

1952

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Recommended Citation

J. E. Taylor, *Transmission of Racing Information by Wire in Missouri, The*, 17 Mo. L. Rev. (1952)
Available at: <http://scholarship.law.missouri.edu/mlr/vol17/iss1/7>

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THE TRANSMISSION OF RACING INFORMATION BY WIRE IN MISSOURI

J. E. TAYLOR*

Within the past year there has been great public interest in the transmission of horse racing news for gambling purposes by telegraph and telephone. This public interest has been aroused by the investigation and reports of the Special Senate Committee to Investigate Organized Crime in Interstate Commerce, which is commonly known as the Kefauver Committee. This investigation dealt with the interstate phases of the transmission of racing information and its importance "as a lever which makes it possible for organized criminal syndicates to get a foothold in every community in the country."¹ This article will deal only with the intrastate operation of the racing news service, especially in Missouri.

This service, which has for its purpose the dissemination of up-to-the-minute racing information, is something of which the ordinary layman and lawyer have very little knowledge. The magnitude of the mechanics of collecting and distributing this racing information is almost beyond comprehension. The distribution and transmission of gambling news in the United States is a monopoly controlled by the Continental Press Service of Chicago, Illinois.² This company, while owned by certain private individuals, is actually directed and controlled by the Capone Syndicate of Chicago. Continental Press obtains the racing information directly from the race tracks located throughout the country. This information is sent to their central office in Chicago, and then relayed to other distribution points in the various states.

The results of the race and the odds paid upon the first three horses is not the only information distributed by the Continental Press Service to its customers. Beginning early in the morning, the jockeys assigned to ride the various horses, and the names of previously entered horses scratched or withdrawn from the races at each track, are sent over the wires. Next, a selection of the probable winners, if carried in the track program, is transmitted; then the probable betting odds against each horse as calculated by a handicapper; and then in the late morning the names of the horses entered in the following day's racing.

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1. SEN. REP. NO. 307, 82nd Cong., 1st Sess. 150 (1951).

2. *Id.* at 151.

In the afternoon, the information obtained directly from the tracks is transmitted. This includes two separate run-downs or tabulations of the shifting pari-mutuel odds for each race, the final run-down on odds being made as the horses approach the starting post. Then a description of the actual running of the race is given and the positions of the leading three horses at the various stages of the race (quarter, one-half, three-quarters and stretch) are commented upon in detail. The unofficial positions of the horses at the finish are promptly sent upon completion of each race, and when the prices on the horses running first, second and third have been posted upon the mutuel-board, they are immediately transmitted.

This up-to-the-minute information is absolutely essential to persons who accepts bets upon the outcome of horse races. As has been pointed out by the report of the Kefauver Committee, "A bookmaker who does not have the wire service cannot compete with one who has. The wire service is as essential to a bookmaker as a stock ticker to a stock broker."³ The reason for this is that the more money the bookmaker is able to handle the more his profit will be, regardless of the outcome of the races. Up-to-the-minute racing information is a necessity to any bookmaker because a bettor who has wagered upon the first race and knows how much his winnings are before the start of the second race, will then be in a position to continue his betting. Moreover, if he knows he has lost upon the first race, he will be inclined to bet upon the second race in order to recoup his losses. The customers of a bookmaker who do not have the rapid-result service usually place their bet or bets in advance of the running of the first race, and no other bets are made that day because the results of the race are not known until the evening edition of the newspaper and the winning bets are not paid off until the next day. This cuts down sharply the volume of business of the bookmaker. There is a further advantage to a bookmaker in having complete information instantly available upon horse races, because, without such service, he must either refuse bets which are placed about the time the race is scheduled to start or run the risk of accepting a bet upon a race which has already been run and the winners of which have been definitely established.

