

**HISTORY OF  
BROADCASTING:**



**RADIO TO  
TELEVISION**

# THE REFERENCE SHELF

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Vol. 12

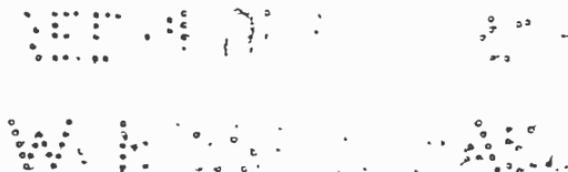
No. 10

## RADIO CENSORSHIP

COMPILED BY

H. B. SUMMERS

*Professor of Public Speaking, Kansas State College*



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## PREFACE

At the present time, the broadcasting industry in the United States is much concerned over the possibilities of federal censorship of radio programs. An active element in Congress apparently favors more stringent control over broadcasting than that exercised in the past, and the attitude of the Communications Commission, while its members deny any desire to censor programs, seems to be moving steadily in the direction of greater control.

This book represents an effort to present a well-rounded picture of the situation existing today by bringing together previously published materials relating to every important phase of the question of censorship. The compiler neither favors nor opposes censorship; both sides are presented as fairly and as impartially as possible.

The writer wishes to express his appreciation for permission to reprint certain of the materials used in this book, to the National Broadcasting Company, the Columbia Broadcasting System, and the National Association of Broadcasters; to the Dodge Publishing Company, the John Day Company, and the University of Chicago Press; and to the editors of *Advertising Age*, *Air Law Review*, *American Magazine*, *American Mercury*, *Annals of the American Academy*, *Billboard*, *Boston Herald*, *Broadcasting*, *Christian Century*, *Collier's Weekly*, *Education by Radio*, *The Evangelist*, *Forum*, *Harper's*, *Literary Digest*, *Look*, *Louisville Courier-Journal*, *NAB News Review*, *Nation*, *Newsweek*, *New York Daily News*, *New York Journal and American*, *New York Times*, *Public Opinion Quarterly*, *Radio Daily*, *Radio Guide*, *Raleigh News-Observer*, *Reading Times*, *San Francisco Chronicle*, *Time*, *Variety*, and *Washington Star*.

H. B. SUMMERS

Manhattan, Kansas  
June 28th, 1939

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## RADIO AS A SOCIAL FACTOR

Radio broadcasting in the United States has been in existence for less than twenty years. While wireless communication was carried on on a commercial basis as early as 1897, and numerous amateurs were experimenting with the broadcasting of programs prior to the world war, program broadcasting on a regular schedule did not begin until 1920, with two stations—WWJ at Detroit and KDKA at Pittsburgh—claiming the honor of having been the first to provide regular service.

Since that time, however, radio has made tremendously rapid development. The 1939 *Broadcasting Year Book* lists more than 750 stations in operation or licensed as of January 1, 1939, with more than 600 of them operating from 16 to 18 hours per day. The magazine *Variety* estimates the total investment in receiving sets at \$1,350,000,000 in 1938, with the American public spending an estimated \$450,000,000 per year for new sets, \$150,000,000 for tubes, parts and repairs, and another \$150,000,000 for electric current to operate sets. And according to the Joint Committee for Radio Research, 26,666,000 American homes—82 per cent of the total homes in the United States—were equipped in 1938 with radio receivers, and receiving broadcast programs.

If it is true that man's attitudes and opinions and beliefs are the product of what he sees and hears and experiences, then radio must exercise a tremendous influence upon American life. A study of listening habits

in urban areas conducted by the Columbia Broadcasting System in 1937 shows that the average radio set is in use 5 hours and 10 minutes per day. A similar study of rural areas, in every state in the Union, made by the Joint Committee on Radio Research and released early in 1939 shows that in small towns and farms, radio sets are in use an average of 4 hours and 50 minutes per day. More localized studies, covering the states of Iowa and Kansas, report that men, on an average, are "in the home with a radio turned on" for 3.4 hours daily; that children are similarly "exposed" to radio programs for 3.9 hours per day; and that women are in homes with radio sets in use for an average of 5.4 hours per day. If these figures are true of radio families throughout the United States, then the average American, living in a radio home, is "exposed" to radio for something more than four hours per day—a quarter of his waking time. The significance of this figure is apparent, when it is compared with the time spent by children, in school. A child in school spends five and a half hours in the class-room, daily, in most communities—990 hours per year, if the school operates over a 36-week term. But during the same year, the same child, on the basis of the Iowa and Kansas estimates given above, is exposed to the influence of the radio for more than 1,400 hours.

Further evidence of the important place of radio in American life is supplied by various studies of relative dependence on newspapers and radio as a source of national news. A newspaper-radio survey made by *Fortune* in 1938, reports that 23 per cent of the adults contacted depend chiefly on radio for news, as compared with 45 per cent who get their news primarily from the newspaper. A similar study made in Buffalo by

the Gallup organization the same year, shows that 49 per cent of those interviewed prefer to listen to the presentation of news, while only 36 per cent prefer to get the news by reading. In rural communities, the radio is becoming the chief source of national news; in the Kansas and Iowa studies previously mentioned, 55 per cent of rural adults in Kansas, and 62 per cent of those in Iowa, depend chiefly on the radio for nationally important news, as compared with 23 per cent and 21 per cent respectively, who depend chiefly on daily papers.

When these figures are taken in connection with reports of psychologists who tell us that the radio listener is more suggestible and less critical than the same man engaged in reading a magazine or newspaper, it is easy to appreciate the fact that radio has become one of the most potent factors in the moulding of attitudes and beliefs, and in shaping the future of our national life.

### THE INFLUENCE OF RADIO<sup>1</sup>

. . . No one can question the unparalleled influence which radio exercises over public opinion, public taste, and public attitudes. It is a platitude, but no less true for that reason, that the world has never known any agency of comparable importance for the direction and control of human relations. No one familiar with the use which has been made of radio in the dictatorship-controlled countries abroad can fail to realize the ghastly power which this device exercises when used for malign and sinister purposes. It is certainly time that we who still believe in democracy awaken to the

<sup>1</sup> By Dr. James Rowland Angell, educational counselor of the National Broadcasting Company. Excerpt from an address before the Second National Conference on Educational Broadcasting, December 1, 1937. *Congressional Record*. Vol. 82. Pt. 3. p. 577-8.

necessity of meeting propaganda and defending to the millions of listeners the world around the merits of a form of government which our ancestors fought through generations to establish and which is now faced by the most unscrupulous forms of attack.

The mere function as a distributor of news which the radio has been taking on in recent years is bringing an entirely new element into the lives of millions of people and at this point, too, those who are in control of the development of the radio have to recognize a profound social and moral obligation which will tax the wisest and most disinterested intelligence. . . .

### RADIO AND EDUCATION<sup>2</sup>

In considering how education may fit into the broadcasting system, school administrators and teachers must take a comprehensive view of the problem. Their vision must extend beyond the classroom. Most of us have our eyes on the details of our work, whether we be in broadcasting or in formal education, that we do not see the relationships, we do not see what we are all together seeking to achieve. The average school life of an American is still only twelve years, figuring thirty weeks to the year, five days to the week, and a few hours to the day. The educational life of the individual, however, extends from the cradle to the grave. Every experience is educational, either for good or for evil. The fact that there are seven hundred thousand young people in America today under the age of twenty-one years who are in the organized army of crime cannot be charged against the schools but against those outside educational influences, to which we have paid so little

<sup>2</sup> By William Mather Lewis, President of Lafayette College and trustee of the World Wide Broadcasting Foundation. Extract from a talk before the National Conference on Educational Broadcasting, Washington, D.C., December 12, 1936. *Educational Broadcasting*. 1936. University of Chicago Press. p. 137-46. Reprinted by permission.

attention. Countless agencies of education, not recognized as such, play a tremendous part in the molding of the character and ideals of the American today.

Those influences playing upon the emotional life of our people, which promote that instability which is a growing menace to national welfare, have been altogether too much neglected in organized and in formal education. It will be well if we carry away from this conference a broader idea of education and of educational agencies than we have had.

In this picture an instrument of prime importance is the radio. The growth of its influence is amazing. Practically unknown in 1921, it is now found in millions of homes, not only in cities and in villages, but in remote farmhouses on the western plain. Where ten years ago those people in those farmhouses had no cultural opportunities at all, today parents and children listen to symphony concerts, grand operas, addresses by distinguished statesmen, clergymen, and social leaders, and dramatic performances of first quality. . . .

### RADIO AND PROPAGANDA <sup>3</sup>

Radio can have any one of several relationships to public opinion. In the first place, it can be used for the direct and unabashed "manufacture" of public opinion. It is especially suited to that sort of social deviltry. It enters the home as an amusing guest. It brings with it primarily that most charming of all offerings—music. It adds to music the thrill of the dramatic sketch and the laugh of the comic sketch. Throughout these enticements it is addressing its hosts at their hearthside, not with the impersonal appeal of printed characters but with the living voices of individual performers who

<sup>3</sup> By William Hard, journalist and broadcaster. Excerpt from "Radio and Public Opinion." *Annals of the American Academy*. Vol. 177. January 1935. p. 105. Reprinted by permission.

seem in time to become intimate friends. It then, having established itself as entertainment, can pass smoothly and almost imperceptibly into propaganda, and, by means of carefully edited "news" and carefully contrived "talks," can do more than any other known agency to convey palatable doses of truth—or of untruth—to the public.

#### ORAL vs. VISUAL PRESENTATION <sup>4</sup>

Dr. Hadley Cantril and Dr. Gordon W. Allport, of the Psychological Laboratory at Harvard University, recently completed some serious work on auditory and visual impressions. Dr. Merton Carver has contributed further original work at Harvard in this interesting field. . . .

Throughout this summary, we have taken the liberty of using the term "Harvard found" in the same spirit in which it has been used in prior press comments on these same experiments. We refer, literally of course, to the findings of Doctors Allport, Cantril and Carver. It should also be noted that in their own reports many of these findings are stated, with due scientific precaution, as tentative, not wholly conclusive and subject to further confirmation.

Harvard found *facts* better understood and more interesting when heard over the radio than when read on a printed page.

Harvard found *narrative* better understood and more interesting over the radio than when read on a printed page.

Harvard found *abstract material* better understood and more interesting when heard over the radio than when read on a printed page.

<sup>4</sup> Extract from booklet, *The Truth About the "Harvard Findings."* Columbia Broadcasting System. 1937. Reprinted by permission.

In the same set of experiments, Harvard found political talks and "exposition" better understood and more interesting when *heard* than when *read*. The human voice *added* to the comprehension of these various kinds of material for 56 per cent to 89 per cent of all the people tested. . . .

Harvard found that *numbers* were remembered better when presented over the radio—but that nonsense syllables were remembered better when presented visually.

Harvard found that lists of *simple words* (such as ruler, pod, star, ink) were remembered better when they had been heard over the radio than when they had been read in print—and found no advantage for either method on words of average difficulty (formula, trinket, serenade, canteen, bondage, canine, etc.). But words as difficult as "incipiency, canonical, duodenum, labyrinth" were remembered better when read than when heard. . . .

Harvard found that *sentences*, short or long, specific or general, were recalled better when heard over the radio—but *subjects were more critical of material presented visually*,<sup>5</sup> and showed more tendency to discriminate against incorrect sentences.

Harvard found that *short prose passages* were preferred orally instead of visually by the majority of subjects—but found that short historical passages were better understood by average people when read in print. . . .

Harvard found that *fairly complex types of sentences* (such as "A growing child is constantly forming more bone, more muscle and more blood") were remembered better, in "recognition" tests, when heard over the radio. But *abstract* and *complicated* passages were better comprehended when read than when heard. . . .

<sup>5</sup> Italics inserted by compiler. See final paragraph in this article.

Harvard found that people *remembered directions* better, and understood them better, when they heard them than when they read them. . . .

Harvard found that the human voice tends to make auditory presentations *more personal*—and found that caution was more exercised toward printed than toward spoken material. . . .

\* \* \*

When we submitted our summary of the Harvard experiments to Dr. Hadley Cantril, he graciously pointed out that we had overlooked one radio advantage which appeared in the results of Dr. Carver's work. It was found that—

*Material presented over the radio has greater power of suggestion than material read on a printed page.*

#### HOW RADIO CREATES ATTITUDES<sup>6</sup>

"Give me two weeks and the proper machinery and I'll change the so-called mind of the American public on any given subject."

So said George Creel, head of the United States propaganda service during the world war. Mr. Creel knows whereof he speaks. It was his "Committee on Public Information" that sold America on making the world safe for democracy, and it is the precedents and techniques established by him that will sell America the idea of saving the world from the dictators. With this difference: Today, propagandists have a new weapon, a weapon far deadlier than anything they knew in 1914-1918. Today, they have radio. And when the next war crashes down on a stricken world radio will do more than any other single agency to work up the proper degree of hatred and savagery.

<sup>6</sup> By Carl Forbes. Excerpts from "How Poison News Gets Into Your Home." *Radio Guide*. May 6, 1939. Reprinted by permission.

For wartime propaganda, radio is a natural—a honey. It's the answer to the warmonger's prayer. And in the next war, for the first time, radio is going to get a real workout. Radio will be the second world war's contribution to the science of combat. . . .

Today, as you read this, you probably don't want war. You will probably even say you hate war. Almost anyone will say that. Adolph Hitler himself has said over and over again that he wants peace. So you don't want war. You won't fight. Let them have it out in Europe, you say, but they'll have to get along without me. I'm not having any.

All right. Suppose that war is declared tomorrow. It's England and France against Germany and Italy. You're sitting peacefully at your radio listening, we'll say, to Jack Benny, when—bang!—in the middle of a gag Benny goes off the air and a station announcer comes on. For once, the dramatic overtones in his voice are justified; for once, he says "Flash!" and means it.

"Ladies and Gentlemen, we interrupt this program to bring you a special bulletin! London, England: Without warning or notification of any kind, hundreds of planes, thought to be German, appeared over London tonight and began a savage bombardment. The attack started about an hour ago, has continued without cessation, and the central part of the city is apparently already in ruins. . . . It is impossible to tell as yet how many have been killed, but the number is certainly in the thousands. . . . The attacking planes, flying high above the clouds, are having no difficulty in finding their target, and the anti-aircraft fire is ineffective against them. . . . High explosives, incendiary and gas bombs are being used. . . . The National Broadcasting Company is making every effort to bring you a broadcast from London and may be able to do so in a few minutes. Keep tuned to this station!"

"Is that what you told Fred Allen, Jack?" Mary Livingstone hasn't heard about the war yet, but somehow it isn't very funny. You don't listen. You light a cigarette with shaking fingers. So this is it! So those blankety-blanks have started it, have they!

"Ladies and Gentlemen! The National Broadcasting Company interrupts this program to bring you a broadcast direct from London, England! Come in, London!"

The man in London seems to be crying. He's an Englishman, but his clipped Oxford accent has lost its authority, its assurance. In back of his voice you can hear the dull "wharoom!" of the bombs.

"I don't know what to say, really," the man begins. "I don't even know if you can hear me. . . . This is perfectly frightful. . . . There must be ten thousand dead in the city of London by this time. I myself have seen at least five hundred killed. . . . Not two minutes ago, looking out of a window, I saw a bomb strike squarely in the middle of a crowd . . . they were blown literally to bits. There is no one left of that crowd; there is nothing there but a great, gaping hole in the pavement; the pavement is running with blood . . . and between the crashes of the bombs one can hear nothing but awful, ghastly, continuous screaming. Those poor people down there, those poor people screaming in the puddles of their own blood. . . . This is the worst catastrophe the world has ever seen. This is the most terrible thing that has ever happened to the world. . . . I saw a little girl down there pick her own hand off the pavement and try to put it back on her wrist . . . she bled to death before my eyes . . . and . . ."

"Ladies and Gentlemen: You have been listening to a broadcast from London, England, this moment under attack by German bombing-planes. Due to circumstances beyond our control. . . ."

Now, what do you think? Still going to let 'em fight it out by themselves? Or is there a small, still

voice down there in the back of your mind saying, "Why, those dirty dogs! I'd like to get my hands on one of those baby-killing bums!" No? It isn't that way with you? Well, be patient. It will be. This is just the beginning. You'll come around. Radio will see to that.

To understand why radio is the perfect, all-time Utopian propaganda instrument, we must understand just what propaganda itself is. It's a word that's been much maligned. To most of us, the word "propaganda" is synonymous with the word, "lies." It isn't as simple as all that. Propaganda, dictionary-defined as "an organized effort or system for the dissemination of information," is also a science. It almost deserves the ranking of an exact science, so positive, so accurate are its workings in the hands of an expert. . . .

Radio fits the propaganda formula to a T. In the first place, radio delivers the spoken word. And the spoken word has roughly five times the effectiveness of the printed word. When you're listening to a speaker, you can't go back over what he has just said, weigh it in your mind, evaluate its justice and its reason. A propagandizing speaker deals in emotions, and stays as far away from cold facts as he can. Also, you can't heckle a radio speaker; you can't talk back to him. You can listen or you can shut it off—but if you listen, you'll have to sit there and take it. And when you're listening to effective propaganda, you keep on listening—because you *want* to. It sounds good. It's exciting. It stirs something in you. Your thinking processes slow down, stop altogether—and there you are, hooked!

But the plain, unadorned, garden variety speech is just the kindergarten of radio. Don't forget the news broadcasts. Don't forget the dramatic shows. Don't forget the commentators. Don't even forget the musical programs, because they can be made useful, too. When Finland was facing trouble with Russia, the authorities

had to forbid the playing of Sibelius's "Finlandia." Whenever five Finns heard it together, they wanted to kill Russians with their bare hands. If war comes, you'll hear even children's programs with an anti-pacifist slant!

It can't happen here, you say? But it can, and it will happen here. If war comes, it *must* happen here. The United States is today, of all the major powers, probably the most thoroughly peace-loving. We want peace, and a lot of it. But peace-loving as we may be, we can't be blind, too. . . . If America must fight, then everybody in America must fight. Americans must be hopping, fighting mad—and propaganda is the only way to bring that about. . . .

### PROPAGANDA BY RADIO <sup>1</sup>

. . . In Germany the Hitler government has developed the use of radio for propaganda purposes with characteristic thoroughness. Shortly after he took office, the Director of the Radio Branch of Goebbels' Propaganda Ministry explained his purpose to me as follows:

Our entire program must be rebuilt. Everything we do must be directed exclusively to the national purpose. We are eliminating the political divisions from all radio stations because politics in the old sense has disappeared. We have added a morning hour of gymnastics because we believe in body building. We have added the Daily Motto because we wish to emphasize a constructive National Socialist thought which will guide people during the day. We use phonograph records in broadcasting current events in order that we may first eliminate what we consider unsuitable. A current event should not necessarily be presented as it occurs. It may be necessary to concentrate it, to shorten it, to diversify with music. What we seek to do is to present it as an artistically ordered radio drama, which will exercise the maximum effect upon the listener. We have added the National Hour to our evening program in order to promote national unity. All stations are compelled to broadcast this National Hour. We consider radio our most precious and potent instrument of popular enlightenment.

<sup>1</sup> By H. V. Kaltenborn, radio commentator and news analyst for the Columbia Broadcasting System. Excerpt from "An American View of European Broadcasting." *Annals of the American Academy*. Vol. 177. January 1935. p. 75-8. Reprinted by permission.

The director of the short-wave programs under the Hitler regime explained his intention to provide daily propaganda programs for the 30,000,000 Germans who live abroad and the 130,000,000 foreigners who speak German. A special short-wave program is broadcast to the United States from 1 to 3:15 every day (German time). The directional antenna of Germany's short-wave station is also used to send the United States selected portions of Germany's regular long-wave evening program. Thousands of appreciative letters from American listeners have already been received, and the number is increasing. This transmission of propaganda on short waves by European stations has assumed real importance now that practically all sets are equipped for short-wave reception.

The Director of Music of the National German station explained his policy as follows:

The purpose of our broadcasting is to serve German reconstruction and the ideals of the Hitler revolution. Whatever we broadcast must help to recreate the German and to mobilize his spirit. Radio should let the world know Germany's capacities. For the fourteen years following the war utopian internationalists fought to extinguish German pride in German culture. German radio must now accord a dominant place to German music. Our music was subordinated. It must be reestablished. Jazz music has no place in a radio program which represents Germanism. We are not dependent on foreigners for serious or for light music. We have it all in our own blood.

