Natural Death, Euthanasia, and Suicide: The Demise of Joint Operating Agreements

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ABSTRACT Joint Operating Agreements between newspapers are permitted under an exemption to U.S. antitrust laws as a means of saving secondary newspapers and preserving editorial competition in cities. During the past two decades, however, the number of cities with papers under these arrangements has declined dramatically. This article explores the economic and business rationales behind their demise, the means used by publishers to end joint operations, and the implications of those processes.

KEY WORDS: joint operating agreements, competition policy, concentration, newspaper deaths

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Joint operating agreements (JOAs) were once considered a means for saving secondary newspapers in cities from failure and making it possible for two papers to continue serving communities with separate editorial voices. Contemporary developments in media industries and newspaper markets have made them less beneficial than in the past, however, and leading papers in these cooperative arrangements are now regularly seeking to escape their unions with secondary papers. The impetus to cease JOA operations arises when one product is no longer economically viable or one or both parties are no longer willing or required to continue joint operations. In most cases, decisions to cease JOA activities are precipitated by approaching JOA contract expiration dates or financial losses that trigger escape clauses or lead to renegotiations to exit or alter the existing contract.

Agreements for such joint operations have existed since the 1930s but ran afoul of competition law enforcement in the 1960s, leading Congress to pass the Newspaper Preservation Act of 1970 (NPA) that provided a mechanism for papers to share economic fortunes by ceasing or highly limiting competition in ways not normally permitted under competition law absent the provisions of the Act (Busterna & Picard,

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1993). Although the Act stipulates requirements and processes for forming joint operating agreements, it contains no provisos for how or under what conditions agreements can be ended.

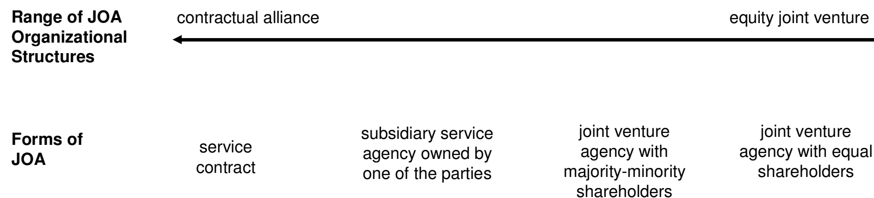
JOAs are designed to produce benefits for both parties by creating cost savings through joint operations in sales, marketing, production, distribution, and business services; by bundling sales for both products; and by ending or reducing price competition in advertising and circulation. For the leading newspaper these factors produce additional profit at lower cost than could be achieved by remaining in competition. For the secondary paper it reduces costs and produces profits previously absent. If the papers are more evenly matched, joint operations reduce costs and increase returns by removing competition that suppressed advertising and circulation prices.

There is no standard form of a joint operating agreement. The structural, financial, managerial, and operational arrangements for joint operations differ and are agreed upon by the specific parties based upon the market conditions and contributions that each party makes when their agreement is negotiated. The only commonality is that editorial operations are kept separate (Busterna & Picard, 1993). Because JOAs organized since 1970 necessarily involved a failing newspaper, it is normal that asymmetrical negotiating relationships exist and that agreements ultimately favor one party. This later factor is significant because it is an underlying cause for discontent with many agreements.

JOAs range in organizational structure across a continuum from contractual alliance to equity joint venture (Figure 1). Contractual alliances are the weakest form of structure but provide the benefits of cost savings, avoidance of price competition, and market allocation. They avoid the necessity of financial investment by both parties—a factor that is important if one party is financially weak when entering the agreement—and they permit one party to maintain control over operations. Contractual alliances require general business trust among the parties and are governed by obligations specified in their contract and general business law. Equity alliances are a stronger form of operation that provide the benefits of cost saving, avoidance of price competition, and market allocation but also creates more shared control, thus reducing the influence of separate motives/incentives of the partners through shared risk and fate/fortune. These joint ventures require commitment of equity by both parties, involve greater levels of trust and intimacy among parties, require reciprocity by both parties, and are governed by obligations specified by contract and fiduciary duties due to the shared ownership

It must be recognized that joint operating agreements are marriages of convenience or shotgun weddings rather than the result of love affairs. Conflicts among partners are normal and a general lack of ardor between partners has been common in most operations. This occurs because JOA operations involve matters of individual and shared interest rather than mutual devotion Joint operations do not guarantee survival of both

Figure 1: Business Contexts of Joint Operating Agreements



papers but provide mid-term relief in which parties can seek to end losses, recoup their investments, and mutually receive financial benefits. Nevertheless, each party has individual self-interests that are pursued despite the agreement. These include desires for short-term profits, long-term income, and avoiding having to absorb losses attributable to the other party in the agreement.

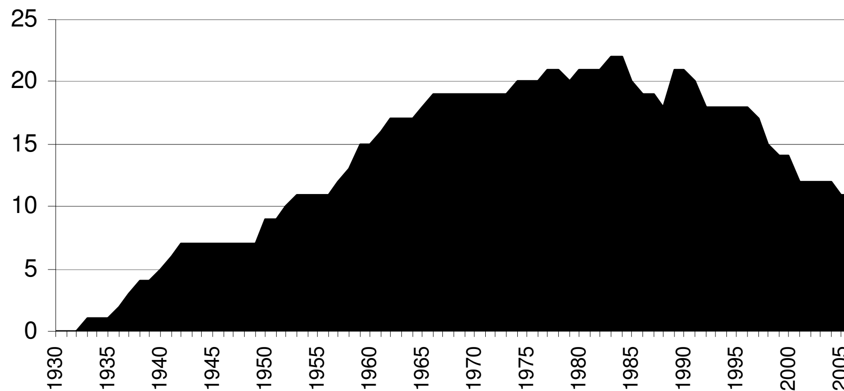
The last half of the 1990s and the early 2000s were particularly difficult for JOAs. Joint operations ended in Birmingham, Ala., El Paso, Texas, Evansville, Ind., Chattanooga, Tenn., Nashville, Tenn., and San Francisco, Calif. An exit from the Cincinatti agreement is underway. Disputes in Salt Lake and Seattle produced litigation between partners and renegotiations and ownership changes have occurred in Ft. Wayne, St. Lake, Detroit, and York

Problems with the ability of the agreements to save newspapers have been evident for two decades and industry scholars have regularly warned that the Newspaper Preservation Act was not serving its purposes (Barwis, 1980; Picard, 1988; Picard, 1991; Barnett, 1993; Busterna & Picard, 1993). Congressional concerns led to proposed amendments and oversight hearings, but these produced to no changes to the law (United States Congress, Senate, 1986; United States Congress, House of Representatives, 1989).