Included in the customers of Continental Press Service were Pioneer News Service, Inc., of St. Louis, Missouri, and the Harmony Publishing Company of Kansas City, Missouri, who received this racing information

3. *Id.* at 150.

in Morse code over a telegraph line. This information was then subdistributed by Pioneer News Service and Harmony Publishing Company to their customers. This distribution fell into three categories. First, the service was sold to bookmakers in St. Louis and Kansas City and the information was conveyed to them over telephone either by a direct line or by ordinary telephone facilities. Second, Pioneer News Service in St. Louis distributed the information by Western Union ticker to bookmakers in East St. Louis, Illinois, and surrounding territory. Third, the information was distributed by Western Union ticker to subdistributors in other cities who in turn sold the service to bookmakers in their territory.

Since the early 1900's, interstate communication facilities have been used to disseminate rapid racing information to bookmakers. Simon Partnoy, who until recently was engaged in the business of disseminating racing news to bookmakers in Kansas City, Missouri, and surrounding territory, under the name of Harmony Publishing Company, testified that he had been engaged in such business in or around Kansas City since 1924. Pioneer News Service, Inc., and its predecessors had been engaged in the business of transmitting rapid racing news to bookmakers in St. Louis and surrounding territory since 1927. During that time there was almost constant agitation to stop the dissemination of such news, but there were differences of opinion as to the authority of law enforcement officials to do so, although it has always been common knowledge that the sole purpose of such racing news distribution is to aid and assist bookmakers in their illegal enterprises. In 1938, the Police Board of St. Louis attempted to eliminate bookmaking establishments in St. Louis by cutting off the telephone service furnished Pioneer News Service, but the City Counsellor at that time ruled that the service furnished by Pioneer News Service was not illegal and that the city had no right to have Pioneer's telephone service discontinued. In 1939, the then Attorney General of Missouri also ruled that the service furnished by Pioneer News Service was not illegal. In 1945, the War Production Board requested all telephone companies to discontinue service to persons engaged in the business of disseminating rapid information upon the results of horse races. Southwestern Bell Telephone Company thereafter notified Pioneer News Service that it was going to discontinue its telephone service because it was being used as an instrumentality to violate the laws of Missouri. Pioneer News Service then filed a complaint with the Public Service Commission requesting that it take appropriate action to insure the continuation of its telephone service. After a hearing, the Public Service Commission

ordered the telephone company to continue its service to Pioneer News Service because sufficient evidence had not been adduced to show that the service was being used for an illegal purpose.⁴

In 1940, Simon Partnoy was engaged in the business of receiving and transmitting rapid information on horse races in Kansas City, Kansas, under the name of Eagle Scratch Sheet Publishing Company. The Department of Justice notified the Western Union Telegraph Company that the service furnished Partnoy was being used to violate the law, and Western Union, after making an investigation, notified Partnoy that it was going to discontinue the service furnished him. Partnoy obtained a temporary restraining order in the Circuit Court of Jackson County prohibiting the Western Union Telegraph Company from discontinuing his service. The cause was removed to the Federal District Court of the Western District of Missouri, and after hearing the evidence Judge Collet found that the service furnished Partnoy by Western Union was being used as an instrumentality to violate the law and dismissed Partnoy's complaint. A short time later, however, Partnoy moved to the Green Hills Night Club in Platte County, Missouri, a few miles north of Kansas City, and obtained Western Union service and continued to operate.

A brief history of the racing news service in St. Louis may be helpful in understanding the picture as it developed in recent years.

Paul "Bev" Brown and Clarence L. "Gully" Owen started their racing news service about 1927 under the name of Empire News Co., and received their racing information from General News Bureau, Inc., of Chicago, which was controlled by Moe Annenberg. General News Bureau was the predecessor of Continental. In 1928, Brown and Owen changed the name of the Empire News Co. to Central News Service Co., and later to Pioneer News Service, Inc. Until 1932, Brown and Owen owned all of the stock of the various companies which they operated. In early 1932, Brown and Owen sold 50% of their stock to Moe Annenberg and his associates, William Molasky, C. S. Kruse and James Ragen. Although Molasky testified that they paid \$100,000 for this stock and that no intimidation was used to purchase it, it has been widely reported that Brown and Owen were forced to sell 50% of their business in order to continue to receive the racing news furnished by Annenberg. Brown and Owen continued to manage Pioneer

4. Pioneer News Service, Inc. v. Southwestern Bell Telephone Co., 27 Mo. P.S.C. 266 (1945).

News Service until February of 1947, when Brown left to manage Reliable News Service in Fairmount, Illinois. He returned to Pioneer News Service, however, in August of 1947. During Brown's absence, Owen continued to operate Pioneer News Service. "Gully" Owen died in May of 1948, and "Bev" Brown died in July of 1949. After that time, William Brown, son of "Bev" Brown, was the manager of Pioneer News Service. William Brown and his mother owned 65 shares of Pioneer News Service, and William Molasky and his family owned the other 35 shares.

