

New Legal Ground Broken

Press-Radio Ad Rivalry Tested

By Ted Princiotte

CLEVELAND, Ohio.—A Federal judge here has begun studying 1300 pages of testimony, 277 documents and an unprecedented set of trial facts in a new exploration of the complex antitrust laws.

Those laws ordinarily are applied against big business combines. But in the case before United States Judge Emerich B. Freed of Cleveland, a daily newspaper — a comparatively small one — is the accused monopolist.

From his study of evidence produced in an eight-day trial, just completed here, the judge will determine whether the Lorain (Ohio) Journal, an afternoon paper with a circulation of about 20,000, broke the antitrust laws by its competitive policy against a radio station and a weekly newspaper.

As the judge himself took occasion to observe from the bench, the lawsuit did not involve any "tremendous" combine. Nevertheless, it has importance. It developed a new set of facts hinging on newspaper-radio rivalry. It posed some new legal questions.

No Daily Opposition

THE civil action started last fall by the Justice Department concerns the neighboring cities of Lorain and Elyria in nearby Lorain County. Lorain, a steel-making town on Lake Erie, has a population of about 45,000. Elyria is a county seat of 26,000 population.

The Journal, Lorain's only daily paper, is a lusty, prosperous publication. It has not had daily competition since 1932, when its owners absorbed the old Lorain Times-Herald.

The weekly involved is the Lorain Sunday News, a shopping newspaper which publishes a Sunday issue.

The radio station, which figured more prominently in the trial as a Journal rival, is WEOL-FM, with studios in Elyria and Lorain. It barely made ends meet last year with a \$2600 profit.

The Government charged that the Journal tried to monopolize news and advertising in Lorain and used unfair business methods to hurt the radio station and the Sunday News.

Ad Contracts Canceled

VICTOR H. KRAMER, chief prosecutor, built his case with 65 witnesses, 259 exhibits and interpretations of the law

which, he argued, put the Journal and WEOL in interstate commerce despite their local character.

Kramer and three associates concentrated on the Journal's policy of discouraging its advertisers from using WEOL or the Sunday News for advertising. A parade of Lorain merchants testified that the Journal canceled their ad contracts because they also used WEOL or the Sunday News. The businessmen switched back to exclusive Journal advertising in view of this policy, they testified.

D. P. Self, business manager of the Journal, hedged as a hostile witness called by the Government, but finally admitted, under judicial prodding for a direct answer, that "We did," in response to the question:

"Did you tell Lorain Journal advertisers that they could not continue to advertise in the newspaper if they advertised over Radio Station WEOL?"

30-Day Clauses

WHEN Samuel A. Horvitz, publisher of the Journal, testified as the defense's only witness, he frankly said his paper discouraged the merchants from radio selling campaigns and took advantage of 30-day cancellation clauses to cancel contracts of merchants who persisted.

He said the paper first advised the merchants to try the radio ads alone to see if they paid off in new business.

Horvitz denied boycotting advertisers of the weekly newspaper rival and offered names of 30 merchants who, he said, used both the Journal and the Sunday News.

In defense of the policy toward merchants who used WEOL, Horvitz insisted that the Journal had the right to reject or accept what advertising it pleased. He maintained also that this policy was not unfair to the Lorain merchants, because the Journal for years had "protected" them by refusing advertising from out-of-Lorain merchants.

His testimony caused an unexpected tussle between Kramer, a Yale Law School graduate with a dozen years' service in the Justice Department, and Parker Fulton, veteran Cleveland lawyer representing the Journal.

'Outside' Listeners

WHAT had looked like a minor trial point suddenly became important. In their final arguments, both lawyers dwelt at length on the interstate commerce issue. If the newspaper and

radio station were not engaged in State-to-State business, then the Federal laws did not apply.

The fast-talking Kramer argued that so long as a single electronic note from WEOL was heard outside Ohio, the station was in interstate commerce. Earlier he had put on out-of-State WEOL listeners as witnesses. He contended that the Journal, through its national news, advertising and supply connections, also was in interstate business.

Fulton argued that while WEOL, mechanically speaking, may not be purely local in view of its out-of-Ohio air range, it nevertheless is purely local as a business enterprise. Both the Journal and WEOL are only "incidentally" involved in interstate commerce, he asserted.

Antitrust Expert

JUDGE FREED, who is expected to spend several months in study and research on the case, is rapidly winning national recognition in the field of antitrust law.

As a former United States Attorney here, he prosecuted an antitrust suit against the Hartford Empire Co., and other major glass-container producers in a 19-month-long trial. Only recently he decided a cartel suit against the Timken Roller Bearing Co. of Canton, Ohio, world's largest in its field.

Two years ago, after he had disposed of 400-odd motions, an antitrust suit against the stencil-making industry and stencil paper suppliers was concluded before him with a no-contest plea. Still pending before him are a suit against the General Electric Co. and companion suits to the Timken one against two other tapered roller bearing producers.

He has been on the Federal bench here since 1941.

The Lorain Journal case marked the first time that radio-newspaper advertising rivalry had figured in an antitrust suit. Even newspaper-newspaper rivalry over ads is a fairly new antitrust topic. The only case decided was a criminal one against the Chattanooga News-Free Press in 1940, when a jury cleared the paper on one count and found it guilty of another. The paper allegedly put clauses in its ad contracts requiring advertisers to advertise exclusively with it for afternoon publication.

The judge imposed a fine of 1 penny. No transcript was made of the case. Thus, the Journal case here is looked upon as the one which will set precedent in this new phase of antitrust law.



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