These quotations are intended to give an idea of the spirit which dominates broadcasting in a country where an absolute government controls radio facilities. Radio is the most potent weapon ever placed in the hands of a dictator. There is no more effective propaganda instrument. Skillfully used, it can play upon the mass emotion of an entire population in a single hour of a single day. It can transmit a clarion call to action in a way that stirs a people to its depths. . . .



## RADIO PROGRAMS UNDER FIRE

The Communications Act of 1934, providing for the regulation of radio broadcasting stations, made no provision for program standards aside from specific prohibition of the broadcasting of lotteries or of "obscene, indecent or profane language," and the general provision that the Communications Commission should consider, in awarding or renewing station licenses, the serving of the "public interest, convenience or necessity." The Commission, however, under this "public interest, convenience or necessity" authorization, would undoubtedly take into consideration any flagrant abuses of the rules of good taste and decency in broadcast programs when taking up a station's application for a renewal of license. And, fully aware of the tremendous influence exercised by radio upon the public, numerous organizations and individuals—among them both the clergy and laity of the Catholic Church, the National Committee on Education by Radio and other educational groups, the Child Study Association of America, federated women's clubs, state and local Parent Teachers' Associations, and similar organizations—have given both the type and content of radio programs careful scrutiny, and have been quick to protest against programs which they have found objectionable.

With 750 or more stations on the air, broadcasting a total of nearly 13,000 station-hours of program material per day, it is natural that many programs would be discovered to which objections might justly be made. Most of the protests registered have been against the

lack of sufficient programs of a type which would raise the cultural level of the listening public, the insistent commercialism of most broadcasts, and the advertising of certain questionable products over the radio.

However, a few individual broadcasts or series of broadcasts have aroused storms of criticism from listeners in all parts of the United States, each becoming for a time at least, a radio *cause célèbre*. One such case was the broadcasting of "news features" from the trial of Bruno Richard Hauptmann at Flemington, New Jersey, in 1932. Others were the cases of Norman Baker of KTNT, and Rev. "Bob" Shuler of KGEF, both discussed at length in a later section.<sup>1</sup>

In 1933, a Minneapolis branch of the American Association of University Women, and the Board of Managers of the Iowa Congress of Parents and Teachers adopted resolutions condemning the "unnatural overstimulation and thrill" of children's serials—principally the "Orphan Annie" and "Skippy" serials. Wide publicity was given the situation by newspapers, and the sponsors of the two children's shows were quick to modify the objectionable features. Similar criticisms of children's programs have been made from time to time, recently in connection with "crime" shows of the "Gang Busters" type.

A program which has provided a perennial storm center has been the series of transcribed talks by Judge J. F. Rutherford, sponsored by Jehovah's Witnesses, a religious group, and the Watch Tower Bible & Tract Society. In some of his broadcasts, Judge Rutherford is alleged to have made attacks on the Catholic Church; and protests from Catholic clergy and laymen against

<sup>1</sup> See page 77.

the broadcasts have frequently resulted in the Rutherford broadcasts being cut off the air.<sup>3</sup>

Recent broadcasts which have created the greatest storms of controversy have been the Mae West appearance on the Chase and Sanborn program in December, 1937; the NBC-Blue broadcast of Eugene O'Neill's "Beyond the Horizon," Pulitzer prize-winning play, in July, 1938; the Orson Welles broadcast of "The War of the Worlds," in October, 1938; and broadcasts by Father Charles E. Coughlin over a special network, during December, 1938.

In the Mae West broadcast, certain lines in her dialogue with Don Ameche, master of ceremonies on the Chase and Sanborn show, and with Charlie McCarthy, radio ventriloquist's dummy, were considered objectionable, resulting in a storm of protest, a public reprimand from the FCC, a broadcast apology from the sponsors, and the barring of Miss West from further network programs. The broadcast of O'Neill's "Beyond the Horizon," following the original lines of the author, contained such expressions as "hell," "damnation," and "for God's sake." Although the broadcast took place in July, it apparently did not attract public attention until two months later, when the Communications Commission held up the licenses of some of the stations which carried the network program, pending investigation.

The "War of the Worlds" broadcast over CBS resulted in newspaper reports of wide-spread hysteria on the part of people who heard a part of the program and who concluded that New Jersey actually had been invaded by creatures from Mars. The program was given front-page newspaper headlines all over the United

<sup>3</sup> See page 197. (WORLD case, etc.)

States. The Father Coughlin broadcasts, on Sunday afternoons over a private network of some fifty stations, contained what was alleged to be anti-Semitic propaganda, although Father Coughlin described what had been said as "anti-Communitic," rather than anti-Semitic. The controversy was heightened by the refusal of some stations to carry the broadcasts, and by retaliatory picketing of those stations, at hours of succeeding broadcasts, by Father Coughlin's followers.

While the "Beyond the Horizon" broadcast attracted little public attention, each of the others was given wide newspaper publicity, and was a subject of conversation—and controversy—in every section of the United States for days after the broadcast was put on the air. Some leaders of the broadcasting industry have suggested that the three programs were given newspaper space far beyond their deserts—with each of the three coming on Sunday, and with news for Monday morning papers scarce, the broadcasters insist that the newspapers deliberately played up the controversial aspects of the programs, simply to fill space, and created artificially a public clamor against the questionable broadcasts.

Perhaps an indication of the actual extent of public protest against the programs is supplied by the number of letters of protest received by the Federal Communications Commission. The Mae West broadcast, although made the subject of numerous newspaper editorials and several speeches in Congress, brought 400 protesting letters to the Commission. In addition, after the Commission had taken action by sending a reprimand to the National Broadcasting Company, 200 other letters were received, 75 commending the Commission for its action, and 125 censuring the Commission for taking

any action whatever. However, NBC received over a thousand letters protesting the broadcast, as well as about 450 taking issue with the protesters. The Orson Welles broadcast of "The War of the Worlds" brought protests to the Commission from 372 writers, endorsements of the program from 253 others. And the "Beyond the Horizon" program drew exactly one letter of complaint.

The four controversial broadcasts have had at least one valuable effect. Public attention has been focussed on the possibility of, and the possible effects of, broadcasts of a socially harmful nature, and on the fact that, with respect to such broadcasts, neither Government nor broadcasters have a clearly defined policy. Since those broadcasts have gone on the air, both the broadcasters, through their organization, the National Association of Broadcasters, and the Federal Communications Commission, have moved in the direction of clarifying the attitude to be taken with respect to questionable broadcasts.

### THE MAE WEST INCIDENT <sup>3</sup>

Last Sunday the Chase and Sanborn Hour presented to the American public that screen model of all licentiousness, Miss (or Mrs.) Mae West, in a skit that defied even the most elementary sense of decency. It was an Adam and Eve scene through which the lascivious West woman, with Don Ameche as partner, was given opportunity to project into wholesome family circles throughout the country all that animalistic lure of lewdness, language and atmosphere which have made her notorious. The thing was unbearably vulgar, besides being an insolent caricature of religion and the Bible.

<sup>3</sup> Extract from editorial, "Tainting the Air." *The Evangelist*. Albany, N.Y. December 17, 1937. p. 4. Reprinted by permission.

In thousands of homes, where families are wont to seek a little innocent relaxation and amusement on Sunday evenings at the radio, the most barefaced insult was inflicted upon them until some member of the family had the presence of mind to relieve the embarrassment by quickly switching the dial. Some people who listened in have since said that they waited with bated breath, expecting momentarily that a studio censor might step in with some improvised alibi and kill the program. No doubt, the "dated" coffee people now wish they had had such a quick-witted person guarding their commercial interests. . . .

Who is to blame for the *faux pas* of last Sunday? Chase and Sanborn should certainly make a hurried check-up of the type of persons in control of its programs. No firm can afford to insult or incense prospective patrons of its products.

The National Broadcasting Company also shares the responsibility. It holds a public trust in its right to broadcast, and that public trust calls for the protection of public decency.

The whole affair warrants a thorough investigation by the Federal Communications Commission. Let the blame be placed and amends be made. . . . The offense was too glaring to be permitted to pass without severe condemnation.

#### THE "WAR OF THE WORLDS" BROADCAST <sup>4</sup>

In Newark more than twenty families wrapped their faces in wet towels to save themselves from the gas raid, tied up traffic with their calls for gas masks, inhalators, ambulances, police rescue squads. While a doughty little band of Princeton scientists set out to investigate the reported catastrophe, in Harlem the

<sup>4</sup> News story headed "Boo!" *Time*. November 7, 1938. p. 40. Reprinted by permission.

godly gathered in prayer. Eight hundred and seventy-five panic-stricken people phoned the *New York Times* alone.

St. Michael's Hospital, Newark, treated 15 people for shock. A man called the Dixie Bus Terminal, shouting, "The world is coming to an end and I've got a lot to do." It was said that President Roosevelt was on the radio telling everybody to pack up and go north.

The editorial staff of the *Memphis Press-Scimitar* was recalled to its office to get out an extra edition on the bombing of Chicago, St. Louis, the threatened bombing of Memphis. A brave Californian telephoned Oakland police that he was prepared to go East and repel the invader. In Providence frightened townfolk demanded that the electric company black out the city to save it from the enemy. Pious Virginians telephoned the *Richmond Times-Dispatch* that they were praying.

A Pittsburgh woman snatched up a bottle of poison, screamed "I'd rather die this way than like that." Her husband stopped her. A man telephoned to the *New York Times* from Dayton, Ohio, to find out exactly when the world was coming to an end. The Associated Press got out a reassuring bulletin.

The cause of this amazing, nationwide panic last Sunday night was a broadcast by Orson Welles's CBS Mercury Theater of the Air, of *The War of the Worlds* by H. G. Wells (no relative). Author Wells's classic pseudo-scientific thriller about how the men from Mars invade earth in a flying cylinder (at first thought to be a meteorite) was first published in 1898. That its broadcast on Halloween Eve 1938 caused something pretty close to national hysteria was not entirely due to the timelessness of the Wells story, the persuasive microphone technique of Orson ("The Shadow") Welles or the stupidity of the U.S. radio audience.

The broadcast was begun with an announcement that a dramatization was taking place and was concluded by

Mr. Welles's statement that it was "the Mercury Theater's own version of dressing up in a sheet . . . and saying Boo!" But the story had been so realistically transplanted from Britain to the U.S., from the 19th to the 20th century, that almost any listener who came in on a fragment might be pardoned for a momentary pricking up of the ears.

From the matter-of-fact voice of the militia officer who said he was at the crater caused by the cylinder and had everything under control, to the plaintive gasp of the last radio operator calling into a void, the story and production had grip. But the only explanation for the badly panicked thousands—who evidently had neither given themselves the pleasure of familiarizing themselves with Wells's famous book nor had the wit to confirm or deny the catastrophe by dialing another station—is that recent concern over a possible European Armageddon has badly spooked the U.S. public.

At week's end FCC was flooded with indignant protests against Mr. Welles and CBS. In Germany the newspapers treated the unconscious hoax as a war scare. In the U.S. the press, no friend to radio, treated it as a public outrage. In London, Author Wells was a little shirty, too. He said: "It was implicit in the agreement that it was to be used as fiction and not news. I gave no permission whatever for alterations that might lead to belief that it was real news."

Said Bogeyman Welles: "Far from expecting the radio audience to take the program as fact rather than as a fictional presentation, we feared that the classic H. G. Wells fantasy . . . might appear too old-fashioned for modern consumption."

### THE FATHER COUGHLIN INCIDENT <sup>5</sup>

The whole question of selling time for religious or quasi-religious broadcasts was brought forcibly to the

<sup>5</sup> News story headed, "Three Stations Refuse Coughlin Talks," *Broadcasting*. December 1, 1938. p. 17. Reprinted by permission.

attention of the broadcasting industry during the last fortnight as a result of the widely publicized controversy growing out of the Sunday afternoon addresses of Father Charles E. Coughlin, Detroit radio priest, speaking over his independent hookup of some 50 stations November 20th and 27th.

The situation became so acute just before the November 27th one-hour broadcast that WMCA, New York, WJJD, Chicago, and WIND, Gary, Indiana, refused to carry Fr. Coughlin's speech when he failed to submit his manuscript in advance of the broadcast. Fr. Coughlin immediately was quoted as charging that the stations were Jewish-owned, hence refused to broadcast his talk, the fourth of his new 52-week series placed on a regular rate basis through Aircasters Inc., Detroit agency.

The controversy began immediately after the November 20th dissertation by the Detroit priest, titled "Persecution—Jewish and Christian." In this speech, he dwelt on the Jewish and Communist questions and intimated that the Nazi government's persecution of the Jews was based on their alleged association with Communism. He spoke of alleged Jewish banker support of the Russian revolution, in which he said millions of Christians' lives were lost without as much protest as was voiced over the plight of 600,000 Jews in Germany. He quoted alleged documents to support the view that Jews were leaders in Communistic activity. He asserted he was opposed to all forms of religious and racial persecution, but the tenor and context of his remarks were interpreted in many quarters as definitely anti-Semitic.

Immediately after this speech, WMCA's announcer stated over the air: "Unfortunately, Father Coughlin has uttered many misstatements of fact." The announcer did not go into further details, but Mr. Flamm<sup>6</sup>

<sup>6</sup> Donald Flamm, president, Knickerbocker Broadcasting Company, which operates WMCA.

at once asked Father Coughlin to supply a copy of his following week's talk forty-eight hours in advance of the broadcast. Father Coughlin let it be known that it was impossible to comply in view of the fact that his speeches had to clear through his superiors and there would be no time. WMCA extended the deadline until noon Sunday, but the speech was still not forthcoming. WMCA then did not carry the talk, instead broadcasting a statement by Mr. Flamm.

Mr. Flamm explained that he had been provided with an advance copy of the November 20th speech and that he and his counsel, William Wiseman, had pointed out various claimed errors of fact to the priest. Father Coughlin, said Mr. Flamm, twice changed the speech when provided with factual information or sources of information, yet the final text as delivered contained innuendoes which reflected upon the Jewish people and allegedly incited racial hatreds. WJJD and WIND, owned by Ralph Atlass, stated to *Broadcasting* that they were "not desirous of restraining Coughlin, merely asking that he conform by submitting script in advance."

### FATHER COUGHLIN AGAIN <sup>7</sup>

Father Charles E. Coughlin, the Royal Oak, Mich., radio priest, became the center of renewed controversy during the last fortnight because his Sunday afternoon broadcasts over an independent network have been interpreted in some quarters as anti-semitic in character. He became a headline subject again following the fifth of his 52-week series December 11th, when various churchmen and laymen undertook to reply to him, particularly the venerable George Cardinal Mundelein, Archbishop of the Chicago diocese, who had only re-

<sup>7</sup> Extract from news story headed "Coughlin Storm is Revived as His Talks Draw Replies." *Broadcasting*, December 15, 1938. p. 15. Reprinted by permission.

cently returned from an audience with the Pope in Rome. . . .

Meanwhile, the stations carrying the Coughlin talks from 4:00 to 5:00 P. M. Sundays found themselves between cross-fires of criticism from those supporting Coughlin and those objecting to his treatment of the Jewish question, although in his December 11th discourse he insisted that his alleged anti-Semitism "in reality is anti-Communism." He has frequently linked Jews with communistic activities in this country and abroad, particularly in Russia, which has been the major source of objection to his talks—objections reflected in threats by some sponsors that they might withdraw from the stations carrying his speeches and by some listeners that they would boycott advertisers on the stations cutting Father Coughlin off.

Obviously due to his broadcasts, many other speeches expressing abhorrence of persecutions abroad were booked on networks and stations during the past few weeks. Some significance was seen in the fact that, speaking over NBC-Red December 11 under the auspices of the Federal Council of Churches of Christ in America, Chairman Frank R. McNinch of the FCC warned against the "destruction of all religion" if intolerance of the sort now loose in Europe comes to America. Mr. McNinch did not mention Fr. Coughlin nor did he even hint at censorship of his talks.

Father Coughlin's hookups December 4 and 11 were much the same as before, numbering around 40 stations. As on November 27, however, stations WMCA, New York, WJJD and WIND, Chicago, and WDAS, Philadelphia, refused to carry him, although they were under contract with Aircasters Inc., his Detroit agency handling the special hookup. They all explained that he had again failed to furnish advance copies of his talks in each instance as they had requested, and that they would no longer carry him unless he agreed to do so. . . .

The fact that the Colonial Network is linked in to the Coughlin hookup, causing protests to its stations, led John Shepard 3rd, president of the Yankee and Colonial networks, to issue a form letter in answer to people writing the networks in which he stated:

We cannot agree with the comment that this broadcast is anti-Semitic or that it is designed to spread religious and racial hatred, and if we did so feel, the broadcasts would be discontinued.

Our understanding, based on a close following of the discourses, is that they are aimed at Communism. Father Coughlin does not attack God-loving Jews. He condemns alike Jews and Gentiles who are atheistic in their viewpoints.

Meanwhile, Father Coughlin was reported to have interviewed Lenox R. Lohr, NBC president, seeking a period on an NBC network for his talks on a sponsored basis. When Mr. Lohr declined, on the grounds that NBC does not sell time for religious broadcasts, Father Coughlin is said to have asserted that his talks could be classified as commercial since he intended to promote the circulation of his magazine, *Social Justice*. He claimed he was in the same classification as other periodicals buying radio time, notably *Time* and *Life*.

### THRILLERS FOR CHILDREN<sup>8</sup>

Young radio listeners are easy prey, say commercial advertisers.

Radio has seen a steady growth of sponsored entertainment for children. These programs boom cereals, milk-mixers, biscuits, tooth-paste, and chewing gum. Announcers woo their immature listeners with souvenir playthings—guns, badges, dolls, airplanes. The prizes are “absolutely free”—in return for variable numbers of “box tops” or package wrappers.

<sup>8</sup> Extract from “Protest: Adults Condemn Air Hair-raisers for Youngsters.” *News-Week*. December 1, 1934. p. 27. Reprinted by permission.

Such sales methods were unanimously condemned by 300 members of the Child Study Association of America at a meeting in New York's banquet-littered Hotel Waldorf-Astoria last week. If a weak-willed mother should buy all these prize "box tops," her grocery budget, said an association member, would swell at least \$2 a week.

The association also declared that these programs feature "adenoid juvenile actors" who speak bad grammar and read "gun-barking melodramas that scare children." Giving weight to the charge was Bobby Benson's program, sponsored by H-O. This week announcers told how Bobby's Aunt Lilly came to the ranch from Boston in an airplane. The plane is stolen by the villain, Little Snake. At the scene of the crime are footprints of a club-footed man. Cowboy Harka is captured by Little Snake, but Bobby's rangers are in hair-raising, hot pursuit.

"Children generally pick as their favorites the very programs which parents as a whole view with special concern," said Mrs. Sidonie Matsner Gruenberg, the association's chairwoman. "Radio seems to find parents more helpless than did the funnies. . . . It cannot be locked out or the children locked in to escape it."

Mrs. Gruenberg suggested a clearing house for these programs. Commercial interests, parent groups, and educational organizations would back it. . . .

### BIAS IN RADIO NEWSCASTS<sup>9</sup>

"The charge has been made seriously in quarters which cannot be ignored that a great many radio stations throughout the country are putting biased news broadcasts on the air. I do not believe it is true, but I am unable for lack of information to dispute the statement."

<sup>9</sup> News story headed "Biased News." *Time*. September 12, 1938. p. 67. Reprinted by permission.

With that explanation last June, shortly before his retirement from the Presidency of the National Association of Broadcasters, Mark Ethridge asked broadcasting stations to submit all scripts of news broadcasts for the week of June 20, prepared the NAB to dispute the statement. Columbia School of Journalism's Assistant to the Dean, Herbert Brucker, was delegated to draw up a report on these solicited scripts and on transcriptions taken from the air. Although the NAB has been guardedly quiet about the survey's progress, last week *Motion Picture Daily's* Jack Banner upset the applecart, published general conclusions, several details he said he drew from the report.