The racing information received by Pioneer from Continental Press was by way of a Western Union "drop" connected with what has been described by the Western Union officials as the Chicago-Portland-Detroit-New Orleans circuit, arranged and paid for by Continental Press. The information was received by Morse code and immediately decoded and simultaneously broadcast over a battery of telephones to bookmakers in St. Louis, Missouri, and adjacent territory. In February 1947, Pioneer News Service had seven or more direct telephone lines to bookmakers and various "drops" from these direct telephone lines to other bookmakers, the number of which materially varied from time to time. In addition it had thirteen or more ordinary telephones, all of which were used for the purpose of disseminating racing information. The information furnished by Pioneer News Service to bookmakers in Eastern Illinois, however, was furnished by Western Union ticker circuits. In March of 1950, there were twenty-eight ticker circuits from Pioneer News Service to various bookmaking establishments in Eastern Illinois. Pioneer did not furnish any ticker service to establishments in Missouri.

The number of customers which Pioneer News Service had from time to time through the years varied materially, depending perhaps upon local law enforcement efforts. At one time it was reported it had six hundred customers. That it was a lucrative business is revealed by the fact that in income tax fraud cases filed against Brown, Owen and Molasky, it was alleged that Brown's income from 1933 to 1936 was \$257,000; that Owen's income was \$219,000; that Molasky's income for a four year period was \$423,000; and that Pioneer News Service's gross income for the four year period was \$1,519,905, although these were depression years. That it continued to be a lucrative business is revealed by the fact that in 1949, William Brown, manager of Pioneer News Service, and William L. Molasky, who testified he did nothing but countersign checks, received salaries of \$550 per week each, and the company paid \$40,000 in dividends.

Pioneer News Service received its racing information from Annenberg until 1939, when he was convicted of income tax evasion and quit business. Thereafter, Pioneer received its racing news from Continental Press Service which was operated by James A. Ragen, a former associate of Annenberg's. An attempt was made on Ragen's life in May of 1946, and thereafter he dictated a ninety-eight page document on gambling operations, which he released to Chicago authorities after he was shot June 24, 1946, by gangsters in South Chicago. Ragen died August 9, 1946. In the document prepared by Ragen, he charged that the old Capone gang intended to take over all racing news distribution west of Pittsburgh and to seize the Ragen distribution chain. He also charged that the Capone gang expected to move into St. Louis after taking over the racing wire service in East St. Louis, Illinois.

Shortly before Ragen's death, the Trans-American News Company, Inc., was organized by a Chicago syndicate reportedly composed of remnants of the old Capone gang. That the Trans-American News Company did try to take over the distribution of racing news in the Middle West is evident from the activities of their representatives in both St. Louis and Kansas City, Missouri. Representatives of the Trans-American Company opened a racing distribution service in Fairmount, Illinois, late in 1946, under the name of Reliable News Service, and competed with Pioneer News Service in the distribution of racing news to bookmakers in East St. Louis, Illinois, and surrounding territory. From September, 1946, St. Louis papers carried numerous stories of efforts of representatives of the Trans-American News Service to "muscle in" and take over the business of Pioneer News Service. At first, both Brown and Owen refused to do business with representatives of the Trans-American News Service. After continuous pressure over a period of months, however, Brown, although he was one of the principal stockholders, did leave Pioneer News Service, and his long-time partner Owen, to become the manager of Reliable News Service. Owen, however, steadfastly refused to do business with the representatives of Trans-American and openly stated that the Chicago Syndicate would have to shoot him and all other stockholders before they could take over his company. He also reputedly made deals with twenty-two bookmakers in St. Louis, Missouri, and afterwards openly stated that the Capone Syndicate would have to shoot these bookmakers, as well as himself and other stockholders, before they could take over his business.