Contemporary developments have led many in the industry to begin writing the epitaph for joint operating agreements (Morton, 1996; Neuwirth, 1998). Just prior to the turn of the century, *American Journalism Review* heralded "The Death of the JOA" (Farhi, 1999) and newspaper analyst John Morton declared "JOAs are DOA" (Morton, 1999).

There are fewer JOAs today than when the Newspaper Preservation Act was enacted in 1970 (see Figure 2). The number declined because some died natural deaths when their agreements expired, some were euthanized by their partners, and others died when owners lost the will to continue and essentially committed suicide. This article focuses on the business rationales and methods for their demise and then explores how the structures, governance, and financial arrangements of JOAs are related to their demise.

Figure 2: Change in the number of joint operating agreements



RATIONALE AND BASIS FOR JOINT OPERATIONS

A locally published daily newspaper in competition with another daily newspaper published in the same location encounters the normal challenges that any business faces in a competitive setting. However, newspapers face additional and unique problems because of their dual product nature, their dependence on advertising, and the fact that advertising choices lead to disparities between circulation and advertising that place secondary papers at a severe disadvantage (Picard, et al., 1988; Picard & Brody, 1997; Picard, 2002).

When two newspapers exist in a single market, competition creates a division of the circulation and advertising markets and publishers engage in a variety of competitive strategies designed to lure customers for the competing paper. Over time one paper may gain market leadership or dominance and this hampers the ability of the secondary papers to remain successful in the market. Joint operating agreements present a means of overcoming these disadvantages and are typically begun before either party is so weakened by competition that it will cease operating on its own.

The rationale for joint operations is that by establishing cooperation the companies halt circulation and advertising price competition that lowers revenue. They create cost savings in sales, business, production, and distribution activities and divide circulation and advertising market coverage for maximum efficiency. Thus profitability is more likely, and the companies divide the resulting profits.

The rationale and its implementation create a significant problem, however, because it violates antitrust laws prohibiting price fixing, profit pooling, and market allocation. In 1965, more than 32 years after the first JOA began in Albuquerque, N.M., the U.S. Department of Justice

challenged the joint operations of the Tucson, Ariz., *Star* and *Citizen* for violations of competition law. JOAs might have escaped notice for more years had the *Star* and *Citizen*—which had operated as a joint operation for a quarter of a century—not attempted to end it through a merger of the two owners. The papers' arrangements were found to violate antitrust laws (U.S. vs. Citizen Publishing Co, 1968). The case was appealed to the Supreme Court, which upheld the previous rulings (Citizen Publishing Co. v. United States, 1969), and further joint activities deemed to violate competition laws were prohibited (United States v. Citizen Publishing Co., 1970).

Because of the court case, owners of joint operating papers and newspaper associations lobbied Congress for an exemption from antitrust law, arguing that it was necessary to save competing newspapers. In 1970 Congress passed the Newspaper Preservation Act, which provided the requested exemption, prefacing the law with the newspapers' argument that it would "maintain a newspaper press editorially and reportorially independent and competitive in all parts of the United States" (Public Law 91-353). The development, rationale, and application of the law have been more fully explored by Busterna and Picard (1993). Although the government has made significant reviews of applications for the antitrust exemption under the Act, no application for a JOA since 1970 has ever been denied.

RATIONALES FOR JOA CONTINUATION OR CLOSURE

Given the rationale and arguments for coordinated and combined activities, it might be easy to expect that JOA publishers would operate in an economic Shangri-La, reaping benefits unavailable to other publishers. In many cases, however, the benefits experienced today are lower than those available to monopoly publishers,[1] so many leading partners in the joint arrangements are seeking to escape them. In fact, twice as many papers have exited JOAs since passage of the Newspaper Preservation Act than have begun joint operations.

For two decades it has been recognized that dominant partners in JOAs have incentives to become monopolists (Busterna, 1987; Patkus, 1984). Clear efforts to position JOA papers for dominance were seen in cities such as Birmingham, El Paso, Evansville, Knoxville, Honolulu, and Seattle where terms of JOA agreements or ownership changes were made so that publishers could operate the leading morning papers in hopes of becoming the single surviving publisher in the future.

Another complicating factor is that financial pressures on secondary papers do not disappear through joint operations. Although there are cost

[1] A monopoly publisher is one operating in a market in which no other locally published daily newspaper is present. It is the condition under which the vast majority of U.S. newspapers operate, except in a few major cities such as New York, Chicago, Washington, and Boston.

savings and sometimes increased revenue from joint operations, the paper that trails in circulation can still become unable to produce sufficient advertising and circulation revenue to cover the costs of its operation or its share of the joint operations result. This occurs because JOA contracts do not remove the fundamental problems identified in the circulation spiral and household coverage models of newspaper economics that make continuation of secondary papers problematic (Furhoff, 1973; Gustafsson, 1978; Engwall, 1981).

As a result, the factors leading to disappearance of JOA papers mirror those that have caused the deaths of afternoon editions produced by owners of morning newspapers during the past two decades. If the secondary paper generates less than the amount it costs to produce, it will induce efforts by the leading paper to close it. The secondary paper will only continue as long as it pays for itself or creates profit, provides other incentives for both partners in the JOA to continue its existence, or because its contract does not provide an escape mechanism for the leading paper. Break-even and profit pressures exist for both papers in JOA operations, but their import to the owners differs depending upon the contract that created the joint operations. In these contracts owners of papers agree to formulas for dividing income, expense, and profits (and losses) created through the joint operations. These terms differ among joint operations depending upon the existing financial performance and market shares of the papers, the capital contributions initially made by the partners, and the future prospects for the joint operations.

Economically rational newspaper owners will, of course, cease publication if their expenses exceed revenue over time, absent significant non-pecuniary benefits and motives. The existence of a joint operating agreement does not alter the bases of such self-interested behavior, but the terms of a JOA contract may limit the discretion and methods of parties to exercise it. The most successful party in a JOA—in terms of circulation and advertising performance—has an incentive to remain in the agreement as long as its return from joint operation is greater than that which could be expected to be received absent the agreement. The less successful partner has the same incentive, tempered with knowledge that it probably would not exist absent the agreement.