Of the 300 political commentators covered by the survey, he said, 13 per cent were found prejudiced. Boston stations were rated as the most biased. Specific examples of biased broadcasting, supposed to be quoted from the NAB survey: (1) Commentator Boake Carter: anti-Russian treatment of the recent Russo-Japanese border battle. (2) Station KGB (San Diego): deleting anti-New Deal news. (3) Station WGAR (Cleveland): anti-New Dealism. (4) Station WGN (Chicago): distorting the facts of *Fortune's* survey of Presidential popularity when the station's newscaster said the survey indicated waning popularity for President Roosevelt.

At the week's end, NAB President Neville Miller branded the report, "orphan, unauthorized and misleading." With a fine disregard of Predecessor Ethridge's words, President Miller declared: "All shades of public opinion have freely attested to the fairness of American radio in its handling of news, political candidates, and controversial issues."

## THE PROBLEM OF CENSORSHIP

From the materials in the two preceding sections, two facts are obvious. First, the radio exercises a tremendous influence upon public attitudes, opinions, standards. Second, there have been a number of conspicuous instances of programs which have been judged harmful, or injurious to the public interest—and in all probabilities, there have been and are countless other less widely advertised programs which exert a similar influence. The most ardent defender of American broadcasting would not contend that, among the thousands of programs broadcast each day, there are not some whose influence might be harmful.

Out of these two facts arises the entire question of censorship. And this problem, in turn, divides itself into two major questions. First, should there be made any attempt whatever, to censor programs—to eliminate the elements deemed contrary to public interest? And second, if programs are to be censored, who should be the censor? In the light of recent experiences, too, a third question may be pertinent—does program censorship exist, today?

It is not the purpose of this writer to attempt to answer either of the first two questions. But some light may be thrown upon the whole subject of censorship of radio programs, by analyzing the problem, and noting the facts concerning controls now exercised over programs.

But first—concerning the word, “censorship.” The term has an unpleasant connotation in the American mind. It would be practically impossible to discover a

man in public life who would advocate "censorship" of radio programs. But substitute for "censorship," the words "control of radio programs," and the idea has thousands of advocates, including practically every manager or owner of a commercial radio station.

Those who favor the exercise of some sort of control over broadcast programs do so from widely varying motives. For the most part, those not connected with commercial broadcasting favor restrictions to protect the public from "harmful" broadcasts which, depending on the individual, might include anything from mystery or "cops and robbers" broadcasts for children, to speeches advocating certain social or economic changes. Operators of broadcasting stations, on the other hand, favor program "regulation" for purely practical reasons—to avoid the broadcasting, over their stations, of programs which might jeopardize their station licenses, or subject stations to suits for damages for libel or slander, or which might offend any considerable section of the radio audience, or which might antagonize a sponsor or potential sponsor.

There are numerous situations in radio which, according to one viewpoint or the other, might call for regulatory action. Some listeners would restrict the amount of commercial advertising; others might wish to eliminate some of the suspense elements in children's serials; still others might advocate the use of controls to prevent the broadcasting of biased or "slanted" news. But the major problem of censorship relates to the discussion of controversial questions—the use of radio to win followers for this or that political, economic, religious or social philosophy, or to attack an opposing philosophy. The censorship issue centers upon this one point.

Ignoring, for the moment, the broadcaster's stake in the presentation of such discussions—the possibility of a

suit for slander if a commentator or a guest speaker becomes too personal, or of antagonizing an advertiser, or of alienating some special interest group among the station's listeners—is it desirable to exercise any control over programs dealing with controversial issues? Yes, says the advocate of such controls; we don't want the radio used to stir up racial or religious or political antagonisms; we don't want it used to popularize communism or socialism or fascism; we don't want propaganda for any "ism" brought into our homes. But the opponent of censorship has a valid argument, too—if we restrict the right of any man to say what he pleases, to advocate or defend any philosophy he chooses, we deny the constitutionally guaranteed right of freedom of speech; we deprive the public of its opportunity to learn the facts from free, two-sided discussion. And besides, if control is exercised, it will be a control that tends to restrict the opportunities of those who disagree with the censoring group, and to impose no restrictions on those who favor the group which does the censoring.

And this leads to our second major question. Assuming that we are to have some sort of control over radio programs, by whom will this control be exercised? Numerous suggestions have been made, but all of them boil down, ultimately, to two possibilities. First, control may be exercised by the government, or some government agency—possibly the Federal Communications Commission, possibly an official "board of censors" set up by the federal government, and exercising authority conferred by the federal government. Or second, control may be exercised by the broadcasters themselves—by a committee of the National Association of Broadcasters, by the executives of the networks, by individual stations, or by a combination of all three. Each method has obvious advantages, and equally obvious disadvantages.

At the present time, all radio stations must be licensed to broadcast. Licenses are secured from the Federal Communications Commission, and must be renewed at the end of six months, although recent developments indicate that the term of the station license may shortly be increased to one year. If control over programs is exercised by the government, it may take the form of requiring stations or networks to submit the scripts of all programs to the regulatory commission or committee, prior to the broadcast, for approval—or it may take the form of punishment of a station which presents an offensive broadcast by refusing a renewal of its license. The Federal Communications Commission has that power today, through the statutory provision that it shall grant new licenses or renewal of licenses to further “public interest, convenience and necessity.” Officially, however, the power has not been used, and to date no station has been denied a renewal of its license on the grounds that its programs have been objectionable. Although a number of stations whose programs might give rise to question have been “deleted,” it was always, according to the Commission, because of some other violation of the Communications Act.

The foregoing discussion suggests that, in the matter of censorship or control of radio programs, American broadcasting has four alternatives:

1. Complete “freedom of the air”; absence of control of any kind over program content; freedom of every individual or organization able to buy time or secure free time from any station, to express any desired views on any subject, without advance submission of manuscript, without being cut off the air during the discussion, and without the risk of being unable to buy radio time in the future.

2. "Previous censorship" of programs by a government agency, with all scripts, or at least scripts of all programs of a controversial nature, submitted for approval in advance, and with broadcasting permitted only of scripts approved by the censoring or controlling body.

3. "Censorship through subsequent punishment" by a government agency, holding responsible either the individual speaker or producer who presents an objectionable program or talk, or the radio station which permitted the broadcast, or both—the situation now existing with regard to violation of laws prohibiting libel and slander. In the absence of specific laws freeing the station of responsibility for material that is broadcast, this method would have the effect of transferring the responsibility for censorship to the individual broadcasting station.

4. Control over the content of programs by broadcasters, either networks or stations. This would involve either submission of scripts for approval, or being subject to the possibility of being cut off the air, or both; in addition to the danger of being unable to purchase time or secure free time under any conditions.

### POSSIBLE TYPES OF CENSORSHIP<sup>1</sup>

No ideal "freedom" of the air is possible, because of the present technical limitations of the medium. The outer limits of the radio spectrum assigned to broadcasting are 550 and 1,500 (recently extended experimentally to 1,600) kilocycles. The Federal Radio Commission has tried to accommodate more than 600 stations on the 90 channels available for assignment in this country. The technical limitation necessitated federal licensing and has resulted in the setting up of quasi-monopolistic vested

<sup>1</sup> By James Rorty. From *Order on the Air*. John Day Pamphlets, No. 44. p. 11-25. Excerpts reprinted by permission.

interests on the air. Because of the unsolved technical, legal and economic problems which clutter the whole subject of radio administration, we have at present several types of disorderly and more or less arbitrary and conflicting censorship.

(a) *Indirect censorship by the Federal Radio Commission.* The Commission is prohibited by law from censoring the material broadcast by stations. But it is obliged by law to grant or withhold licenses as may seem desirable in order to serve the "public interest, convenience or necessity." Indirect censorship is therefore implicit in the exercise of the Commission's powers and duties, until these powers and duties are more explicitly defined by law.

The Federal Radio Act of 1927 . . . definitely prohibits the Radio Commission from exercising any *direct* censorship. The act also . . . prohibits radio stations from censoring speeches made by qualified candidates for public office. However, a station may refuse to sell any time at all to candidates, and is not prohibited from censoring other political speeches or non-political speeches. . . .

The only specific prohibition in the Radio Act upon the type of material to be broadcast is contained in the following clause from section 29:<sup>2</sup>

No person within the jurisdiction of the United States shall utter any obscene, indecent or profane language.

However, the Federal Radio Commission is given implied jurisdiction over station programs by its discretionary power in issuing, renewing or modifying licenses.

The licensing authority, if public convenience, interest or necessity will be served thereby, subject to the limitations of this Act, shall grant to any application therefor a station license provided for by the Act. (Section 9)

If upon examination of any applicant for a station license or for the renewal or modification of a station license the licensing authority shall determine that the public interest, convenience and

<sup>2</sup> Compiler's note: The revised Act of 1934 also prohibits the broadcasting of any information concerning lotteries.

necessity would be served by the granting thereof, it shall authorize the issuance, renewal or modification thereof in accordance with said finding. (Section 11)

The power of deleting stations or curtailing their privileges may be exercised in two ways, (1) disciplinary or penal action; (2) proceedings in which the privileges of an existing station are challenged or sought by an applicant for a license.

The first type of proceedings may be divided into cases having to do with specific violations of law or regulations, and those "having to do with the character of program service rendered by the station." Petty violations of law or regulations may be used by the licensing authority as a pretext for the exercise of censorship, while the power to pass on the program service of a station is definitely a power to censor such programs.

The licensing authority also has this same power to pass upon the program service of a station in the second type of proceedings, i.e., when such a station is challenged by an applicant for a license. This situation arises frequently because of the limited number of channels available for broadcasting. These have already been allotted, with the result that almost the only way for an applicant to obtain a license for broadcasting is by challenging the usefulness to the public of an existing station. Once challenged the existing station is put on the defensive and bears the burden of proving that it is operating in the "public interest, convenience and/or necessity." Here it may be questioned on any part of its past performance, including the sort of material broadcast.

Prescribing the form of application for a license, Section 10 of the Radio Act qualifies

The licensing authority at any time after the filing of such original application and during the term of any such license may require from the applicant or licensee further written statements of fact to enable it to determine whether the original application should be granted or denied or such license revoked.

The vagueness of the criterion, "public interest, convenience or necessity," is obvious. What sort of program is in the public interest? What sort is not? These are questions on which many disagree. A decision against a challenged station not only censures its past program, but also influences the programs of existing stations and this in effect amounts to a censorship of the programs of existing stations. Licensees are not apt to continue a type of broadcast which has been decided by the Commission as not in the public interest, and which might jeopardize their chances of renewal. Even when the decision is not against the challenged station, or the station applying for renewal, a hard fight to obtain a favorable decision may make other stations more wary. . . .

(b) *Censorship by States.* The State libel and slander laws and their interpretation by court decisions have resulted in at least one decision, sustained by the Supreme Court of Nebraska, that a station may be held responsible for defamatory statements uttered by a person broadcasting an address over the station's facilities. In this case, the KFAB Broadcasting Company pleaded vainly that it was a common carrier, subject to the regulation of the Federal Radio Commission, and that under its rules it was prohibited from censoring the matter broadcast by candidates for public office . . .

(c) *Censorship by Stations.* As a mere matter of self-defense, radio stations must exercise considerable censorship over their programs. If they did not, they would soon find themselves in difficulties with the Federal and State governments, with their public, and with advertisers. The necessity of some form of station censorship under the existing legal confusion thus becomes an excuse for censoring any kind of attack or criticism directed not merely at the advertisers and the advertising business, from which the stations derive their income, but also for censoring any radical attack upon the *status quo* of industry and finance.

The extraordinary lobby against the Tugwell Food and Drugs Bill is perhaps the best example of this. Radio stations, many of which derive an important share of their income from proprietary medicine, drug and food advertisers, received urgent letters from these advertisers demanding that, on pain of cancellation of advertising contracts, they do their bit to beat the bill. Many of them obeyed, especially the smaller ones. The major chains, with the political spotlight focussed upon them, were more cautious. But the Columbia Broadcasting Company cancelled a scheduled broadcast of F. J. Schlink, director of Consumer's Research, on the failure of the NRA to protect the consumer. Because of the pressure of newspaper publicity President Paley of Columbia repudiated his subordinate's action in cancelling the broadcast and Schlink went on the air a week later with the same broadcast.

(d) *Indirect Sources of Radio Censorship.* To complete the picture of radio censorship as it now operates, we must include mention of the influence of the advertisers, of the listening public, and of the pressures exerted by powerful interests, some of which, like the Radio Corporation of America, control broadcasting stations. There is also the more or less discretionary censorship exercised by station employees.

Last fall, Dr. William K. Gregory, curator of Comparative and Human Anatomy at the American Museum of Natural History, ran afoul of the control room in the course of a radio interview with Michel Mok on the subject of "Evolution and the Depression." Arriving at Station WABC, Dr. Gregory told a member of the staff that he had made some changes which he had not had a chance to submit for formal approval. He was thereupon requested by the staff-member to delete the following passage:

"We have reckless overproduction of goods and reckless overproduction of people. We are a beehive choked with honey, yet full of striving bees."

Dr. Gregory refused to leave this out and threatened not to speak if the omission were insisted upon. The staff-member apparently gave in, and the discussion went on the air until Dr. Gregory, in the opinion of the station employees, approached the danger point in the following sentence:

"We are still in a transitional stage of evolution, in which the aggressive selfishness of the solitary animal has led to unlimited cutthroat competition—"

Here the connection was cut off in the control room. The interviewer said, "Would you favor the Russian remedy?" and Dr. Gregory replied, "Of course not. Our very basic patent of American evolution is the principle of live and let live, with a minimum of control from the outside."

Reassured, the control operator restored the connection at this point. On his return to the museum Dr. Gregory was asked by his colleagues for an explanation of the strange silence in the middle of the broadcast. Although annoyed, Dr. Gregory didn't make a fuss. The radio station officials evidently had heard of it from another source and apologized immediately.

Here is how the magazine *Variety* describes this unofficial censorship:

"Censorship in radio now more or less runs itself. The policy, somewhat along the lines of an honor system, makes a censor of everybody in the studio, from actors to control room engineers. Nobody has been taught what to avoid or bar and the material washing is left to personal discretion.

An idyllic picture, surely. But there is a greater censor standing over and above these busy studio Peck-sniffs. He is the Great Radio Audience. Says *Variety*:

"One complaint among countless listeners can condemn an idea or even a proposed series of ideas before they get started. If the complainant isn't of the crank type, his squawk is always taken seriously. Radio figures if one person wrote in, there might be many others who were offended but didn't take the trouble to write."

But radio's final censor is not, as *Variety* suggests, the audience. He is the advertiser, for it is he who pays the bills. *Variety* declares that:

"Most advertisers figure the offending or embarrassing of one potential buyer would make the entire broadcast, expenditures and coverage worthless."

Meat packing is a major industry, concentrated in the hands of a few large corporations. The packers are important advertisers. They and the live stock associations were quick to protest when the Public Health Service issued the following statement for a radio broadcast:

"Meat is an active heat-producing food, as shown by the fact that natives of the far North live entirely on animal products; and therefore, the amount of meat eaten during the hot seasons should be less than that eaten during colder months."

As a result of the protests, the Public Health Service officials were notified that all radio broadcasts and press releases issued from that bureau would have to be examined by the Secretary of the Treasury. An editorial in the Bristol, Tenn., *News Bulletin*, in commenting on this episode was unkind enough to observe that this requirement was censorship in disguise, for it meant that government health experts cannot speak freely because their official superiors are afraid of offending private business men. . . .

Commercial censors notoriously lack humor. Colonel Stoopnagel, of Columbia's *Gloomchasers*, was bound to get in trouble when in answer to the question, "Where do you get your rabbit meat?" he replied, "Oh, I go out in the alley and whenever one meows, I shoot it." It wasn't long before the Colonel heard from the rabbit raisers about that one. . . .

Here is a rough list of some of the more important things that cannot be said on the air, under the present set-up in this country:

1. Any attacks by Communists or other radical minorities upon our form of government or upon specific acts of the administration in power. A certain amount of liberal criticism is permitted, as for example on the sustaining programs sponsored by the National Council on Radio in Education. Some exception should also be made for speeches, on purchased time, by radical candidates for political office. But radical minority parties rarely have adequate funds for such purposes.

2. Any criticism of advertisers, or of the advertising business in general.

3. Any radical criticism of the power and utility interests which directly or indirectly dominate the broadcasting industry.

4. Any direct espousal of the cause of a militant labor group involved in a strike or other struggle for power.

5. Any advocacy, or even any mention, of birth control, or especially of the role of the Catholic Church in opposing birth control.

6. In general, anything that might be construed as "obscene" or even "tactless" or "controversial" by the alert young Pecksniffs who guard the portals of the air in behalf of the owners and directors of the major broadcasting stations.

This list of "sacred cows" comprises only the negative half of the system by which the huge social and cultural potency of radio is sterilized and made ridiculous. What radio does—its functioning as a major propaganda instrumentality serving the ends of the vested interests of business and finance, its debauching of taste and thought through the exceedingly low average of its "sponsored" programs—these positive aspects are even more important when one attempts to envisage how radio might be rescued and put to constructive social uses. . . .

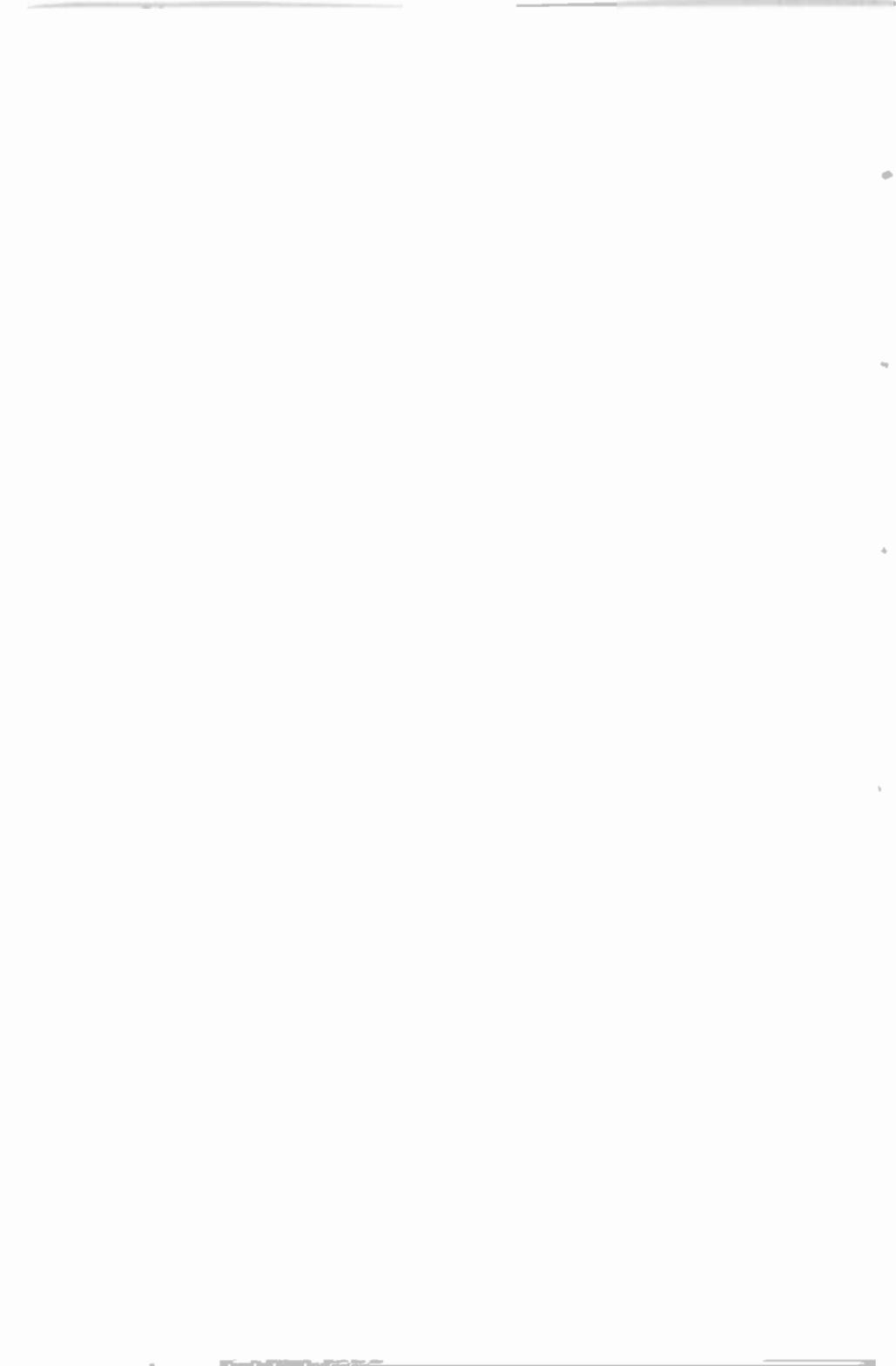
ATTITUDES CONCERNING CENSORSHIP<sup>3</sup>

. . . The ambiguity of the public-interest clause has given rise to three distinct schools of thought concerning the proper functions of the Federal Communications Commission. The first school, to which the broadcasting industry fervently subscribes, stands for an absolute minimum of regulation and believes with entire sincerity that it would be in the public interest to lighten the burden imposed by the twice-a-year renewal of licenses. Admitting that this would mean a lessening of control, they say the act provides enough control as it is; for broadcasting is a business which must be run to please its customers; and public opinion, in the last analysis, is the most effective of all controls.

