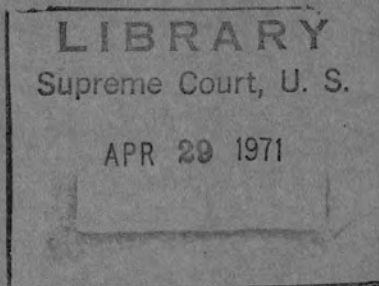


# Supreme Court of the United States



In the Matter of:

UNITED STATES OF AMERICA

Docket No. 821

Appellant

vs.

GREATER BUFFALO PRESS, INC. et al.

APPELLEES

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Place Washington, D.C.

Date April 19, 1971

**ALDERSON REPORTING COMPANY, INC.**

300 Seventh Street, S. W.

Washington, D. C.

NA 8-2345

## IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1970

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THE UNITED STATES OF AMERICA,

Appellant,

vs

GREATER BUFFALO PRESS, INC.,  
ET AL.,Appellees  
-----

No. 821

The above-entitled matter came on for argument at  
1:00 o'clock p.m. on Monday, April 19, 1971.

## BEFORE:

WARREN E. BURGER, Chief Justice  
HUGO L. BLACK, Associate Justice  
WILLIAM O. DOUGLAS, Associate Justice  
JOHN M. HARLAN, Associate Justice  
WILLIAM J. BRENNAN, JR., Associate Justice  
POTTER STEWART, Associate Justice  
BYRON R. WHITE, Associate Justice  
THURGOOD MARSHALL, Associate Justice  
HARRY A. BLACKMUN, Associate Justice

## APPEARANCES:

DANIEL M. FRIEDMAN, ESQ.  
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On behalf of Appellant  
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Buffalo, New York 14203  
On behalf of Appellees

C O N T E N T S

ARGUMENT OF

PAGE

Daniel M. Friedman, Esq.  
On Behalf of Appellant

2

Frank G. Raichle, Esq.  
On Behalf of Appellees

19

REBUTTAL OF

Daniel Freidman  
on Behalf of Appellant

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1 in Peoria, Illinois, but the Peoria plant has been closed.

2 The third principal actor in this story is a firm  
3 called King Syndicate that is a division of the Hearst  
4 Corporation. King itself is not a printer; it is engaged in  
5 syndication of copyrighted articles, such as comic strips,  
6 cartoons, to newspapers. What King does, it engages in two  
7 forms of activity: first, it licenses features to the news-  
8 papers, and secondly, it arranges for the printing of various  
9 comic supplements to the newspapers that wish it.

10 The Government complaint, which was filed in 1961,  
11 challenged not only the merger that is here before the Court,  
12 but also alleged that Greater Buffalo, Hearst, through King,  
13 and another syndicate had engaged in a conspiracy to divide  
14 customers, to fix prices and to monopolize the printing of  
15 color comic supplements; alleged that King and the other news-  
16 paper syndicate had also engaged in illegal tie-in agreements,  
17 under which the plan was that the licensing of the comic sup-  
18 plements was tied to the dealing with the syndicate for  
19 printing.

20 In 1965 the Government settled the case against  
21 Hearst, through the entry of a consent judgment under which  
22 there were various prohibitions upon Hearst, including the  
23 prohibition upon engaging in time agreements, although the  
24 judgment, that judgment would not preclude King from quoting a  
25 single price for features and printing; for the licensing, that

1 is, and printing.

2           However, that judgment also contains provisions  
3 that in the event that Greater Buffalo is found to have  
4 violated any provision of the anti-trust laws the judgment may  
5 then be reopened.

6           Q       Why did it take so long, ten years to bring  
7 this case --

8           A       Ten years --

9           Q       Before this case gets up here?

10          A       If I may, Mr. Justice, I would just like to  
11 briefly describe the chronology of it and explain why.

12          Q       Excuse me, Mr. Friedman, isn't it more than  
13 ten years?

14          A       Well, ten years from the time the complaint  
15 was made.

16          Q       Yes, but 16 since the merger.

17          A       Sixteen since the merger.

18               Let me, if I may explain just what happened in this  
19 case. The merger took place in 1955. Two or three years  
20 thereafter, an employee of another firm made a complaint to the  
21 Department of Justice that Hearts was engaging in tie-ins.  
22 Following this complaint in some preliminary investigation  
23 there was a grand jury investigation in Buffalo. At the con-  
24 clusion of the grand jury the Government decided not to seek  
25 an indictment, but instead to bring a civil suit.

1           The original complaint did not relate, of course,  
2 to the merger; the original complaint related to the tie-ins  
3 by Hearst and King, but in the course of our investigation we  
4 developed other facts, including the facts relating to the  
5 merger which led us to conclude that there were violations in  
6 addition to those that had been brought to our attention.

7           Now, the ten years between the time that the com-  
8 plaint was filed and the case comes to this Court, has been  
9 occupied by serious situations. First, two or three years  
10 were occupied by the Government's first successful attempt to  
11 obtain a preliminary injunction against the transfer of certain  
12 assets in the Wilkes-Barre plant of International to a plant  
13 that they built down in Sylacauga, Alabama.

14           Following that we had negotiations over the consent  
15 decree, which led to the consent decree against Hearst.

16           The trial actually began in October of 1965. And,  
17 of course, in the interval, I might add, that after we had  
18 gotten the preliminary injunction then there were further pro-  
19 ceedings; there was more testimony taken on a motion by the  
20 Appellees to modify the injunction.

