

IN THE MATTER OF
STENOGRAPHIC MACHINES, INC.; LASALLE EXTENSION
UNIVERSITY: AND THE STENOTYPE COMPANY

ORDER, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6076. Complaint, Jan. 14, 1953—Decision, Mar. 18, 1955

Order prohibiting an agreement between the only two distributors of mechanical shorthand machines in the United States to divide the market between themselves, one to confine its sales and solicitations mainly to private commercial schools or colleges while the other limited its activities mainly to home-study and correspondence students.

Before *Mr. John Lewis*, hearing examiner.

Mr. George W. Williams and *Mr. Paul H. LaRue* for the Commission.

McBride & Baker, of Chicago, Ill., and *Davies, Richberg, Tydings, Beebe & Landa*, of Washington, D. C., for Stenographic Machines, Inc.
Staehlin & Jantorni, of Chicago, Ill., for LaSalle Extension University and The Stenotype Co.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

STATEMENT OF THE CASE

The Federal Trade Commission issued its complaint against the above-named respondents on January 14, 1953, charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the Federal Trade Commission Act. Copies of said complaint and notice of hearing were duly served upon respondents. Said complaint charges, in substance, that respondents on November 16, 1948, and thereafter, agreed to divide, and did divide, among themselves the customers in the mechanical shorthand market, thereby tending to limit competition and create a monopoly in said market.

Respondents appeared by counsel and filed motions to dismiss the complaint based, in substance, on the insufficiency of said complaint and the mootness of this proceeding by reason of the cancellation of the alleged agreement of November 16, 1948. Said motions were denied by order of the undersigned hearing examiner dated March 19, 1953. Thereafter, said respondents filed their separate answers, in which they denied having engaged in any illegal practices as charged.

Pursuant to notice, hearings were held before the undersigned hearing examiner, theretofore duly designated by the Commission to hear this proceeding, in Chicago, Illinois, on various dates between May 4, 1953 and February 3, 1954. At said hearings testimony and other evidence were offered in support of and in opposition to the allegations of the complaint, which testimony and other evidence were duly recorded and filed in the office of the Commission. All parties were represented by counsel, participated in the hearings, and were afforded full opportunity to be heard, to examine and cross-examine witnesses and introduce evidence bearing on the issues. At the conclusion of the evidence offered in support of the complaint, motions were filed by respondents to dismiss the complaint for insufficiency of evidence, and a separate motion was filed by respondent Stenographic Machines, Inc. to strike certain documentary evidence consisting of correspondence between the other two respondents and third persons. Said motions were denied by order of the examiner dated October 23, 1953. At the close of all the evidence proposed findings and conclusions, together with reasons therefor or supporting briefs, were filed by counsel for respondents and counsel supporting the complaint, all of which have been carefully considered. No request for oral argument has been received from counsel.

Upon consideration of the entire record herein, and from his observation of the witnesses, the hearing examiner makes the following:

FINDINGS OF FACT

I. The Business of Respondents

A. *Respondent LaSalle*

Respondent LaSalle Extension University (sometimes referred to herein as LaSalle) is a corporation organized, existing and doing business under the laws of the State of Illinois, with its principal office and place of business at 417 South Dearborn Street, Chicago, Illinois. Said respondent operates what is commonly known as a correspondence school, through which it teaches a variety of subjects by the correspondence or home-study method. Among the courses conducted by said respondent is one in the training of students to take dictation by means of a mechanical shorthand machine known as the Stenotype, which is sold in conjunction with said course, the course of instruction being designated as Stenotypy.

The Stenotype machine has been manufactured for LaSalle by other companies, in accordance with LaSalle's specifications. The

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prototype of the machine was acquired by LaSalle in 1927, when it purchased the assets of the bankrupt Stenotype Company of Indianapolis. From approximately 1928 to 1936 the Stenotype machine was sold by LaSalle largely to students taking respondent's course in Stenotypy by the correspondence or home-study method, and to a lesser extent to business schools. However, starting approximately in 1936, LaSalle began to sell said machine to students enrolled in schools known as "Stenotype Institutes," which LaSalle assisted in organizing. Although privately owned and operated, said institutes were affiliated with LaSalle under a franchise or other contractual arrangement. The only courses of instruction offered in such schools were courses in Stenotypy, as distinguished from the average business school teaching a variety of commercial subjects. LaSalle assisted in the training of the teachers at such schools and awarded certificates to students upon satisfactory completion of the course. The owner or manager of such school was designated by LaSalle as its Registrar. The students enrolled at such schools signed a dual form of contract with LaSalle and the school. The contract with LaSalle provided for the purchase by the student of the Stenotype machine, texts, lessons and other material from LaSalle, and the contract with the school provided for the furnishing of instruction to the student by the school, and the payment therefor by the student. Separate payment was made by the student to LaSalle and the school, respectively, under the dual contract. This arrangement was known as the "Cooperative Plan."

Some of the independent business schools to whom LaSalle sold had an arrangement similar to that of the Stenotype Institutes in that they operated under a franchise from LaSalle and had a similar contractual arrangement for the purchase of Stenotype machines and text materials, and the payment of tuition.¹ In the case of most independent business schools, however, there was no such formal relationship with LaSalle and they purchased machines or text material from time to time on an individual-transaction basis.

During the latter part of 1948, LaSalle abandoned its so-called co-operative plan of operation and began selling its machines, texts and lesson materials to the schools as a unit, with the latter making their own separate arrangements with the students for the purchase of the machines and materials and the payment of tuition. This method of operation was known as the "Package Plan" for the reason that all of the physical material, including the machine, was sold to the school

¹ One of LaSalle's officials estimated that approximately 10 percent of the independent schools operated under this plan.

as a package. Under the Cooperative Plan, LaSalle had paid a commission to its salesmen on each sale of a machine and the accompanying material, as well as on the amount of tuition from the student, although LaSalle itself received no direct benefit from the tuition since that amount went entirely to the school. Under the Package Plan the school did its own selling to the students, and LaSalle was not obligated to pay any commissions on such sales.

B. Respondent Stenotype

Respondent The Stenotype Company (sometimes referred to herein as Stenotype) is a corporation organized, existing and doing business under the laws of the State of Illinois, and has its principal office and place of business at 417 South Dearborn Street, Chicago, Illinois. Respondent Stenotype is a wholly owned subsidiary of respondent LaSalle, and was organized in 1937 for the purpose of handling LaSalle's Stenotype business, including the sale of Stenotype machines, textbooks and lesson materials to Stenotype Institutes, independent business schools and home-study students. During the latter part of 1948 respondent Stenotype became inactive, and its functions involving the sale of courses or machines to institutes, business schools and students were thereafter carried on directly by respondent LaSalle. During the period of its operation Stenotype maintained no separate books and records, and its officers were identical with LaSalle's.

C. Respondent Stenographic

Respondent Stenographic Machines, Inc. (sometimes referred to herein as Stenographic) is a corporation organized, existing and doing business under the laws of the State of Illinois, with its principal office and place of business at 318 South Michigan Avenue, Chicago, Illinois. Said respondent was organized in 1938 by Milton H. Wright, a former official of LaSalle who, while he was with the latter, had been in charge of the sale of Stenotype courses and machines. Stenographic developed its own mechanical shorthand machine, known as the Stenograph, and its own text materials. The Stenograph machine is in many respects similar to the Stenotype, both being adaptations of the original Stenotype which LaSalle had acquired in 1927.² Stenographic's machine and the text materials prepared by it for use in connection therewith are sold to various independent business schools and to certain institutes formerly affiliated with LaSalle. Up to 1952

² It may be assumed that the patents for the original Stenotype had already expired when Stenographic put out its machine.

Stenographic did not manufacture its machine, but had it produced by another company in accordance with Stenographic's specifications. However, in 1952 it acquired its own plant and has been manufacturing the machine itself.

D. The Relations Between the Two Groups

During the latter part of 1947 LaSalle cancelled its contract with the company which was then making its machine, for the reason that it could not agree with the manufacturer on the price of the new model which the latter was seeking to develop for it. After several unsuccessful attempts to procure another manufacturer, LaSalle entered into negotiations with respondent Stenographic for the purpose of having the latter manufacture its machine. The agreement between the two companies, which was signed on November 16, 1948, provides that Stenographic will develop and manufacture for LaSalle a new model Stenotype machine, and that, pending completion of the new model, Stenographic would sell to LaSalle a certain number of its own Stenograph machines at a stipulated price per machine. It was agreed that upon completion of the new Stenotype machine LaSalle would pay Stenographic an amount equal to the factory cost of the machine, plus \$10.00 per machine. The contract was for a period of five years and obligated LaSalle to purchase at least 5,000 machines per year during the term of the contract. Due to a decline in its business, LaSalle did not actually purchase the full number of machines provided for in the agreement,³ which was terminated on January 8, 1953, and was superseded by a new arrangement in the form of a letter, under which LaSalle was relieved of the obligation of purchasing any specific number of machines from Stenographic. Under the new arrangement Stenographic was to continue making the Stenotype machines for LaSalle in accordance with the latter's needs, the price thereof to be determined at the time of each order, such orders to be placed for a six-month period. The new arrangement was for an indefinite term, subject to cancellation by either party upon two years' notice in advance. Until it acquired its own plant in 1952, the machines produced for LaSalle under the contract were actually manufactured by the firms which made Stenographic's own machine.

³ The number of machines actually delivered to LaSalle is as follows:

1949-----	3, 099	1951-----	3, 858
1950-----	4, 232	1952-----	2, 231

E. Position in the Industry

Outside of the LaSalle-Stenotype group and Stenographic, there are no other companies in the market at the present time distributing a mechanical shorthand machine. This situation has existed, substantially, since the date of the agreement between the two groups on November 16, 1948, and for several years prior thereto. It is therefore apparent, and is so found by the hearing examiner, that the respondents dominate the mechanical shorthand market.

F. The Interstate Commerce

The record establishes, and it is so found, that the respondents sell and distribute their respective mechanical shorthand machines in the various states of the United States, and in the District of Columbia, and that said respondents maintain; that at all times mentioned herein they have maintained, a regular course and current of trade and commerce in said machines between and among the various states of the United States and in the District of Columbia; and that their volume of trade in said machines has been, and is, substantial.