The second school of thought consists of those people who would like to see a maximum of government control short of actual ownership and operation; who believe in giving the public what it ought to have—as does the British Broadcasting Corporation—rather than what it seems to want.

Between these two schools is a middle-of-the-road group which is not concerned with the niceties of regulation as such, but believes that the FCC should function as a kind of Will Hays Organization for radio, guiding the industry in the way it should go, striving for loftier program standards, punishing violations of the group's own personal code of morality and decency. Nine-tenths of all the criticisms of the FCC have arisen out of these conflicting interpretations of the words "in the public convenience, interest, and necessity." Were any of the three interpretations obviously wrong it would be a simple matter to clear up the prevailing confusion. But none is. Each is based upon an entirely tenable set of convictions. . . .

<sup>3</sup> By Merrill Denison. Extracts from "Freedom, Radio and the FCC." *Harper's*. May 1939. p. 629-40. Reprinted by permission.



## REGULATORY POWERS OF THE COMMUNICATIONS COMMISSION

During the early days of radio, no type of regulation was attempted by the American government. The few known channels were available for use by anyone who could provide the facilities for transmitting messages over the air. As radio transmitters became common, so many commercial and amateur radio operators were on the air that interference made the reception of messages almost impossible. And consequently, in 1912, in response to widespread public demand, the Federal Government hesitatingly passed an act authorizing the Secretary of Commerce and Labor to issue licenses to stations, and prohibiting unlicensed stations or operators from engaging in radio communication.

Under the terms of this act, however, the Secretary had no power to withhold a license; the Department of Commerce and Labor was required to issue a license to any and every person filing a proper application. There was even doubt as to whether the Secretary could require a station to transmit its signal on any single assigned frequency. But the situation did not appear serious until after 1920, when program broadcasting came into existence, and when hundreds of stations were on the air with programs every minute during the day. By 1923, the problem of interference had become so serious that the Secretary of Commerce ruled, on the basis of a decision by the Court of Appeals of the District of Columbia, that each licensee must broadcast on a definite assigned frequency or channel. Each station

was limited to an assigned frequency until 1926, when a decision by a Federal Court in Illinois that the Secretary of Commerce had no power to assign frequencies, led to a mad scramble on the part of stations for desirable frequencies and brought about a renewal of the broadcasting chaos of 1921 and 1922.

To attack the problem of interference, Congress passed the Federal Radio Act of 1927, creating a Federal Radio Commission of five members, with authority to license broadcasting stations and to assign frequencies. Regulation of broadcasting continued under this act until 1934, when the Communications Act of 1934, with provisions almost exactly like those of the 1927 act, transferred the powers originally exercised by the Radio Commission to a Communications Commission of seven members.

Both the 1927 and the 1934 acts provided for licensing of stations; both allowed the Commissions created under them to license stations and to assign frequencies. But the regulatory powers of the Commission, in each case, were primarily in the field of engineering. No provision was made in either act for regulation, by the Commission, of broadcast programs, beyond prohibition of lotteries and of indecent language, and the general "public interest, necessity and convenience" formula.

On the basis of the Communications Act of 1934, the Federal Communications Commission has no power of censorship over programs. In fact, Congress inserted a section in the act which specifically prohibits censorship. Indeed, Congress could not do otherwise; for in the First Amendment to the Constitution of the United States, Congress is forbidden to pass any law infringing upon freedom of speech.

However, the prohibition of censorship of program material by the Commission applies to "direct" censorship—what is known as "previous" censorship. The Communications Commission does have, and does exercise, an indirect control over broadcast programs by considering the program service rendered by stations in passing on applications for renewal of license. And this type of control may have a marked influence on program policies of broadcasters, as pointed out in the articles which follow.

### ORIGIN OF THE ACT OF 1927<sup>1</sup>

. . . Up to 1920, the principal use for radio was by stations on board ships and in other point-to-point communication. The general public at that time was conscious of, and accepted with little question, the transmission of messages by radio. This had been done as a regular thing for many years. The Titanic disaster gravely emphasized in the public mind the necessity for this new science. Nor was it news to the soldiers who had participated in the great World War.

In November 1920, a station at Pittsburgh, Pennsylvania, advertised that Presidential election returns would be given by voice over its facilities. The public response was immediate. To sit down in one's own home and receive election returns miles from the point of transmission! What a vista that opened to the American people! Here, indeed, was something to stir the imagination of the most phlegmatic.

However, comparatively few applications for broadcasting station licenses were made during 1920 and 1921, and these were all assigned to a single frequency selected

<sup>1</sup> By Hampson Gary, former chairman of the Broadcast Division of the Federal Communications Commission. Excerpts from "Regulation of Broadcasting in the United States." *Annals of the American Academy*. Vol. 177. January 1935. p. 15-20. Reprinted by permission.

by the Secretary of Commerce under the Act of 1912 entitled "An Act to Regulate Radio Communication." This act required the obtaining of a Federal license before any one might engage in any form of interstate or foreign communication.

After 1923, interest in broadcasting was greatly accelerated. The American public enthusiastically began to buy receiving sets, and soon there developed a large listening audience. The Department of Commerce estimated the sale of radio receiving sets in the United States during 1923 to be 750,000; during 1924, 1,500,000; and for 1925, 2,000,000. Numerous interests throughout the United States were quick to see the splendid opportunities afforded by this new medium, and rushed forward to apply for available frequencies.

By 1926 there were more than five hundred broadcasting stations in operation. In that year a Chicago station became dissatisfied with its operation under the conditions set forth in its license, and "jumped" its assigned frequency. It also operated at times other than those authorized in its license. Proceedings were commenced by the United States in the Federal Court in Illinois to enforce the penalty provided in Section 1 of the 1912 act for operation in violation of that section. The Court held that the statute in question could not be construed to cover the acts of the station upon which the prosecution was based. In other words, the holding of the Illinois Court was directly opposite to that of the Court of Appeals in 1923, in which the power of the Secretary of Commerce to assign frequencies was upheld. The Secretary thereafter ceased to assign frequencies, and stations used whatever frequencies they chose.

Pandemonium resulted. Literally thousands of letters were written by members of the listening public and others interested in radio communication all over the United States to Senators and Representatives demand-

ing that something be done to "clear the air." Extensive hearings were held before the appropriate committees of both the Senate and the House of Representatives. Draft after draft of a proposed law was prepared and considered, but, due largely to divergent views in the two branches of the Congress as to whether the Secretary of Commerce or a new commission should be charged with the duty of regulating radio communication, the proposals failed of passage.

Finally, in February 1927, Congress passed the Radio Act of 1927, which established the Federal Radio Commission. The new law reiterated certain broad, general principles: The doctrine of free speech must be held inviolate, restrictions upon monopoly were to be applied to the realm of radio communication, and many of our traditional theories, under the commerce clause of the Constitution, were adapted to the new instrumentality. Control in time of war of the potent agency of radio was lodged in the Executive. There was to be no vested right in the use of the ether waves by licensees, and all grants were to be conditioned on the waiver of any claims of proprietorship. The granting of broadcast privileges must be on the consideration of public interest, convenience, or necessity. There were some of the fundamentals that found expression in the new law. . . .

While the Commission cannot approve or disapprove any program in advance of rendition, because the act of 1927 expressly denies to it any power of censorship over the radio communications, nevertheless it can and does scrutinize carefully the past operation of any station seeking a renewal of license for its continued operation. This, the courts have held, is not censorship; for "by their fruits ye shall know them." The Commission in the past has refused to renew the licenses of several stations whose operation was found, after a public hearing, to be inimical to public interest. Its

action in this regard has been sustained by the courts, and is a very real check upon station licensees and a protection to the listening public. . . .

## ATTITUDE OF CONGRESS ON CENSORSHIP<sup>2</sup>

The First Amendment to the Constitution provides:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

Section 326 of the Communications Act of 1934 provides:

"Nothing in this act shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication. No person within the jurisdiction of the United States shall utter any obscene, indecent, or profane language by means of radio communication."

Section 326 is an exact replica of Section 29 of the Radio Act of 1927.

It appears then that in addition to the First Amendment to the Constitution, for more than eight years there has been a law which was passed by the Congress of the United States which compels the radio licensing authority to refrain from the censorship of radio programs and from any abridgment of free speech by radio.

Another section of the Communications Law which is applicable to the question of censorship is the provision that

"If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting sta-

<sup>2</sup> By Seymour N. Siegel, Assistant Director of Radio Broadcasting for the City of New York. Excerpt from "Censorship in Radio." *Air Law Review*. Vol. VII. January 1936. p. 1-24. Reprinted by permission.

tion, he shall afford equal opportunities to all other such candidates to the office in the use of such broadcasting station, and the Commission shall make rules and regulations to carry this into effect: Provided, That such licensee shall have no power of censorship over the material broadcast under the provisions of this section. No obligation is hereby imposed upon any licensee to allow the use of its station by any such candidate."

If the provisions of the law are not sufficient evidence of the intent of the framers of the Radio Act of 1927 to uphold freedom of speech and to prohibit censorship of any kind, the debates on the floor of the House at the time the Radio Act was being discussed will indicate the feeling of those who were responsible for its passage. The principal sponsor of radio legislation in the House of Representatives in 1926 was Mr. White, now Senator from Maine. An excerpt from this debate with the then Congressman F. H. LaGuardia best presents the attitude at the time:

MR. LA GUARDIA. The gentleman stated the recommendations, among which was a guaranty of free speech over the radio. What provision does the bill make to carry that out?

MR. WHITE OF MAINE. It does not touch that matter specifically. Personally I felt that we could go no further than the Federal Constitution goes in that respect. The pending bill gives the Secretary no power of interfering with freedom of speech in any degree.

MR. LA GUARDIA. It is the belief of the gentleman and the intent of Congress in passing this bill not to give the Secretary any power whatever in that respect in considering a licensee or the revocation of a license?

MR. WHITE OF MAINE. No power at all.

It seems obvious, therefore, that the Radio Act of 1927 and the Communications Act of 1934 were both enacted by Congress with the distinct understanding that they give the licensing authority:

(1) no power to censor programs in any way or to take any action abridging the freedom of speech; (2) no power to regulate or control defamation by radio; and (3) no power to control individual broadcasters in their selection of programs other than that contained in the provision requiring equal treatment of candidates

of public office, but at the same time without obligating the broadcasters to allow the use of his facilities by any candidate.

### “PREVIOUS RESTRAINT” AND “SUBSEQUENT PUNISHMENT”<sup>3</sup>

... In analyzing the types of government interference with freedom of expression, we must differentiate between “previous restraint” and “subsequent punishment.”

“Previous restraint” has been held to mean any government interference which prevents publication without advance approval either of the publisher or of the material to be published. On the other hand, to suppress further publication because of material previously published which does not meet with the approval of the government agency is also a form of previous restraint. The best example is a law that would require each publisher to be licensed and would provide a punishment for any publication that is not so licensed. Such a law may simply require advance submission of proposed publications for government approval. A newspaper, for instance, might be suppressed by injunction forbidding its further publication.

“Subsequent punishment” is that form of government control which prevents publication through fear of consequent penalties or the deprivation of some right. Obviously, the fear of punishment has the indirect effect of a “previous restraint.”

The method of previous restraint is reminiscent of the Star Chamber, the Stamp Act of Queen Anne of 1711, and many other historical oppressions.

The American press has fought long and victoriously for freedom from censorship. It is believed that a government controlled press is a characteristic forerunner of dictatorship. In 1925, an action was brought

<sup>3</sup> By Seymour N. Siegel, Assistant Director of Radio Broadcasting for the city of New York. Excerpt from “Censorship in Radio.” *Air Law Review*. Vol. VII. January 1936. p. 1-24. Reprinted by permission.

in Hennepin County, Minnesota, to enjoin the publication of the *Saturday Press*, a weekly which had been published in Minneapolis for a period of two months. The contents of the paper were practically all such as would be considered "malicious, scandalous, and defamatory." No attempt was made to prove the truth of its contentions. The Minnesota "Gag Law" provided that the printing of such material made the publisher guilty of maintaining a nuisance and would permit the perpetual discontinuance of such. The Supreme Court of the United States held the Minnesota statute invalid and thus newspapers cannot be suppressed or put out of business because they are regularly "malicious, scandalous, or defamatory." The essence of that epochal decision was that the Minnesota statute operated as an unconstitutional previous restraint upon the newspapers. Said the court: "This is the essence of censorship."

A broadcasting station, however, can be put out of existence and an owner's investment and means of livelihood can be taken from him if the microphones are used for the dissemination of any material defamatory to public men. That is, this can be done if the practices of the licensing authority and the decisions so far rendered by the lower courts are upheld by the Supreme Court.

The Federal Communications Commission has the power to "decapitate" a broadcasting station by exercising its right of refusal of license-renewal because of material previously broadcast over the station on the grounds that the material does not meet the test of "public interest, convenience, or necessity." This may readily be explained by briefly reviewing the basis of radio regulation in the United States.

The teeth in the Communications Law is the fact that it is a crime punishable by heavy penalty for anyone to operate a radio transmitter without a license from the Federal Government. A broadcasting license can be issued for a maximum of three years but at the

present time the Federal Communications Commission issues them for a maximum of six months.

The licensing authority considers applications for renewal on the basis of "public interest, convenience, or necessity," and must provide for hearings to determine whether or not such a standard is being complied with. After such a hearing, it may revoke a license for any of a number of reasons. Rarely, if ever, has the Commission utilized the revocation method. Rather, it has assumed that the renewal of a license may be refused on any of the grounds for which it could have been revoked. In addition, it has assumed that such procedure may be followed for other reasons than those for which revocation is authorized. In other words, the very life of a broadcasting station is decided by a Commission which sits in a judicial capacity and, outside of its own regulations, is guided only by the *dictum* "public interest, convenience, or necessity." The law also vests the Commission with the power to "make such regulations not inconsistent with law as it may deem necessary to prevent interference between stations and to carry out the provisions of this Act." These regulations have the same effect as any statutes that may be enacted by Congress. Violation is not only a crime bringing about heavy fines, but may well be grounds for a revocation of a license or, as it is more delicately done, by the refusal of a license-renewal. . . .

#### PROGRAM STANDARDS MAINTAINED BY THE COMMISSION<sup>4</sup>

The Federal Communications Commission is empowered by the Communications Act of 1934 to "make such regulations not inconsistent with law as it may deem

<sup>4</sup> By Louis G. Caldwell, former Counsel, Federal Communications Commission. Extracts from "Legal Restrictions on Broadcasting Programs," abridgement of report to Second International Congress on Comparative Law, The Hague, August 4, 1937. *Air Law Review*, July 1938, p. 229-49. Reprinted by permission.

necessary . . . to carry out the provisions of this Act," subject to the test of "public convenience, interest or necessity." It is directed by the act to grant or deny applications for construction permit, license, modification of license or renewal of license depending on the same test, with an immaterial change in the order of the words, "public interest, convenience or necessity." Under the construction which it has placed upon its powers, and in which it has so far been upheld by the courts, it may take the program service of an applicant either in the past or as proposed for the future, either solely or in conjunction with other factors, as the basis for its decisions, by applying to such program service the test of "public interest, convenience, or necessity." In doing this, according to its own views and the views of the United States Court of Appeals for the District of Columbia, it does not exercise censorship, and does not run counter to either the First Amendment or Section 326 of the Communications Act.<sup>5</sup>

It becomes important, therefore, to determine the meaning of the statutory standard as applied to program service. In the fifty opinions so far rendered by the Court of Appeals there is virtually nothing that will assist this inquiry. Under these circumstances, we turn naturally to the phrase itself, its history and its interpretation in other statutes, State and Federal; but again we find nothing helpful with respect to program service. Such a phrase or its equivalent has never been applied as the badge of legality to human utterances of programs of entertainment. This leaves us only to the Commission's own interpretation.

#### RESTRICTIONS IMPOSED BY REGULATIONS

Regulations promulgated by the Commission, if within the power delegated to it, have all the force and effect of a statute enacted by Congress. Violation of a regulation is made a crime punishable by fine of not more than \$500

<sup>5</sup> See page 58.

"for each and every day during which such offense occurs." Violation of a regulation is also among the grounds specified for revocation of license and, under the Commission's practice, for adverse action on any application, including an application for renewal of license.

The Commission's regulations, however, are all but silent on the subject of program service. Those few provisions which touch on the subject are explainable as being primarily for other purposes, or as mere repetitions of the specific prohibitions contained in the act. Licensees are required to keep an accurate "program log," to make periodical announcements of the call letters and location of the station, to make certain announcements in connection with the broadcasting of phonograph records, electrical transcriptions and other mechanical reproductions, to conform with certain requirements in connection with rebroadcasts, and to observe certain precautions with respect to distress signals relating to ships or aircraft.

The Commission (and its predecessor as well) has taken the position that it may not promulgate any regulation regarding the contents of broadcast programs, or even regarding the amount or character of advertising, because of the prohibition against censorship in Section 326. In 1931 the Federal Radio Commission was petitioned by the American Newspaper Publishers' Association to promulgate an order banning the broadcasting of lottery programs. The Commission denied the petition on May 4, 1931, taking the position that, because of the prohibition in Section 326, such a regulation could not be legally promulgated. Three days later, however, the Commission authorized a press release stating:

"There exists a doubt that such broadcasts are in the public interest. Complaints from a substantial number of listeners against any broadcasting station presenting such programs will result in the station's application for renewal of license being set for a hearing."

In a report made to the Senate in June, 1932,<sup>6</sup> the Commission stated the following:

"Any plan to reduce, limit, and control the use of radio facilities for commercial advertising purposes to a specific amount of time or to a certain per cent of the total time utilized by the station must have its inception in new and additional legislation which either fixes and prescribes such limitations or specifically authorizes the commission to do so under a general standard prescribed by that legislation. While the commission may under the existing law refuse to renew a license to broadcast or revoke such license because the character of program material does not comply with the statutory standard of public interest, convenience, and necessity, there is at present no other limitation upon the use of radio facilities for commercial advertising."

Whether or not the Commission's view be correct, it is certain that, if the contents of broadcast programs are to be subject to restrictions, definite standards are preferable to *ex post facto* determinations made on applications for renewal of license.

#### SPECIFIC STATUTORY RESTRICTIONS

Six provisions of the Communications Act of 1934 bear directly or indirectly on the contents of broadcast programs. They are as follows:

1. "No person within the jurisdiction of the United States shall utter any obscene, indecent, or profane language, by means of radio communication."<sup>7</sup>

2. "No person shall broadcast by means of radio station for which a license is required by any law of the United States and no person operating any such station shall knowingly permit the broadcasting of any advertisement of or information concerning any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes drawn or awarded by means of any such lottery, gift enterprise, or scheme, whether said list contains any part or all of such prizes."<sup>8</sup>

3. "All matter broadcast by any radio station for which service, money, or any other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall, at the time the same is

<sup>6</sup> Commercial Radio Advertising, Washington, 1932, 72d Congress, 1st Sess. Doc. No. 137. p. 33.

