced competition from the *Oakland Tribune* and the various other evening papers in the suburbs. Its basic ad rate was increased after the merger by only about 50 percent—from \$1.03 to \$1.55 per line. (pp. 649, 654)

The real squeeze, however, lay in the new combination rate for both papers. This was set at \$2.58 per line—only \$28 more than

the rate for the *Chronicle* alone. (pp. 654-655) Advertisers needing the *Chronicle* thus had little choice, after paying its monopoly-inflated rate, than to take the "bargain" combination rate giving them the *Examiner* as well. They would have had to pay much more than \$26 per line for some evening paper in the suburbs—or for some new paper that might otherwise enter the market in San Francisco itself.

For those of you—and there are many that I see here in the Chamber, who diligently approach their decisionmaking on legislation—I refer you to other testimony contained in our hearings of a comparable nature covering the situation in other cities where there is a joint operating agreement.

Mr. Chairman, I must respectfully disagree with the analysis of my colleagues regarding the necessity and propriety of the Newspaper Preservation Act. I submit that the purpose of this legislation is not to serve the public by providing diversity in editorial and reportorial opinion but rather to preserve the right of certain newspaper publishers to enjoy monopoly profits. Accordingly, I must concur with an editorial that appeared in the New Yorker magazine of January 31, 1970, which stated:

Any newspaper which has to be preserved this way might as well be preserved in formaldehyde.

The Newspaper Preservation Act legalizes price fixing, profit pooling, and market allocation which are crimes punishable by fine and imprisonment. Unless we delude ourselves into believing that such criminal conduct should be casually sanctioned, surely a manifestly clear showing of justification should be made before this legislation is passed. Such has not been the case. There has been no substantial evidence to justify this sweeping repudiation of competition in the newspaper industry.

Proponents of the legislation argue that without the Newspaper Preservation Act the public will be deprived of the benefit of diversity in editorial and reportorial viewpoint. No one would deny that competition in ideas is one of the foundations upon which the greatness of our society is based. If this were the actual *raison d'être* for the bill, no fault could be found with it. But this rationale is a thin facade which is not supported by the content of our hearings and which cannot stand searching analysis.

The situation in San Francisco offers a graphic example of the degree to which some of the proponents of this legislation have distorted the facts. Sponsors of the bill strongly argue that without the Newspaper Preservation Act the public would be faced with a monopoly in communications. If the loss of one of the newspapers involved in the joint newspaper operating arrangement in San Francisco would leave only one editorial and reportorial voice in the area, public policy might dictate legislative action. Yet the facts clearly indicate that the situation in San Francisco is not one of near monopoly, but rather one of intense competition. Indeed, there are 21 daily newspapers and countless weekly newspapers which regularly compete with the two joint-operation newspapers