The papers continued to carry stories of the efforts of the Capone Syndicate to take over Pioneer News Service by threats and intimidation and openly charged that gang war was imminent. My own investigation led me to believe that there was good foundation for such stories. The Chief of Police of St. Louis believed them to be true and ordered all known gangsters jailed on sight in an effort to prevent gang war over control of the racing news service in St. Louis. Governor Phil M. Donnelly and myself had numerous conferences about the St. Louis situation and what we could do about it. We came to the conclusion that if we could have the telephone service furnished Pioneer News Service discontinued, we could eliminate bookmaking in St. Louis and Eastern Missouri, put Pioneer News Service out of business and thereby prevent the threat of gang warfare over the control of such business. We, accordingly, on February 5, 1947, sent a telegram to Southwestern Bell Telephone Company in St. Louis, Missouri, stating that the telephone service furnished to Pioneer News Service was being used as an instrumentality to violate the laws of the State of Missouri and requesting that the telephone company discontinue such service immediately. The telephone company complied with this request and removed all of Pioneer's telephones.

In March, 1949, more than two years later, Pioneer News Service filed an injunction suit in the Circuit Court of the City of St. Louis asking that a writ of mandatory injunction be issued against the telephone company requiring it to restore Pioneer's telephone service, which had been disconnected in 1947. On behalf of the State of Missouri I intervened in this case and filed a motion to dismiss the cause on the grounds that the circuit court had no jurisdiction of the matter because under our statutes the Public Service Commission had exclusive original jurisdiction.

After a hearing on the motion to dismiss, the court ordered the Southwestern Bell Telephone Company to restore the telephone service theretofore furnished Pioneer News Service and the telephone company complied with the order.

We filed in the Supreme Court of Missouri a petition for a writ of prohibition against the Circuit Court of St. Louis. On February 13, 1950, the supreme court made its writ of prohibition absolute and held that the judge of the Circuit Court of St. Louis had no jurisdiction of the matter.⁵ The supreme court, however, stayed its decision for ninety days to give Pioneer

5. State *ex. rel.* Taylor, Attorney General v. Nangle, 360 Mo. 122, 227 S.W. 2d 655 (1950).

News Service time to apply to the Supreme Court of the United States for a writ of certiorari, which it did on May 6. The State filed a brief in opposition to the issuance of the writ of certiorari, and on October 9, 1950, the Court denied Pioneer's petition for writ of certiorari.⁶ I immediately requested the telephone company to discontinue its telephone service to Pioneer, and the company removed all Pioneer's phones except two supposedly personal phones.

The next day Pioneer filed a petition in the federal district court in St. Louis asking that Southwestern Bell Telephone Company and the Public Service Commission be enjoined from taking out its telephones. On October 12, 1950, we filed, on behalf of the Missouri Public Service Commission, a motion to dismiss Pioneer's petition, and on October 16, after a hearing, a three-judge federal court sustained our motion.

After Governor Donnelly and I had requested the telephone company to discontinue Pioneer's telephone service in February, 1947, and were advised by the telephone company that it had done so, we believed that Pioneer was without any means of transmitting its racing news information to bookmakers in St. Louis and adjacent territory in Missouri. However, after Pioneer filed its suit in March, 1949, for a mandatory injunction in the Circuit Court of St. Louis to restore its telephone service, I learned that Pioneer had had telephone service continuously and had continued to broadcast their racing news information to bookmakers over such telephones.