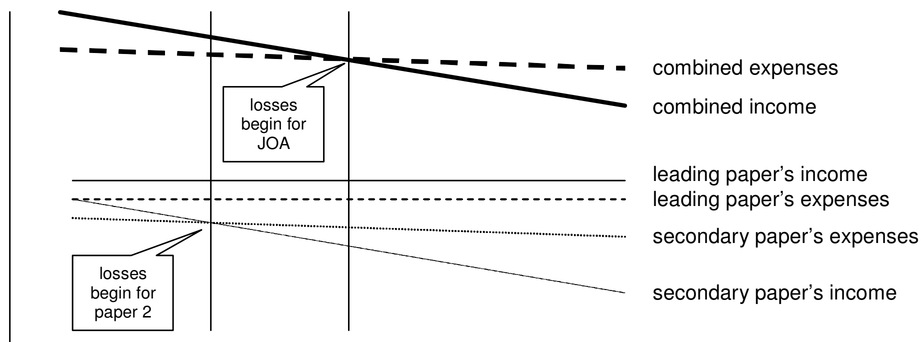
The incentives for joint operation change when financial losses are incurred. If both papers are losing money due to their own performance, the leading paper will seek to exit or end the JOA so it may obtain the benefits of greater advertising and circulation income through competition or by the demise of the secondary paper.

The dynamics of economic rationality are slightly different in a JOA in which only the secondary paper is losing money on its operations. In such cases it is rational for its owner of the secondary paper to keep publishing if the overall joint operation remains profitable because of the revenue generated by the leading paper and if the secondary paper's share of overall profits exceeds its own losses. The owner of the leading paper, however, has strong disincentive to continue the JOA is such a

situation. Its returns are lowered by the losses of the partner and it will also benefit from increased circulation and advertising sales if the partner ceases publication. These factors will induce leading papers to refuse to renew the contract or to pay the other party to exit the JOA, cease publication, or alter terms of the JOA. Payments to the secondary paper to exit or end publication are rational for the dominant partner if the cost of doing so is lower than the overall cost than continuing payments to the loss making paper for remainder of a JOA contract.

Losses for a secondary paper may not immediately produce losses for the overall joint operation because they may be offset by profits from the leading paper, so the secondary paper may receive profit generated by the leading paper even it if produces losses itself. At some point, however, the losses can become significant enough to push the entire joint operation into unprofitability as well (see Figure 3), even if the leading paper produces a return. This situation completely removes any incentive for the leading paper to remain in the JOA.

Figure 3: Points where financial losses begin



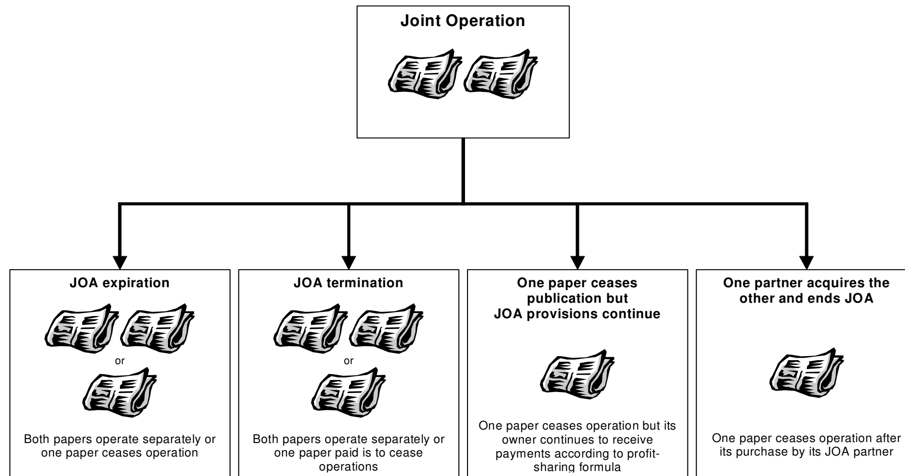
CESSATION OF JOA PUBLICATION

Although the Newspaper Preservation Act specifies conditions and review procedures under which applications to form JOAs should be considered, it does not provide any provisions governing their cessation. This omission has led partners in JOA to create their own methods, but has also left regulators and JOA participants in the position of not knowing whether the antitrust exemption ends at the time of JOA cessation or whether it covers subsequent acts involving disposition of assets or payments among the parties.

Publication of papers under joint operating agreements have ended in four different ways: 1) expiration of the contract; 2) termination the contract; 3) continuation of the contract but with publication of one paper

ceasing; or 4) acquisition of a JOA partner by the other partner or merger between the two firms. These methods are illustrated in Figure 4.

Figure 4: Methods of ceasing publication under a joint operating agreement



There is has been no "most common" method for ending JOA publication. Partners have ended joint activities with varying degrees of civility and cooperation. All of the methods have resulted in either a single newspaper surviving or both papers surviving in some form, but a single survivor has been the most common and predictable outcome. These methods and examples are illustrated for ease in Table 1.

Table 1: Cases of JOA cessation

Contract Expiration	JOA Contract Termination	JOA Continued but 1 Paper Closed	Acquisition of the Partner Paper
Cincinnati, 2007	Birmingham, 2005	Las Vegas, 2005[1]	Chattanooga, 1999[2]
Evansville, 1998	Honolulu, 2000	Shreveport, 1991	San Francisco, 1999[3]
Columbus, 1985	Nashville, 1998	Miami, 1988	Pittsburgh, 1992
	El Paso, 1997	St. Louis, 1983	Franklin-Oil City, 1985
	Tulsa, 1992		
	Knoxville, 1991		
	Anchorage, 1979		

[1]Separate publication has ended; *Sun* continues quasi-publication as a daily insert in *Review-Journal*.
[2]A pre-NPA joint operation existed from 1942 until it was dissolved in 1966. The more contemporary JOA began in 1966 to 1999. This analysis focuses on the latter JOA and its characteristics.
[3]The *Examiner* was subsequently sold by Hearst.