21           Following the completion of the Government's case  
22 in October of 1965, in 1966 there was a hearing on whether the  
23 Government had established a prima facie case. And a year and  
24 a half elapsed after that hearing until the defendant's case  
25 came and the defendant's case came in the summer of 1967;

1       briefs were filed about a year thereafter. Present arguments  
2       were not held until about a year thereafter, which was in  
3       December of 1969.

4               Now, the reason for all this delay is basically  
5       this, as I understand it: At that time in the latter part of  
6       the 1960s there was only one judge on the bench in Baltimore.  
7       That was Judge Henderson.

8               Q           In Buffalo.

9               A           Buffalo.

10              After a successive judge was appointed the man  
11       selected for the post was the United States Attorney, and as  
12       a result this new judge was not qualified to hear any of the  
13       pending criminal cases. And since criminal cases were given  
14       priority it was meant that Judge Henderson was required to  
15       spend the major part of his time in this area on trying the  
16       criminal cases. He just had to work this case in as he could.  
17       This is the reason for the delay. And I don't think that the  
18       delay is attributable to the Government, Mr. Chief Justice.  
19       I think it is unfortunate. I think these delays in these cases  
20       are always unfortunate. I am afraid this was just one of those  
21       circumstances. We tried to do everything we could to drop the  
22       charge of violating Section 2, the monopolization charge, for  
23       the purpose of trying to expedite the thing. We did everything  
24       we could to get the case moving but I think it was just one of  
25       those unfortunate things in which the judicial process



1 sometimes moves slowly.

2 Q The only issue that is here now is the  
3 Section 7 issue?

4 A That is correct, Mr. Justice; that's all  
5 that is appealed from is the Court's dismissal of the Section  
6 7.

7 Q Is that the reason, Mr. Friedman, why the  
8 monopolization charge was dropped?

9 A We stated explicitly in our, in a motion --  
10 in a notice we filed, stating that we were dropping the mono-  
11 polization charge; that we were doing so for the purpose of  
12 expediting the trial of the case.

13 That is set forth at page 516, 518 and 19, I  
14 think, of the record.

15 Q That that was the reason?

16 A Now, coming to the facts of the case, most  
17 Sunday newspapers in this country have what I have in my hand,  
18 the typical color supplements. The supplement has two ele-  
19 ments to it, basically. A newspaper that wants a supplement  
20 has to get two things. The different features are all copy-  
21 rights, and the newspaper has to get the license for these  
22 features. In addition, the newspaper has to arrange to have  
23 the supplement printed and the printing of comic color supple-  
24 ments is a very, requires special skills. It's not something  
25 that can be done -- they are done with four different inks and

1 it takes a great technique to accomplish this.

2 The licenses for using the comic -- color comics  
3 themselves, are controlled by the syndicates and the syndicates  
4 license to the newspaper as many of these particular comics as  
5 they want. Sometimes the newspaper will get all of its par-  
6 ticular comics from a single syndicate. More likely it will be  
7 a combination and this one of the Washington Post shows that  
8 the different comics come from half a dozen or more syndicates.

9 Now, approximately one-third of all of these color  
10 comic supplements are printed by the newspapers themselves.  
11 The remaining two-thirds are printed by the so-called "Comic  
12 Color Supplement Printers," of which the two merging com-  
13 panies are the two leading ones.

14 At the time of the acquisition and even to this day  
15 everyone concedes that Greater Buffalo Press is the leader in  
16 the comic supplement field. This is the most skilled one; it  
17 is the firm that can produce the best product. Both of these  
18 firms, of course, produce the same product. The end result is  
19 identical, whether or not it's produced by Greater Buffalo or  
20 International; it's this comic supplement.

21 But the two firms file a different method of dis-  
22 tributing those products. Greater Buffalo sells primarily  
23 directly to newspapers. It sells to a few of the syndicates,  
24 but basically sells to newspapers. International has no  
25 business relations at all with the newspapers except that it

1 ships the comics. It deals exclusively with King and it has  
2 dealt exclusively with King for almost 30 years. King, under  
3 the contracts, is obligated to give at least 75 percent of its  
4 printing requirements to International. The other 25 percent,  
5 I might add in passing, is because on the West Coast it is just  
6 not economically feasible to print in the East and ship it to  
7 the West Coast, because printing is very expensive.

8 Now, what happens in the case of King is that King  
9 goes out and actually sells the comics to the newspapers. King  
10 sells the comics to the newspapers. King has this arrangement  
11 with International and has had it for many years and Inter-  
12 national does the printing. And King's profit, of course,  
13 represents the difference between what it pays International  
14 and what it can sell the comic to the newspapers for.

15 And the newspapers, all of their business dealings  
16 are with King. They pay their bills to King and King in turn  
17 then pays International. But, of course, the price that King  
18 pays International necessarily determines what kind of an offer  
19 King, in turn, can make to the newspapers. And, not unexpec-  
20 tedly the record in this case shows that over the years there  
21 was a constant battle between King on the one hand, and Inter-  
22 national on the other over price. And King, on occasion has  
23 forced International to cut its prices in order that King could  
24 meet a particular competitive situation.

25 King had something of a club over International

1 in this respect, because up to the time of the merger King had  
2 a six month cancellation clause in its contract. It could  
3 cancel for any reason within six months.