Officials of the telephone company informed me that Pioneer News Service had obtained this service by illegally connecting telephones, obtained for other places of business, with the telephone circuit leading into the Fullerton Building, where the Pioneer News Service office was located. This was done without the knowledge or consent of the telephone company. We later learned that Pioneer had wired into direct lines leased for the purpose of broadcasting music to various outlets and were using such lines to transmit racing news information to bookmakers. The books and records of Pioneer reveal that during the period of time when it was supposed to have had no telephone service, it had a place of business in an office located at 11 North Jefferson Street in St. Louis, Missouri, and that this office had as many as nine telephones, one of which was used to receive the rapid transmission of racing news from Pioneer, and the others to rebroadcast it

6. *Nangle v. State of Missouri ex. rel. Taylor*, Attorney General, 340 U. S. 824 (1950).

to bookmakers. Pioneer also had an office in East St. Louis with three telephones. Pioneer's records also show that it had eight telephones in the Fullerton Building, which were paid for in cash. After the telephones were ordered restored by the Circuit Court of St. Louis in April of 1949, Pioneer paid for all telephones by check.

On October 16, 1950, after the three-judge Federal Court had sustained our motion to dismiss Pioneer's petition, I requested the telephone company to remove any and all remaining telephones in Pioneer's offices, which was done, and, so far as I know, since that time Pioneer has been without telephone service.

A history of the racing news service in Kansas City, Missouri, shows an even closer connection between the transmission of racing information and gangsterism.

In 1940, Simon Partnoy, doing business as the Harmony Publishing Co., operated his racing news service from the Green Hills Night Club in Platte County, Missouri, a few miles north of Kansas City. He later operated at 9th and Broadway in Kansas City, Missouri, for about a year and a half, when he moved to the Railway Exchange Building in Kansas City, Missouri. During all this time he continued to receive his racing information from Continental Press Service until September, 1946, when he began obtaining this service from Trans-American News Service of Chicago, which had been organized shortly before to compete with Continental Press Service. After Partnoy began receiving his service from Trans-American, he continued to serve the exclusive territory of Western Missouri, Iowa, Nebraska, Kansas and Oklahoma, as well as the same customers.

In October, 1946, a St. Louis newspaper carried a story charging that Capone representatives had taken over the operation and staff of the Harmony Publishing Company in Kansas City at pistol point. A story which is believed in police circles in Kansas City is that representatives of Continental Press came to Kansas City to remonstrate with Partnoy after he had notified Continental that he was discontinuing its service. These representatives were escorted out of town by Kansas City hoodlums.

In any event, Eddie "Spitz" Osadchey testified before a United States Senate Committee that he made a deal in August, 1946, with Pat Burns, the manager for the Trans-American News Service of Chicago, to obtain racing news service in Kansas City. He further testified that he, Tano Lococco, Morris Klein and Charles Gargotta, all known gamblers and hoodlums, formed a partnership to operate a racing news service in Kansas City

and that they purchased Harmony Publishing Company from Simon Partnoy for \$7,500 and fifteen per cent of the net income of the company, and agreed to pay him \$200 per week salary for managing the company. Osadchey further testified that Harmony Publishing Company had been grossing about \$40,000 per year and that about one-half of this was profit. He also testified that there was no force or intimidation used in taking over Partnoy's business and that it was a good deal for Partnoy. An examination of the books and records of Harmony Publishing Company, however, reveals that at the time they took the company over from Partnoy, it was grossing approximately \$175,000 per year.

Harmony Publishing Company received its racing information by Morse code and decoding the same rebroadcasted it over a battery of telephones to bookmakers in Kansas City, Missouri, Kansas City, Kansas, and surrounding territory. Harmony also retransmitted this information by telewriter to various points in Iowa, Nebraska, Kansas and Oklahoma.

On March 11, 1947, Governor Donnelly and I sent a telegram to the Southwestern Bell Telephone Company at Kansas City, Missouri, similar to the telegram sent to Southwestern Bell Telephone Company in St. Louis, notifying the telephone company that the telephone service furnished Simon Partnoy, doing business as Harmony Publishing Company, was being used as an instrumentality to violate the laws of Missouri, and requesting that the telephone company discontinue such service. The telephone company immediately disconnected the service furnished Partnoy, but on the same day Partnoy filed a petition for injunction in the Circuit Court of Jackson County and obtained a mandatory temporary restraining order, and the telephone company restored his telephone service. I, on behalf of the State of Missouri, immediately intervened in the cause and filed a motion to dismiss the complaint and to dissolve the temporary restraining order on the ground that the circuit court had no jurisdiction over the matter because the Public Service Commission had exclusive original jurisdiction.