Because the Newspaper Preservation Act does not provide guidance as to when the antitrust exemption ends, questions about the propriety of methods of cessation have led the Department of Justice (DOJ) to create its own policies in the cases of JOA continuation but closure of one paper or acquisitions or mergers of partners. The DOJ has taken the position that JOA cessation ends the antitrust exemption, a position that has not been challenged by any of parties and a position upon which no court has ruled.[2]

The issue arose when St. Louis JOA cessation was leading to closure of the *Globe-Democrat*. The Department of Justice decided to take the position that the antitrust exemption no longer existed and applied the traditional "failing firm test" to the subsequent actions. Although no formal decision was published, Assistant Attorney General William F. Baxter (Head of the DOJ Antitrust Division) issued a press release outlining the position (United States Department of Justice, 1983). The government did not intervene to halt the cessation of the JOA or closure of the *Globe-Democrat*; nevertheless the *Globe*'s owner (Herald Co., a subsidiary of Newhouse) alleviated the potential for additional criticism and litigation by selling the title to a party outside the JOA. Two years later, when the Franklin-Oil City, Penn., JOA was terminated by the acquisition of the *News-Herald* by its partner, the DOJ reviewed the transaction, again applying the failing company doctrine, and issued a business review letter indicating it would not act against the acquisition. (United States Department of Justice, 1985). Since those determinations parties seeking to JOA cessations and the DOJ have generally abided within the outlines of provisions seeking to prove that the secondary paper would fail outside the JOA, that no reasonable alternative buyers existed when closing, and that the title should be sold outside the JOA if a appropriate buyer emerged.

This article will now examine more closely the four methods of cessation, examples of their use, and the implications of the methods.

JOA Expiration

Expiration of the contract occurs when the date for the ending of the contract creating the JOA is reached and the parties involved do not extend it. In these situations both papers may begin independent competitive operations again, or the weaker paper may cease publishing altogether. Contract expiration led to the 1985 death of the *Citizen-Journal* in Columbus, Ohio, leaving the *Dispatch* as that city's only paper, and to the demise of the Evansville, Ind., *Press* in 1998 after its agreement with the *Courier* expired. ("Columbus Dispatch Defends," 1985).

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[2] The position is a conservative one that is more protective of markets and competition than the alternative of accepting that the antitrust exemption continues.

The most contemporary case of expiration is that of the Cincinnati JOA. The 30-year agreement between the E.W. Scripps Co.-owed Cincinnati *Post*/Kentucky *Pos*t and the Gannett-owned Cincinnati *Enquirer* is set to come to a natural end when it expires Dec. 31, 2007 (E.W. Scripps, 2004). The expiration of the agreement was ensured when Gannett invoked a 3-year non-renewal notice clause in the JOA contract in January, 2004, that nullified an automatic 10-year renewal clause that would have gone into effect had not the non-renewal notice been given ("Gannett won't renew," 2004). Because the JOA contract is simply expiring, no JOA amendment or termination fees are payable under the contract. Gannett, which provided business, sales, publication, and distribution services, will no longer provide those services after 2007 and Scripps is exploring options to continue operations as a paid or free daily, non-daily or online publication (Monk, 2006). The decision to let the contract expire occurred because the agreement was more beneficial to Scripps than to Gannett. The joint operation in Cincinnati contributed about $12 million to Scripps' profit in 2003 because of the profit division with the *Enquirer*, even though the financial operations of the *Post* were not positive on their own.

Expiration has not been the source of significant criticism or policy disputes because the joint operating agreement and its expiration terms for individual partnerships are approved under the processes of the Newspaper Preservation Act. Expiration represents the natural and expected end of the approved agreement.

JOA Termination

Early terminations of JOAs occur when the parties agree to dissolve the JOA contract and divide any joint assets in a fashion similar to that of a dissolution of a marriage. This may result through negotiation of an agreement to end the contract or be precipitated by termination provisions previously agreed to in the existing contract. The termination can be voluntary on the part of both parties or involuntary on the part of one party if the existing contract provides the mechanisms for the dominant paper to terminate the agreement.

After the joint operations end the papers may operate separately—as illustrated in the bitter dissolution of the Anchorage, Alaska, JOA that put the *Times* and *Daily News* into a new competitive battle in 1979 ("Anchorage Dailies" 1978)—or one paper may simply shut down because it negotiates payment from the other party to terminate the agreement and shut down its operations. This was the case in Tulsa, Ok., where the agreement was terminated early when the owners of the *World* agreed to pay $29.9 million to the owners of the *Tribune* to close before the end of the JOA term. Similarly, when agreement to end publication of the secondary paper in the Honolulu JOA was reached in 1999, Gannett agreed to pay $26.5 million to its partner.

More recently voluntary termination led to the demise of the Birmingham *Post-Herald* on Sept. 23, 2005, 10 years before the expiration of its JOA with the Birmingham *News* (E.W. Scripps, 2005). The afternoon *Post-Herald*'s circulation had fallen to 7,500, producing a considerable negative impact on the performance of the JOA that was managed by Advance Publications' Birmingham *News* ("Post-Herald's final edition," 2005). The existing agreement was to continue until 2015 but was ended early. Scripps had been receiving about $7 million annually for its share of the JOA earnings, but accepted $40.8 million for the termination and sale of its assets to the *News* (E.W. Scripps Co., Form 10-K, March 16, 2006; Lang, 2006). Until 1996 the *Post-Herald* had been the morning paper and *News* the evening paper, but they switched publication times as part of a renegotiation of the contract.

Although changes to agreements are reviewed by the Department of Justice, it has taken no action involving such terminations. From the policy—rather than legal—standpoint, payments to the owner of the secondary paper that allow it to recover investments in a publishing agency or for acquisition of facilities and equipment from the secondary paper are not highly problematic in themselves. However payments made merely to halt publication of one paper after the benefits of the JOA have been exploited by the partners raise issues of public benefit and harm and have been the subject of some public criticism.

JOA Terms Continue but Publication of Second Paper Ends

Another method is the agreement to continue payments under the existing contract if the secondary paper ceases publication. In these cases the existing JOA profit-sharing formula remains in effect for the term of the agreement and the owner of the paper that ceases operations continues to receive payments for the term of the agreement. This method was used in Miami, when the *News* ceased operation in 1991. Its owners, Cox Enterprises, will continue receiving payments until 2021 from Knight-Ridder, owner of the surviving *Herald* (McPhail, 1988; Scardino, 1988). The financial rationale for such choices is that increased profit for the JOA will accrue if lost revenue is low and expenses for production of the second paper are eliminated. This can provide both the leading and secondary owner more return than continuing existing operations.

If the terms of the previously approved agreement between the parties remain in place, the agreement is unchanged. Strong criticism over this method of ending joint publication has emerged because it allows publishers to continue reaping benefits from the NPA even when they no longer carry out the statute's intent of preserving the secondary paper. Many public policy advocates have urged Congress to revisit the act limit or end the practice. Despite congressional hearings (United States Congress, Senate, 1986; United States Congress, House of

Representatives, 1989) in which the issues were aired, the NPA has not been amended and this cessation method remains in place.