4 At the time of the merger in June of 1965, King  
5 and International were negotiating a new printing contract  
6 which they wanted to be a long-term contract. About a month  
7 after the acquisition was consummated they did sign a long-term  
8 contract and it was the same prices they had before, but they  
9 had no six months cancellation clause. However, and we think  
10 this is quite significant, and I will come to it in a moment  
11 -- at the time the merger was taking place, a week before the  
12 merger agreement was finally signed, International and King had  
13 agreed upon the prices to be charged under that contract. At  
14 the time of the merger King and International each had sales  
15 of about eight-and-a-half million dollars.

16 There is a dispute between the parties as to what  
17 their respective shares of the market was. The dispute is over  
18 whether or not in calculating the market you include in the  
19 market printing that is done by newspapers themselves. The  
20 Government contends that that printing should not be included  
21 because, as we say, while a newspaper might give its business  
22 to one of these printers, it is unlikely that any newspaper  
23 would be a source of printing for any other newspapers.

24 Under our study of the market, as we interpret it  
25 under our evaluation of this, together these two firms had



1 roughly 75 percent of the volume of printing done at the time  
2 of the acquisition under the --

3 Q You mean 75 percent of that two-thirds  
4 portion which you were talking about?

5 A 75 percent of the two-thirds; right.

6 Under the defendant's evaluation the two firms  
7 together had just under 42 percent of the whole market; their  
8 42 percent is 42 percent of the whole market; ours is 75 per-  
9 cent of the two-thirds. But, under either standards, these two  
10 firms simply dwarfed the rest of the industry. Each of these  
11 firms was at least five times as large as any of the other  
12 four or five independent printers.

13 Now, the facts relating to the acquisition are  
14 relatively simple. The original organizer of International,  
15 the acquired company, had been dead for many years. The stock  
16 of the company at the time of the acquisition was owned by two  
17 of his children, who had made no investment in the company,  
18 who had nothing to do with the running of the business. They  
19 let a Mr. Gorman, the President of International, run it. Their  
20 sole interest was in the dividends they could get out of the  
21 company. And finally, they tried to sell this plant in 1952  
22 to Hearst and King and Hearst was not interested.

23 In December 1954 negotiations began between the  
24 President of International and the President of Greater Buffalo.  
25 International's man indicated the property he thought could be

1 purchased at the book value and that was ultimately done in  
2 June of 1955, at a price of \$575,000. But, the record show  
3 that Gorman, the President of International, kept King fully  
4 informed during the whole course of these negotiations, of  
5 what was going on. And, three months before the acquisition  
6 took place, in March of 1955 the sales manager of King, a man  
7 named Nicht, wrote a letter to his superior in which he pointed  
8 out the King role that King occupied in connection with this  
9 merger. As he said, "Although the owners of International are  
10 anxious to sell, they can hardly sell without our consent and  
11 cooperation." He further added that "Greater Buffalo realizes  
12 they can hardly continue to purchase plans without our approval.

13 Now, of course, the reason for King's control over  
14 this thing is quite obvious: without the arrangements that  
15 International had with King or International had with the  
16 printing plants, there were no customers. International did  
17 not have anyselling organization.

18 On the other hand, King also had a very real stake  
19 in this thing because King at this time, was basically dependent  
20 upon International for its printing. And I will come in a  
21 minute now to what the District Court said in explaining the  
22 significance of why this interrelationship, as a practical  
23 matter, meant that even though the contracts between King and  
24 International was not signed until a month after the merger,  
25 in fact, at the time of the merger Greater Buffalo knew that by

1 acquiring International it was acquiring basically King's  
2 printing presses.

3 The District Court held against us on the Section  
4 7 issue on really two grounds. First, the District Court said  
5 that because of the advantage King has in selling printing as  
6 a result of its control over the features, there were two  
7 different markets here; "One market," said the Court, "Is the  
8 printing of comic color supplements for sale directly to the  
9 newspapers, and the other market was for sale to the syndi-  
10 cates which then sold them to thenewspapers.

11 And the Court went on and said: "The effect of  
12 this acquisition may not have been substantially to lessen  
13 competition because in the first place," it said, "Greater  
14 Buffalo and International are not in competition; they are not  
15 in the same market. International is selling to one market;  
16 that is to the syndicates. Greater Buffalo is selling to the  
17 othermarket, to the newspapers themselves. They are not in the  
18 same market, so there could be no elimination of competition  
19 between them."

20 Secondly they said that since the time that the --  
21 the Court said that since at the time of the acquisition King  
22 had no firm contract with International, Greater Buffalo was  
23 not acquiring any share of the printing business; it was a tie-  
24 in expectation that with its skill it could pick up some of this  
25 business, and finally it said in any event, International was a

1 failing company.

2 Then, at the end of its opinion, in the last  
3 sentence of the portion dealing with the Section 7 violation,  
4 the Court said that even if there were some violations of  
5 Section 7 here it would not be appropriate for divestiture 15  
6 years after the acquisition took place.

7 Q Did the record show anything as to new  
8 entries into the market since 1961 or since the trial?

9 A There is evidence that there is one firm  
10 that developed very rapidly in the early 1960s. There is a  
11 dispute between us as to the ease of entry. The District Court  
12 found that there were no substantial barriers to entry. The  
13 claim is that anybody can print; all you need is a printing  
14 press; that there is plenty of surplus capacity in this great  
15 ease of entry.