II. The Illegal Practices*A. Background and Issues*

The complaint herein charges in substance that Stenographic and LaSalle entered into an illegal agreement or understanding to divide the market in mechanical shorthand machines, in pursuance of which Stenographic was to confine its sales and solicitations mainly to private commercial schools or colleges, and LaSalle (including its subsidiary Stenotype) was to confine its sales and solicitations mainly to home-study or correspondence students. This agreement or understanding for a division of the market is alleged to have arisen out of the agreement of November 16, 1948, between Stenographic and LaSalle. In addition to reliance upon the language of the agreement (particularly Clause 7 thereof), counsel supporting the complaint relies on a number of letters which passed between the respondents, and on certain correspondence between LaSalle and its customers or potential customers, which correspondence counsel claims reflects the understanding reached in the agreement of November 16, 1948, to the extent that such understanding may not be entirely clear from the written agreement. Counsel supporting the complaint called as his witnesses various officials of respondents and sought, with varying degrees of success, to get them to accept his interpretation of what

they meant or intended by certain of the language used in the agreement and the various items of correspondence.

In offering their defense respondents relied on substantially the same witnesses as those called in support of the complaint. It was the general contention of these witnesses, at both junctures of their testimony, that counsel supporting the complaint had improperly interpreted the language of the agreement and the correspondence, and they sought to show that the language used was consistent with a non-culpatory purpose on their part. Respondents further endeavored to show, through certain figures and summaries taken from their records, that not only was there no agreement by LaSalle to give up its school business and confine itself mainly to home-study students, but that LaSalle's school business has actually increased since the agreement.

The basic question for decision, therefore, is whether the interpretation of the agreement and correspondence urged by counsel supporting the complaint is the correct one. In order to determine this question it is necessary to refer to the actual language used in the documentary evidence and to consider it in the light of respondents' explanations thereof. To the extent that there is any doubt as to what was meant or intended in the written agreement and correspondence, the evidence offered by respondents to show whether there was any actual division of the market will have a bearing in resolving such doubt.⁴

B. *The Agreement of November 16, 1948*

As previously indicated, the agreement of November 16, 1948, between LaSalle and Stenographic deals with the development of a new model Stenotype machine by Stenographic for LaSalle, and fixes the number of machines to be purchased and the prices to be paid by LaSalle, and contains other provisions with respect to ownership of tools and dies, the duration of the contract and liability thereunder. However, the agreement contains one clause upon which counsel supporting the complaint relies particularly as supporting his contention that the transaction involved an illegal understanding with respect to

⁴In their motion to dismiss at the close of the evidence in support of the complaint, respondents appeared to take the position that the lack of evidence of any actual division of the market was fatal to the case of counsel supporting the complaint. For the reasons appearing in the examiner's order of October 29, 1953, denying the motion to dismiss, the examiner concluded that a showing of an actual division of the market was not a necessary element of the *prima facie* case where the evidence was otherwise sufficient to establish the consummation of an agreement of the type charged. Respondents now apparently accept the correctness of this position, but urge that in determining whether an illegal agreement was ever entered into, the fact that there was no actual division of the market is a factor to be taken into consideration.

a division of the market. The clause in question, which is number 7 of the agreement, reads as follows:

7. It is understood and agreed that LaSalle desires to promote the sale of Stenotypes by it to purchasers of its correspondence courses, and through certain private Stenotype institutes now in existence where sales are made by salesmen under contract with the Stenotype Company or LaSalle. With respect to any school whose contract is terminated, Stenographic, upon notice in writing from LaSalle of such termination, shall thereafter offer Stenographs to such school at Stenographic's regular list prices, terms and conditions.

The explanation for the inclusion of this clause, given by E. J. Kendall, LaSalle's treasurer, who represented that company in the negotiations, was that it was inserted on advice of counsel "to protect us from possible lawsuit when and if somebody should be left without machines or courses because of termination of a contract." When Kendall was asked whether it was contemplated at the time of the agreement that there would be any termination of contracts with some of the schools, he replied in the negative but added that "such things [do] happen in the course of business." When asked to explain how his company could have any liability under a contract with a school if it were terminated, Kendall fell back on the line of defense that he was merely acting on advice of counsel and didn't know himself. Aside from the possible inconsistency between Kendall's testimony regarding the termination of contracts and his testimony elsewhere that LaSalle had no contracts with its schools,⁵ the examiner was not impressed with his explanation as to why paragraph 7 was put in the agreement.

M. H. Wright, who represented Stenographic in the negotiations, also claimed that the clause was inserted on advice of counsel, and professed to have no understanding as to the "technical and legal" reasons for its insertion. However, when pressed for an explanation, he stated that it was put in to protect his company from possible "involvement * * * with departments of the government" arising out of a "possible infringement of schools' rights." Among the involvements with the government mentioned by Wright were "certain Congressional acts that make it very difficult to fix a price * * * The Wright-Patman Act (sic), for instance." However, he again fell back to the line of defense that he was not "as well aware of [the technicalities] as counsel was, and we put this paragraph in there on advice of counsel." Despite Wright's and Kendall's professed lack of understanding with respect to this clause, which they claimed was inserted

⁵ Although Kendall claimed at one point that there were no contracts with any of the schools since 1940, the examiner is convinced that this information is incorrect, as will elsewhere appear.

on advice of counsel, no effort was made to produce an explanation by counsel, although respondents were represented in this proceeding by the same counsel who assisted in the contract negotiations.

In connection with the proposed findings filed on behalf of Stenographic, counsel states that one of the "considerations [which] prompted counsel for the parties to suggest the inclusion of Paragraph 7 in the contract" was the fact that it was contemplated some of LaSalle's schools might find the Package Plan less desirable than the Cooperative Plan and be left without a source of supply. Aside from the fact that this explanation by counsel in proposed findings has no testimonial value, the examiner cannot accept this as an explanation of why the parties were advised to put clause 7 in the agreement. In the first place Kendall testified that the change from one plan to the other took place in May 1948 or, at least, not later than October 1948. Unless, therefore, Kendall is incorrect the changeover had occurred before the agreement between LaSalle and Stenographic was consummated. Assuming, however, as appears more likely, that the adoption of the package plan occurred at or about the time of the contract between the respondents, it is doubtful that this was the real reason for including clause 7 in the contract. While it may be that the Package Plan was less desirable from the school's point of view than the Cooperative Plan, it is difficult to see how the school stood to gain anything by being given an opportunity to purchase supplies from Stenographic, since this would merely give it the right to purchase another package, Stenographic's rather than LaSalle's. If the change to the Package Plan has any connection with clause 7 it is, in the opinion of the examiner, as a concomitant of an arrangement under which LaSalle was to de-emphasize its school business and not as the cause for inclusion of the clause in the contract.

Turning to the actual language of clause 7, it will be noted that it refers to contracts with schools "now in existence" and provides that LaSalle shall notify Stenographic when such contracts are terminated, in which event the latter would offer to service the schools. While not expressly requiring LaSalle to terminate any contract, the language used contains the suggestion that LaSalle would not try to expand its school activities beyond those then in existence, and that as contracts expired or were terminated, a transfer to Stenographic would be considered. The language used is admittedly, and probably purposely, ambiguous. However, its meaning becomes fairly apparent when considered in the light of the correspondence and other evidence in the record. To a consideration of such evidence, in chronological order, the examiner now turns.

C. The Correspondence Between Respondents and With Third Persons

1. The Correspondence Between T. K. Elliott and Herman Miller

During 1948 T. K. Elliott was vice-president and sales manager of respondent Stenotype, and Herman Miller was the owner of The Stenotype Company of California, which was LaSalle-Stenotype's exclusive representative on the West Coast. Miller did business in Los Angeles under the name "The Stenotype Company of California," and also conducted a school in San Francisco under the name "Stenotype Certified School." He had a ten-year contract as LaSalle's West Coast representative, which was due to expire in May, 1949. During the fall of 1948 Miller was having certain difficulty in obtaining machines from LaSalle, which, for a period of about a year, had been without any source of supply. Since about August 1948, Miller had been corresponding with M. H. Wright of Stenographic in an effort to procure machines from the latter. Following a telephone conversation between Miller and Elliott, the latter, in a letter dated November 3, 1948, advised Miller that he had talked to William Allan (LaSalle's president) "about the matter we discussed," and that Allan had agreed with him that "we cannot blame you for wanting to deal directly with Wright under the circumstances." The letter further continues:

We are perfectly willing to release you from your contract and to cancel orders which you have on hand with us upon receipt of your request. Mr. Allan points out that *inasmuch as this is at the very start of our deal with Wright, it is essential that there be no possibility of misunderstanding.* Therefore he insists that we must receive your letter requesting cancellation of your contract and cancellation of your orders before advising Wright that all is clear. [Emphasis supplied]

The letter also requests that certain machines which were loaned to Miller be returned, upon receipt of which Elliott would "see to it that Wright is advised you are in the clear." On the same day Miller wrote to Elliott to "confirm our agreement by telephone made today in order to permit me to negotiate with Mr. Wright for Stenograph machines." The letter further continues:

This move is made because of the information that you gave me that you have temporarily discontinued your efforts to bring out the new machine, upon which we have based our last two years' operations.

Other correspondence passed between Miller and Elliott in which there was apparently discussed the possibility of a continuation of relations between them. On December 9, 1948, Elliott addressed the following letter to Miller:

I have just received your letter of December 3. While I realize that too many personal notes having to do with a piece of business might prove em-

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barrassing or confusing later, I am going to take the liberty of tipping you off to something else which I have not told you before this time.

I think I did tell you that we have arranged with Wright to manufacture our new Stenotype machine. Our machine will be a Stenotype, entirely distinctive, and will be the same in appearance as the pictures which you have seen. However, there will be enough standard parts in the two machines so that it will lower the manufacturing costs for both of us and it looks like we will both come out better from the cost standpoint. *Naturally, this deal entails some agreements between us. One of those agreements was that we would not try to steal customers from each other. We agreed with Wright that we would not try to open any new schools which are not at present franchised if he has another school in the immediate territory. It was agreed that should a school wish a franchise and in the event Wright could not satisfy him or he did not want to do business with the Stenograph people, then Wright would release him to us and we could go ahead.*

The reason I am telling you this is because as a result of my effort to cooperate with you and do what you asked me to do, on the phone, we told Wright that in view of the circumstances, we had no objection to your negotiating with him. *Now if he holds us to the terms of the agreement, we cannot renegotiate with you unless he releases you to us. I know all this sounds rather silly in a letter, but do you get the picture? When you requested that we cancel your contract, I immediately told Wright I had the request and we were willing to go along with you in complying with your request, even though at the same time I wrote you and called your attention to several details in connection with the cancellation. Naturally we are very anxious not to upset this deal now that we have it clicking pretty well, and I frankly do not know just what Wright's attitude is going to be if we tell him you have changed your mind and want to continue doing business with us.*

I think you should have this inside information because I do not want you to feel that we are trying to get rid of you. I told Wright in the first place that it was all right to negotiate with you because you asked me to. Now if he figures you are his baby, it might cause trouble if I tell him that the deal is off.