<sup>7</sup> Federal Communications Act of 1934. Paragraph 326.

<sup>8</sup> *Ibid.* paragraph 316.

broadcast, be announced as paid for or furnished, as the case may be, by such person."<sup>9</sup>

4. "If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station, and the Commission shall make rules and regulations to carry this provision into effect: Provided, That such licensee shall have no power of censorship over the material broadcast under the provisions of this section. No obligation is hereby imposed upon any licensee to allow the use of its station by any such candidate."<sup>10</sup>

5. "No person within the jurisdiction of the United States, shall knowingly utter or transmit, or cause to be uttered or transmitted, any false or fraudulent signal of distress, or communication relating thereto, nor shall any broadcasting station rebroadcast the program or any part thereof of another broadcasting station without the express authority of the originating station."<sup>11</sup>

6. "No person shall be permitted to locate, use, or maintain a radio broadcast studio or other place or apparatus from which or whereby sound waves are converted into electrical energy, or mechanical or physical reproduction of sound waves produced, and caused to be transmitted or delivered to a radio station in a foreign country for the purpose of being broadcast from any radio station there having a power output of sufficient intensity and/or being so located geographically that its emissions may be received consistently in the United States, without first obtaining a permit from the Commission upon proper application therefor."<sup>12</sup>

Violations of any of these provisions are, under the statute, grounds for revocation of license and, under the Commission's practice, grounds for refusing to grant an application (including an application for renewal).

*Obscene, Indecent or Profane Language.* The instances in which the use of language falling within this description have been the basis for adverse action by the Commission are very rare. In an early case, "the direct use of indecent language" was mentioned in the Federal Radio Commission's statement of reasons for a decision refusing a renewal license but, to judge from the statement, was not the sole or even the principle reason for the decision. In another early case a station was placed

<sup>9</sup> *Ibid.* paragraph 317.

<sup>10</sup> *Ibid.* paragraph 315.

<sup>11</sup> *Ibid.* paragraph 325 (a).

<sup>12</sup> *Ibid.* paragraph 325 (b).

"under probation" for the use of profane language.<sup>13</sup> In two other cases, the language used was apparently considered either over or near the borderline of obscenity and indecency, but the decisions were not primarily predicated on this feature.

In a decision by the present Commission, language used in an astrologer's program was found to contain "a liberal allowance of matter bordering on indelicacy and scandalousness, if not actually scandalous," and therefore contrary to public interest. In another case the Commission condemned advertising broadcasts of contraceptives. Over a year ago one of the networks cut off a speech by the New York State Health Officer in which he mentioned syphilis control.<sup>14</sup> During recent months, however, a nation-wide campaign has been in process in the course of which a number of stations have joined in the fight against syphilis and gonorrhoea, without interference from the Commission.

*Lotteries.* Since enactment of the lottery section, violation of it has been before the present Commission infrequently. In two decisions will be found detailed descriptions of certain schemes which were held to be lotteries, accompanied by extensive citation of court decisions; in both instances the applications were, nevertheless, granted.

Lotteries are not among the more heinous crimes, were perfectly lawful for many years in this country and still are lawful in many other countries, and are frequently employed by religious organizations and governments themselves to raise money.

*Failure to Announce Advertising as Such.* This omission has come before the Commission only rarely. In one instance the Federal Radio Commission condemned spon-

<sup>13</sup> *U. S. Daily*. January 25, 1930. In a later case (Hello World Broadcasting Corp. [KWKH, Docket 889]), the same individual's language was characterized as "derisive and abusive."

<sup>14</sup> *Broadcasting*. Vol. 12. February 15, 1937, p. 46, 60. In one of the early cases (Baker, Docket 835) the Commission, by implication at least, condemned mention of the word "syphilis" in broadcasts.

sored programs on which the sale of securities was advertised without announcing or divulging the name of the sponsor. In another instance the Federal Communications Commission condemned the cloaking of commercial programs as religious talks.

*Equal Facilities for Candidates.* It is significant that, although the requirement of equal treatment of candidates has been in effect over ten years, there does not appear to be any decision of the Commission (or its predecessor) or any examiner's report in which a violation of the requirement is noted. There has been only one substantial complaint of violation and that was immediately remedied by the station involved.

Certain questions which arose during the election campaigns of 1936, while they do not involve any violation of the statute, illustrate some of the interesting problems which arise. President Roosevelt decided personally to address the opening of Congress at a night session January 3, 1936, the address to be broadcast over the major networks. This was over six months before the political parties held their conventions to nominate their candidates. The Chairman of the Republican National Committee immediately demanded that the networks give an equal opportunity for a Republican spokesman to reply. The networks had both adopted a policy of declining to sell commercial time to the parties or to individual political speakers until after the conventions, and of keeping all political addresses on a sustaining or non-commercial basis in the meantime. The president of one of the networks drew a distinction between Mr. Roosevelt as President and Mr. Roosevelt as candidate for re-election. After exchanges of correspondence which furnished front-page news and material for editorials for a week or more, the controversy subsided without any request for action to be taken by the Commission. The Republican National Committee also requested the networks to carry a political dramatic series, recorded on

electrical transcriptions, entitled "Liberty at the Crossroads," but they refused because of their policy and because of another policy against broadcasting such dramatizations, asserting that "appeals to the electorate should be intellectual and not based on emotion, passion, or prejudice." Individual stations, however, broadcast the series.

*Rebroadcasts.* The principal and, in fact, the only question so far presented by the section of the statute which forbids rebroadcasting without the express authority of the originating station, is whether rebroadcasting is limited to feeding the program received from another station directly into the microphone, or includes repetition or restatement of information received by means of a radio receiver. The Commission has decided that the former is correct. No station has been found guilty of violating the statute thus construed.

*Transmission of Programs Across the Border.* The section having to do with this subject does not involve restrictions on the contents of programs broadcast in the United States. It is, however, of interest because of the indirect expansion of Commission's authority across international boundaries. The section was aimed primarily at the furnishing of programs to stations located in Mexico, just across the border from Texas, broadcasting largely in English to listeners in the United States. Connected or identified with two of these Mexican stations were two individuals who had been identified with broadcast stations deleted by the Federal Radio Commission because of program services found to be against public interest. Since the enactment of the section (which first appeared as part of the Communications Act of 1934), the Federal Communications Commission has twice had occasion to refuse applications for permits to transmit programs across the border, one by persons desiring to furnish programs to the Mexican station now used by Dr. Brinkley and the other a woman in the employ of the Mexican

corporation of which Baker is president. Charges were filed with the Commission early this year that organized "drys" in the United States were illegally using the Brinkley station in Mexico as a propaganda medium.

Having concluded this study of the program practices upon which specific statutory restrictions have been imposed by Congress, we may turn to a consideration of what the Commission has found it possible to accomplish under the standard "public interest, convenience, or necessity." We shall conclude that Congress might as well have spared itself the trouble of enacting the specific provisions (or, at any rate, most of them). The Commission would have arrived at the same result anyway, and in most cases, by the use of the vague standard, has greatly expanded the prohibitions found in the statute.

#### PROGRAM SERVICE—GENERAL AND NON-COMMERCIAL ASPECTS

*Merit and Mediocrity.* Over and again in the Commission's decisions we find the program services of stations characterized as "meritorious" or "mediocre." Occasionally these characterizations are accompanied by descriptions of programs giving some idea of what the Commission has in mind and intends to approve or condemn. More often, however, insufficient clues, or no clues at all, are furnished, and not infrequently the same or substantially equivalent program practices are given the stamp of approval in one group of cases and are put on the *Index Expurgatorius* in another group. Certainly, few if any intelligible standards of program service have been provided, and the matter is not helped by statements that programs are not "high-minded," or that "they are not uplifting or entertaining," or that they do not conform to a "standard of refinement fitting our day and generation."

Some aspects of program service have, however, been the subject of comment by the Commission on enough

occasions to justify attempts at sub-classification, but the reader must be warned in advance that in not a single one of these sub-classifications is a definite rule to be found which can be relied upon for future conduct of a station. Nor has "the gradual process of judicial inclusion and exclusion" been of any great amount of help, since no line can be drawn, or even a wide no-man's-land established, between program practices that are legal and those that are illegal, without leaving many decisions on the wrong side of the line in both directions.

We are justified in examining into the character of information about program service required by the Commission in the printed forms of applications for new stations and applications for renewal of license. Presumably the Commission deems this information material to a determination whether granting the application will meet the test of public interest. This information includes

1. Diversity of program service :
  - a. Average per cent of time per month devoted to commercial programs and to sustaining programs.
  - b. Average per cent of time per month under each heading, devoted to entertainment, educational, religious, agricultural, fraternal and miscellaneous.
2. Interest of applicant; average number of hours used per month.
3. Amount and character of advertising :
  - a. Average number of hours sold per month before 6 P.M. and after 6 P.M.
  - b. Average number of hours per month of sponsored programs, and hours devoted to "direct" advertising.
  - c. Whether merchandise prices are quoted in interest of applicant or of others.
4. Chain connection :
  - a. Name of chain.
  - b. Total hours per month of chain programs (*i.e.*, programs, both paid or sustaining, which are duplicated by any other station).
5. Rebroadcasts—the programs of what other regular broadcast stations, if any, are normally rebroadcast.
6. Mechanical reproductions :
  - a. Extent to which phonograph records are used—hours per month.
  - b. Extent to which other mechanical reproductions are used—hours per month.

The renewal applicant is required to attach the station's program for the week last preceding the date of the application. The new applicant is required to state the objects to be attained by granting the application, and what service will be rendered by the proposed station which is not now available to the community which it expects to serve.

Under the following subheadings we shall have opportunity to observe what weight is given some of the features by the Commission, so far as ascertainable.

*Diversity of Program Service.* In an early decision, the Federal Radio Commission said the following:

"The entire listening public within the service area of a station, or of a group of stations in one community, is entitled to service from that station or stations. If, therefore, all the programs transmitted are intended for, and interesting or valuable to, only a small portion of that public, the rest of the listeners are being discriminated against. This does not mean that every individual is entitled to his exact preference in program items. It does mean, that the preferences of groups among the listening public should be met, in some fair proportion, by a well-rounded program in which entertainment, consisting of music of both classical and lighter grades, religion, education and instruction, important public events, discussion of public questions, weather, market reports, and news, and matters of interest to all members of the family find a place. . . .

"In such a scheme there is no room for the operation of broadcasting stations exclusively by, or in the private interests of, individuals or groups so far as the nature of the programs is concerned. There is not room in the broadcast band for every school of thought, religious, political, social and economic, each to have its separate broadcasting station, its mouthpiece in the ether. If franchises are extended to some, it gives them an unfair advantage over others and results in a corresponding cutting down of general public service stations. It favors the interests and desires of a portion of the listening public at the expense of the rest."

Since the above pronouncement was made, the principle of diversification of programs has received at least lip-service in a multitude of decisions. That is to say, in granting applications the Commission has frequently stated that the record shows "a well diversified program service" or the equivalent. What constitutes the anti-

thesis of diversification, however, is not clear. The implication is, of course, that a station may devote too much of its time to entertainment (*e.g.*, jazz music) or to sponsored programs, and not enough to the more serious side of life, including education, religion, the interest of agriculture, and civic affairs, or to sustaining programs. What constitutes too much entertainment or too little education is not explained, but the Commission's pronouncement has had one palpable effect: applicants, in supporting their applications before the Commission, overlook no opportunity to stress the non-entertainment and non-commercial features of their programs, sometimes to a point which, if their claims were true, might be taken by some to demonstrate that their stations are without audiences or financial support.

*Propaganda Stations.* The principle that stations should not be operated exclusively in the interests of individuals or groups has, however, received expression several times, although not at all consistently. The same principle was relied upon as the ground for refusing an application for a station to be used in the interests of colored listeners and an application by a university for a better assignment in order to give a service to its alumni. In another case, however, the Federal Radio Commission held that the mere fact that an application discloses that the applicant is a public utility (or controlled by a group of affiliated public utilities) and that the station's policy was "to furnish to the public a service which will foster and promote the cordial relations with the public" already enjoyed by the utilities does not bring the station within the class of propaganda stations.

*Personal Views and Attacks.* What may be another facet of the same principle is found in a number of decisions condemning program services because they were chiefly devoted to furthering the "personal interests" of the applicant, or to expressing his "personal views" or for "personal attacks" by him or the use of the station in

the furtherance of his "hobbies." Very few of these cases have to do with organizations representing schools of thought. In some of them the applicant is also engaged in another business and was deemed to be making excessive use of the station in the interests of that business. Excessive solicitation of funds over the air, and misappropriation of the money received for personal purposes have been disapproved.

The cases of "personal attacks" and "hobbies" are difficult either to classify or summarize. The Commission's statements must be read in full, in order to appreciate the significance of the decisions, particularly from the point of view of the guaranty of free speech or of the prohibition against censorship in Section 326 of the act. Nearly every case involving these attacks has in it also some element of defamation or other form of language deemed objectionable by the Commission. . . .

*Foreign Language Programs.* An examination of the cases in which programs in foreign languages constitute a substantial part of the service fails to disclose any uniformity of principle.

In the most drastic decision rendered since the enactment of the Radio Act of 1927, two stations in Chicago, rendering an admittedly meritorious service, were deleted, the investments of the owners destroyed and their facilities given to other Chicagoans for a station in Gary, Indiana (which station is now directing a substantial portion of its service to Chicago). The Federal Radio Commission relied in part on the ground that the Gary station had no chain affiliation whereas one of the Chicago stations did. In a few other instances the devoting of a substantial portion of a station's service to programs in foreign languages has been given the stamp of express or implied approval.

Apparently the rule is, or may be, somewhat different when the foreign language programs are sponsored or

contain advertising. In certain cases this has been mentioned with disapproval accompanied by the comment that

"... no member of the staff is familiar with the language used nor is the material so broadcast subject to any censorship by the station management."

In the *Brooklyn Cases*, the Commission went a step further, and, after remarking that one of the stations devoted 40 per cent of its time to foreign language programs said:

"The evidence shows that the station is operated 30 hours per week, and that 40 per cent of the total operating time has been devoted to foreign language programs; 20 per cent to Jewish, 10 per cent to Italian, and 10 per cent to Polish. The foreign language programs are shown to be almost entirely of a commercial nature, designed for the purpose of selling merchandise by direct advertising in foreign languages. For the first six months of 1933 the station realized a total net income of \$17,399.63, of which \$16,294.63 was received from foreign language programs.

"In this connection, the Federal Radio Commission, during 1931, in the matter of this application of the Johnson Kennedy Radio Company (WJKS), for modification of license, cited with approval the broadcast of foreign language programs where they were designed to educate and instruct the foreign populace among its listening public in the principles and ideals of our Government and American institutions. But the foreign language programs of Station WLTH were, for the most part, not designed to educate or assist its large foreign populace to become better citizens, or to familiarize them with American principles and ideals, but were primarily advertising programs stressing the sale of merchandise. Hence, this large proportion of its programs cannot be said to serve public interest merely because they are given in a foreign language.

"In the second Annual Report of the Federal Radio Commission to the Congress of the United States (1928), at page 168, the following statement appears:

*"While it is true that broadcast stations in this country are for the most part supported or partially supported by advertising, broadcasting stations are not given these great privileges by the United States Government for the primary benefit of advertisers. Such benefit as is derived by advertisers must be incidental and entirely secondary to the interest of the public."*

"With such a statement, this Commission is in entire accord. It accurately describes another criticism to be made of the so-called foreign language programs."

If the process is carried much further we may expect resort to the courts on the contention that violations of

the First and Fifth Amendments to the Constitution are involved.

*Loss of Censorship Control by Licensee.* The Commission on several occasions has disapproved of arrangements by a licensee with another by which the latter obtains control of the character of programs and advertising to be broadcast over a given hour or hours on the station. One such case involving foreign language programs, has already been mentioned. There have been a number of others. It is not easy to reconcile the principle on which these holdings are based with the contracts between certain of the network companies and their affiliate stations.

*Defamation.* In the legislative debates that preceded enactment of the Radio Act of 1927, Congress considered and definitely rejected a proposal that the act should include a provision regulating or controlling the broadcasting of defamatory utterances, on the ground that the common law and State statutes on slander were sufficient to protect individuals, that the proposal was "very near censorship" and that there was question "as to the legality of such provision." The Commission, however, has arrived at the same result in its application of the standard of "public interest, convenience or necessity."

Repeated defamation over a station, particularly when directed against public officials, has been the principal ground for refusing to renew certain renewal applications and an important ground in others. It is impossible to give an intelligible summary of the defamatory language involved in these cases, and the reader must be referred to the Commission's statements.

*Other Objectionable Language.* The only sort of language, as such, that was forbidden by Congress in the entire Communications Act is "obscene, indecent, or profane language." It is significant that this prohibition should appear in Section 326 (which forbids censorship by the Commission) since, under ordinary rules of statu-

tory construction, it would be interpreted as an exception to an otherwise general rule against censorship, with the implication that other sorts of language may not be censored.

The Commission, however, has applied the standard of "public interest, convenience or necessity," not only to defamation, but to a miscellaneous and nebulous assortment which can be assembled only under some very general term such as "objectionable." Much of the language has occurred in connection with various types of advertising in which mention is made of functions of the body, the properties of internal medicines and laxatives, intimate advice on private affairs by doctors, fortune-tellers, and others, and the like. Such language need not be separately considered.

Various adjectives and characterizations have been used to condemn the sort or sorts of language in question. It was in the *Norman Baker case* that the Federal Radio Commission went farthest, saying that Baker's way was not "high minded," that his utterances were "vulgar," that they were not "uplifting or entertaining," and that it was the Commission's duty "to see that a standard of refinement fitting our day and generation is maintained." As we have seen, "views" and "attacks" have frequently been condemned with the adjective "personal," or disparaged as "hobbies." Language has been characterized as "disparaging," "abusive," "vicious," "offensive to the sensibilities of the public" and otherwise objectionable.

#### STATISTICS DELETED BY THE COMMISSION <sup>15</sup>

There have been four cases in which the Commission's decisions reveal on their face that the ingredient of censorship of programs was exclusively or pre-

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John G. Caldwell, first General Counsel of the Federal Radio Commission, excerpt from "Freedom of Speech and Radio Broadcasting," *American Academy*, January 1935, p. 179-207. Reprinted by

dominantly the basis for the result. I shall speak of them as the *Schaeffer*, the *Brinkley*, the *Baker*, and the *Shuler* cases. They serve better than any of the others to illustrate the extreme powers actually exercised by the Commission, and two of them show the extent to which these claims have been upheld in court. . . .

In the *Brinkley* case the Commission's decision was based primarily on Dr. Brinkley's practice of prescribing over the air for patients he had never seen. Since the case does not involve political discussion, it is unnecessary to attempt any detailed description of the physician's talks.

In the *Schaeffer* case, the nature of the reprobated utterances (which were not by the licensee but by a third party) may best be gathered from the following excerpt from the Commission's statement of its grounds for decision:

"The compelling factor in the Commission's decision, however, was the nature of the broadcasts which have been emanating from this station. . . . This disclosed that as a result of a very bitter political campaign the defeated candidate, one Robert G. Duncan, had entered upon a program of vilification denouncing in most violent terms those whom he believed responsible for his defeat. As a medium for this outburst the facilities of radio station KVEP were engaged for two hours daily, and under the guise of a political speech the character of reputable citizens was defamed and maligned, not only by innuendo but by direct use of indecent language.

"Although the licensee . . . did not actually participate in these broadcasts they were rendered with his knowledge under a contract previously made with the aforementioned Robert G. Duncan. The claim that he disapproved much of the latter's utterances is not sustained by the evidence since, as proprietor of the station, he had full authority over all programs broadcast."

In the *Baker* case the objectionable speech consisted principally in attacks on the local newspaper. It consisted of an alleged alliance between them and the utilities, on the attorney-general of the State, on the State Board of Health, and on the Iowa American Medical Societies. It must be noted that some of the language employed was at least as objectionable as that which I doubt that any court would hold it "inadmissible" within

the legal meaning of the term. One of the Commission's enumerated grounds for decision was:

"The programs broadcast by Station KTNT have included personal and bitter attacks upon individuals, companies, and associations and whether warranted, or unwarranted, such programs have not been in the public interest, convenience or necessity..."