16 Now, we think that there are serious barriers to  
17 entry in this business for two reasons: first, this is a very  
18 skilled thing. This is not just turning the press on and  
19 printing. You have got to know what you are doing, and the  
20 fact of the matter is that a large number of newspapers have  
21 it is financially advantageous to them to shift their printing  
22 business from their own printing facilities to one of these  
23 printers.

24 In addition, once you have a firm which has 75  
25 percent of the printing market available. That is with papers



1 who don't print their own, it seems that this itself, as it has  
2 been recognized, creates a substantial barrier to entry. And  
3 I can say that I know of no new firms that have gone into the  
4 business. In fact, in 1955, shortly after this acquisition,  
5 another independent color printer went out of business. That  
6 was a firm called Buffalo Colorprint, a smaller printer, which  
7 Greater Buffalo also acquired, that was doing printing for  
8 another one of the syndicates in this case.

9 Now, we start, it seems to me, with a self-  
10 evident proposition, which is basically: Greater Buffalo and  
11 International are in the same business. They are both print-  
12 ing this thing and of course, an essential element of the  
13 printing of this thing is getting it distributed to its cus-  
14 tomers, the ultimate customers: the newspapers. and it seems  
15 to us it doesn't make any difference that a particular dis-  
16 tributor, such as King, may have had some advantages in dis-  
17 tribution; it's still the same product. It doesn't cease to  
18 be -- it doesn't become a different product merely because one  
19 firm is distributing it through King and the other firm is  
20 distributing directly.

21 And therefore, under the decisions of this Court,  
22 we think that the business of printing and selling color comic  
23 supplements was a relevant market. I stress the word "a,"  
24 because it may well be that printing for syndicates is also an  
25 independent relevant market, but certainly this is "a" relevant

1 market.

2 Q International did, what was it, two-thirds  
3 or three-quarters of King's printing?

4 A International -- three-quarters.

5 Q Three-quarters of King's printing. But,  
6 now was 100 percent of International's printing done for King?

7 A All of it. International printed only for  
8 King. International had no contracts -- no printing itself  
9 for any -- that is right, and that's the way International had  
10 done business. I think when it started in 1925 it had two  
11 small customers and for almost 30 years it had been printing  
12 exclusively for King.

13 Now, within this borderline of promise, which we  
14 think is the relevant market; that is sale and printing, we  
15 think that there would be no doubt that the effect of this  
16 acquisition may have been substantially to lessen competition.

17 The District Court found, and no one disputes it,  
18 that Greater Buffalo and King were engaged in active competi-  
19 tion for the business of printing color comic supplements, and  
20 this competition between them in selling the printing  
21 necessarily reflected and was dependent upon the competition  
22 between Greater Buffalo and International in printing, because  
23 only if International kept its prices low enough, would King be  
24 in a position to compete effectively with Greater Buffalo.

25 And I think the realities of this were recognized

1 in 1954 in a letter that Mr. Gorman, the President of Inter-  
2 national, wrote to the unions when he was complainig that the  
3 unions were putting very onerous conditions upon them; that he  
4 couldn't deal with, because he was complaining, as he said --  
5 he referred to Greater Buffalo as his competitor and he is  
6 complaining that Greater Buffalo is taking business away from  
7 him because of the onerous burdens.

8 Q International claimed that Greater Buffalo  
9 was taking business away from it?

10 A From it; yes. International said -- this is  
11 Exhibit P-9 at 785 of the record -- it's a rather long letter  
12 and he complains, and he says: "I'm losing business to my  
13 competitors and the demands you are making for me in the way of  
14 labor conditions are unfair"--

15 Q Now, was Greater Buffalo doing any printing  
16 for King?

17 A Greater Buffalo was doing a little printing  
18 for King back in the mid-1950s and it has -- there was evidence  
19 that on one occasion that it began that Mr. Nicht, of King,  
20 was distressed because he didn't think he was getting a good  
21 enough deal from International so he transferred some business  
22 to Greater Buffalo and as a rather revealing quotation in which  
23 he said, and this is at page 1428 of the record. He said he  
24 had shifted business to Greater Buffalo at a lower rate and that  
25 Gorman, the President of International understands he is likely

1 to lose other business "because of inability to meet the rates  
2 I have been able to obtain from Greater Buffalo."

3 Q Well, was this contemporaneous to the letter  
4 to which you just referred?

5 A This was about --

6 Q -- to the union?

7 A Yes; this was about a month or two apart.  
8 Both of these were 1954.

9 Now, the effects of this merger was to very  
10 drastically change the structure of the market. Previous to  
11 the merger what you had was two very large firms, each with  
12 roughly 35 to 40 percent of the market, competing with each  
13 other and four or five smaller firms.

14 After the merger you had one major firm that really  
15 stood out as a colossus over this market; it had 75 percent  
16 of the business. The competition that previously had existed  
17 between International and Greater Buffalo in printing and keep  
18 ing prices down and improving service, necessarily was basically  
19 eliminated and while my opponent will tell the Court, as he has  
20 in his brief, that despite all of these facts, there was plenty  
21 of competition in the industry. The significant thing, it seems  
22 to me, for Section 7 purposes, is whether or not this merger  
23 significantly lessened competition. And on that issue we  
24 think the record abundantly shows that it did.

25 I would like, if I may, to reserve the balance of



1 my time.