Thereafter, Partnoy filed a complaint before the Public Service Commission against the Southwestern Bell Telephone Company asking the commission to make an order requiring the Southwestern Bell Telephone Company to continue his telephone service.

On March 20, 1947, a hearing was held in the Circuit Court of Jackson County on our motion to dismiss, which the court overruled. At that time the court made its temporary restraining order a temporary injunction and stated it would be in effect until a hearing could be had before the Public

Service Commission. On April 29, 1947, a hearing was had before the Public Service Commission, and at this hearing we introduced a great deal of evidence which showed that Partnoy had no other customers than book-makers, and that he was knowingly aiding and abetting them in their illegal enterprise by furnishing rapid race horse information. The Public Service Commission on June 13, 1947, decided that the services furnished Partnoy were being used as instrumentalities to violate the laws of the State of Missouri and dismissed Partnoy's petition.⁷

On July 15, 1947, Partnoy filed a petition for a writ of certiorari in the Circuit Court of Cole County to review the decision of the Public Service Commission, and the writ was issued. The case was submitted to the Circuit Court of Cole County on October 18, and both sides were granted time to file briefs. After a number of extensions of time for filing briefs obtained by Partnoy, the Circuit Court of Cole County affirmed the order and decision of the Public Service Commission. Partnoy appealed from this decision to the Supreme Court of Missouri. After numerous delays and continuances obtained by Partnoy, the case was finally briefed and argued in the supreme court on January 25, 1950. On February 11, 1950, without any notice to us, Partnoy filed a motion to dismiss his appeal, which was sustained by the court. We were very anxious to obtain the decision of the supreme court for our guidance in the future. We were particularly anxious to have determined the validity of the telephone company's tariff regulation, which provided that a telephone company could discontinue service at the request of the law enforcement officer. The validity of this regulation had been questioned by the supreme court in the prohibition suit involving Pioneer News Service.⁸ We were also desirous of having the court pass on the right of the telephone company to discontinue service, regardless of its tariff, under the facts produced at the hearing before the Public Service Commission. We therefore filed a motion to set aside the order of the supreme court dismissing Partnoy's appeal and vigorously contended that we were entitled to a decision on the merits. The court, however, overruled this motion.

On May 8, 1950, we filed in the Circuit Court of Jackson County a motion requesting the court to render its decision upon the motion of the

7. *Simon Partnoy v. Southwestern Bell Telephone Co.*, 27 Mo. P.S.C. 678 (1947).

8. *State ex rel. Taylor, Attorney General v. Nangle*, 360 Mo. 122, 133, 227 S.W. 2d 655, 659 (1950), *supra* n. 5.

State to dismiss the complaint and dissolve the temporary injunction which had been filed on June 30, 1947.

On May 11, 1950, a hearing was had on our motion and the court dissolved the temporary injunction which had been in effect since March 11, 1947.

Immediately thereafter I demanded that the telephone company not only disconnect but immediately remove all telephone equipment from Harmony's office. As the place of business was locked, it was necessary that we obtain a search warrant. All of the telephone equipment in Harmon's office was finally removed.

A review of the above history discloses that there have been no decisions of the appellate courts of this state directly dealing with the legality of the dissemination of racing news to bookmakers. The question of whether a telephone or telegraph company, upon request of a law enforcement officer, could discontinue service to a person who is disseminating racing information to bookmakers was briefed and argued by both sides in the appeal from the Public Service Commission ruling to the Supreme Court of Missouri in the case of *State ex rel. Partnoy, doing business as Harmony Publishing Company v. Public Service Commission*. Further, the question of whether Partnoy was violating the criminal laws of this state was submitted to the supreme court in that case. However, because the appeal was dismissed by Partnoy after it had been argued and submitted to the supreme court no decision upon these questions was rendered.