*If we can work it out with M. H. [Wright], it will be necessary that we start out from scratch with you and that means a new contract * * *.*

* * * The best thing you could do at this time would be to write us indicating that you would be willing to consider a new contract on the same basis as the other major schools, so that I can assure our people that you are interested in going right along with us under the new plan. As I say, *I do not know just what Wright's attitude is going to be*, but I am sure we can carry more weight in discussing the matter with him if we are sure that there is going to be no question concerning your deal if and when you come back to us.

You understand of course that this is a little personal note to you and not official. I am not answering your official letter and cannot do so until I get the go-ahead from the boss. If you can see your way clear to writing me along the lines I have suggested, I know it will help me in straightening this thing up, both here and with M. H. [Emphasis supplied.]

Further reference to the arrangement with Stenographic appears in a letter from Elliott to Miller, dated January 26, 1949, as follows:

Your letter of January 17 seems to clear things away pretty well and consideration of a new contract that will be in line with the contracts which will be issued to New York, Chicago and other major offices. There is one point remaining which must be cleared away before we can proceed. *You will recall I mentioned in another letter that we have an agreement with Wright not to interfere with schools which are doing business with him.* At your request we told Wright that we had no objection to your doing business with him and *there is now some possibility that Wright is going to consider you one of his schools* and this will make the situation rather awkward.

Kendall tells me that Wright told him, in a conversation with him the other day, that you had indicated a desire to act as his Pacific Coast distributor. I don't know whether he went along with you on this or whether you even asked him, *but we do have to clear this point away before going further or we could upset our deal with Wright.*

I'll get right after this matter and *if Wright is not claiming you as one of his agencies we will proceed with the matter of the new contract and franchise* just as soon as we have the new contract ready. If I run into any difficulty with Wright concerning this matter, I'll let you know.

Mr. Allan advises that until we get this point clarified we cannot do anything *which could be considered a violation of our agreement with Wright*, so I cannot ship you the 2000 ADVANTAGE booklets which you requested. * * * [Emphasis supplied.]

This letter was supplemented by the following letter addressed to Miller by Elliott on January 27, 1949:

It has been called to my attention that I overlooked mentioning a very important point to you in my letter of January 26. In that letter I indicated that it seemed everything was cleared away for us to negotiate *except for the matter of our agreement with Wright.*

We have handled most of our contacts with Wright through Mr. Kendall for reasons which I will not go into here. When I asked Kendall to clarify with Wright just exactly what your status is, he hit the ceiling. It so happens the Executive Committee has agreed that we will not renegotiate a franchise with any school whose credit standing is in any way questionable. Mr. Kendall pointed out to me very forcefully that your account is delinquent at the present time and that you owe us \$4,272.98. He says that he will not recommend renewing the contract until this balance is paid.

* * * If you will get your check in here to cover, I think we can go on from there without too much trouble. [Emphasis supplied.]

The foregoing is persuasive evidence in support of the existence of an agreement of the type charged in the complaint.⁶ Miller's letter of November 3 indicates that his consent to a cancellation of his agree-

⁶ Respondent Stenographic objected to the receipt of this correspondence in evidence as not binding upon it and, following the receipt of such correspondence (subject to a motion to strike), Stenographic moved at the close of the evidence offered in support of the complaint to strike the correspondence between Stenotype and Miller. As indicated in the hearing examiner's order of October 29, 1953, the motion to strike such correspondence was denied for the reason that the record, in the opinion of the examiner, revealed sufficient independent evidence of an illegal agreement of the type charged to justify receipt of the disputed correspondence and to give it probative effect as an admission made by one of two "co-conspirators."

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ment with LaSalle was based on information given him by Elliott that LaSalle was not going to bring out a new machine. For reasons which were not fully developed, LaSalle later decided to continue with Miller if he cleared up the arrears in his account and if Stenographic would consent to the arrangement. Throughout Elliott's letters there is expressed a concern about antagonizing Wright of Stenographic, which, it may be inferred, stemmed from the fact that the latter was LaSalle's vital source of supply. Finally, the letter of December 9 is clear evidence of an illegal agreement to limit competition between the two groups.

LaSalle sought to minimize the effect of this correspondence, and particularly the admissions in the letter of December 9, 1948, by claiming that the statements which Elliott made in the letter of December 9 were untrue, that he had not participated in any of the negotiations for the agreement of November 16, 1948 and was not familiar with its terms, and that he had made untruthful statements to Miller in an effort to get Miller to renew his relationship with LaSalle-Stenotype. However, after careful consideration of the explanations given, the examiner is satisfied that Elliott's information to Miller was substantially in accordance with the facts. Despite his protestations of ignorance, Elliott admitted that he knew the contract was being negotiated when he wrote the letters, that he was informed when it was closed, and that he was generally familiar with the arrangement between the two groups of companies. The statements made by him in the letters reveal too much knowledge on Elliott's part regarding the details of the situation, and conform too much to the information revealed in other correspondence to merit serious consideration of any claim that such statements were merely a coincidental figment of Elliott's fertile imagination.

Respondents argue that the fact Elliott referred to "our deal with Wright" in a letter dated November 3, 1948, indicates the whole story was imaginary, since the agreement was not signed until November 16. However, the evidence shows that negotiations for the agreement had begun in October and it may be inferred that certain understandings had already been reached before the written agreement was signed on November 16.⁷ Respondents also argue that the fact that Elliott, in the later correspondence, was trying to hold on to Miller is inconsistent with any agreement to turn over its schools to Stenographic. How-

⁷ As previously mentioned, Elliott admitted he knew the contract was being negotiated when he wrote the letters. Kendall admitted that he had discussed the agreement with Elliott "in a general way" while it was being negotiated. Likewise, the latter's letter indicates that he had discussed the matter with William Allan, his company's president, who was not called to deny this.

ever, the fact that LaSalle did not turn over all its schools to Stenographic does not, in the opinion of the examiner, establish that there was no agreement for a division of the market. The complaint, it may be noted, does not charge a complete division of the market, but that each party agreed to confine its sales "largely and principally" to a certain segment of the market. The correspondence between Elliott and Miller is consistent with such an understanding, and indicates a natural desire on LaSalle's part to salvage what it could of its school business without antagonizing Stenographic, to whom it was beholden for its machines.

2. Correspondence Regarding the List of LaSalle's Schools and Institutes

On January 5, 1949, M. H. Wright of Stenographic addressed the following letter to E. J. Kendall of LaSalle:

Your December 27 letter, *listing institutes and schools in two classes*, is acknowledged; and thank you very much.

The meanings of this letter, in the light of our conversations, are appreciable, we think, and accordingly, we are glad to have it. When there's more to say, you'll be saying it; unless we might possibly beat you to it, which is not at all likely. [Emphasis supplied.]

Although this letter refers to a letter by Kendall dated December 27, neither company was able to produce the original or a copy of the letter, and neither could account for its disappearance. Both Kendall and M. H. Wright were less than candid in their testimony about the list of schools and its connection with the agreement between the two companies. Kendall's explanation as to why he sent a list of schools to Wright was that he believed that Wright had asked him "for a record of the schools with whom they were doing business in two classes, Stenotype institutes and schools other than institutes." When asked why Wright would ask for such a list since this was LaSalle's own business, Kendall replied:

That isn't the way we work. Our books are open. We cooperate with everyone * * *. Whatever Mr. Wright asked me for, whatever was in my power to give him, I gave it to him.

When asked what he understood Wright to mean by his statement that the "meanings of this letter, in the light of our conversations, are appreciable," Kendall replied, "Mr. Wright is a very affable gentleman, he is very appreciative of any little thing." When pressed for a more specific answer as to his understanding of the letter, Kendall replied, "The meaning I got out of that letter was 'Thank you very much for the list you sent to us. This is fine.'" When asked what the "conversations" referred to in the letter were about, Kendall replied, "We talked about everything under the sun."

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Wright's testimony regarding the correspondence was in a similar vein. When he was asked as to what he meant by the statement in his letter that the "meanings" were "appreciable" in the light of their conversations, he gave the following reply:

I could only very vaguely recall a thing of that sort. I have no memory clearly at all. The chances are that it is merely some words that seemed to flow out of a mind that wasn't too busy otherwise.

When asked why he had asked for a list of schools, Wright replied:

I suppose it was incident to some talk we had had, but what specific purpose there would be in having two lists of schools, I wouldn't know now. I bet there weren't twenty-five schools in all the list. You are in a teapot looking for a tempest here * * *.

When pressed for a more specific answer, Wright expressed the opinion that possibly the list had reference to the "fear we had in our company that some schools * * * might be deprived of a service." When it was pointed out that under paragraph 7 of the agreement his company would be notified of the termination of any contract with schools by LaSalle, Wright gave the following response:

I probably didn't have to have them [the list of schools]. It probably was an empty gesture. There was no point to it because there wasn't anything involved of any importance.

Wright was reluctant to admit that the request for the list of schools had any connection with paragraph 7 of the agreement. However, his testimony in this respect was contradicted by his son Robert, who stated that the list was requested by him, in accordance with paragraph 7 of the agreement, so that his company could have some idea as to the number of schools they might be called on to supply with machines under that paragraph.

The proximity of this correspondence to the date of entering into the agreement of November 16, 1948 and the close connection between its subject-matter and that of paragraph 7 of the agreement tend, in the opinion of the examiner, to establish that the letter was an outgrowth of the understanding reached by the parties in connection with the agreement. The failure to produce the letter of December 27 and the evasive testimony of Kendall and Wright are both indicative of the pattern of obfuscation which characterized significant portions of their testimony.