The Commission's statement in the *Shuler* case is so long that I am afraid that any attempt to characterize briefly the utterances on which it relied would be subjected to criticism by one side or the other. I shall therefore confine myself to excerpts of a general character which bear directly on the subject matter of this article, with the suggestion to the reader that he should consult the decision itself for a full and complete description of the Commission's reasons. One of the enumerated grounds for decision was:

"The principal speaker over this station has repeatedly made attacks upon public officials and courts which have not only been bitter and personal in their nature, but often times based upon ignorance of fact for which little effort has been made to ascertain the truth thereof."

Other excerpts of interest are the following:

". . . In most instances, however, he has vigorously attacked by name all organizations, political parties, public officials, and individuals whom he has conceived to be moral enemies of society or foes of the proper enforcement of the law. He has believed it his duty to denounce by name any enterprise, organization, or individual he personally thinks is dishonest or untrustworthy. Shuler testified that it was his purpose 'to try to make it hard for the bad man to do wrong in the community' . . ."

The *Brinkley* and the *Shuler* cases reached the Court of Appeals, which affirmed both decisions of the Commission. The first of these cases is important to the present discussion chiefly because of the conception of censorship announced by the Court in the following excerpt:

"Appellant contends that the attitude of the Commission amounts to a censorship of the station contrary to the provisions of Section 29 of the Radio Act of 1927 (47 USCA par. 109). This contention is without merit. There has been no attempt on

the part of the Commission to subject any part of appellant's broadcasting matter to scrutiny prior to its release. In considering the question whether the public interest, convenience, or necessity will be served by a renewal of appellant's license, the Commission has merely exercised its undoubted right to take note of appellant's past conduct, which is not censorship."

In the *Shuler* case, after some general observations on the First Amendment, the Court said. . . :

"This is neither censorship nor previous restraint, nor is it a whittling away of the rights guaranteed by the First Amendment, or an impairment of their free exercise. Appellant may continue to indulge his strictures upon the characters of men in public office. He may just as freely as ever criticise religious practices of which he does not approve. He may even indulge private malice or personal slander—subject, of course, to be required to answer for the abuse thereof—but he may not, as we think, demand, of right, the continued use of an instrument of commerce for such purposes, or any other, except in subordination to all reasonable rules and regulations Congress, acting through the Commission, may prescribe. . ."

To return to my thesis: a broadcasting station can be put out of existence and its owner deprived of his investment and means of livelihood for the oral dissemination of language which, if printed in a newspaper, is protected by the First Amendment to the Constitution against exactly the same sort of repression. . . .

## POWERS OF THE COMMISSION <sup>16</sup>

. . . What, in the face of these restrictions against censorship by the Commission, is the actual power of that Commission to restrict and control broadcasting? There is no question but that freedom of speech on the air can be completely abolished by the President of the United States in time of war. He may exercise this power without reason, but merely upon proclamation "that there exists war or a threat of war or a state of public peril or disaster or other national emergency."

<sup>16</sup> By Minna F. Kassner, member of the New York Bar. "Radio Censorship." *Air Law Review*. April 1937. p. 99-111. Reprinted by permission.

It is, therefore, pertinent to mention, that the validity of regulation is daily being sustained on the ground that a national emergency now exists. The danger of drastic action by the President, insofar as free expression on the air is concerned, should, thus, be obvious.

As to the situation in times of peace, we find that the Federal Communications Commission has power sufficient to maintain a rigid control over broadcasting under all circumstances.

1. It may refuse to grant a license in the first instance ;
2. It may revoke an existing license ;
3. It may refuse to renew a license ;
4. It may refuse applications for improved facilities, to wit, better wave-lengths, additional power, longer hours of operation.

The licensing authorities are limited to issuing licenses for no more than three years, but the period has been limited by the practice of the Commission, and by changes in the law, to a maximum period of six months.

It is a matter of record that the Commission has rarely invoked its power to revoke a license, but has preferred to wait until a license is about to expire and has then, after a hearing, refused to renew such license.

The sole guide to the Commission's power to decide on the birth, continued existence, or the death of any station is that vague and confusing test of "public interest, convenience or necessity."

The decisions of the Commission can be appealed (with certain specific exceptions) to the Court of Appeals of the District of Columbia, and, on petition for *certiorari*, a further review can be obtained in the Supreme Court, subject, however, to first obtaining the latter's permission.

Since the phrase "public interest, convenience or necessity" is met with at every turn, it becomes important to consider whether that phrase is capable of logical or intelligent understanding.

It will not be denied that when the Commission takes action due to an excessive number of broadcasting stations, makes technically sound allocations of wave-lengths and attempts to effect a more equitable distribution of stations over the country, it is indeed acting for the "public interest, convenience or necessity."

On the other hand, the life and death power held by the Commission over the stations every six months which can compel these stations to sustain the burden of proving that they are acting within the rule of "public interest, convenience or necessity" raises considerable doubt as to whether or not the Commission, in disregard of the prohibition against censorship, is using the vagueness of that phrase as a shield behind which it can proceed to exercise a real and powerful censorship.

The broadcaster, with an eye on past decisions of the Commission, attempts to define what the Commission thinks on the subject of "public interest, convenience, or necessity." He keeps one ear posted for an interpretation of the statements in the form of speeches, pronouncements, etc., coming from the various commissioners. He keeps both eyes open to ward against possible liability in the state courts for defamation. So, with every nerve tense in an effort to comply with the many rules, regulations, and pronouncements of the Commission, the broadcaster becomes timorous and is forced into the position of suppressing much of what goes over his air waves in order to avoid the expense, loss of time, and effort of a hearing to protect his right of continued existence.

It might be added that in spite of the situation outlined above, which results in censorship directly practiced by the Commission, this same Commission has repeatedly stated that it does not have power under the act to make regulations covering the contents of radio programs or even various types of advertising, because of the prohibition against censorship contained in Section 29. . . .

## GOVERNMENT CENSORSHIP OF PROGRAMS

During the twelve years of regulation of radio by the Federal Radio Commission and the Federal Communications Commission, there have been made many general charges of Administration pressure on the Commission, or of Commission action to deny equal rights to opponents of Administration policies. However, very few charges of such Commission action are discoverable in which specific situations are named. Important among them, in recent years, have been charges that certain commentators criticizing administration policies have been kept off the air "at the suggestion of Administration officials," that a speech in New York by Representative Dies of Texas was not broadcast because of Administration pressure, and that in the famous case of Senator Vandenberg's debate with the recorded voice of President Roosevelt, during the 1936 campaign, the program was turned down by the network over which it was to be carried, because of fear of Administration disapproval.<sup>1</sup>

Specimens of charges and of denials of Administration or of Commission censorship are presented in the following pages. Comments on the use of the "subsequent punishment" method by the Communications Commission, and instances of stations cited for violation of Commission program standards, are given in a following section.

<sup>1</sup> For an account of the Vandenberg broadcast, see page 192.

ADMINISTRATION PRESSURE CHARGED<sup>2</sup>

Boake Carter, who is touring the country on a lecture trip, had some pointed remarks to make about alleged censorship on the big chains when he spoke at the University of California recently. The major radio chains exercise complete and absolute censorship over commercial programs, he told his audience. They exercise this censorship because they are in business for profit and they are "afraid of Administration pressure," he stated. He added that, since every radio station must have its license renewed every six months by the F.C.C., radio is very susceptible to Administration "suggestions."

Speaking on "Free Speech in the News," Mr. Carter told his audience that Hugh Johnson, David Lawrence and other outspoken commentators, including himself, will not be on the air again "until the Administration lets up." He said that present radio censorship is dictated "by Steve Early, Tommy Corcoran, Harold L. Ickes, Harry L. Hopkins and that group."

Radio censorship, he said, became noticeable about four months ago. He declared that one of the networks deleted from a speech by John B. Kennedy, the sentence, "Neville Chamberlain gave a good speech." This sentence was considered "editorializing," Carter said.

THE "LIBERTY AT THE CROSSROADS"  
INCIDENT<sup>3</sup>

. . . The first weeks of 1936 were characterized by political controversy when Chairman Fletcher of the Republican National Committee engaged in a tussle with the national networks over the policy of differentiating

<sup>2</sup> News story headlined "Censorship seen by Boake Carter." *Broadcasting*. January 1, 1939. p. 18. Reprinted by permission.

<sup>3</sup> By Seymour N. Siegel, Assistant Director of Radio Broadcasting for the City of New York. Extract from article, "Censorship in Radio." *Air Law Review*. January 1936. p. 1-24. Reprinted by permission.

between Mr. Roosevelt as President and Mr. Roosevelt as a political candidate for re-election. The President had used his message to Congress, according to Republicans, as the opening gun in his campaign for re-election in November. No sooner had this furor died down when Thomas D. Sabin, G.O.P. radio publicity chief, attempted to buy commercial time over both major networks for the purpose of reproducing Henry Fisk Carlton's dramatic sketch "Liberty at the Crossroads." Both the National Broadcasting Company and the Columbia Broadcasting System auditioned the sketches and then turned down what the Republicans considered a very lucrative offer. Both chains alleged that their policy was to offer as much time as possible to responsible party spokesmen on a sustaining basis. At the same time they were not interested in commercial commitments of a partisan nature until after the national conventions.

Headlines all over the country carried the charges of Chairman Fletcher that the Roosevelt administration dominated the networks. In reply, William S. Paley, youthful and aggressive president of the Columbia Broadcasting System, asserted that "appeals to the electorate should be intellectual and not based on emotion, passion, or prejudice." Newly-elected President Lenox Lohr of the National Broadcasting Company told the Republican National Committee that "to accept such dramatic programs as you have offered would place the discussion of vital political and national issues on the basis of dramatic license rather than upon a basis of responsibly stated fact or opinion." WGN, Chicago *Tribune's* station, which formerly had a policy of placing all politics on a sustaining basis, accepted the series on a commercial basis under local Republican sponsorship.

The *New York Times* and the Scripps-Howard newspapers reprinted excerpts from the initial skit of the proposed series and some of the news stories which

followed the presentation of the first few episodes could only be classified as satirical. Said pundit Heywood Broun:

"I hope 'Liberty at the Crossroads' goes on the air again next time over a network. All Democrats, Progressives, and Radicals should join me in that wish, because it turns out that Mr. Fletcher's first campaign show is a sort of Republican 'shoot the works',—and that is putting it mildly. The Democrats who have been having a tough time lately, can afford to laugh at last. Their attitude toward their adversaries ought to be, 'just give them enough radio.'"

At the present writing the policies of individual stations in the current pre-convention campaign are not particularly well known. John Shepard, head of New England's largest department store chain and who runs the Yankee network on the side, has been quoted as saying that he would accept political programs on the same basis as any other commercial or advertising program. Most independent stations do not offer free time until the actual candidates begin their campaigning. Most chain stations carry the network political presentations when their time is not sold locally, even though this may be on a sustaining basis.

The *Broadcasting Magazine* sums up the situation as follows:

"Meanwhile, time was being allocated freely to Republicans and Democrats alike on the networks, and very few, if any, charges of favoritism were heard from party leaders other than from Mr. Fletcher or from sources other than the rabid Republican press. The *New York Herald-Tribune* naturally burst out against radio in editorials and cartoons, suggesting it was politically dominated by the Democrats—a charge most radio executives strongly resent. The networks, on their part, have gathered an array of statistics showing in some cases that in recent months the Republicans have had more time on the air than the Democrats, all on a free basis. And the networks insist they will adhere to their policy that politics over the radio, in the pre-convention period at least, must take the form of speeches by responsible spokesmen rather than dramatizations."

STATIONS AND PARTISANSHIP<sup>4</sup>

. . . A first paradox of American broadcasting is this: the men and the corporations which make possible the advertising prosperity of the stations and networks are substantially the same men and corporations which so picturesquely berate the government, the source of life or death for broadcasters. Newspapers which tend to share and to express the sentiments of the business community represent a unanimity between advertiser and advertising medium. Broadcasters, however, pose on a delicate perch and may not safely articulate in their own right.

In 1932 some gentlemen prominent in the higher councils of broadcasting rather openly opposed the election of Roosevelt. After the election a personal friend of the President publicly declared that there had been bias. Without here attempting to itemize or judge overt acts, the private-preference angle at the time was known and was subsequently embarrassing. Because one of the networks more than the other was credited with rooting for the Republicans, its rival, in plausible contrast, if not in actuality, was trade-credited with an edge with the White House secretariat.

The lesson was clear. Broadcasters henceforth must avoid even the appearance of being partisan. Not only must the policy of neutrality be emphasized and dramatized at all opportunities, but broadcasting's executives should, as a matter of wise policy, largely dissociate themselves as private individuals from participation in politics.

William S. Paley, President of the Columbia Broadcasting System, has strongly deplored the occasional exception to the rule of complete neutrality. The editorial

<sup>4</sup> Extracts from "Radio and Government," by Robert J. Landry, radio editor, *Variety*. *Public Opinion Quarterly*. October 1938. p. 557-69. Reprinted by permission.

privilege, in his opinion, should be limited solely to the self-protection of the broadcaster from co-liability for slander and the protection of the community from offense.

There is pending before the Federal Communications Commission at the present time a citation against John Shepard, III, a former merchant, now head of two regional networks in New England, requiring him to appear for hearing on charges that he permitted the use of his secondary Boston outlet, WAAB, on one side of a partisan political fight. The commission has cited this use of publicly-licensed facilities as not in the public service, convenience and necessity. He is a Republican.

Inherent in the Shepard hearings and the ultimate decision, whatever it may be, is the whole question of whether the holder of a license may go beyond reporting the news and take an editorial position similar to a newspaper.

Meanwhile the Commission has recently set forth several basic rules concerning a station's political responsibility. Cardinal point is the requirement that having sold radio time to one political party a station must sell time to all legally recognized parties. While broadcasters believe the Commission should have gone into considerably more detail in its statement of policy, at least there is now less confusion than heretofore. . . .

### THE DIES INCIDENT <sup>5</sup>

Six hundred members of the American Defense Society listened to an address by Representative Martin Dies in this city last Saturday. Appropriately, the subject of Mr. Dies's speech was *Americanism*, a subject

<sup>5</sup> Editorial, "Representative Dies and Radio Censorship," *New York Journal and American*, December 8, 1938. p. 22. Reprinted by permission.

which ought above all others to be free from even the suspicion of censorship.

However, the persons gathered together to hear Representative Dies were severely shocked and offended when Col. Arnold L. Davis, chairman of the meeting, reported that the six leading radio stations in New York City had *all* refused to broadcast the address, and asked: "Now, who had the power to do that?"

There was certainly no precedent for such an action. On the contrary, Representative Dies, speaking in exactly the same capacity—as Chairman of the House Committee Investigating Un-American activities—had been heard previously over nation-wide hook-ups at least seven times.

One excuse offered was that the subject was "controversial." What can anybody mean by demeaning Americanism as a "controversial" topic? Has it suddenly become so, when Representative Dies happens to be its advocate; and if so, why?

Another excuse made was that none of the six stations had "time" available for Mr. Dies. But the application for "time" was made three weeks in advance, allowing amply for the arrangement of "time"—and the radio programs for Saturday, published in New York City a week before the speech was made, showed a number of merely routine programs listed on some of the stations during the period of the Dies speech, and several obviously available program vacancies noted under the listing. "To be announced."

Consequently, lack of available time cannot be accepted as a valid reason for confining a patriotic speech on Americanism to the four walls of a luncheon room. And in view of this circumstance, the unanimity with which the six stations all shut their microphones to Congressman Dies suggests a great deal.

Everybody knows that the New Deal administration, which dominates the radio commission, has tried to re-

press and discredit the Dies inquiry into subversive activities. Inasmuch as two and two still make four, is it not logical to suspect that *somebody* in the government wanted Congressman Dies kept off the air?

As Colonel Davis asked the American Defense Society, "*Who* had the power to do that?"

Congress had better find out—unless other Congressmen are willing to be "censored" should they try to discuss with their fellow countrymen so "controversial" a subject as Americanism.

### COMMISSION ACTIONS IMPARTIAL \*

. . . Last year the country went through a bitter political campaign. All shades of opinion were expressed in varying degree—in many cases to the point of complete boredom of the listeners—and there was no complaint that the Commission was trying to censor anybody. In three widely publicized incidents which reached the Commission the cry of censorship was raised, but not against the Commission.

In one instance two California stations refused to carry an address of the President of the United States without payment. When some individuals in California complained against this refusal, the Commission stated that the stations acted within their legal rights in declining to carry the President's address.

In the second case the owner of a broadcast station who had carried—for pay—the speeches of Candidates Roosevelt and Landon, refused to carry—for pay—the speeches of Candidate Browder, although the law is very specific that if a station's facilities are made available to any candidate for a public office, they must be made available to all candidates for that office. When

\* By Irvin Stewart, member of the Federal Communications Commission. Excerpt from an address at Duke University, March 23, 1937. "The Public Control of Radio." *Air Law Review*. Volume VIII. April 1937. p. 131-52. Reprinted by permission.

the Commission asked the station owner to explain his conduct in the matter, he decided to let Candidate Browder speak.

The third incident was the debate between a Senator and a phonograph record, which some stations refused to carry. Although there was a half-hearted attempt in some quarters to show that the Commission was in some way censoring the Senator, I think that most people, certainly including the Senator himself, realize that the affair was one between the Senator and the broadcasting chain which could not make up its mind whether to carry his speech.

I know of no instance of censorship or attempted censorship of broadcasting by the Federal Communications Commission. To complete the picture I want to add, however, that the Commission has the right to look into a licensee's conduct of his station as an aid in determining from a study of his past conduct whether public interest would be served by the removal of his license. In nine years of Commission regulation under that power, five renewals of licenses have been refused primarily because of past programs. Where appeals were taken from those decisions, the Commission was sustained by the courts, which agreed with the Commission that the past conduct of the licensees indicated that their future holding of station licenses would not be in the public interest. The courts shared the views of the Commission that this was quite different from censorship. . . .

## NO PRESSURE FROM THE WHITE HOUSE<sup>1</sup>

. . . Now a word about the occasional charge that politics affects radio stations and programs; the silly stories about supposed Administration interference.

<sup>1</sup> By Frank R. McNinch, Chairman, Federal Communications Commission. Extract from an address over the Columbia, National and Mutual networks, November 12, 1938.

I have read stories to the effect that the present Administration sought to and even did influence the Communications Commission in the administration of its regulatory duties for partisan, political purposes. I want to nail that canard squarely on the head. I have been Chairman of the Commission for thirteen months, and during the nation-wide campaign leading up to the elections last Tuesday. And I say to you categorically, without qualification or reservation, that not a single suggestion of political favoritism has come to me from anyone in the White House or the Administration or from any political organization.

Furthermore, neither the President nor any member of his family nor any of the secretaries to the President nor anyone who even pretended to speak for the President or the White House, has ever made the slightest suggestion to me about granting any license or denying any license. Any assertion to the contrary is a bald misrepresentation. All that has come to this office from the White House is numerous letters of inquiry, of complaint, of suggestion or appeal. In every instance these have been referred without comment or suggestion, just as thousands of similar letters are referred in White House routine to the Department of State, the War Department, the Power Commission, or the Bureau of Entomology.

### INFRINGEMENT ON FREEDOM OF SPEECH <sup>8</sup>

In one of the most amazing rulings ever issued by a governmental body in this country the Federal Communications Commission has forbidden the rebroadcasting of foreign programs without its written permission. When the order becomes effective on July 1, it will mark the abandonment for radio of every pretense of adher-

<sup>8</sup> Editorial, "How Free Is the Air?" in *Nation*. July 4, 1936. p. 5-6. Reprinted by permission.

erable antagonism. But these obvious problems and their rather terrifying implications apparently do not trouble the commission nearly so much as the fear that foreign governments will use the radio to spread their subversive propaganda.

The new ruling is made ridiculous by the inability of the FCC to censor the programs heard by owners of short-wave sets. It is estimated that there are now approximately six million short-wave sets in use, and the proud owners, their families, and friends can listen directly to the European broadcasts which the twenty million owners of standard sets may not be permitted to hear. Eventually the FCC may find it necessary to adopt the Nazi practice of censorship by interference with the air waves.