2 MR. CHIEF JUSTICE BURGER: Very well, Mr.  
3 Friedman.

4 Mr. Raichle.

5 ORAL ARGUMENT BY FRANK G. RAICHLE, ESQ.

6 ON BEHALF OF APPELLEES

7 MR. RAICHLE: Mr. Chief Justice and may it please  
8 the Court:

9 This is an unusual anti-trust case. Its genesis  
10 is this: a man by the name of Hornaday who worked for King,  
11 which is a division of Hearst. When Counsel is referring to  
12 King he is referring to Hearst, Hearst newspapers. Hornaday  
13 left King and went to work for another smaller syndicate sell-  
14 ing color comic supplement printing. Now, while he had a  
15 little initial success, he soon encountered the effects of the  
16 tie-in of Hearst with its features and its printing. Hearst  
17 would tell a fellow: well, if you aren't going to have your  
18 printing done through us, why, you will have to pay more for  
19 your features; a typical violation.

20 So, Hornaday began to complain about Hearst; in  
21 fact he complained about the things he used to do while he was  
22 with Hearst. And so the Government got busy and started an  
23 investigation of the industry at the instance of Hornaday, who  
24 had not complained about us in any way, and in the course of  
25 events there was a grand jury investigation which resulted in

1 a "no bill," as I recall it, and subsequently the commencement  
2 of this suit in the year 1961. And a strange course of events,  
3 at least to me, a strange course of events ensued.

4 The original argument by Counsel for the Government  
5 told the Court that the action was brought primarily against  
6 Hearst, to stop Hearst from its tie-in practices; indeed it  
7 was brought for our protection. You will find that oft  
8 repeated in the record; a strange kind of protection in light  
9 of the relief by way of divestiture of our Sylacauga plant  
10 that's sought in the complaint.

11 Well, in any event, Greater Buffalo, if I might  
12 take just a minute to describe it, had a very inauspicious and  
13 humble beginning back in 1926. The Koessler family: Walter  
14 Koessler who was a reporter on a newspaper, who entered the  
15 business for himself, with members of the family assisting him,  
16 with an investment of \$1,000 to \$3,000; and they put up a  
17 little printing press right in their own home. Members of  
18 the family worked and they printed a little neighborhood news-  
19 paper, and I guess they were helped by the depression in the  
20 30s, because it began to print these mortgage foreclosures and  
21 happenings, legal notices connected with bankruptcies and so  
22 forth.

23 And they began to print a few ads for the local  
24 stores, and started to print colored ads. Sometime in the 30s  
25 one of the Buffalo papers suggested to them that they might be

1 able to print the comic sections, and furnished them with an  
2 old press, and they started to print. From that they started  
3 to print for the Syracuse paper and then from that the Chicago  
4 paper, and the thing grew. It's one of the typical American  
5 success stories of its time.

6 So, as the year 1950 and '51, '52, '53 rolled  
7 around, the Buffalo Press, by some innovations of Walter  
8 Koessler, as president, and some ingenuity of all of them, hard  
9 work on the part of the whole family, they had succeeded in  
10 developing quite a business in this color comic supplement.  
11 field. And they began to feel the effects of the King tie-in.  
12 King had the major features; not only comic features, but the  
13 syndication of the columnists popular of the day, and the  
14 competition between Greater Buffalo and Hearst, as I put it,  
15 King, if you please, was intense; there is no question about  
16 it. We didn't concede that we were competing with Inter-  
17 national which printed exclusively for Hearst.

18 The strange thing about it to me has always been --  
19 and I will say more about that when we talk about the absence  
20 of barriers there to entry in this field. International never  
21 printed for the Hearst papers; they always printed their own.  
22 The whole country, the Hearst papers print their own comics.

23 Well, in any event, in 1951, 2 and 3 Greater  
24 Buffalo Press built a plant down in Lufkin, Texas to accommodate  
25 itself to the transportation charges more beneficial to its

1 customers in that area, and began to plan -- in fact at an  
2 earlier date, began to plan for a plant in Sylacauga, Alabama,  
3 and it's that plant with which we are particularly concerned,  
4 and it's more or less unmentioned by my opponent, so I will  
5 have to get to that in a few minutes.

6 But, in any event, the owners of the International,  
7 the Golden family by name, who lived -- I think one of them  
8 lived in Cuba and one of them in Alabama and refused to make  
9 any investment in the company after the original investment  
10 and were content to let this man Gorman, a very competent  
11 operator, run the plant for them. But I don't suppose I could  
12 say with candor to the Court that by 1955 International  
13 squared with your decisions, definitions of a failing company,  
14 but if it wasn't a failing company then it was destined to  
15 become one -- whatever artificial difference they are making  
16 in that observation -- Its working capital was impaired; its  
17 machinery was obsolete and getting worse. It's only customer,  
18 King, was threatening to take the business away and put it  
19 somewhere else.

20 In answer to the inquiry from the bench: the first  
21 business of King that Greater Buffalo got was in the year 1954  
22 when a run from Youngstown, Toledo and I think Erie, Pennsyl-  
23 vania, was transferred to it by Nicht of Hearst.

24 In the extremeness in which International found  
25 itself, it sought to sell the plant, the business, if you could



1 call it that, to Hearst. Importunities were made, insistent  
2 importunities were made to Hearst to buy it and the answer  
3 was: Hearst wasn't interested in it at any price and refused  
4 to. Mr. Gorman testified at the trial that he knew of no  
5 other purchaser, so he offered this to Mr. Koessler of Greater  
6 Buffalo Press. Koessler bought it for \$575,000 back in 1955,  
7 and all this anti-trust litigation has ensued since.