3. Correspondence Regarding the Advertisement of the Stenotype
Institute of Boston

Respondent LaSalle had an affiliated school in Boston, known as the Stenotype Institute of Boston. This school was owned and op-

erated by one Frank Emery. Stenographic also had an outlet for its Stenograph machine in Boston, known as the Winslow School, which was owned and operated by one Joseph Leddy. The Stenotype Institute of Boston advertised its school in the newspapers as "Boston's Only Stenotype School Authorized by Stenotype Company." A copy of this advertisement was referred to Kendall of LaSalle by Wright, who, according to his testimony, had received it from Leddy in Boston. Following the receipt of the advertisement from Stenographic, Kendall addressed the following reply to Wright on May 2, 1949:

I am glad you sent to me the clipping of the ad for the Stenotype Institute of Boston.

I assure you that this will be taken up with Mr. Emery and Mr. Caulfield promptly.

In a recent talk with Frank Emery, he gave me the impression that *he would co-operate with us fully.*

I will let you hear from us after we have word with regards to this ad. [Emphasis supplied.]

Following this letter Kendall, on May 10, 1949, addressed a further letter to Wright regarding the same subject matter, as follows:

I checked with Mr. Emery regarding the ad which you turned over to me, and *I am sending you his reply with the attachments* so that you can see at first-hand his reaction.

These matters will take a bit of working out, but I am sure that if we keep at it everyone concerned will soon learn that his best interest is in promoting a machine shorthand rather than in fighting each other. [Emphasis supplied.]

The record does not disclose the contents of the letter from Emery referred to in Kendall's letter of May 10, 1949. Although counsel supporting the complaint and the examiner requested respondents to make an effort to ascertain the whereabouts of this letter, they stated that they were unable to find it, and apparently could not account for its disappearance.

Respondents' explanation for the above correspondence was that Leddy had objected to the use of the word "Only" in the advertisement that LaSalle's affiliate was "Boston's Only Stenotype School," for the reason that it would give the public the impression that it was the only school teaching machine shorthand in Boston. Although Emery's school was admittedly the only Stenotype school in Boston, Kendall testified that he had agreed to take up the matter with Emery because:

We are not interested in anyone fighting each other. We believe the best solution to any problem is to reach a mutual understanding with regard to the method that machine shorthand is superior to shorthand.

When Kendall was asked whether the respondents were actually fighting one another at that time, he testified that "we are always fighting each other, but we believe the very best way to fight each other is on the basis of merit." When asked to explain in what way they were fighting each other, Kendall gave the explanation that: "The only fighting each other I know of is the reference to machine shorthand versus the old-fashioned shorthand." Since neither of the respondents was engaged in promoting the "old-fashioned shorthand," Kendall's answer was obviously a *non sequitur* resulting from his prior lack of forthrightness.

The statement appearing in the letter of May 2 to the effect that Emery had given Kendall the impression that "he would cooperate with us fully" and the further statement in the letter of May 10 that "if we keep at it everyone concerned will soon learn that his best interest is in promoting a machine shorthand rather than in fighting each other," strongly suggest that this correspondence was part of an effort by LaSalle and Stenographic to limit the competition between them. Implicit in both the correspondence and the testimony is the idea that what Wright and Kendall were aiming at was the establishment of a *modus vivendi* between their two customers in Boston which would, in effect, establish a soft, gentlemanly competitive relationship between them. It seems reasonable to infer that Wright would not have made the request that he did, and that Kendall would not have seen fit to procure the cooperation of Emery, were it not for the underlying understanding reached in the agreement of November 16, 1948.

4. Correspondence Regarding the Advertisement in American Business Education Magazine

During May 1949 LaSalle inserted an advertisement in the American Business Education Magazine. The advertisement was headed:

This "C. S." Card is a 3-Way Ticket To Success.

The reference to the C. S. card in the advertisement was to the certificate of "Certified Stenotypist" which was issued by LaSalle to students who completed the course in Stenotypy. The advertisement stated that the certificate of Certified Stenotypist was a "Ticket to Success" to three categories: (1) the job applicant, (2) the employer, and (3) the school. The reference to the advantages of a Certified Stenotypist certificate to the school was contained in the third paragraph of the advertisement, and read as follows:

3. FOR THE SCHOOL * * * turning out a steady parade of Certified Stenotypists builds increased prestige and patronage. Your school succeeds in direct proportion to the ability and success of your graduates. Stenotypy gives them *plus* ability which reflects favorably upon your school.

Following the appearance of this advertisement in the American Business Education Magazine, M. H. Wright of Stenographic addressed the following letter to Kendall of LaSalle on May 31, 1949:

The current issue of AMERICAN BUSINESS EDUCATION (May, 1949) carries your company ad on the back page. *The third paragraph rather puzzles all of us.* Will you please let us have your comment? [Emphasis supplied.]

Kendall replied to Wright's letter on June 2, 1949, with the following explanation regarding the insertion of the advertisement:

Everyone here was as surprised as you must have been to know that the ad in the American Business Education Magazine was still running.

This contract was made more than a year ago and everybody forgot all about it. This was a group ad placed simultaneously with several other magazines under contract.

Mack Bennett, our advertising manager accepts the responsibility for this error.

As I told you, we are not promoting Stenotypy through schools. Our contract covers this agreement. We have not made a single franchise since we entered into our agreement with you and I assure you we do not intend to do so since the Co-op plan was discontinued last October.

I am not surprised that you were puzzled by this ad and I assure you that this will be the last copy.

Funny how these things escape you, isn't it? [Emphasis supplied.]

Wright responded to Kendall's letter of explanation by a letter, dated June 3, 1949, in which he indicated that he accepted Kendall's explanation, with the comment: "It rings true."

Despite the self-evident meaning of the above correspondence, and its unmistakable connection with the agreement for a division of the market, both Kendall and Wright denied that it had any such connotation. Their explanations regarding this correspondence are of a kind with that pertaining to some of the other correspondence previously discussed. When Kendall's attention was first directed to the questioned advertisement which "puzzled" Wright, he stated that it "didn't puzzle me," that "it is a splendid statement and [I] endorse it a hundred per cent," and that he guessed Wright "thought it was good, just as I do." When his attention was called to the fact that in his letter of June 2, 1949 he acknowledged that he "was as surprised as" Wright that the ad was run, he stated that he didn't remember the reason for his surprise. However, at the next group of hearings, after he had evidently had an opportunity for reflection, Kendall explained his surprise was due to the fact that the advertisement was "obsolete," since it had been run under the name of The Stenotype Company and it was now his company's policy to advertise as LaSalle Extension University, and he expressed the opinion that this undoubtedly was why Wright had brought the matter to his attention. Kendall de-

nied that the fact that one of the three categories to whom the advertisement was directed was "The School" had any connection with his "surprise" and Wright's puzzlement.

Aside from the self-contradiction in Kendall's testimony, the plain wording of the correspondence belies his claims. It is clear that Wright did not call the advertisement to Kendall's attention because of any use of an "obsolete" name, but because the "third paragraph" (which was directed at "The School") "rather puzzles all of us." Kendall's "surprise" had nothing to do with the "obsolete" name, but with the fact that the advertisement was directed to schools, which was a breach of his commitment to Wright that, "we are not promoting Stenotypy through schools. Our contract covers this agreement."

Although Kendall claimed that Wright was puzzled because of the use of the obsolete name, Wright was frank enough to concede that the cause of his puzzlement was the fact that the advertisement was directed to schools. However, he gave as the reason for his puzzlement the fact that he didn't believe the Package Plan, to which LaSalle had just changed, would be suitable for a school that "doesn't sell a package or teach a package" which, according to Wright, was primarily intended for home-study use. When Wright was asked what difference it made to his company that LaSalle had seen fit to insert an erroneous ad, he gave the following response:

To tell the truth, it didn't make a doggone bit of difference what they did. We were needling a little. It was one of those moments and really doesn't have much point.

Wright's explanation about the Package Plan not being suitable for schools is in direct contradiction to the testimony of T. K. Elliott of LaSalle, who stated that, despite the change in the form of contract from the Cooperative to the Package Plan, "basically we were doing the same thing with mainly the same schools." The record shows that a similar advertisement to the one objected to had previously been inserted by LaSalle and was evidently considered to be appropriate, insofar as schools were concerned. The main difference in the two situations was that at the time of the previous insertion there was no agreement between Stenographic and LaSalle.

The general tenor of the correspondence makes it apparent that it was not generated by any whimsical curiosity on Wright's part or considered by Kendall as a casual inquiry from a solicitous associate calling attention to a minor error in an advertisement. The tone of Kendall's reply, in which he found it necessary to "assure" Wright that his company did not intend to franchise any more schools and to "assure" him further that "this will be the last copy," certainly is in-

consistent with the casual character which respondents sought to attribute to this correspondence.

The key to the whole matter is, of course, found in Kendall's statement appearing in his letter of June 2 that:

* * * we are not promoting Stenotypy through schools. Our contract covers this agreement. We have not made a single franchise since we entered into the agreement with you and I assure you we do not intend to do so, since the Co-op plan was discontinued last October.

Kendall sought to explain this statement about not promoting Stenotypy through schools as being merely an expression of his company's historic policy to confine their promotions mainly to home-study students and institutes, and not to franchise independent business schools. However, the examiner cannot accept this rather fine-spun explanation based on the distinction between institutes and other categories of schools. In the first place, according to Kendall's own testimony, LaSalle did franchise qualified business schools, albeit not to the same extent as its institutes. Secondly, and more important, it is clear from the context of the letter that Kendall was referring to a recent policy and was using the word "schools" in the generic sense. The policy of not promoting Stenotypy through schools is expressly stated in the letter to be an outgrowth of the November 1948 agreement,⁸ which agreement in clause 7 thereof deals mainly with the institutes and refers to them as "schools." Although Kendall's letter also refers to the discontinuance of the "Co-op Plan" in connection with his statement that LaSalle did not intend to issue any more franchises, the examiner is satisfied that this was not the underlying reason for the change of policy on the issuance of franchises, since there was nothing about the change from the Co-op to the Package Plan to prevent such issuance.⁹ If anything, the abandonment of the Cooperative Plan was a result of the policy not to promote sales to the schools, which resulted from the November 1948 agreement, and was not the cause of the lack of promotion.¹⁰

⁸ Kendall admitted that the "contract" referred to in the letter is the agreement of November 16, 1948.