Acquisition of Partner Ends JOA

A fourth method involves one partner acquiring the other partner or a merger of partners that ends the JOA. This method does not require the closure of the secondary paper, but if the financial incentive to do so exists, it will be closed. Absent guidance from the NPA, the Department of Justice has established its own policy of reviewing such acquisitions or mergers using traditional merger and acquisition review guidelines under the Hart-Scott-Rodino Act (Hart-Scott-Rodino 1976).

In 1985 the partners in the Franklin-Oil City JOA merged and continued to operate the *News-Herald* and *Derrick* as morning and evening editions under the same ownership (Roper, 1985). This merger was reviewed and approved under the general merger guidelines, setting the precedent for its subsequent use, as noted above.

The most recent case of acquisition of a JOA partner took place in San Francisco in which the Hearst Corp., publisher of the *Examiner*, purchased the *Chronicle* (the leading paper) when it became clear that its ability to continue operating the *Examiner* after the nearing expiration date of the JOA was in doubt. The acquisition was reviewed by DOJ, which permitted the acquisition but required efforts be made to find a buyer for the *Examiner*. The deals produced significant outcry in the city and led to an unsuccessful court case to overturn the transactions (Clinton Reilly v. the Hearst Corp. and The Chronicle Publishing Co., 2000).

STRUCTURAL ELEMENTS OF CEASED OPERATIONS

When JOAs are created, a number of elements involving structures, governance, and financial terms are agreed to between the parties. This section considers the relationship of these elements and the forms of demise of JOA papers.

Joint Operation Structure in JOAs with Ceased Operations

Two basic structures are used in joint operations. The first is an equity-based agency structure in which a joint venture firm is established to act as the agent for the two partners in carrying out the joint activities. Both parties contribute financially and materially to the venture, and their shares of ownership of the agency are determined by the contributions at the time of its establishment. In this structure facilities, equipment, and personnel needed to conduct joint activities are provided by the agency enterprise. The second structure is a contractual alliance in which one paper acts as the operating partner, providing facilities, equipment, and personnel needed for joint activities under conditions determined by the

agreement. Under this structure, the non-operating partner gives up its own facilities, equipment, and duplicative personnel.[3]

Both parties have a stake in the operating activities under an agency structure, but only one party has a stake in the operating partner structure. As a result, the agency system would be expected to lend more stability to a JOA and make it less likely for it to simply expire or to be easily terminated. In the operating partner structure, the interests of the operating partner will be more strongly evident and the non-operating partner has fewer physical assets. In such a situation, expiration or termination would be more likely to be encountered.

When the actual demise of JOAs is considered, by a 3-to-1 margin joint operations that have ended have had one party that was the operating partner in a host-tenant or similar relationship (see Table 2). This has occurred because untangling joint operations is easier under this structure, and the leading paper has typically enjoyed greater market success, has been financially stronger, and has had clauses in its agreement that protect it when its benefits from the agreement diminish.

The size of the secondary paper in a JOA also appears to play a factor in termination choice. As seen in Table 3, terminations are more likely when the secondary paper is mid-sized or smaller. Some accommodation (JOA continuation or acquisition) is more likely when mid-sized or larger papers are involved.

Revenue/Profit Division

JOA contracts stipulate division of revenues or profits. These are typically fixed divisions. Disparities in the division are related to the degree of competitive equality and market performance at the time the agreement was negotiated or renegotiated or if it is altered by contractual performance-based provisions. A large disparity in the division indicates significant inequality in performance and stronger negotiating position in the dominant paper. Less disparity indicates more equality and parity in the strength of the partners.

To consider the relationship between revenue division and cessation of publication, the revenue split at the time of secondary papers' demise or announced JOA cessation is considered. Three categories are employed: 1) high disparity, evidenced by a split of 75% or higher; 2) moderate disparity, evidenced by a split between 60%/40% and 74%/24%; and 3) low disparity, evidenced by a split below 60%/40%.

The majority of JOAs that have ceased have occurred between papers with high disparity in the revenue division (see Table 4). This has occurred primarily because the benefits of the JOA no longer accrue to the leading newspapers. Where the revenue division has been more

Table 2: Structure of joint operations that no longer publish both papers

[3] In some cases the operating partner may set up a wholly owned "agency" to provide the joint services but the secondary paper is not an equity partner in the agency.

	Contract Expiration	JOA Contract Termination	JOA Continued but 1 Paper Closed	Acquisition of the Partner Paper
Agency Joint Venture	Evansville	Honolulu[1] Tulsa	Shreveport	San Francisco Franklin-Oil City
Operating Partner	Cincinnati Columbus	Birmingham Honolulu[1] Nashville[2] El Paso Knoxville Anchorage	Las Vegas Miami St. Louis	Chattanooga Pittsburgh

[1] The arrangement was initially an agency/joint venture but the structure was changed so that Gannett became the managing partner.
[2] The arrangement was initially an agency/joint venture but the structure was changed when the agreement was renewed for the last time.

Table 3: Size of secondary paper and method of cessation

Circulation Category	Contract Expiration	JOA Contract Termination	JOA Continued but 1 paper Closed	Acquisition of the Partner Paper
>500,000 Major Metro				
250,000 to 499,999 Very Large				
100,000 to 249,999 Large	1		1	2
25,000 to 99,999 Mid Sized	1	4	2	1
<24,999 Small	1	3	1	1

equal, ending JOA operations has primarily been accomplished through acquisition of the second partner.

Loss Division

As with the division of revenue, agreements commonly contain agreements for the division of losses among the partners. In some cases these are the same as the division of revenues or profits but in some cases they differ. In cases in which the dominant partner pays the larger portion of any losses, the performance of the secondary paper may create situations in which continuation of the JOA is undesirable because of poor performance of the second paper, even if the JOA overall remains profitable.

Table 4. Revenue division by level for JOAs that no longer publish 2 papers

	Contract Expiration	JOA Contract Termination	JOA Continued but 1 Paper Closed	Acquisition of the Partner Paper
75%-25% or higher	Evansville Columbus	Anchorage[1] Birmingham Nashville El Paso Knoxville	Shreveport Miami Las Vegas[2]	
60%-40% to 74%-24%	Cincinnati	Tulsa		
59%-41% and below		Honolulu[3]	St. Louis	San Francisco Franklin-Oil City Chattanooga
Not available				Pittsburgh

[1] Terms of the agreement provided a split based on total circulation.
[2] The *Sun* is no longer published as a separate edition but is a small insert in the *Review-Journal*
[3]The revenue division changed over time with various renegotiations. In 1993 the concept of revenue split was removed from its renegotiated agreement and the secondary paper receive a guaranteed $1.2 million per year, rising to $2.1 million annually over a 20-year period.