8 Now, at the time of the purchase International was  
9 engaged in negotiations looking toward a long-term contract.  
10 Those negotiations had not ripened into a contract and at the  
11 time that Greater Buffalo bought it on June 25, 1955, it had no  
12 contract assurance of business and it took a calculated busi-  
13 ness risk and bought what was the equivalent of some obsolete  
14 machinery which it hoped to modernize with its own techniques  
15 and make efficient.

16 Well, there is an element in the case which I  
17 don't shrink from, which I think I should talk about for just  
18 a moment. After Greater Buffalo built its Lufkin plant, or  
19 the Lufkin plant became a reality and Nicht learned that -- and  
20 about the time of the purchase of the International plant, that  
21 Nicht began to put pressure on Koessler, through his tie-ins,  
22 in other words, that he wanted to become the exclusive sales  
23 agent for the Greater Buffalo Press and that Greater Buffalo  
24 Press should print only for International and there is exten-  
25 sive correspondence on that subject in the record. And I would

1 characterize it as a flirtation on the part of the parties  
2 looking toward a line-up when and whereby Hearst would be the  
3 seller -- King would be the seller and the Greater Buffalo  
4 would be the printer.

5 And this went on over a period of two or three  
6 years and accounts for some of the documents in the record,  
7 which at first blush, are somewhat embarrassing, I think to  
8 both King and Greater Buffalo. But, in the course of events  
9 Koessler was advised and Nicht was advised that any such  
10 arrangement as Nicht was proposing would be in violation of the  
11 anti-trust laws. It was abandoned. There is no dispute about  
12 the fact of the abandonment of their plan.

13 Well, Greater Buffalo went ahead and built the  
14 Sylacauge plant, five years after this acquisition and that's  
15 what they to divest us of. Now, I don't care at the moment,  
16 and for the purpose of this discussion, whether you take the  
17 relevant market as that which the Court found, or the relevant  
18 market as Counsel contends that it should be considered, the  
19 fact remains that there are no barriers.

20 An interesting thing, people, newspapers for whom  
21 we have printed, and who we thought we had sewed up because of  
22 our vaunted efficiency, had gone back to printing their own.  
23 I think I can say without fear of serious dispute, certainly  
24 not an effective dispute, that most any newspaper in this  
25 country can print its own and that there is great excess

1 capacity in this country for the printing of these comic  
2 color supplements. Your Honors know, from your daily reading,  
3 most any newspaper you pick up prints colored ads for stores,  
4 for automobile companies, dress designers and whatever; and it  
5 takes very little adaptation to put those presses to work to  
6 print the color comic supplements.

7 Now, we cite in our brief and the Government's  
8 exhibits show that certain newspapers print for other news-  
9 papers. Exhibit -- I think on page 1823 in the record, is  
10 something that's printed at page 14 in my brief, the red one,  
11 which shows that Hearst, the Hearst papers in Chicago print  
12 for two nonHearst papers, one in Chicago and one in Pittsburgh.  
13 The same exhibit shows that the Hearst plants have the surplus  
14 capacity for the printing of 12,500 four-page sections. That's  
15 the unit of production that's talked about.

16 Q What page was that, Mr. Raichle?

17 A Page 14 of our brief and page 1823 of the  
18 record.

19 Q 1823?

20 A 1823, of the Appendix. I said "record;" I  
21 mean appendix.

22 Now, then, I say that the competitive effects, if  
23 any, were minimal and immediately dispelled, long since dis-  
24 sipated. I don't have time, but let me cite one example. The  
25 principal competitor of Greater Buffalo Press who runs head

1 onto Greater Buffalo Press and its Sylacauga plant, is Southern  
2 Colored Prints. It's an undisputed fact, clear as a pikestaff  
3 in the records, that between the time that we acquired Inter-  
4 national and the time of the trial that Southern Color, which  
5 incidentally is a Hornaday company, the man who started all  
6 of this stuff, has gone from 477,714 four-page sections per  
7 week, to 3,400,000 per week; that during the same period of  
8 time, translated into dollars, he's gone from a \$600,000  
9 volume to \$3,300,000.

10 It's an established fact that every printing  
11 company that is a factor in this industry, or was a factor in  
12 1955, at the time of our acquisition, has increased its busi-  
13 ness and it is an undisputed that most of the increase in the  
14 business came from us and that we took no compensating business  
15 from them.

16 Now, let me get to the divestiture and introduce  
17 Your Honors to that subject, and I know this historic court-  
18 room, this Court has heard many strange contentions, but I  
19 call attention to one advanced by my friend as one of the  
20 strangest that I've ever heard -- now they say that this  
21 violation, this purchase of this old machinery back in 1955,  
22 took with it the planning which International had for the plants  
23 at Sylacauga, Alabama. And at page 37 of their brief they  
24 say: "Effective relief in this case which would create a  
25 viable independent color comic supplement printer capable of



1 providing King with an ultimate source of printing from  
2 Greater Buffalo, requires divestiture of all of the assets  
3 owned by International at the time of the acquisition and the  
4 Sylacauga, Alabama plant planned by International, but con-  
5 structed and operated after the acquisition by Dixie Color  
6 Printing Company, a Buffalo subsidiary. Dixie Color is the  
7 company who owns the title to the building which we built.