⁹ Elliott testified that LaSalle was doing basically the same thing with its schools under the Package Plan as it was under the Cooperative Plan.

¹⁰ Originally Kendall claimed that the change in LaSalle's selling plans with the schools occurred in May 1948, thereby indicating that it had no connection with the agreement of November 1948. When his attention was called to the fact that the above letter mentioned October as the date of the change, Kendall gave the explanation that some schools had students enrolled under the old system and that in these instances the plan was put into operation in October. In the light of some of this witness' other testimony this explanation impresses the examiner as an afterthought, and the examiner is of the opinion from the evidence as a whole that the change occurred in October at or about the time when negotiations with Stenographic were in progress.

5. The Letter of February 17, 1950

On February 17, 1950 Kendall addressed the following letter to M. H. Wright:

As much as I would like to, it seems the days pass and I do not get the opportunity to contact you personally, so I am writing you while I have this matter in mind.

The enrollment of Home Study students has not yet reached our expectation of volume. Sales have increased considerably since we have now announced to our field representatives that the revised training and new model Stenotype is now ready for service. We have increased our advertising and we believe that we will have a steady increase in this volume.

I have talked to you several times in the matter of school sales. We have not promoted this activity at all, so there is a diminishing volume from this activity.

We caught up with back orders for Stenotypes and we now have a sufficient inventory to take care of the current orders so we find that our present requirements for Stenotypes as within the volume of 100 Stenotypes per week, originally agreed upon.

I feel that this information will be of value to you in the manufacturing process and in scheduling your commitments for Stenographs. * * *. [Emphasis supplied.]

Kendall's explanation of why he had discussed the matter of school sales in the letter with Stenographic was as follows:

That was just the common everyday business things you talk about when you get together and have lunch. You talk about things in general, and you talk about the weather, too.

When he was asked for an explanation of the statement in the letter that he and Wright had talked about the matter of school sales "several times," Kendall gave the following enlightening response:

Sure, we talked dozens of times, we talk every time we get together. He called me on the phone two or three times a week, and said, "How's business?".

In the brief filed by counsel for LaSalle the explanation given for this letter is that Kendall was merely making known LaSalle's "sales progress and inventory position" to Stenographic as the manufacturer of its machine. While this is a perfectly natural reason for Kendall writing to Wright, albeit one which Kendall overlooked in his testimony, it does not destroy the significance of the admission in the letter that the reason for the decline in school sales was that LaSalle had not "promoted this activity at all." Counsel for LaSalle seeks to interpret this remark as merely a statement of LaSalle's historic policy not to promote sales to independent business schools, and as not referring to its affiliated schools, the Institutes. However, the examiner is satisfied from the letter as a whole and from the entire context of events, including the figures of sales to all types of schools (which will be hereafter discussed) that Kendall's reference to school sales was in-

tended in the generic sense and was not limited to a particular type of school. It is significant that the same letter which talks about a diminishing volume of school sales also expresses hope that home-study sales will have a steady increase, although indicating some disappointment with the progress thus far. As will hereafter appear, this latter activity, which it is charged was the one primarily allocated to LaSalle, experienced a considerable upsurge after 1948.

6. The Letter of May 1, 1950 From Wright to Elliott

On May 1, 1950, Wright wrote to T. K. Elliott of LaSalle with regard to an order for some "Stenotype Speed Manuals" on behalf of one of Stenographic's school customers. One of the reasons given by Wright for ordering the manuals on behalf of the customer rather than having the latter communicate directly with LaSalle was because, as stated in Wright's letter, "You no longer assume to serve the schools, I believe." Although not much point was made of this letter during the course of the hearing, the examiner considers it of significance as confirming Wright's understanding of what LaSalle's policy now was with respect to schools. In the setting of the whole case it may be inferred that this understanding arose out of the agreement between the two companies.

7. The Correspondence With the Berean School

Respondent Stenotype received a letter dated July 5, 1950, from a school in Philadelphia known as the Berean School, inquiring as to "the terms and conditions upon which a Stenotype Franchise is granted to schools and if there is an available franchise that we may secure for Berean School in Philadelphia." This letter was received by the secretary of T. K. Elliott, who at that time was apparently on leave of absence from the company due to illness. Elliott's secretary referred the matter to Kendall, placing the following notation on the incoming letter:

Mr. Kendall—Can I offer them Package Plan. No franchise? Would be in competition with Stenograph there.

In response to this notation on the inquiry, Kendall placed the following instruction to Elliott's secretary on the letter:

Explain that we no longer "Franchise" schools. Offer the Package plan (for cash).

The following reply was then prepared for Kendall's signature, addressed to the Berean School under date of July 17, 1950:

* * * You enquired of conditions under which a Stenotype Franchise is granted to schools. *Our present policy does not provide for the granting of*

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franchises because we are not in a position to grant the exclusive rights in any territory.

Stenotypy is being offered primarily by Home Study as a complete training program including the Stenotype machine and complete instruction service.

As you know, the success of Stenotype by resident school instruction depends upon trained Stenotype teachers and a sufficient enrollment to justify a specialized instructor.

We offer the Stenotype machine for sale to you at our special school price of \$79.10.

The complete set of Stenotype text consisting of the three theory manuals, the speed manual, and complete set of lessons, may be purchased at \$10.00 for the complete package.

As you undoubtedly know, Stenotypy is taught by the Stenotype School in Philadelphia, 1227-29 Walnut Street, Philadelphia. This school, however uses the Stenograph whereas we offer the LaSalle Stenotype.

We are forwarding you some descriptive literature and we invite your further enquiry. [Emphasis supplied.]

The above correspondence indicates that while LaSalle offered to sell machines to the Berean School, it was unwilling to offer the school a franchise. The basis for this refusal appears to be suggested in the note made by Elliott's secretary on the incoming letter that the school "would be in competition with Stenograph" in Philadelphia, thus indicating that the refusal stemmed from the agreement with Stenographic. Kendall claimed in his testimony that his company's policy of granting franchises had been abandoned long before any agreement with Stenographic. However, this testimony was so confused and contradictory that no credence can be given to it. Thus while claiming at one point that his company had had no written contract or franchise since 1940 granting a school exclusive recognition in a particular area, he indicated at another point that schools were still granted exclusive recognition in a certain territory but that "if there is any agreement it is in the form of a * * * letter of designation." Kendall's testimony that there were no franchises or written agreements with schools after 1940 is contradicted by at least three pieces of documentary evidence in the record: (1) his own letter to Wright, dated June 2, 1949 stating that "we have not made a single franchise *since we entered into our agreement with you*" (which would fix the date of discontinuance of franchises as the fall of 1948), (2) the agreement of November 16, 1948, which refers to Stenographic being notified with respect "to any school whose *contract* is terminated," and (3) a letter from Elliott to Miller, dated March 24, 1948, "enclosing copies of the new cooperative school *franchise* forms."¹¹ Kendall's

¹¹ Kendall claimed that these forms were something that Elliott had specially prepared for Miller and that they were never executed. However, the same letter states that the new forms "are basically about the same as the old school cooperative fran-

testimony was also contradicted by that of Elliott which was to the effect that in the latter part of 1948 LaSalle sent out letters cancelling "franchises" of schools under the Cooperative Plan "with the idea of issuing a new franchise under the package plan."

Whether they were called franchises, letters of designation or by any other appellation, the examiner has no doubt that schools were granted certain territorial rights and recognition as a LaSalle affiliate until at least the approximate time of the agreement between LaSalle and Stenographic. The examiner is also convinced that the refusal to grant Berean a franchise was based on the understandings arising out of that agreement, as evidenced by the notation made by Elliott's secretary on the incoming letter. Significantly, the Stenographic school in Philadelphia, which was the "competition" referred to in the notation made on Berean's letter, was the former LaSalle affiliate, The Stenotype School of Philadelphia. This school is specifically mentioned in LaSalle's reply to Berean. It appears somewhat unusual to the examiner that LaSalle should advise a potential customer as to the address of the school using the machines and methods of its competitor.

8. The Correspondence with the Lenox School

LaSalle received the following letter, dated December 7, 1950, addressed to it on the stationery of the Lenox School, Public Schools of the District of Columbia, and signed by the "Secretary" of the school:

I am interested in learning about purchasing a Stenograph Machine. Perhaps, you would be good enough to answer some of my questions, so that I can better tell my class about the machines.

First of all, I contacted the Stenotype Institute here in Washington, D. C. and they informed me that they sell the Stenograph Machine for \$79.95 cash. Does your school sell the machine for cash, also, without taking the full Stenotype Course? Or, is it possible to obtain a machine, (or machines) on a credit basis?

At your earliest convenience, kindly let me hear from you. I know of at least three people who are interested in purchasing machines after the Christmas Holiday. * * *

In response to this letter LaSalle made the following reply, under date of December 14, 1950:

We acknowledge your letter of December 7th inquiring about the purchase of Stenograph machines.

We do not offer a Stenograph machine which is manufactured by the Stenographic Machines Incorporated, 318 South Michigan Avenue, Chicago, Illinois, and distributed in Washington D. C. by the Stenotype Institute of Washington.¹²

chise, but they are set up in a more impressive form. We want all schools to be in this franchise."

¹² The latter was a former LaSalle institute which, according to Kendall's testimony, was lost to Stenographic prior to the agreement of November 1948.

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"We distribute a Stenotype machine which is very similar to the Stenograph machine. *However, our policy is to sell a complete training program including the text and lesson assignment, complete instruction service, and the Stenotype machine as a unit. The price is \$225.00.*

We accept orders for the Stenotype machine separately from the training under certain circumstances such as where a student already has had a Stenotype and would like to replace it. The price of the LaSalle Stenotype is \$95.00 with a five per cent discount for cash payment with order. Monthly terms of \$25.00 down and \$10.00 a month may be arranged where credit is established.

Under another cover we have sent to you a copy of "Stenotypy for Better Business Careers," which fully explains the course and shows a picture of the Stenotype machine and gives full details of the training program.

We will appreciate your further inquiry if we may be of service. [Emphasis supplied.]