If one considers loss division among JOAs in which the second paper ceased publication, it is clear that in situations in which formulas for absorbing losses requiring the leading newspaper to pay more than half of the losses generated in the agreement are clearly linked to ending of joint operations (see Table 5). This occurred because they often divided losses at the same level as revenue or profit division. In cases of equal division of losses, acquisitions of the partner were the more likely outcome.

Table 5. Means of loss division in JOAs no longer publishing the secondary paper

	Contract Expiration	JOA Contract Termination	JOA Continued but 1 Paper Closed	Acquisition of the Partner Paper
Loss disproportionately borne by leading paper	Evansville Cincinnati	Birmingham Nashville El Paso Knoxville Tulsa Honolulu	Shreveport Las Vegas Miami	
Equal loss division			St. Louis	San Francisco Franklin-Oil City Chattanooga
Not available	Columbus	Anchorage		Pittsburgh

Management Control of the Agency or Business Related Operations

Control of the operating agency or business operations can be equal, unequal with input from or veto power by the secondary partner, or fully controlled by one partner. The business decisions made can have significant effect on expenditures for and the performance of the secondary paper. Control is usually evidenced in the make-up of a joint management committee or by specific clauses in agreements. Contract expiration, termination, or closure of one paper with continuation of the JOA contract have been prevalent means of ending operations when the leading paper controls the joint operations (see Table 6).

Table 6. Control of joint operations' management in JOAs no longer publishing two papers

	Contract Expiration	JOA Contract Termination	JOA Continued but 1 Paper Closed	Acquisition of the Partner Paper
Leading paper	Evansville Cincinnati	Anchorage Birmingham Nashville El Paso Honolulu	Las Vegas Miami Shreveport	
Equally divided among partners			St. Louis	San Francisco Chattanooga Franklin-Oil City
Not available	Columbus	Knoxville Tulsa		Pittsburgh

Circulation Disparity and Cessation of JOA Operations

It is generally recognized that when a paper's circulation reaches 30 to 40 percent of leading paper's circulation, its demise is near. Thus ratios of .300 to .400 are seen as crucial indicators even in competitive situations. In JOAs, however, the ratio extends upward because of the effects of loss and revenue division provisions (see Table 7).

Most cessation takes place in the middle range of disparity, with the greatest number occurring when the ratio of circulation of the secondary paper is between .200 and .399 of that of the leading paper (Table 8).

Whatever the disparity with the leading paper, papers that are mid-sized or smaller are more likely to fail (Table 9).

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Table 7. Ratio of secondary to leading paper's circulation in ceased JOA operations

City	Secondary paper ratio	
Anchorage	.253	(*Daily News*: 11,547/*Times*:45,615)
Birmingham	.049	(*Post-Herald*: 7,500/*News*:150,346)
Chattanooga	.999	(*Times*: 40,694/*Free Press*: 40,743)[1]
Cincinnati	.374	(*Post*: 72,616/*Enquirer*: 194,328)[2]
Columbus	.585	(*Citizen-Journal*: 117,000/*Dispatch*: 200,000)
El Paso	.307	(*Herald-Post*: 19,731/*Times*: 64,231)
Evansville	.346	(Press: 21,402/Courier: 61,780)
Honolulu	.660	(*Star-Bulletin*: 67,533/*Advertiser*: 102,358)
Franklin-Oil City	.507	(*News*-Herald: 8,466/*Derrick*:16,666
Knoxville	.392	(*Journal*: 40,809/News-*Sentinel*: 104,167)
Las Vegas	.169	(*Sun*: 28,000/*Review Journal*: 165,000)
Miami	.134	(*News*: 56,024/*Herald*: 417,923)
Pittsburgh	1.636	(*Post-Gazette*: 156,782/*Press:* 256,504)[3]
Nashville	.287	(*Banner*: 42,100/*Tennessean*: 146,914)
San Francisco	.238	(*Examiner*: 114,774 /*Chronicle*: 482,268)
Shreveport	.235	(*Journal*:17,641/*Times*: 75,003)
St. Louis	.532	(*Globe-Democrat*: 146,432/*Post-Dispatch*: 274,000)[3]
Tulsa	.522	(*Tribune*: 66,964/*World*: 128,311)

[1] Although the *Times* had similar circulation, the *Free Press* had the Sunday paper and owned the production facilities.
[2] 1995 circulation data. JOA expires in 2007 and will not be renewed.
[3] The demise of the *Press* resulted during a strike when its owners decided to sell the paper rather than continue operations.

Table 8. JOAs ceased by ratio of secondary paper to leading paper

Ratio Category	Number of JOAs Ceased
< .200	3
.200 to .399	8
.400 to .599	4
> .600	3

Table 9: Circulation size of secondary paper

Circulation Category		Number of Papers Ceasing Publication
>500,000	**Major Metro**	0
250,000 to 499,999	**Very Large**	0
100,000 to 249,999	**Large**	4
25,000 to 99,999	**Mid-Sized**	8
<24,999	**Small**	6

WEAKNESSES IN REMAINING JOAS

After reviewing the previous failures of JOA operations, there are 5 indicators of negative conditions that lead to the demise of the operation: 1) significant differences in circulation; 2) evening publication cycle; 3) profit/remainder division unrelated to current market performance; 4) loss provisions in which the leading paper bears a greater portion; and 5) lower influence on the management of the joint operation. No one indicator alone is sufficient to conclude failure will occur, but the more indicators that exist, the greater the likelihood of failure of a JOA.

This article now considers how these indicators appear in the remaining JOAs

Circulation Differences

Significant differences in circulation are an indicator because of disparity in the contributions of income and in the importance of the secondary paper to the overall operations. Three of the 9 continuing JOAs—Albuquerque, Salt Lake, and Tucson—show significant disparities in circulation (see Table 10).

Publication Cycle

Publication cycle is relevant because papers published in the morning are more likely to survive than papers published in the evening. Of the remaining JOAs, 5 have papers produced in the evening cycle (Table 11).