8 Now, that's cumulative to the effect that the in-  
9 tended beneficiary of the requested divestiture is Hearst.  
10 Now, in the early days of this case, I repeat: we were des-  
11 cribed as the victim and Hearst was described as the predator.

12 This is the first time I ever heard a Government Counsel seek  
13 a divestiture from the victim for the benefit of the predator.

14 Now then, let me give you the history of the  
15 building of the Sylacauga plant. Why did two or three people  
16 hit upon Sylacauga and that might sound like a strange co-  
17 incidence; not at all. There is something called the Coosa  
18 River Paper Company down there, and as early as 1950, Coosa  
19 River Paper Company had called on Greater Buffalo to see if  
20 they could built a plant for us if we would take their pro-  
21 duct and use it in our printing. Well, at that time we were  
22 engrossed in going forward with Lufkin and we didn't pursue it  
23 seriously, although we made some investigation and indeed,  
24 that's five years before the acquisition; back in 1947, which  
25 was eight years before the acquisition, we had planned a plant

1 in the Deep South and in 1950 we had in writing, committed  
2 ourselves to the -- that Atlanta Paper, I forget the name of  
3 it, to build the plant. We didn't specify Sylacauga, but we  
4 said in the Deep South, probably in Alabama.

5 Well, it seems that this Coosa River, contacting  
6 printers generally to see if they could get someone to build  
7 a plant, also contacted International and that International,  
8 had, at least in the minds of Gorman, its operating end had  
9 planned to pursue the subject on its own. Well, he went to  
10 Hearst and Hearst wouldn't give him a long-term contract  
11 at a price that would permit the investment in a new plant.  
12 Hearst, as I said, wouldn't buy the International plant. Hearst  
13 wouldn't do a thing to promote the development of the plant in  
14 Sylacauga.

15 Now, after -- not before, but after the acquisition,  
16 we built the plant, completed it five years later. Now, this  
17 I say in all -- the Government's brief says that we changed  
18 some details that can furnish some things -- details, well we  
19 built the plant in accordance with the same plans which we  
20 had used some years before in Lufkin. It's a reproduction of  
21 our Lufkin plant. We went to Baltimore and bought a press.  
22 Our competitor bought the other available press from the same  
23 newspaper -- I forgot the name of the Baltimore newspaper .

24 The press was worked on, transiently in Wilkes-  
25 Barre by the International employees. This is after the

1 acquisition, but we reimbursed them for all the work. The  
2 plant was built to install the press; the press was installed.  
3 No equipment of consequence came from Wilkes-Barre. The only  
4 equipment that did come was a little office furniture, and I  
5 think one color duplicator, and I think the inventory is in  
6 evidence, was worth less than \$350 in the aggregate, and the  
7 plant cost us \$3 million.

8 Now he says, or the brief says that for some  
9 reason or another we should divest that plant so that Hearst  
10 can buy it. Preposterous, I say, Your Honors. Now, then,  
11 continuing, because that's what the case is all about,  
12 apparently, did we build the plant for any business from  
13 Hearst? No. Seventy-four percent of the color comic supple-  
14 ment printing which is done in that plant is by contracts made  
15 by Greater Buffalo, not International, directly with newspapers  
16 who had theretofore printed their own.

17 Now, 30 percent of the business down there is what  
18 they call "commercial printing," a subject to which we have not  
19 alluded. That means advertising for chain stores: Sears  
20 Roebuck, Montgomery Ward, Safeway Stores and all that sort of  
21 thing; that constitutes 30 percent of the printing being done  
22 in that plant. And if you give an effect of 30 percent, then  
23 84 percent of the printing down there is ours, and I think  
24 some -- that is from contracts of ours and a minimal amount  
25 came from Wilkes-Barre, from International.

1 Now, then, one or two more things. This attempt  
2 on the part of the Government to make a printer out of Hearst  
3 and out of King is so incongruous, because time and again the  
4 evidence shows and it's undisputed that as a matter of policy  
5 that Hearst would not enter the printing, often citing a  
6 statement by Hearst, 's senior officer that -- let me get it  
7 right. It sums up the case from Hearst's point of view, but  
8 the Government's trying to foist it on us.

9 Mr. Green, who is Mr. Nicht, senior, said that  
10 Hearst was never interested in printing. Then he cites the  
11 fact that Luden's sold 50 million gumdrops a year and never  
12 made one; they made money notwithstanding. Now, I just don't  
13 know. I respectfully submit to you that under all cases, that  
14 under any case on the subject there cannot be divestiture for  
15 equitable reasons, let alone those associated with due process.

16 Now, i he wants to talk about a divestiture of the  
17 old machinery that we bought 15 years ago up in Wilkes-Barre,  
18 that at the moment, is idle. I think that all the arguments  
19 I have evinced, though showing that there were no anti-com-  
20 petitive effects; if, indeed, there was any technical viola-  
21 tion, easy access to the market, the passage of time, the  
22 development and the growth of competition -- and just one more  
23 thing that probably is the least important --

24 In the early days of the case the unions were  
25 appearing as amicus here, urging that we not take things out of



1 Wilkes-Barre, predicting dire consequences to the economy if  
2 we did. Why, the economy has grown largely through what we  
3 have done up there, if I might boast about it. All their  
4 fears have gone away. Senator Sparkman was coming after us if  
5 we didn't bring the things down to Sylacauga after we started,  
6 and I think we brought prosperity to that part of the country.  
7 We buy the newsprint; we employ people; we do a wholesome  
8 business and I think it's wholesome that this little family  
9 business in the tradition of free enterprise, can flourish as  
10 it has and do so well and violate no laws.