The above correspondence is cited by counsel in support of the complaint as another instance where LaSalle indicated a reluctance to sell its machines to a school. While in the correspondence with the Berean School, LaSalle had indicated a reluctance to grant a franchise to the school, it was at least willing to sell that school Stenotype machines at the regular school price; whereas in the case of the Lenox School the letter evidences a reluctance to deal with the school except on the basis of selling the complete instruction service for the sum of \$225.00.

Kendall's explanation for the statement in the letter that it was LaSalle's policy to limit the sale of machines, apart from the training course, to "certain circumstances such as where a student already has had a Stenotype" was as follows:

We don't think the public schools or any others should buy machines unless they know how to teach Stenotypy.

At a later point in his testimony, when he was asked why he had offered to sell a machine to the Berean School and did not make a similar offer to the Lenox School, Kendall's explanation was that in the case of the Berean School, he understood it as being an inquiry from a school wanting to teach Stenotypy, whereas he understood the inquiry from the Lenox School to be an individual inquiry from the writer of the letter. Despite the fact that the letter of inquiry is written on the stationery of the Public Schools of the District of Columbia and is signed by the Secretary, Kendall nevertheless insisted that he regarded it as an inquiry from an individual because the letter used the first person singular "I" rather than the plural expression "we," the latter being, in his mind, indicative of an official inquiry. The examiner finds it somewhat difficult to accept this rather finespun distinction, particularly since the letter from the school refers to the fact that the

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inquiry is being sent "so that I can tell my class about the machines."¹³ In any event, Kendall's explanation that his company would only sell machines to certain qualified users, and the statement in the above letter indicating that it was the company's policy only to sell the complete training course, are at variance with Kendall's earlier testimony that:

Our list, which is available to *anyone* who asks for it, offers a package consisting of the Stenotype machine, the text, lessons and material, *but we won't insist that they buy the entire package*. If they want to buy part of it, they may buy the books or the paper or the machine. It is priced separately.

Another unusual aspect of LaSalle's reply to the Lenox School letter is that, in addition to advising the inquirer as to the address of LaSalle's competitor, a carbon copy thereof was sent to "Wright."¹⁴

D. The Contention of Respondents Concerning the Increase of LaSalle's Sales to Schools

To support their basic contention that counsel supporting the complaint was seeking to draw unjustified inferences from the agreement and the correspondence in the record, and that no illegal agreement was in fact entered into, respondents endeavored to show (1) that the percentage of LaSalle's sales to schools actually increased sharply after 1948 instead of declining, and (2) that LaSalle acquired a number of new schools and institutes after the agreement with Stenographic. It is contended that these figures "demonstrate conclusively" that there was no agreement by LaSalle to confine its effort to the home-study field by discouraging sales to schools. However, the analysis which the examiner has made of the figures submitted by respondents not only fails to bear out respondents' contentions but tends to affirmatively establish that the illegal agreement charged in the complaint was actually carried into execution. Respondents' contentions, based on the figures submitted by them, are discussed below:

1. The Alleged Increase in the Percentage of Sales to Schools

LaSalle introduced into the record a summary of its Stenotype sales from 1928 to 1952. The summary is prepared on an annual basis and purports to show Stenotype sales (a) to home-study students, (b) to Stenotype Institutes and schools under the cooperative and package plans, and (c) to other schools. Two separate sets of figures are given for each of the above three categories, (1) the *number* of

¹³ Significantly, in his earlier testimony, before he was asked to explain the difference in the treatment of the two schools, Kendall used the expression "public schools" in referring to the injury from the Lenox School.

¹⁴ This appears from the following notation at the foot of the reply: "CC: Mr. Wright."

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sales during the year and (2) the *dollar volume* of such sales. According to computations made by LaSalle, based on the above figures, the "Percent of School Sales to Total Stenotype Sales" has increased from 2.6% in 1948 to 23.9% in 1949.

However, the figures used by LaSalle are not a fair measure of what happened to their school sales during this period. In the first place, the percentages used are based on the number of transactions involved in sales to schools, and include supplies as well as machines. Under this method, a single sale of a book or some paper in a minor amount would have the same weight as a single transaction involving the sale of a number of Stenotype machines and courses.¹⁵ Obviously the standards of comparison are not equal. In order to properly compare the trend of sales to schools with that of all Stenotype sales, the proper measure of comparison is the dollar volume of such sales rather than the number of transactions involved. The difference in the results achieved under the latter method from that used by LaSalle may be seen from the following comparisons:

Percent of School Sales to Total Stenotype Sales		
	Based on number of transactions involved	Based on dollar volume of sales
	Percent	Percent
1945.....	0.9	6.44
1946.....	2.6	18.73
1947.....	2.3	18.39
1948.....	2.6	14.17
1949.....	7.3	17.03
1950.....	6.4	14.21
1951.....	14.6	12.00
1952.....	23.9	18.24

While the above figures do not show any such marked increase in the percentage of sales to schools as that contended by LaSalle, it must also be conceded that they do not show any marked decline in the percentage of sales to such schools. However, these figures do not tell the whole story. The charge is not merely that LaSalle agreed to give up the so-called independent schools, but that it agreed to de-emphasize its school business generally, including its institutes, and to concentrate mainly on home-study students. When reference is made to the figures of sales to institutes (which also include sales to some independent schools operating under the Cooperative and Package plans), an entirely different picture from that urged by LaSalle appears. Set forth below is a comparison of LaSalle's sales for a representative period before and after the contract with Stenographic,

¹⁵ Kendall testified that the column headed "Sales of Stenotypes and Supplies to Schools" includes sales of supplies, such as paper, separate and apart from sales of machines.

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showing sales in all three categories (home-study students, institutes and non-contract independent schools), both on the basis of total dollar volume and on the basis of the percentage of such sales as compared to total Stenotype sales:

	Total sales of Stenotypy	Home study		Sales to institutes ¹		Sales to other schools	
		Volume	Percent	Volume	Percent	Volume	Percent
1945.....	\$882,286	\$221,132	25.06	\$604,326	68.50	\$56,828	6.44
1946.....	828,835	268,711	32.42	404,872	48.85	155,252	18.73
1947.....	770,451	228,864	29.70	399,924	51.91	141,663	18.39
1948.....	509,930	185,744	36.43	251,918	49.40	72,268	14.17
1949.....	425,346	248,950	58.53	103,950	24.44	72,437	17.03
1950.....	564,164	384,478	68.15	99,509	17.64	80,177	14.21
1951.....	549,525	417,330	75.94	66,265	12.06	65,930	12.00
1952.....	523,033	358,395	68.52	69,264	13.24	95,374	18.24

¹ Sales prior to the year 1949 were under the Cooperative Plan; sales beginning in 1949 are those made under the Package Plan.

The above figures show that the significant change which took place in LaSalle's sales occurred in the field of its institutes. In the first year after the contract between the parties such sales declined by more than 50% on a dollar-volume basis, and they continued to decline until by 1952 they only amounted to about one-eighth of LaSalle's sales as compared to their former position of one-half or better. The figures also reveal that home-study sales, which prior to the agreement accounted for approximately one-third of LaSalle's total sales, have increased so that they now represent in excess of two-thirds of such sales. It seems evident from the foregoing figures that the major change which took place occurred, not in the field of the independent business schools, which never amounted to more than about 18% of LaSalle's total business during this period, but in the field of its institutes, and that home study has taken the place of the institutes as the major source of revenue.

2. The Alleged Acquisition of New Schools

LaSalle offered in evidence a list of six institutes and 16 business schools which it claimed were newly acquired after November 1948. The fact that it acquired 22 new schools since the date of its agreement with Stenographic is cited as evidence of the fact that there was no agreement by LaSalle to get out of the school business and to confine itself mainly to home-study students.

An analysis of the list offered by LaSalle and its comparison with other evidence in the record establishes that the list is "highly watered" insofar as it purports to show that LaSalle acquired any substantial amount of new school business subsequent to the date of the agreement with Stenographic. Of the six "new" institutes, five were either old

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customers (including two of Herman Miller's schools) or subsidiaries of old customers,¹⁶ and one, by Kendall's own admission, was not an institute but consisted of a woman steno-typist who ordered supplies from LaSalle and gave some private lessons.¹⁷ Of the 16 so-called new independent schools listed by LaSalle, ten are located in communities where there is no rival school purchasing the Stenograph and the sales to these schools are so small and sporadic that there is reason to believe that Stenographic had no interest in acquiring them.¹⁸ In the case of three of the other so-called independent schools, the record shows that they were public schools and that the sales to them were made under a home-study coaching plan.¹⁹ Since LaSalle was supposed to concentrate on home study under the agreement with Stenographic, the sales to these schools are perfectly consistent with that agreement. Of the remaining three schools, there is reason to believe that Stenographic acquired one of them in 1950.²⁰ Except for the

¹⁶ These include the Stenotype Schools listed in the following cities: Little Rock, Los Angeles, San Francisco, Montreal and Ottawa. The first of these, according to Kendall's own testimony, merely involved a change of name or management of an old customer. The record shows only one sale to the Little Rock school in 1949, six in 1950, and two in 1951. The second and third schools mentioned above are Herman Miller's schools, with whom LaSalle had resumed business. While the school in Montreal is listed by LaSalle as a "new" school, in another exhibit purporting to show its customers as of the day prior to the agreement with Stenographic, the institute in Montreal is listed as a customer. Significantly, at one point in his testimony Kendall stated that no new institutes were formed after 1946. When his attention was called to the above-mentioned exhibit, he quickly added the name of the Montreal school. However, the fact that it is elsewhere listed as an old school suggests that his first answer was correct. The Ottawa School is merely a subsidiary of the Montreal School, according to Kendall's testimony.

¹⁷ This is the school listed in the exhibit as the Stenotype Institute of Denver. The record shows only a single sale to this customer in 1951.

¹⁸ Below are listed the names of these schools and the number of sales to them according to LaSalle's own records:

School	Sales (Based on RX 3)			
	1949	1950	1951	1952
Utterbach Business College, Mattoon, Ill.			1	
Steubenville Business College, Steubenville, Ohio		1	3	5
Northwest Business College, Huron, S. Dak.	1	3	1	
Hine Business College, Midland, Tex.	2			
Rogers Business College, Everett, Wash.		No sales listed.		
Skaget Business College, Mt. Vernon, Wash.		No sales listed.		
Benson School, Clovis, N. Mex.		1	3	1
Amarillo Secretarial School, Amarillo, Tex.		No sales listed.		
Butte Business College, Butte, Mont.		1		
State Vocational School, Dothan Field, Ala.		No sales listed.		