Table 10: Circulation Differences in Remaining JOAs

PAPERS	DAILY CIRC.
Seattle Times Seattle Post-Intelligencer	219,698 191,169
Salt Lake City Deseret News Salt Lake Tribune	61,609 129,836
Arizona Star Tucson Citizen	91,561 42,267
Albuquerque Journal Albuquerque Tribune	113,694 25,061
Detroit Free Press Detroit News	365,145 232,434
Charleston Gazette Charleston Daily Mail	51,514 49,906
Denver Post Rocky Mountain News	376,549 396,114
Ft. Wayne Journal Gazette Ft. Wayne News Sentinel	61,782 48,289
York Dispatch York Daily Record	40,326 43,003

Data are from 2005

Table 11: Publication Cycles of JOA Papers

PAPERS	AM/PM
Seattle Times Seattle Post-Intelligencer	AM AM
Salt Lake City Deseret News Salt Lake Tribune	AM AM
Arizona Star Tucson Citizen	AM PM
Albuquerque Journal Albuquerque Tribune	AM PM
Detroit Free Press Detroit News	AM AM
Charleston Gazette Charleston Daily Mail	AM PM
Denver Post Rocky Mountain News	AM AM
Ft. Wayne Journal Gazette Ft. Wayne News Sentinel	AM PM
York Dispatch York Daily Record	PM AM

Profit/Remainder Division

If profit or remainder division is not related to circulation share or some other performance base, it is likely to lead to the secondary paper will gain a greater portion of return than it produces—thus creating an incentive for the leading paper to exit the JOA. Thus, the more equal the division of profits or remainders, the more likely it is that the leading paper is not receiving a share equal to its contributions to that profit. Among the remaining papers, 4 have 50/50 divisions and 2 have 60/40 divisions (Table 12).

Table 12: Profit/Remainder Division among Partners

PAPERS	Division %
Seattle Times Seattle Post-Intelligencer	60 40
Salt Lake City Deseret News Salt Lake Tribune	42 58
Arizona Star Tucson Citizen	50 50
Albuquerque Journal Albuquerque Tribune	60 40
Detroit Free Press Detroit News	50 50
Charleston Gazette Charleston Daily Mail	50 50
Denver Post Rocky Mountain News	50 50
Ft. Wayne Journal Gazette Ft. Wayne News Sentinel	75 25
York Dispatch York Daily Record	57.5 42.5

Loss Division

How losses are divided among the partners is also significant. When the leading paper bears a disproportionate share there is a greater likelihood of JOA failure because the secondary paper is typically responsible for all or most of the losses (Table 13).

JOA Control

The influence exercised on management decisions through the control structure of the JOA gives an indication of the strength of the secondary paper in determining its future and its likelihood for survival. As noted above, secondary papers are in the weakest position in a host/tenant JOA form and in a joint venture form in which one party has management control. Of the remaining JOAs, 5 have forms that disadvantage the secondary paper in terms of management decisions (Table 14).

Evaluation of the Position of Remaining JOAS

Of the 9 continuing JOA operations, Albuquerque and Ft. Wayne evidence a greater number of negative conditions and both are scheduled to expire within 15 years. York and Seattle also have significant numbers of negative indicators, but they have agreements that will remain in effect much longer.

Table 13: Loss Division among Partners

PAPERS	%
Seattle Times	66
Seattle Post-Intelligencer	34
Salt Lake City Deseret News	42
Salt Lake Tribune	58
Arizona Star	50-55
Tucson Citizen	45-50
Albuquerque Journal	60
Albuquerque Tribune	40
Detroit Free Press	50
Detroit News	50
Charleston Gazette	50
Charleston Daily Mail	50
Denver Post	50
Rocky Mountain News	50
Ft. Wayne Journal Gazette	66.7
Ft. Wayne News Sentinel	33.3
York Dispatch	57.5
York Daily Record	42.5

Table 14: Control in the Remaining JOAs

PAPERS	Form	Mgt Control
Seattle Times Seattle Post-Intelligencer	host/tenant	Seattle Times
Salt Lake City Deseret News Salt Lake Tribune	Joint venture	
Arizona Star Tucson Citizen	Joint venture	
Albuquerque Journal Albuquerque Tribune	Joint venture	Albuquerque Journal
Detroit Free Press Detroit News	Joint venture	Free Press
Charleston Gazette Charleston Daily Mail	Joint venture	
Denver Post Rocky Mountain News	Joint venture	
Ft. Wayne Journal Gazette Ft. Wayne News Sentinel	Joint venture	News Sentinel
York Dispatch York Daily Record	Joint venture	York Dispatch

CONCLUSIONS

Today, nine JOAs are still publishing two separate daily newspapers[4] and Cincinnati is in the processes of ending JOA operations. Three-quarters of the remaining JOAs are set to expire in the next 20 years. Discussions in the industry and among policy scholars are no longer focused on how and whether the Newspaper Preservation Act can save secondary newspapers, but on how it is utilized by JOA publishers and on financial benefits they achieve from decisions as to whether to cease or continue operations.

The rationales and processes for ceasing joint operations are primarily business based. This article has shown that the weaker the secondary partner and the more disparity between the parties, the more likely it is that publication of the secondary paper will cease. When the interests of the leading paper are no longer served, the paper will allow JOA to expire or seek to halt publication of the secondary partner through the various mechanisms shown above. It is thus beneficial for the secondary paper to negotiate a longer contract or have greater time remaining on an existing contract, because it provide more leverage for negotiating a beneficial exit when it is no longer economically rational to publish both papers.

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[4] Albuquerque, Charleston, Denver, Detroit, Fort Wayne, Salt Lake, Seattle, Tucson, and York

From a policy perspective, the Newspaper Preservation Act cannot be seen as much of an achievement. For a policy to be successful, it must accurately identify factors causing the phenomena being addressed, must ameliorate the factors, and must produce the desired effects.

The intent of the Act was stated in testimony supporting its passage and its own language as being designed to preserve separate editorial voices by solving economic difficulties. The Act, however, merely reduced costs and permitted economic collusion. Although these factors provided some financial benefit for papers in JOAs, they never addressed the fundamental economic conditions that make it nearly impossible to preserve direct newspaper competition in cities and were thus insufficient to overcome the challenges faced. In the 30 years since passage of the NPA, the number of newspapers in the U.S. has declined nearly 20 percent, the number of cities with separately owned and operated paid daily newspapers has dropped by 90 percent, and the number of JOAs publishing two papers has been cut in half.

The primary success of the NPA has been prolonging the lives of a few papers for a few years and creating financial benefits for their owners. Although there have been some benefits of having two papers—even for a limited period of time—in the communities served by JOAs, the Newspaper Preservation Act at the height of the number of JOAs in the mid-1980s ensured a secondary paper to only about one percent of cities in which papers were published. Today that number is only about one half of one percent.