In that case the State argued that the telephone service should not be restored to Partnoy because he was violating what is now Section 563.360 of the *Missouri Revised Statutes* (1949)⁹ That section in part provides that it shall be a felony for any person to occupy a room in this state containing a telephone or telegraph instrument "for the purpose of communicating information to any place in this or any other state, for the purpose of there recording or registering bets." It was argued in the supreme court that Partnoy was guilty of violating this statute when he distributed information to bookmakers in this state, which information was to be used for the purpose "of there recording and registering bets." Partnoy argued that the statute only prohibited the transmission of actual bets by telephone or telegraph. As no opinion was written, the applicability of this statute to the

9. Formerly Mo. Rev. Stat. § 4674 (1939).

activities of a person furnishing wire service is still an open question in this state.

The only other decision by the appellate courts of this state relating to this matter is that of *State ex rel. Taylor, Attorney General v. Nangle*.¹⁰ This is the prohibition suit brought against James F. Nangle, Judge of the Circuit Court of the City of St. Louis, after Judge Nangle in 1949 had ordered the telephones restored to the Pioneer News Service, Inc., which telephones had been disconnected in 1947 by the Southwestern Bell Telephone Company at the request of Governor Donnelly and myself. The grounds for the prohibition suit was that the Circuit Court of St. Louis had no jurisdiction to order the telephones restored because the exclusive primary jurisdiction was vested in the Public Service Commission to determine whether the telephone company was justified in discontinuing the telephone service to Pioneer News.

The supreme court agreed with my views and held that the Circuit Court of the City of St. Louis had no jurisdiction to entertain any suit for the restoration of the telephones. The Supreme Court of the United States refused to review this decision.¹¹

The question of the legality of wire service has been before the Public Service Commission of Missouri twice, as stated above. In 1945, in the case of *Pioneer News Service, Inc. v. Southwestern Bell Telephone Company*,¹² Pioneer News Service, after receiving notice from the telephone company that its telephone service was to be disconnected, filed a complaint with the Public Service Commission. The telephone company was ordered by the Public Service Commission to continue to render telephone service to Pioneer News Service. In so doing the commission said:¹³

"... It is our view that on the issues joined the facts must be, and should be, proven. But this the company signally failed to do, although, if the facts existed, it seems to us that the telephone company could have easily secured and produced such evidence. "Why such evidence was not obtained and offered at the hearing before this Commission is not for us to say, but suffice it to say that there was a complete failure of proof on the part of the telephone company. This Commission has no choice as the record stands

10. 360 Mo. 122, 227, S.W. 2d 655 (1950), *supra* n. 5.

11. *Nangle v. State of Missouri ex. rel. Taylor, Attorney General*, 340 U. S. 824 (1950), *supra* n. 6.

12. 27 Mo. P.S.C. 266 (1945), *supra* n. 4.

13. *Id.* at 273.

before us but to order the telephone company to continue its service. . . .”

But in its report the commission found that “the business of Pioneer News Service, Inc., is a lawful business and that the telephone company may not refuse service to complainant unless it is shown by substantial evidence that the complainant is knowingly using the telephone service for an unlawful purpose.”¹⁴

In 1947, however, upon the complaint of Simon Partnoy to have his telephone service restored a different result was reached.¹⁵ While the commission report held that “Horseracing in the State of Missouri is not unlawful; neither it is unlawful to disseminate news of horseracing,” still the finding of the commission was:¹⁶

“ . . . We think this evidence is sufficient to establish guilty knowledge upon the part of complainant. Even without this testimony by complainant, we think the record as a whole justifies the inference that complainant knew that his service was used exclusively by bookmakers. We are convinced, from all the evidence, that complainant’s service had no purposes other than to aid and abet the carrying on of an unlawful enterprise; therefore, we conclude that the charge of the Governor and Attorney General, that complainant’s telephone service was being used as an instrumentality to violate the law, was founded upon truth and fact and that the Company acted with propriety in applying the rule to complainant.”