¹⁹ These include East Detroit High School and Lake View High School of Detroit, Michigan and Civic Center, St. Clair, Michigan. Although listed as new schools, LaSalle's record of sales made between March 1, 1949 and December 31, 1952 shows no sales to the first two of these schools.

²⁰ According to LaSalle's figures, it made two sales to the Massey-Draughon Business College of Montgomery, Alabama, in 1949 and five in 1950. No sales are listed thereafter. However, one of Stenographic's exhibits lists this school as being acquired as a customer in June 1950, and shows sales of \$5,428.87 to it up to 1952.

sales to Miller's two schools and two or three other schools, the record shows that the sales to all 22 of the so-called new schools and institutes were on a relatively small scale. The fact of the matter is that despite the "new" acquisitions, LaSalle's sales to its institutes dropped sharply throughout the 1949-1952 period, while the sales to independent schools remained fairly static. This is mute testimony to the unrealistic nature of LaSalle's claims with respect to its expansion during this period, based on the acquisition of new Stenotype schools.

E. The Competition Between Respondents

Respondents contend that the competition between them was either nonexistent or on a very minor scale. Such contention is apparently urged as negating the existence of any illegal agreement to curtail competition or as indicating that any agreement which may have been made had no substantial effect on competition. Respondents' basic position in this respect is that LaSalle is fundamentally an educational institution, whose primary interest is the teaching of students rather than the sale of machines, and that its objectives have been pursued mainly through its home-study students and institutes, and only incidentally through independent business schools. On the other hand, it is contended that Stenographic is primarily interested in selling machines and that it has concentrated mainly in the field of independent business schools.

The examiner finds that this claim of the absence of substantial competition between the respondents is lacking in merit. The record shows that there has been substantial competition between LaSalle and Stenographic both with respect to LaSalle's so-called institutes and in the field of independent business schools. When Stenographic entered the field in 1938, the major part of LaSalle's business was with its institutes, the next largest part was in home study, and the smallest, but a nevertheless significant, part was with general business schools.²¹ In order for Stenographic to build up its business it was necessary, as Wright himself testified, to "get our schools out of their [LaSalle's] list," and further to take "a lot of theirs [schools] and I

²¹ Illustrative of the division of LaSalle's sales during this period, and for some years thereafter, are the following figures of dollar volume of sales:

	Institutes	Home Study	Business schools
1938.....	\$494,624	\$221,186	\$111,777
1939.....	561,001	196,968	111,997
1940.....	511,288	227,216	113,523

am sure maybe they took some of ours." According to Stenographic's own figures, it is today doing business with at least 34 schools which were formerly doing business with LaSalle. Other figures, showing Stenographic's schools as of 1951, reveal that it was doing business with at least 15 schools bearing the name "Stenotype" or "Stenotype Institute" as part of the name of the school.

In the opinion of the examiner, the emphasis put on the fact that LaSalle is primarily an educational institution interested in selling training courses and not shorthand machines is largely a matter of semantics. According to Wright, when he was with LaSalle prior to forming his own company, "most of the emphasis was on machine sales." Assuming, however, that there is some merit to the claim that LaSalle was interested in training students in the art of mechanical shorthand rather than in merely selling machines, the same thing was true of Stenographic's operations since it too sold texts and other materials in connection with its machines and was interested in the proper training of the student.²² Kendall of LaSalle admitted that basically his company and Stenographic "both promote the sale and distribution of our own machines and training."

Based on the evidence in this record, the examiner is convinced, and finds, that competition between LaSalle and Stenographic has been real and substantial in the non-home-study field, except insofar as it has been curtailed by agreement of the parties. Only in the home-study field is evidence lacking of actual competition. Even in this field, according to Wright, his company has been for some time engaged in the preparation of material for home study use, but has not yet perfected it or put it on the market. Whether Stenographic would have by now entered the home-study field if not for its agreement with LaSalle is a matter as to which there may be room for speculation. In any event, to the extent that LaSalle and Stenographic were not in actual competition in this field, they were at least potential competitors, and any agreement to limit such competition would likewise be illegal.²³

Summary and Concluding Findings

The examiner is convinced from the record as a whole, and so finds, that respondents entered into an agreement substantially as alleged in the complaint. The fact that these two groups of competitors

²² Correspondence between Stenographic and Herman Miller, which was introduced in evidence by the former, reveals an unwillingness on its part to sell machines to Miller except on a basis which would recognize the welfare of the students and the fact that Stenographic was interested in something more than the sale of machines.

²³ *U. S. v. Aluminum Co. of America*, 148 F. 2d 416, 429; *U. S. v. General Dyestuff Corp.*, 57 F. Supp. 642, 648; see also *American Tobacco Co. v. U. S.*, 328 U. S. 781, 709.

should have entered into an agreement that one would become the other's source of supply is itself a rather unusual and suspicious circumstance. While there were certain advantages (such as cost-saving arising from the interchangeability of parts) which might have suggested the desirability of such an arrangement as a strictly business deal, nevertheless, the fact that one competitor would be willing to place its source of supply at the mercy of the other, even to the extent of having that competitor develop a new machine for it, suggests that possibly there was more to the arrangement than meets the eye.

When reference is made to the actual terms of the agreement, one is confronted with the somewhat unusual provision that LaSalle would notify Stenographic when it terminated a contract with any of its schools and that Stenographic would then undertake to serve these schools. While the agreement does not expressly require that LaSalle terminate any of its contracts, there is a suggestion in the language used that such a course may possibly have been within the contemplation of the parties. Any doubt on this score, however, is resolved when recourse is had to the subsequent conduct of the parties, which is largely recorded in various items of correspondence.

Thus in December 1948, shortly after the agreement between the parties was consummated, LaSalle sent Stenographic a list of its schools and institutes. The letter transmitting the list was strangely missing at the time of the hearing herein. All that appears is the acknowledgment of the list by Wright of Stenographic with the cryptic comment that: "The meanings of this letter, in the light of our conversations, are appreciable." The explanations given of this correspondence by Wright and by Kendall of LaSalle are a masterpiece in evasion and circumlocution. While they were not required to make admissions helpful to counsel supporting the complaint, their lack of candor is a factor to be considered in evaluating their testimony as a whole and in considering whether the disappearance of certain correspondence was sheer accident. Despite the reluctance of these witnesses to admit that there was any connection between the sending of the list and clause 7 of their contract, the testimony of Wright's son establishes that there was such a connection, albeit it was his claim that this clause of the contract had no illegal connotations. It may be inferred that this list served some useful purpose, since the record shows LaSalle sustained a substantial loss in its business with so-called institutes, and that Stenographic acquired a substantial number of institutes and schools which were formerly customers of LaSalle.²⁴

²⁴ According to a list of schools prepared by Stenographic, purported to show schools which it acquired from LaSalle, 23 of the 34 schools were acquired after December 1948 when it received the above list.

The correspondence which passed between the parties further shows that in May and June 1949, Stenographic undertook to censor the advertising of LaSalle and of one of its customers. Although the advertisement of LaSalle's affiliate school in Boston, which represented itself as the "only" Stenotype school in Boston, was accurate, Kendall undertook at Wright's request to have it modified. The reply from the customer was strangely missing, but in his own reply Kendall assured Wright "that if we keep at it everyone concerned will soon learn that his best interest is in promoting a machine shorthand rather than in fighting each other." The examiner entertains no doubt that if not for the underlying understanding between the two companies Kendall would not have sought to get his customer to modify his advertising and, in fact, that Wright would not have made the request he did in the first place.

The second effort at censorship is perhaps the most damaging piece of evidence, aside from the correspondence with Herman Miller. The advertisement to which Wright objected was one which indicated that LaSalle was still seeking to get business from schools. When Wright asked Kendall to explain this advertisement, the latter indicated that it was all a mistake arising from the fact that his advertising manager had forgotten to cancel an order given prior to their agreement, and assured Wright it would be "the last copy." Kendall's letter contains the unmistakable admission that as a result of the agreement with Stenographic his company was "not promoting Stenotype through schools" and had "not made a single franchise since we entered into our agreement." This explanation was accepted by Wright with the gracious comment: "It rings true."

In February 1950, in advising Wright as to his probable needs under the contract, Kendall indicated that he and Wright had discussed the matter of school sales "several times" and acknowledged that: "We have not promoted this activity at all, so there is a diminishing volume from this activity." The same letter indicates that LaSalle's home-study activities were being expanded, which is also in accordance with the agreement between them. In a letter written by him in May 1950, Wright acknowledged what his understanding of LaSalle's policy now was, viz.: "You no longer assume to serve the schools." It may reasonably be inferred that this understanding on Wright's part was an outgrowth of the agreement and the discussion between himself and Kendall.

The foregoing evidence, in the light of what actually happened to LaSalle's business, is sufficient, in the opinion of the examiner, to establish the existence of an agreement of the type charged in the com-

plaint. However, the correspondence between Elliott and Herman Miller of the Stenotype Company of California lends additional support to the conclusion and serves to clarify some of the details of the understanding. This is particularly true of the letter of December 9, 1948, which states that "naturally" the deal between LaSalle and Stenographic "entails some agreements between us," as follows:

One of those agreements was that we would not try to steal customers from each other. We agreed with Wright that we would not try to open any new schools which are not at present franchised if he has another school in the immediate territory. It was agreed that should a school wish a franchise and in the event Wright could not satisfy him or he did not want to do business with the Stenograph people, then Wright would release him to us and we could go ahead. * * *.

This exposition by Elliott undoubtedly explains why LaSalle was able to acquire a number of small schools in communities where it was not in competition with Stenographic and why it declined to grant a franchise to a school in Philadelphia where there was such competition. While the correspondence with Miller indicates a desire to keep his business, if possible, there is nothing inconsistent between this and the existence of an agreement with Stenographic to curtail competition, since it is evident from the correspondence that only if the matter was "cleared" with Wright could they continue with Miller.

The correspondence between LaSalle and two potential customers in July 1950 and December 1950 also lends support to the existence of an illegal agreement between LaSalle and Stenographic. It is clear from the July correspondence that the reason why no franchise was granted to the Berean School of Philadelphia was, as indicated on the notation made by LaSalle on the letter received from that school, that: "[We] would be in competition with Stenograph there." In the correspondence with the Lenox School of Washington, D. C. in December 1950, LaSalle endeavored to discourage a sale of machines by advising the inquirer that it was its policy only to sell a complete training course.