It is naive to believe that Congress will act to amend the Act to improve its effectiveness in the coming years. Today, too few cities and newspapers are now involved. Newspapers no longer have a privileged position in the media space or minds of the public, and there will be little political gain or loss for action or inaction. There are barriers to action posed by far weightier issues that are attracting the attention and time of legislators.

It would seem, then, that the Newspaper Preservation Act is no longer an even a nominally effective mechanism for saving secondary newspapers and promoting news diversity and plurality of voices. The arena for promoting those desired outcomes will have to be elsewhere.

REFERENCES

"Anchorage Dailies to End Joint Operating Agreement in April" (1978, October 7). *Editor and Publisher*, p. 7.

Associated Press (2005). "Afternoon Daily in Birmingham, Ala., to End Its 55-Year Run," Sept. 23, 2005. Available at: http://www.nytimes.com/2005/09/23/business/media/23post.html?ex=1285128000&en=1964c7ce3bfe0a61&ei=5088&partner=rssnyt&emc=rss

Barnett, Stephen R. (1993). "Anything Goes," *American Journalism Review*, October. Available at www.ajr.org/article_printable.asp? id=1264-

Barwis, Gail Lund. (1980). "The Newspaper Preservation Act: A Retrospective Analysis," *Newspaper Research Journal*, 1(2):27-38.

Busterna, John C., and Robert G. Picard (1993). *Joint Operating Agreements: The Newspaper Preservation Act and its Application*. Norwood, N.J.: Ablex Publishing Co.

Citizen Publishing Co. v. United States, 394 U.S. 131 (1969).

Clinton Reilly, Plaintiff, v. The Hearst Corporation and The Chronicle Publishing Company, Defendants. / No. C-00-0119-Vrw, in the United States District Court for the Northern District Of California. Ruling available at http://sfgate.com/cgi-bin/article.cgi?file=/gate/archive/2000/07/27/ruling.DTL

"Columbus Dispatch Defends Ending of Joint Arrangement" (1985, November 16). *Editor & Publisher*, p 41.

E.W. Scripps Co. (2004). "Newspaper JOA in Cincinnati Will Not be Renewed after 2007," News Release, January 16, 2004.

E.W. Scripps Co. (2005). "Birmingham Newspapers to End JOA," News Release, Sept. 22, 2005.

E.W. Scripps Co. Form 10-K. March 16, 2006.

Engwall, Lars (1982). "Newspaper Competition: The Case for Theories of Oligopoly," *Scandinavian Economic History Review*, 19:145-154.

Farhi, Paul (1999). "The Death of the JOA," *American Journalism Review*, September, pp. 15, 23, 25, 26.

Furhoff, Lars (1973). "Some Reflections on Newspaper Concentration," *Scandinavian Economic History Review*, 21, 145-154.

"Gannett won't renew Cincinnati newspaper deal," USA Today.com, Jan. 16, 2004. Available at: http://www.usatoday.com/money/media/2004-01-16-cincinnati-joa_x.htm.

Gustafsson, Karl Erik (1978)."The Circulation Spiral and the Principle of Household Coverage," *Scandinavian Economic History Review*, 26:1-14.

Hart-Scott-Rodino Antitrust Improvements Act of 1976, Public Law 94-435, 15 U.S.C. § 18a.

Lang, Holly (2006). "Killing the Competition," *Pine* Magazine, August 21. Available at www.pine-magazine.com/content.php?id=56.

McPhail, Bob (1988, December 14-20). "How the Big Boys Put Out a Newspaper," *New Times*, pp. 8-15.

Monk, Dan (2006). "Post Won't Survive as Afternoon Daily But Future Unsure," *Cincinnati Business Courier*, Feb. 24, 2006.

Morton, John (1996). "JOAs: No Guarantee of Saving a Paper," *American Journalism Review*, April. Available at: http://www.ajr.org/article_printable.asp?id=105

Morton, John (1999) "Roster of One-Paper Towns is Growing: JOAs are DOA in Evansville, Chattanooga and other Markets," *American Journalism Review*, January/February, available at: ajr.newslink.org/arjmjan99.html

Neuwirth, Robert (1998). "Death Toll Mounts as Weak JOA Papers Die Anyway," *Editor & Publisher*, April 18, pp. 18, 90.

Picard, Robert G. (2002). *The Economics and Financing of Media Companies*. New York: Fordham University Press.

Picard, Robert G. (1987). "Evidence of a `Failing Newspaper' Under the Newspaper Preservation Act," *Newspaper Research Journal*, 9:73-82 (Fall 1987).

Picard, Robert G. (1988). "It's Time to Revise the Newspaper Preservation Act," *Editor & Publisher*, September 24, pp. 18, 28.

Picard, Robert G. (1991). "JOA Odyssey," *News Inc.*, October, pp. 29-36.

Picard, Robert G. and Jeffrey Brody (1997). *The Newspaper Publishing Industry*. Boston: Allyn and Bacon.

Picard, Robert G., James P. Winter, Maxwell E. McCombs, and Stephen Lacy, eds. (1988). *Press Concentration and Monopoly: New Perspectives on Newspaper Ownership and Operations* (senior editor) (Norwood, N.J.: Ablex Publishing.

"Post-Herald's final edition on Friday" (2005, Sept. 22). Birmingham *Post Herald*. Available at: http://www.postherald.com/sep22.html.

Public Law 91-353, July 24, 1970, 15 U.S.C. sec. 1801 (1970).

Roper, James E. (1985, May 11). "Justice Department May Not Oppose Consolidation," *Editor & Publisher*, p. 30.

Scardino, Albert (1988, November 4). "Cox to Keep Link with the Miami Herald," *New York Times*, p. D5.

United States v. Citizen Publishing Co., 280 F. Supp. 978 (D. Ariz. 1968).

United States v. Citizen Publishing Co., Antitrust Division Case No. 1843, 1970 Trade Cases.

United States Department of Justice (1983) Press Release of Assistant Attorney General William F. Rule

United States Department of Justice (1983). Business Review Letter of acting Assistant Attorney General Charges F. Rule,

United States Congress, House of Representatives (1989). Oversight Hearings on the Newspaper Preservation Act, 101st Congress. Before the United States House of Representatives Committee on the Judiciary, Subcommittee on Economic and Commercial Law. June 20.

United States Congress, Senate (1986). Newspaper Preservation Act: Hearing before the Committee on the Judiciary, United States Senate, Ninety-ninth Congress, second session, on S. 2314, June 10, 1986. Washington, D.C.: Government Printing Office.