The only other decision involving construction of Missouri statutes and law is that of *Simon Partnoy, doing business as the Eagle Scratch Sheet Publishing Company v. Western Union Telegraph Company*, tried in the District Court of the United States for the Western Division of the Western District of Missouri in June, 1940. In that case the Western Union Telegraph Company was notified by the United States Department of Justice that Simon Partnoy, who was then operating in Kansas City, Kansas, was using the equipment and wires of the Western Union Telegraph Company for illegal purposes. An injunction suit was brought by Simon Partnoy in the Circuit Court of Kansas City, Missouri, which case was transferred to the federal district court. The decision of Judge Collett in that

14. *Id.* at 272.

15. *Simon Partnoy v. Southwestern Bell Telephone Co.*, 27 Mo. P.S.C. 678 (1947), *supra* n. 7.

16. *Id.* at 696.

case was that the telegraph company could discontinue the service to Partnoy when it appears that the service is being used for an illegal purpose upon notice to Partnoy.

A reading of the above decisions discloses that the criminal liability of a person who disseminates racing information in Missouri is problematical. As to the right of telephone and telegraph companies, at the request of law enforcement officers, to discontinue service to persons engaged in the dissemination of racing information, it appears that such service may be discontinued if it is shown or known that such facilities are being used as instrumentalities to violate the laws of this state.

CONCLUSION

The foregoing presents a sordid picture of the close alliance between the business of disseminating racing news information and the underworld. It is obvious that there has existed a serious problem which has caused public officials grave concern and which has presented serious legal difficulties. Further legislation, both on a federal scale and locally, is required. I have had occasion to make recommendations in this regard before the Committee on Interstate and Foreign Commerce of the United States Senate, of which Senator McFarland of Arizona was Chairman, dealing with the bill to prohibit the transmission of certain gambling information in interstate and foreign commerce by communication facilities, and also before the Special Committee to Investigate Organized Crime in Interstate Commerce, popularly known as the Kefauver Committee, and before the Special Crime Committee of the Senate of Missouri, of which Senator Chamier is Chairman.

My views as to how this situation can be remedied may best be expressed, I believe, by what I said before the Kefauver Committee, which is published in such Committee's Third Interim Report, with the Committee's introductory statement, as follows:¹⁷

"Although Attorney General Taylor was much opposed to Federal intervention in State affairs, he felt that it was proper for the Federal Government to stop interstate transactions carried on for the sole purpose of fostering violations of State law.

Continental Press Service (of which Pioneer is a subsidiary)—
stated the attorney general—

is a giant monopoly whose slimy tentacles reach into every metropolitan area in the country. It serves no useful purpose; its sole

17. SEN. REP. No. 307, 82nd Cong., 1st Sess. 44 (1951).

business is supplying information to bookmakers which enables them to carry on their illegal enterprises. It has brought about and financed gangsterism; it has caused bloodshed and led to the corruption of public officials. That it not only knows the kind of business its customers are engaged in, but also the volume of business they do is evident from the fact that they charge some customers a few hundred dollars a week and others as much as \$6,000 a week for the same service.

“He further sated:

If the transmission of this racing information by Continental or any other similar agency in interstate commerce could be stopped it would, in my opinion, eliminate racing news distributing agencies, take the profit out of bookmaking and prevent a great deal of gangsterism which results from fights over the control of such illegal enterprises.”

There is no doubt that federal legislation by itself will not correct the evil. In the hearing before the Special Crime Committee of the Missouri Senate, I said:

“While I am convinced that federal legislation is necessary to control the dissemination of gambling information, I believe that the state should also enact legislation prohibiting the transmission of such information in intrastate commerce. In my opinion, those engaged in the lucrative business of transmitting gambling information to bookmakers in this state will find some method of receiving such information and retransmitting it regardless of federal legislation. I believe that with both such federal and state legislation that bookmaking in this state could be completely eliminated.”¹⁸

In the final analysis, however, it is only the constant vigilance of the public and its duly elected officers that will hold gambling in Missouri to a minimum and destroy the close alliance between gambling and gansterism which results not only in law violation but a breakdown in all law enforcement.

18. *Hearings before Subcommittee on Crime of Missouri Judiciary Committee*, 66th General Assembly, p. 52 (1951).