While respondents' officials who testified sought to give a different, and largely innocent interpretation, to much of the above correspondence, the hearing examiner cannot accept these explanations in the light of the record as a whole. While some of the explanations might be considered to have a measure of plausibility if considered in isolation, when viewed in the light of the record as a whole, including the many contradictions and evasions above adverted to, the examiner prefers to accept the normal meaning of, and reasonable inferences to be drawn

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from, the contemporary documents rather than some of respondents' officials' fine-spun latter-day denials and explanations.²⁵

If there were any doubt as to the existence of an agreement substantially as charged in the complaint, it is dissipated when reference is made to the evidence of what happened to respondents' business after the agreement, particularly the figures of LaSalle's sales. Although cited by LaSalle in support of its claim that there was no agreement by it to de-emphasize its school business, the figures actually show to the contrary. These figures show that while LaSalle's sales to its institutes amounted to \$251,918 in 1948 and accounted for approximately 50 percent of all Stenotype sales, the sales for such institutes declined by 1952 to \$69,264 and accounted for only 13% of all Stenotype sales. During the same period home-study sales, which were \$185,744 and accounted for 36 percent of Stenotype sales in 1948, increased to \$358,395 in 1952, when they accounted for 68 percent of its sales. Sales to independent business schools, while they showed some decline during the period, did increase in 1952 to above the 1948 level. However, such increase is a negligible factor in the overall loss in non-home-study sales. While no comparable figures of Stenographic's sales during the 1948-1952 period are available, the record does disclose that it acquired approximately 25 former LaSalle schools since the date of its agreement with LaSalle.

From the record as a whole, the examiner is convinced, and so finds, that LaSalle and Stenographic entered into an agreement under which LaSalle was to de-emphasize its school business and place its primary emphasis on home study, and that Stenographic was to be given an opportunity to take over a number of LaSalle's schools as well as to acquire new ones. While it may be that LaSalle still retains some of its institutes and schools, and that there are still some instances of overlap of customers and of competition between them, as respondents claim, this does not disprove the existence of an illegal agreement for a division of customers. As is true in many of such covert agreements, all the details of the arrangement are not always apparent and certain exceptions to the general rule are made. However, while all of the ramifications of the arrangement, or possible exceptions or modifications which the parties may have decided to make, may not be apparent, the fact remains that a basic agreement of the type charged has been established and, furthermore, such agreement has, in substantial measure, been carried into effect. Just as it may not always be possible to establish a perfect competition, it is also not always possible to achieve a perfect agreement to limit competition, since, as the

²⁵ See *U. S. v. U. S. Gypsum Co.*, 334 U. S. 364, 395.

poet said: "The best-laid schemes of mice and men gang aft a'gley." Such lack of perfection in achievement does not gainsay the fact that finite men have entered into an illegal agreement to meddle with the natural laws of competition.

III. The effect of the unfair practices

Respondents contend, in effect, that there can be no substantial adverse effect upon competition of the practices here complained of because the mechanical shorthand business constitutes only a very minor segment of shorthand instruction field generally.²⁶ The examiner regards this contention as lacking in any substantial merit. The mechanical shorthand business is clearly a separate field of trade or commerce or a definable segment of such a field, in which an agreement of the type above found would have a substantial effect on customers or potential customers in the field. Respondents' argument that their customers or potential customers have available to them other modes of shorthand instruction has as much merit as an argument that a conspiracy between airline carriers can have no effect on commerce because passengers have an opportunity to use rail, bus and other modes of transportation. The fact is that respondents are the only sources from which mechanical shorthand machines can be obtained and have a virtual monopoly in the field. It matters not that the amount of their commerce is relatively small in comparison with other commerce in this general field since it is the "character and not the extent of the control which the law denounces. The amount of interstate commerce or trade involved is not material."²⁷

It is accordingly found that the agreement, understanding and arrangement hereinabove found, and the methods, acts, practices and things done and performed in pursuance thereof have a dangerous tendency unduly to hinder competition and tend to create a monopoly in respondents in the trade and commerce hereinabove described and found.

CONCLUSION OF LAW

It is concluded that the acts and practices of respondents and the things done and performed by them as hereinabove found, are all to the prejudice of the public and constitute unfair methods of competi-

²⁶ Respondents sought to show that in 1949 persons receiving instruction by mechanical shorthand machines constituted less than one percent of all persons receiving instruction in shorthand by pen, pencil and other non-mechanical devices.

²⁷ *Louisiana Farmers' Protective Union v. Great A. & P. Tea Co.*, 131 F. 2d 419, 422; see also *White Bear Theatre Corp. v. State Theatre Corp.*, 129 F. 2d 600, 605.

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tion and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

THE REMEDY

Although denying that they entered into any illegal agreement respondents urge, in effect, that no order should be entered against them since the agreement of November 16, 1948, from which the illegal understandings are alleged to flow, was abandoned on January 8, 1953, approximately two weeks prior to service of the complaint in this proceeding upon them. The examiner finds this contention to be wholly lacking in merit. In the first place the alleged abandonment of the agreement of November 16, 1948 on the eve of the issuance of the complaint and after this matter had, to respondents' knowledge, been under investigation for over a year does not demonstrate any particular good faith on their part. In the second place the examiner is not convinced that the basic understanding with respect to a division of customers reached in the 1948 agreement has been abandoned. The letter-agreement of January 8, 1953 continues the basic relationship between the parties and there is no reason to believe that the illegal understanding above found has been abandoned. It is accordingly concluded that this proceeding is in the interest of the public and that an order to cease and desist from the illegal practices found should issue against respondents.

ORDER

It is ordered, That the respondents Stenographic Machines, Inc., a corporation, LaSalle Extension University, a corporation, and The Stenotype Company, a corporation and their respective officers, directors, agents, and employees, in connection with the offering for sale, sale or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of any type of shorthand stenographic machine whether sold or disseminated under the name "Stenotype," "Stenograph" or any other name or designation, do forthwith cease and desist from entering into, continuing, cooperating in or carrying out any planned common course of action, combination, agreement, or understanding or arrangement between or among themselves, or between any one or more of said respondents and others not parties hereto, to do or perform any of the following things:

(1) Allocate to, among or between themselves or any manufacturer, seller or distributor of said machines, the customers, potential customers, or class of customers to whom said products may be sold, rented, leased, loaned or disposed of in any other manner;

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(2) Restrict, restrain or limit in any manner or by any means those to whom any manufacturer, seller or distributor of said products may sell, lease, rent, loan or dispose of same in any other manner; and

(3) Restrict or restrain in any manner or by any means the sale or distribution of said machines.

OPINION OF THE COMMISSION

PER CURIAM:

This is an appeal by respondents from an initial decision finding that respondents have entered into an illegal agreement to divide between themselves the market for mechanical shorthand machines contrary to the provisions of the Federal Trade Commission Act.

LaSalle Extension University operates a correspondence school. Included among the courses taught is that of taking dictation by means of a mechanical shorthand machine. This Respondent also sells a machine which is known as the "Stenotype". Respondent Stenotype Company is a wholly-owned subsidiary of the LaSalle Extension University. Since the latter part of 1948, The Stenotype Company has been inactive and its functions have been taken over by respondent LaSalle. Respondent Stenographic Machines, Inc. is engaged in the manufacture and distribution of a shorthand machine known as the "Stenograph".

The complaint alleges that respondents have entered into an agreement whereby Stenographic was to confine sales mainly to private commercial schools or colleges and LaSalle was to confine its sales principally to home study or correspondence students.

Involved principally are questions of fact. The initial decision contains a detailed statement of the evidence. From an examination of the record, we conclude that the findings, conclusions and order of the hearing examiner are correct and they are adopted as the findings, conclusions and order of the Commission.

It is directed that an order issue accordingly.

ORDER AFFIRMING INITIAL DECISION

Respondents having appealed from the initial decision of the hearing examiner dated July 15, 1954; and the matter having been heard by the Commission on briefs and oral argument; and the Commission having rendered its decision adopting the findings, conclusion and order contained in the initial decision:

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It is ordered, That respondents' appeal from the initial decision is denied and the initial decision is hereby affirmed.

It is further ordered, That the respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order contained in said initial decision.

Decision

IN THE MATTER OF
MAX SCHWARTZ AND SARAH SCHWARTZ TRADING AS
MAX SCHWARTZ COMPANY

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL
TRADE COMMISSION ACT AND OF THE WOOL PRODUCTS LABELING ACT

Docket 6192. Complaint, Mar. 11, 1954—Decision, Mar. 18, 1955

Order requiring an individual in New York City who purchased from mills and jobbers bolts of cloth which he cut into suit lengths and sold to peddlers, to cease labeling such domestic "cuts" falsely as imported from the British Isles; failing to disclose that certain wool-like fabrics were in fact made from rayon and acetate, and that others were "seconds", "mill ends", and "unmerchantables"; and failing to label certain wool products as required by the Wool Products Labeling Act, with respect to the constituent fibers, country of origin, and otherwise.

Before *Mr. Frank Hier*, hearing examiner.

Mr. George E. Steinmetz and *Mr. John J. McNally* for the Commission.

Mr. Hyman Fried, of New York City, for respondents.

DECISION OF THE COMMISSION

Pursuant to Rule XXII of the Commission's Rules of Practice, and as set forth in the Commission's "Decision of the Commission and Order to File Report of Compliance", dated March 18, 1955, the initial decision in the instant matter of hearing examiner Frank Hier, as set out as follows, became on that date the decision of the Commission.

INITIAL DECISION BY FRANK HIER, HEARING EXAMINER

Complaint herein issued March 11, 1954, charges respondents as copartners with violation of the Federal Trade Commission Act (15 U. S. C. 45) and the Wool Products Labeling Act of 1939 (15 U. S. C. 68 (a)-(j)) in that it alleges that respondents:

1. Misrepresented domestically produced fabrics as being imports.
2. Failed to disclose true fiber contents on synthetic fiber fabrics simulating natural fiber fabrics.
3. Failed to disclose that inferior fabrics were not first quality.
4. Falsely labeled fabrics as to true fiber content.
5. Failed to label fabrics as to true fiber content.