There is a significant exception to the ruling on rebroadcasting. If the program is transmitted entirely by telephone facilities, it does not come under the ban. This exception might almost have been written by the telephone companies themselves. It is a direct subsidy to them. But the commission's intention was far more subtle than appears on the surface. Wealthy chain stations use telephone facilities to obtain foreign programs for rebroadcast; small stations pick up their programs from the air waves. The new regulations are aimed only at the little fellows and are intended to discourage them from disseminating too much foreign news. The chains representing huge capital investments are considered safe and less in need of strict censorship. The commission's rules are masterpieces of ingenuity—without mentioning the large stations, they succeed in giving them a monopoly on foreign programs, they effectively check rebroadcasting of "dangerous" material, and they gratuitously increase the business of the telephone companies.

These rules were announced at a time when criticism was certain to be smothered in the apparently more

ence to the proud tradition of freedom of speech and thought. The indifference of the public is almost as amazing as the ruling itself. The general press has remained strangely silent; even the most vocal defenders of our civil liberties have not raised their voices; and the commercial broadcasters are unwilling, especially at a time when hearings on the reallocation of the radio spectrum are being held, to show resentment or to assert their independence.

The right of the FCC to issue an order might easily be challenged. Under Section 326 of the act creating the commission the power of censorship except as to obscene, indecent, or profane language is expressly denied. By a broad interpretation of the provision which makes the issuance of a license to broadcast dependent on "public convenience, interest, or necessity," the old Radio Commission, as well as its successor, the Communications Commission, has of course indirectly censored radio programs. But this censorship, even though an established fact, has always been officially denied. The new ruling, therefore, constitutes the first admission that the FCC is in reality the dictator of the American radio world.

What prompted the FCC to make such a dangerous admission is hard to divine. The commission's most useful alibi has always been that it had no power to censor programs. The danger from foreign propagandists must certainly have seemed great to have induced the commission to uncover its hand. Although there has been considerable use of radio by foreign propagandists, the novelty of foreign broadcasts to the American radio audience is beginning to wear off. But the commission is evidently thinking of future contingencies. The role it now essays is highly perilous. Permitting or refusing to permit the broadcasting of certain programs may very well be accepted by European countries as indicative of national policy and may arouse consid-

important discussion of the reallocation of radio channels and in the hearings on the ultra-high wave lengths. The manner in which the FCC will distribute the new wave lengths, its handling of the claims of the powerful networks which now control all but a few of the cleared channels, place it in a very powerful position. Great things are promised by the radio experts—television, newspapers printed by facsimile, bigger and better programs. But all of these are rendered unimportant in the light of the now publicly announced policy of government censorship.

### STATIONS OWNED BY MINORITY GROUPS\*

. . . Before leaving this aspect of the problem of freedom of the air, it is necessary to look briefly at the experience of broadcasting stations which, in their very nature, might be expected to present programs containing "nonconformist" material. The most conspicuous station of this sort has been WEVD, of New York City. This station, established by the socialist party as a memorial to Eugene V. Debs—note the call letters—has been given only 500 watts of power and a wave length of only 230.6 meters, a low assignment on the dial which it must share with 11 other stations, one in its own city (with double the power) and one only as far away as Troy, New York. Such power and position assignments of course make it impossible to compete with the chain stations (the two NBC stations in New York having 50,000 and 30,000 watts and the CBS station having 5,000). After a terrific struggle, therefore, in which much broadcasting material of the finest quality was freely donated by persons interested in the establishment of an independent station, WEVD has

\*By Paul Hutchinson. Extract from "Is the Air Already Monopolized?" *Christian Century*. April 1, 1931. p. 441-4. Reprinted by permission.

been almost forced out of existence. At the moment of writing, indeed, the station has been suspended from operation by the radio commission because of "technical violations" of regulations, and it stands in grave danger of soon being wiped out entirely.<sup>10</sup>

Even more disquieting has been the fate of WCFL, Chicago. This station, as its call letters indicate, was established by the Chicago Federation of Labor, and has been endorsed by the A. F. of L. It has been given the highest grade of technical service, good business management, and has provided programs of unusual merit. Yet, starting out with a fine position on the broadcasting band and with ample power, as well as with assurances from Washington that it would be given every reasonable assistance from the radio commission, by successive radio commission orders WCFL has been pushed almost off the radio map. Its power has been reduced to 1500 watts; it has been placed on the dial where it is locally blanketed by the powerful Westinghouse KYW station and where its wider reception is seriously interfered with by Westinghouse KDKA, and it has been forced to go off the air every night at sun-down on the Pacific coast.<sup>11</sup>

The fate of this labor station is thrown into sharper focus when it is discovered that while WCFL was suffering this series of rebuffs at the hands of the radio commission, allegedly because the "public interest" was being adequately served otherwise in the crowded Chicago radio field, the Insull public utility interests, acquiring a semi-moribund station, were promptly assigned a place on a cleared channel at almost the center of the broadcasting dial, and 50,000 watts power.

<sup>10</sup> Compiler's note: Station WEVD is still in operation in New York City, sharing time with two other stations on a frequency of 1300 kc., with a power of 1000 watts.

<sup>11</sup> Compiler's note: At the present time, WCFL is operating full time with 5000 watts power, on 970 kc., with no other Chicago station of equal or greater power occupying a channel within 100 kc. of that used by WCFL.

## “SUBSEQUENT PUNISHMENT”

### COMMISSION ATTITUDE ON COMPLAINTS<sup>1</sup>

. . . While the broadcasting industry is to be highly commended on the quality of most of its program service, I would be less than candid if I did not say that in my opinion some of the program features fall below the standard which I believe the public expects and has a right to expect.

This comment and such further comments as I may make on programs is made in a friendly, cooperative and purely advisory spirit. It is not intended to carry the least threat. I want to help you if I can, for that is my job. I hope I may be able to look at these things from the standpoint of the average citizen. Maybe you are not so well placed to do that, for sometimes we are so close as not to be able to see the woods for the trees. All that I say is intended to be helpful to you rather than hurtful.

I am neither a purist nor a prude, though I have had some questions asked me indicating that I was both—and then some!

Not at all! I am just an average American citizen. If I have ideals and fairly high conceptions of public interest, public taste and public desire I do not believe I overrate the concepts of the average American citizen. I do not think I have any higher conception of the home than you have, and I am not willing to grant that any other has a more exalted opinion of the home than I

<sup>1</sup> By Frank R. McNinch, Chairman, Federal Communications Commission. From a speech before the convention of the National Association of Broadcasters, February 15, 1938. *Broadcasting*. February 15, 1938. p. 15+. Reprinted by permission.

have. I have a family, a wife and five children, and I can get a fair impression similar to that made upon the average American home by program material that is broadcast.

As I sit in our family circle listening to the radio, we are, I believe, a typical American family. Some programs are not welcomed. They subtly and sometimes boldly suggest to young people things that I wonder if any of you think it proper to suggest to young minds in their plastic and formative stage where impressions are quickly and indelibly made, often to last through life. Beware of the danger to the ideals, the morals, the thought-habits of our youths and children. I wonder if here there is not the highest possible degree of responsibility that is carried by any public agency because you do come into our homes, whisper your message or your song whether for good or ill to those assembled.

I do not believe in, I do not want, I shall not exercise consciously any power of censorship. The supervision of your programs rests squarely on your shoulders, but it is definitely there and it goes with and is incident to your license. You cannot escape that responsibility.

I have heard that some have the jitters about what the Commission may do about censorship. I do not know what I may say about it that would not be misleading, but I shall try to say a helpful word. Why have the jitters about censorship? The Commission has done nothing that I know to justify your sitting on edge lest you be hailed into court upon some frivolous accusation as to a broadcast over your station.

If you sat at my desk you would read many, many complaints against the stations, about which you do not hear because they do not appear to warrant active consideration.

I send other complaints to you from time to time without any expression of opinion but for your informa-

tion. I think I owe that to you. You would not like, would you, that the Commission should continue to receive complaints against your station without your knowledge? When the complaints are received from the Commission without comment, I would like you to be sure that the Commission has formed no opinion whatever touching the matter complained of.

Of course, all complaints received against a station will be considered in connection with its application for a renewal of its license. You know as well as the members of the Commission what is fair, what is vulgar, what is decent, what is profane, what will probably give offense. It is your duty in the first instance to guard against them.

It is the Commission's duty in the last instance to determine fairly and equitably and reasonably whether you have lived up to the high duty that is yours. The tenure of your license is so long as you exercise it in the public interest, convenience and necessity.

The key to that statutory phrase, in my judgment, is *public*. "Public" must be paramount. If something has been broadcast that is contrary to the public interest, is vulgar, indecent, profane, violative of any rules of fair play ordinarily recognized, or that might be reasonably anticipated to give offense, I conceive it to be the duty of the Commission to do something about it.

But, does that carry any threat that should cause you concern? You do not intend, do you, that material of this sort should go over the air? It is your purpose, I am sure, to safeguard the public interest to the fullest measure you can, in the exercise of the facilities at your control.

May I suggest for your own good that you scrutinize more carefully the sponsored advertising script and ask yourself, in each case, not how profitable this will be, not will the public tolerate this, not can we get by with this, but—will this be in the public interest?

You won't have much trouble if you apply that acid test to every script as it lies on your desk. It will take courage, but you must have the courage to resolve your doubts, if you have any doubts, in favor of the listening public and against your immediate financial gain? . . .

Keep in mind, while making your determination on a particular script, that it is to be heard in the home. Put yourself in the other person's place. They don't get any money out of it. They aren't concerned with the financial aspect of it. They think radio belongs to them. It does. They believe you are licensees of radio, that it is loaned to you, that you are authorizing someone to visit the home and speak to them. Before you introduce the salesman to the family circle, apply the yardstick, "Is it really, honestly in the public interest?" . . .

I commend the industry upon the service it has rendered without compensation to many fine social, religious, civic and educational causes. Your contribution has been noteworthy. There are, however, yet wider fields of usefulness for the radio. I believe you will win and deserve an even larger measure of public favor than you now enjoy, if you can find it practicable to make your facilities available for even greater measures of public service. . . .

I have read with satisfaction the code of ethics adopted at your 1935 convention and every licensee who lives up to this code strictly will show his sincere desire to use the license privilege to serve the interests of the public. I am especially concerned with those code declarations intended to protect and benefit the listeners and I note with gratification this declaration in your code:

"Recognizing that the radio audience includes persons of all ages and all types of political, social and religious belief, every member station will endeavor to prevent the broadcasting of any matter which would commonly be regarded as offensive."

This is a sound declaration for the protection of the rights of minorities, which has always been one of the proudest boasts of our American traditions. To attempt to justify a broadcast of something offensive to racial, religious, social or other groups on the ground that the majority will not be offended by such a broadcast is, in my opinion, to overlook that which I believe to be a fact—that the majority is fairminded, and will itself resent an abuse of or an injustice to the minority.

May I informally express the hope that I may come to know many of you personally. I shall be delighted to have you come to see me. If you have problems now or later I would like for you to come in and talk them over, for in such conferences minds may often meet and meet constructively. . . .

### INDIRECT CENSORSHIP POSSIBLE <sup>2</sup>

. . . The broadcasting controls established by law are intended primarily to regulate physical facilities, not programs. The law specifically withholds from the Commission the power of program censorship. Section 326 of the Radio Law of 1934 states:

Nothing in this Act shall be understood or construed to give the Commission the power of censorship over radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication.

While direct Government censorship over radio programs is thus forbidden by law, the terms of the Government licenses leave the door open for an indirect—and more insidious—censorship. Any attempt to impose the ordinary “blue-pencil” censorship is little to be

<sup>2</sup> By David Sarnoff, President, Radio Corporation of America. Extract from an address on “The American System of Broadcasting,” before the Town Hall luncheon, New York, April 28, 1938. Printed, 1938, by the National Broadcasting Company. Reprinted by permission.

feared, because, being a conspicuous violation of the right of free speech, it would arouse a storm of public protest. But what is not conspicuous—and is therefore dangerous—is the effect on the mind of the broadcaster, resulting from attitudes that may be taken by the government toward stations, on matters outside the regulation of facilities.

Fear of disapproval can blue-pencil a dozen programs for every one that an official censor might object to. While practically nobody advocates a pre-program blue-pencil in the hands of government, few realize that post-program discipline by the government can be a form of censorship that is all the more severe because it is undefined.

### EFFECT OF THREAT OF PUNISHMENT<sup>3</sup>

. . . While a station owner can be fined—relatively a minor penalty—only for proved violation of the law or of a regulation of the Commission, he can be put completely out of business and his property virtually confiscated, without having been convicted of violating any law or regulation at all. It is immaterial to argue, as the Commission speciously does, that in the only cases where this has actually happened the licensees were notorious “bad actors,” devoting their broadcasts to defamation, obscenity, quackery. Admitting all this, admitting that the broadcasts complained of were not desirable, the fact remains that these broadcasters were punished by the equivalent of decapitation, not because they were convicted violators of the law, but because the Commission did not approve of their programs. I do not say that this is wrong. I do not say that broad-

<sup>3</sup> By Henry A. Bellows, former member, Federal Radio Commission. Excerpt from “Is Radio Censored?” *Harper's*. November 1935. p. 697-709. Reprinted by permission.

casting may not require some such form of special control. What I do say is that it constitutes censorship, and a very effective censorship, at that.

After all, the chief function of capital punishment is not to electrocute murderers, but to restrain people from committing murder by warning them of the results if they get caught at it. Just so with the Commission: it has actually refused to renew just enough licenses so that every time it sends out a notice that a station's renewal application is set for hearing, the presumed culprit has visions of a speedy and lamentable end to his radio career. The result—the only possible result—is that every broadcaster in the country lives in abject fear of what the Commission may do. . . .

The potency of mere suggestion, when the fact of censorship is once established, was vividly shown in the case of a certain quasi-religious organization which had contracts for the commercial broadcast of its programs over a large number of stations. One of these programs was highly offensive to the Roman Catholic Church, and complaint was made to the Radio Commission. The Commission thereupon sent form letters to the stations indicated as having participated in this particular program, merely asking whether in fact they had broadcast it. Not a word in the letter implied blame or criticism—and yet a considerable number of the stations involved promptly notified the sponsoring organization that they dared no longer accept its programs for fear of “getting in bad” with the Commission. The documents in this case are all a matter of public record. The Commission had done absolutely nothing for which it could justly be criticized; it had merely requested some routine information. And yet its power and practice of censorship were so obvious that the slightest hint was terrifying. . . .

COMMISSION ACTION IN THE  
"ADAM AND EVE" CASE<sup>4</sup>

Action against stations which carried the Chase & Sanborn broadcast of December 12, as well as the one which originated it, may be taken by the Federal Communications Commission, Chairman Frank McNinch said this week in a letter to National Broadcasting Company. Mr. McNinch demanded all details of the program, in which Mae West gave her conception of Eve to Don Ameche's Adam.

"If those who have protested to the Commission concerning this broadcast," Mr. McNinch wrote, "are substantially correct in their appraisal, I have no hesitation in saying that the licensees of the stations over which it was broadcast have been derelict in the discharge of their duty. There is a marked uniformity of thought in the letters of protest which variously characterize the skit as profane, obscene, indecent, vulgar, filthy, and insulting to the American public."

While the Commission has no direct power of censorship, the act of 1934 which created the FCC provides that no person shall utter "any obscene, indecent or profane language by means of radio communication," Mr. McNinch pointed out, and the FCC is charged with enforcement of this provision. . . .

The outcry following allegedly improper broadcasts is not without precedent. Late in 1934, Columbia Broadcasting System got into difficulty over a Spanish poem, which was apparently more suggestive in that language than in English, as the FCC dismissed the complaint.

The Commission absolved Station WOV, New York, of charges that it broadcast an obscene program in Italian two years ago. It revoked the license of KFKB,

<sup>4</sup> Extract from news story headed "FCC Threatens Action Against NBC Affiliates." *Advertising Age*. December 27, 1938. Reprinted by permission.

owned by the famous Dr. Brinkley and dedicated largely to the gland business.

The power of the FCC to revoke licenses was upheld by the courts in a case fought by the Rev. Bob Shuler, as the Trinity Methodist Church South vs. the Federal Radio Commission. The tribunal held that Shuler's references to prostitutes, Jews and the Roman Catholic Church were something more than religious or patriotic zeal.

## INSTANCES OF CITATION OF STATIONS

COMPILER'S NOTE—Under ordinary circumstances, station licenses are renewed for the usual six-months period as a routine procedure. If, however, complaints have been made against a station or its programs, the practice of the Federal Communications Commission is to hold a hearing on the station's application for license renewal. Since the Commission is usually several weeks behind in its consideration of business, the application is usually "set for hearing" for a date a month or more in the future. Meantime, a temporary license is given the station, authorizing its operation until the question of granting a regular six-months license has been decided, one way or the other, following the hearing. A station is "cited" or its application "set for hearing" only when commission regulations have been violated, or when complaints have been made to the commission concerning the station or its programs. In a large proportion of cases, the case against the station is dropped by the Commission before the date set for the hearing is reached, and the station is given a regular license.

— WNAX — WKBW — WAAB — WDAF — WJSV —

While its "Committee on Informal Complaints" studies rather lackadaisically the question of program actions against stations with a view to reforming procedure, the FCC continues to cite stations on such matters, with growing complaints from licensees.<sup>5</sup>

At the FCC meeting April 20, a number of stations were given temporary renewals because of program complaints, while other temporary renewals were made

<sup>5</sup> Extract from news story headed, "FCC Cites More Stations on Programs." *Broadcasting*, May 1, 1938. Reprinted by permission.

regular after investigation of complaints had proved them unjustifiable. . . .

At its April 20 meeting, the FCC set for hearing the renewal application of WNAX, Yankton, S. D., because of a program having to do with a processing tax. . . . WKBW, Buffalo, was designated for hearing on its renewal because of a complaint from Dr. J. H. J. Upham, dean of the College of Medicine of Ohio State University, against a program by Burt Wakelee regarding the medical school of the University and anti-vivisection. WAAB, Boston, was given a temporary license renewal for two months because of a complaint by Lawrence J. Flynn, said to be a former employee of the Yankee Network, alleging improper program operations by the station. . . .

A complaint against WAAB involving broadcasts by Rev. Gerald L. K. Smith, former Huey Long lieutenant, was dropped, and presumably will be dropped against other stations that have been given temporary licenses for the same reason. Complaints against WDAF, Kansas City, involving a transcription identified as "Rube Appleby" and against certain other stations for the same program, were dropped and regular licenses were granted. A complaint against WJSV, Washington, by John P. Davis, national secretary of the National Negro Congress, alleging improper statements in a news broadcast, likewise was dropped. . . .

— WTCN —

Press and public antipathy against the FCC seemed to hit an all-time high during the last fortnight as an outgrowth of its citation of WTCN, Minneapolis, because of the "Beyond the Horizon" play, relayed to it last July by NBC-Blue network.<sup>6</sup> Reaction against the citation was so brisk and unanimous that the FCC at

<sup>6</sup> Extract from news story headed "Citation for O'Neill Pulitzer Drama Sidetracked by FCC for Further Study." *Broadcasting*, October 15, 1938. p. 22. Reprinted by permission.

its very next meeting, set aside its action, designating WTCN's license for renewal, though it still hasn't wiped the incident from its books.

The citation came at the FCC meeting on September 27, and at that time all five members voted for the hearing to determine whether the broadcast was proper. Action apparently was taken on the basis of a single complaint, and so far as known, the authenticity of the complaint was never verified. . . .

At its October 4 regular meeting, however, and after the torrent of editorial criticism, the Commission voted to reconsider its action of the preceding week in designating the WTCN license for hearing. . . .

Many newspapers picked up the incident as a censorship threat. The most amusing morsel was that published by Leonard Lyons, New York columnist, on October 6. He related that the FCC is censoring stations which broadcast the O'Neill prize-winner because of some cuss-words in the script. Then he observed, "The FCC officials are not aware that another Federal agency—the Federal Theater—three times has presented the same play—uncensored."