11 Thank you.

12 Q Mr. Raichle, what do you say about the  
13 District Court's view of the relevant market?

14 A Well, of course I agree with them.

15 Q You agree with him?

16 A Yes, I do.

17 Q Well, supposing one disagrees with that;  
18 where does the case go?

19 A I still say there is no violation if it  
20 raises -- I'm kind of tieing into some of your decisions -- if  
21 it raises an inference or presumption that there was a  
22 violation, that some anti-competitive effects -- I think the  
23 presumption has been completely overcome by the evidence some  
24 of which I have alluded to and the rest of it is in the brief.

25 MR. CHIEF JUSTICE BURGER: Thank you, Mr. Raichle.

1 Mr. Friedman, you have got about four minutes left.

2 REBUTTAL ARGUMENT BY DANIEL M. FRIEDMAN, ESQ.

3 ON BEHALF OF APPELLANT

4 MR. FRIEDMAN: Thank you Mr. Chief Justice, and may  
5 it please the Court:

6 The Government is seeking the divestiture of the  
7 Sylacauga plant, not to aid the wrongdoer, Hearst, but  
8 we think that under normal principles governing divestiture,  
9 which you have to have if the plant, the entity to be divested,  
10 must be capable of functioning as a strong effective competitive  
11 factor in the marketplace. Now, the way this market is now  
12 structured, what it means is for International to take up and  
13 become the kind of plant that is necessary to provide competi-  
14 tion for Greater Buffalo, it's got to have a facility in the  
15 South because the newspaper customers down there now are used  
16 to a southern plant; they save substantial money as a result of  
17 the saving of transportation costs.

18 We are not, of course, suggesting, as Mr. Raichle  
19 somehow suggests, that we are trying to put Hearst into the  
20 printing business. We're not saying that the plant has to be  
21 divested to Hearst. All that we are saying is that when you  
22 divest International and of course I just mention in passing,  
23 divestiture is the normal remedy when you have a stock acquisi-  
24 tion that violates the act, when you divest it you've got to  
25 divest it in a way that makes it into a strong competitive force

1 in the market and that requires, we think, that the Sylacauga  
2 plant be included.

3 Q Well, what do you think about the equities  
4 of ordering a divestiture 15 years after the event and in the  
5 face of what the District Court found was an inappropriate  
6 remedy even as of the time he tried the case?

7 A Well, I think, Mr. Justice, that the equities  
8 relating to the situation of the individual firms in this  
9 situation, must be balanced against the demands of the public  
10 interest in destroying effective competition here and I think  
11 that in this situation it is appropriate to divest it.

12 But, I would like to add, if I may, just one thing  
13 on how this Sylacauga plant was developed. For a year before  
14 the acquisition, International was playing a very active role in  
15 working out its own plant and many of its people had made  
16 lengthy trips to Sylacauga to investigate the situation.  
17 International was under constant pressure from King to build a  
18 southern plant and indeed, they have written in the spring of  
19 1955 International had twice informed the Chamber of Commerce  
20 of Sylacauga that it had definitely decided to move to  
21 Sylacauga to build a plant in Sylacauga and they still at that  
22 point did not have the financing available, but it seems, in the  
23 light of the pressure that were coming upon International from  
24 King in the light of all this extensive plant it certainly is  
25 most reasonable and most likely that if there hadn't been this

1 situation International somehow would have found a way to  
2 build a plant.

3 Now, it's quite clear that the plant was actually  
4 built by Greater Buffalo and Greater Buffalo paid for it, but  
5 it seems to, at least in the inception the spirit of the thing,  
6 that this was enough of an International plant that it would  
7 be appropriate to require that it be divested in order to  
8 establish the kind of strong company that is necessary to  
9 restore competition in this industry.

10 Q There is nothing very remarkable, though,  
11 about this move into the Deep South by an expanding industry;  
12 is there?

13 A There is nothing remarkable about it, with  
14 this exception, Mr. Chief Justice: this move into the Deep  
15 South was not the typical move where a firm finds that this is  
16 an attractive area for various reasons to develop a new fac-  
17 tory. This move into the Deep South is because of the --  
18 basically because of the transportation situation. That is:  
19 newspapers are located in the Deep South, which is much better  
20 off financially if they had a nearby plant. It's the newspapers,  
21 not the printers, that pay the cost of transporting the supple-  
22 ment from the printing plant to the newspaper plant. And I  
23 think this is what's involved in this case. It is an attempt  
24 -- they moved in there because they needed the plant and I  
25 think it was a realistic matter if you divest International.



1 Without this plant down south it's going to be very, very  
2 difficult for there to be any really effective competition  
3 created by International.

4 That, it seems to us, is the basic purpose of  
5 relief in this case.

6 MR. CHIEF JUSTICE BURGER: Thank you, Mr. Friedman.  
7 Thank you, Mr. Raichle. The case is submitted.

8 (Whereupon, at 2:00 o'clock p.m. the argument in  
9 the above-entitled matter was concluded)