— WMIN — WMBC —

#### "BEYOND THE HORIZON" CASE

Framing of new procedure in the supervision of program complaints against stations—notably those involving allegedly profane, obscene and indecent language and lottery prize-contests—is being undertaken by the FCC through its new general counsel, William J. Dempsey.<sup>7</sup> . . . Smarting from the sting of editorial criticism directed at it because of alleged "censorship" in connection with recent program citations, the Commission apparently is determined once and for all to establish a procedure that will be beyond reproach. . . .

<sup>7</sup> Extracts from news story headed "FCC Orders Study of Program Complaints," by Sol Taishoff. *Broadcasting*. November 1, 1938. p. 11+. Reprinted by permission.

In two recent cases (WMIN, St. Paul, and WMBC, Detroit) counsel for the stations challenged FCC action in setting down the stations for hearing, contending that the Commission has no jurisdiction and that the lottery provision of the Act is enforceable only by the appropriate authorities in the district where the offense is alleged to have been committed.

At the same meeting, the FCC wiped from the records the temporary licenses issued to ten stations on the NBC-Blue network which had been cited because of the now-famous Eugene O'Neill "Beyond the Horizon" broadcast. In granting the stations regular license renewals, the FCC cleared the way for the independent study of the whole question of obscene broadcasts, along with lotteries.

But even more spectacular was the action of the Commission at the same meeting in setting down for hearing the renewal of WBNX, New York City, and issuing it a temporary license because of a program alleged to have depicted a white slave situation. The broadcast, it is understood, was in Polish, and was sponsored by a motion picture theater advertising a picture titled, "Girls in Danger." It is alleged to have been broadcast last February.

Another complaint against the station was alleged to have involved broadcast of a song in Italian titled "Potzo Woodrow Wilson." The word "potzo" was interpreted at the Commission as meaning "crazy" in English. A third charge alleges Fascist propaganda programs.

Stations which had been granted temporary renewals because of the Pulitzer prize-winning "Beyond the Horizon" broadcast last July all were NBC-Blue outlets. They included WTCN, Minneapolis; WALA, Mobile; KXYZ, Houston; WSPD, Toledo; WSAN, Allentown, Pa.; KLO, Ogden, Utah; WFEA, Manchester, N. H.; WORK, York, Pa.; KMED, Medford, Ore.; and

WFBC, Greenville, S. C. These stations were granted regular renewals for the usual six-months period.

WHOM, Jersey City, was given a three-month extension, with Commissioners Sykes and Craven dissenting, in connection with a further investigation of a complaint alleged to involve pro-Fascist broadcasts. . . .

— WBNX — WHOM —

The Commission late last month cited WBNX and WHOM, in New York, for alleged programming transgressions.<sup>8</sup> No formal statement was forthcoming from WBNX, and the FCC did not issue any announcement elaborating on its citation of that station for hearing. The complaints, it was learned, alleged, among other things that a white slave situation had been depicted in one commercial broadcast, and that pro-Fascist propaganda had been broadcast, along with other charges.

WHOM, however, issued a denial of pro-Fascist broadcasts, coincident with the issuance of a press release Oct. 31 by the FCC that a complaint had been registered concerning an alleged anti-Semitic, un-American broadcast. The program, said to have broadcast on September 18, was sponsored by an organization designated as "Il Gride Della Stirpe."

— WAAB — WNAC —

Indefinite postponement of the hearings scheduled on application renewals of WAAB and WNAC, Boston key stations of the Yankee and Colonial networks, was authorized November 1 by the FCC upon petition of John Shepard 3d, president of the stations.<sup>9</sup> The indefinite postponement was until "sometime after January 1, 1939." Commissioner Craven dissented.

<sup>8</sup> From *Broadcasting*. November 15, 1938. p. 16.

<sup>9</sup> News story headed "WAAB, WNAC Hearings are Deferred by FCC." *Broadcasting*. November 15, 1938. p. 73. Reprinted by permission.

The stations were designated for hearing because of complaints alleging improper use of the facilities in editorial campaigns and in alleged political activities.

— WMBC — WMIN — KFOX —

Program citations against five stations operating with temporary licenses pending investigation have been dismissed by the FCC after legal questions had been raised in certain instances as to the FCC's jurisdiction.<sup>10</sup> Counsel for several of the stations had contended that the FCC lacked authority on matters involving alleged lottery or profane broadcasts and that local authorities in the district in which the alleged offense was committed must initially take steps.

While the FCC in dismissing the decisions did not announce that it concurred with this contention, it nevertheless had it under advisement. Temporary renewals issued WMBC, Detroit, and WMIN, St. Paul, involving alleged lottery broadcasts, were among those countermanded. The FCC announced that the programs in question no longer are being carried and as a consequence regular renewals were authorized.

KFOX, Long Beach, Calif., likewise was given a regular renewal, and its hearing cancelled because certain programs allegedly involving fortune telling and misleading medical advertising had been discontinued. . . .

#### COMMISSION LIST OF PROGRAM TABOOS<sup>11</sup>

Panicky broadcast industry representatives are still arguing this week over the underlying significance of the FCC vote approving a majority report of the Committee on Informal Complaint Procedure which endorsed,

<sup>10</sup> Extract from news story headed "Five Stations Get Regular Renewals." *Broadcasting*. March 1, 1939. Reprinted by permission.

<sup>11</sup> Extracts from news story headed "Industry Upset by Possible Meaning of FCC's Latest Flank Maneuvers." *Variety*. March 8, 1939. Reprinted by permission.

with only minor changes, the current method of spanking station operators whose conduct offends a majority of the regulators. With the FCC's motives still obscure, substantial element voiced alarm that the government agency is determined to exercise round-about censorship, with non-conformists subject to the death penalty.

Apprehension was caused last week when the Commish adopted a memorandum submitted by Commissioners Eugene O. Sykes and George Henry Payne setting forth 14 types of program which might be the basis of punitive action because licenses fail, in the Commission's judgment, to observe their public interest obligation.

Almost coincident with a warning from NAB directors about censorship dangers, the Commish made public the two reports of its Complaints Committee, revealing a deep-seated difference of opinion on the question of how far the regulators may go in applying the eligibility test for license holders. Disclosure of the conflicting view followed by nearly 24 hours an announcement that henceforth issuance of temporary tickets for stations under investigation will be abandoned and that revocation proceedings will be used to punish flagrant violators of the basic law or FCC regulations in the future.

The alarm came chiefly from the way in which the majority of the Complaints Committee classified the squawks and the indication that Sykes and Payne feel stations should be woodshedded for airing any of 14 types of programs. . . . Many watchers feared the enumeration of these items means the Commish will call on the carpet proprietors of stations which air such material. It was noted that the majority report failed to define some of the terms—leaving broadcasters in a worse quandary than ever before—such as “children's programs,” “liquor and cigaret advertising,” “too much advertising,” and “too many recorded programs.” . . .

## TYPES OF PROGRAM POISON

FCC has hinted the kind of program that will almost certainly evoke displeasure and involve possible discipline or deletion for offending stations. Broadcasters are warned against

1. Fortune telling in any form.
2. Astrology or other fake sciences.
3. Solicitation of funds.
4. False, fraudulent or misleading advertising.
5. Defamatory statements.
6. Failure to allow equal opportunity to discuss all sides of controversial issues.
7. Programs bordering on the obscene.
8. Programs offending religious or racial groups.
9. Taking sides (as broadcasters) on political, religious or racial matters.
10. Cliff-hanger (over-stimulating) kid shows.
11. Booze glorification.
12. Interrupting concerts or music to insert advertising announcements.
13. Too much advertising in general.
14. Too many phonograph records.

NO CHANGE IN COMMISSION POLICY<sup>12</sup>

Advertisers were alternately shocked and relieved this week as a report gained circulation to the effect that the Federal Communications Commission had laid down a new policy involving stringent censorship over commercial broadcasting, only to be specifically and vehemently, denied by FCC Chairman McNinch.

The early story, emanating from Washington and given strong prominence by several newspapers, asserted that the Commission intended to widen the scope of its censorship activities and listed a number of purported radio conditions listed by the FCC as "contrary to public interest." . . . This interpretation of the Commission's attitude grew out of a report submitted to the FCC by a special committee, covering suggested changes in the procedure for handling informal complaints on broadcast matters. During the course of the report the committee

<sup>12</sup> Extract from news story headed "Radio Censorship Issue Flares Anew in Controversy." *Advertising Age*, March 6, 1939, p. 1+. Reprinted by permission.

listed 14 types of programs which complainants felt were "contrary to public interest." . . .

Publication of the early report regarding the FCC attitude drew a blistering retort from Mr. McNinch. He declared the stories "thoroughly misrepresent" the Commission's action on program complaint procedure. He also took occasion to bring out into the open the internal dissention that has plagued the FCC for some time and which has been epitomized by persistent bickering between the chairman and Commissioner T. A. M. Craven.



## THE BROADCASTER AS CENSOR

In the matter of programs broadcast over his station, the operator of a radio station occupies an unenviable position. His livelihood depends upon the continued good will of the listening public; he must scrupulously refrain from presenting programs which might incur the displeasure of the public, or any considerable element of it. Yet his station is supported by advertising revenues, and those to whom time is sold demand the right to determine what programs shall be presented in the time which has been purchased. Likewise, the policies of the Federal Communications Commission require him to operate his station in "the public service," which in practical application means that he must make his facilities available to various organized religious, social and educational groups on a sustaining basis, with little control over material presented on programs presented by these groups. Yet if any outside agency to which the facilities of his station have been extended presents a program which offends any section of his listeners, a storm of protest is raised which inevitably injures the reputation of his station and causes advertisers to refrain from buying time. And even more serious, a complaint to the Commission by even a single listener—as in the case of the "Beyond the Horizon" Blue network broadcast by WTCN—may endanger the station's license to broadcast.

To illustrate the broadcaster's difficulties, suppose that a speaker representing some powerful organized group—say a labor union, or the American Legion, or

the Daughters of the American Revolution—wishes to use the facilities of the station for a talk on a subject which, in the opinion of the operator of the station, includes material which very probably will offend a large section of the station's listeners. The broadcaster is faced with a serious dilemma. If he sells the time desired, and permits the speech to be given, he faces the certainty of widespread criticism and protest from the offended groups which will certainly injure his station, perhaps—if the material presented is slanderous—make his station a defendant in a court action, and possibly even result in a refusal of the Communications Commission to renew his license. But on the other hand, if he refuses to sell the time desired, or insists on the elimination from the speech of the objectionable passages, he incurs the hostility of the group sponsoring the speaker and again injures his station. In every situation in which time is desired for the discussion of a controversial question, the broadcaster finds himself between the Scylla of censorship and the Charybdis of a suit for slander.

In the case of political speeches, the broadcaster is in even worse case. If he sells time to one candidate for office, he is required by the statute to make time available on exactly the same terms to every other qualified candidate for that office, whether he be Republican or Democrat, Independent, Socialist, or Communist. And more important, he is specifically restrained by statute from censoring in any way, the material broadcast by any candidate—but at the same time, the Courts have held that the station is liable under the laws of libel and slander if the uncensored political broadcast includes slanderous statements.

When a political speech is broadcast, all that the station operator can do is rely on the good judgment

and good taste of the speaker—and hope for the best. But in the case of other broadcasts, it has hardly to be wondered at that the broadcaster has gradually developed a set of “station policies” which permit him to exercise a sort of station censorship over material to be broadcast—a censorship sometimes referred to as “editorial selection.”

In this and the following sections are presented various viewpoints on the broadcaster's problem, material on station policies, and instances in which stations have used their power of “editorial selection.”

### THE BROADCASTER'S DILEMMA<sup>1</sup>

Pity the poor radio broadcaster. He is criticized if he unlooses on a jittery public the war whoops of fire-breathing inhabitants of Mars or the equally incendiary utterances of a certain radio priest, and he is just as roundly criticized if he cuts them off the air. If he opens his station to inflammatory or hysteria-inducing broadcasts, he may be accused of abusing his license and may have to answer to the all-powerful Federal Communications Commission. If he exercises discrimination, on the other hand, he is subject to charges of dictatorial censorship and abridgment of free speech.

The dilemma in which the broadcasters find themselves more often than not is well exemplified in the controversy which has developed between Neville Miller, president of the National Association of Broadcasters, and Senator Burton K. Wheeler, Democrat, of Montana, over Mr. Miller's recent declaration that broadcasters should not tolerate programs “inciting racial and religious hatred.” Mr. Miller placed the responsibility for this type of censorship “on the shoulders of the American broadcaster.”

<sup>1</sup> Editorial, *Washington Star*, January 2, 1939. Published in *NAB News Review*, January 18, 1939. p. 16-17. Reprinted by permission.

Senator Wheeler, ever alert to defend the constitutional guaranties of free speech, detected in Mr. Miller's pronouncement what the Senator believed was a threat to these guarantees via radio. "Who is Mr. Miller that he should set himself up to say when free speech should be denied to any citizen of the United States?" asked the Montana Senator. "What special knowledge does he possess that he can judge when I or any one else abuses free speech?" These are rather harsh questions. They might quite properly be referred by Mr. Miller to the F.C.C., which, through its power to issue or revoke broadcasting licenses, holds radio stations strictly accountable for any abuses which occur. And the F.C.C., in turn, well might pass the question back to Senator Wheeler and his colleagues at the Capitol, who created the commission and the laws under which its licensing powers are exercised.

The fact remains that the issuance to a radio station of a license to broadcast programs to the public at large necessarily carries with it a serious responsibility which the broadcaster cannot in good conscience evade. Programs likely to offend good taste, to corrupt morals or to conflict with what is broadly termed the public interest have no right of free speech, on the air or elsewhere. The broadcaster knows he may forfeit his right to a license unless he uses discretion in what he broadcasts. He knows, moreover, he will be in peril of losing his license if he abuses this exercise of discrimination. This check, after all, is probably the best possible insurance against offensive programs on the one hand and unreasonable censorship on the other.

### CENSORSHIP—OR SLANDER <sup>2</sup>

. . . What haunts the broadcaster is his predicament as a prospective co-defendant in an action for slander.

<sup>2</sup> By Robert J. Landry, radio editor, *Variety*. Extract from "Radio and Government," *Public Opinion Quarterly*, October 1938. p. 557-69. Reprinted by permission.

Vituperative candidates submit their text in advance, but in the heat of speechmaking frequently digress into dangerous personalities. The broadcaster then must make an instantaneous decision of grave character. To cut or not to cut the text-jumper? On the one hand there is the risk of being charged with exercising censorship, which the law specifically forbids. On the other hand, the station may become an accessory to a possible malignment. . . .

### SHOULD SPEECHES BE CENSORED?<sup>3</sup>

A publisher of a newspaper usually has uppermost control of his own company, and can easily protect himself against libel. He has the direct supervision of his writers, and can blue-pencil anything. The editors of his paper can accept or reject the work of the reporter. The publisher, therefore, should be held responsible for libelous and slanderous statements in his paper. His responsibility should be of the most onerous character for he wields a sword that can mow down ruthlessly or destroy a reputation at will. A written word that is poisoned with libel spreads rapidly. Anyone controlling such dynamite must exercise the greatest vigilance and be held to strict accountability. A publisher can easily protect himself against libel by care and vigilance.

The broadcaster, on the other hand, in many instances, cannot exercise such vigilance. He cannot control that which is spoken over his station. Be he ever so alert, the speaker may often get in, edgewise, damaging utterances. He cannot stand guard as effectively as a publisher or editor of a paper or magazine or pamphlet.

Furthermore, it is often impossible to prevent orators over the radio from uttering slanderous statements. A "mike" may be set up at a political meeting, or in a

<sup>3</sup> By Congressman Emanuel Celler, New York. Excerpts from a speech in the House of Representatives, January 18, 1939. *Congressional Record*. Vol. 84. p. 1108.

banquet hall. The owner of a station may have asked for a copy of the script, and the request may have been refused. The importance of a speaker or the occasion may make the speech of real value and consequence. The owner can exercise no power or control over the speaker. The owners of radio sets are anxious to get the words of the particular speaker on particular occasions. Someone is slandered. Is it fair to hold the owner of the radio station responsible for these slanderous utterances when he had no opportunity to stop or prevent them?

Speakers, and particularly officials of public life, resent censorship. They loathe to present in advance copies of their orations, and when they do so they are reluctant to accept the suggested changes. They have pride in authorship. They rebel against the revision of the text.

We should not compel the broadcaster to censor, save to prevent readily ascertainable libel and/or slander. He should, of course, exercise some initiative and be fairly vigilant, but behind that vigilance there should not be the stalking specter of a suit for defamation. That fear should be removed and he (the broadcaster) should not be liable, except where he is absolutely and directly responsible for the utterance of the orators or failed to exercise due and reasonable vigilance to prevent the damage. It might be argued that because a broadcaster can call for the script of the radio talk he should be held responsible for the statements made over his station. In refutation, it should be remembered that writers and orators and officials are very loathe to submit scripts in advance, much less allow scripts to be doctored.

Moreover, whenever a station picks up the broadcast of a foreign distant station and cannot anticipate the speaker's statements, then the broadcaster is without any opportunity whatsoever to censor any libel or slander contained therein. Of course, he can "pull the switch"

and cut off the speech. But that is a step which a broadcaster is obviously very hesitant to take and, in any event, a step which would be of very little aid because it is a remedy that can be exercised only after the "words are out" and the damage done; a remedy that only can prevent continued damage. . . .

#### SLANDER IN POLITICAL SPEECHES<sup>4</sup>

. . . In 1927 there was enacted a Federal law called the Radio Act of 1927 by the terms of which no one was permitted to operate a radio station without a license issued by the Federal Radio Commission, a body established by the act. Regarding political broadcasts, Congress provided that if opportunity is given to one candidate for public office to use a broadcasting station, equal opportunity must be given to the opposing candidate, and that in such case the station cannot censor the material broadcast. The same provision was reenacted in the Communications Act of 1934, without any material change. The Communications Act provided:

"If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station, and the Commission shall make rules and regulations to carry this provision into effect; *Provided*, that such licensee shall have no power of censorship over the material broadcast under the provisions of this section. No obligation is hereby imposed upon any licensee to allow the use of its station by such candidate."

—48 Stat. 1088, c. 652, par. 315, 47 U.S.C.A. par. 315 (1934)

The language of the section of the 1927 act respecting the allowance of time to political candidates, has come before the courts in only one case, *Sorenson v. Wood*, an action arising in the state of Nebraska. No case concerning the similar section of the Communications Act has yet been litigated.

<sup>4</sup> By Stuart Sprague. Excerpts from "Freedom of the Air." *Air Law Review*. January 1937. p. 30-45. Reprinted by permission.

It appeared that Sorenson was seeking his own reelection as attorney general of Nebraska, while the defendant, Wood, was a candidate for the post of Railway Commissioner. Radio station KFAB, a co-defendant in the suit, permitted Wood to read the speech he had prepared and reduced to writing containing a defamatory personal attack on the character of Sorenson. The radio station did not require and did not have a copy of the speech in advance of the broadcast. The employees of the station made no attempt to cut the speaker off the air, although they could have done so with the station's existing equipment. The announcer who introduced the speaker was present during the speech, but paid no attention to it and did not know what words were used.

The jury in the District Court of Lancaster County, Nebraska, brought in a verdict against Wood for one dollar, and absolved the radio station. On appeal from the judgment, the Supreme Court of Nebraska reversed the judgment and remanded the case to the lower court for a new trial. . . .

The Nebraska Supreme Court held that the words being written, their publication by radio broadcasting constituted libel rather than slander, and then proceeded to find prejudicial error in some of the charges of the trial Judge to the jury, most important of which was the charge to the effect that a broadcasting company failing to "honestly and in good faith exercise due care and on account of that failure permitting libelous matter *per se* to be broadcast, is responsible for the natural and proximate results of that failure." The Appellate Court held that this charge put the basis of the liability on the law of negligence, instead of on the law of defamation as should have been the case. Applying the rule of newspaper publications that honest mistakes and due care do not relieve the publisher from liability for libel, the court found no legal reason why a broadcasting

station should be granted special favors as against one who has been injured by a libelous publication. . . .

The defendants appealed to the United States Supreme Court from the decision of the Supreme Court of Nebraska, but on December 4, 1933, the appeal was dismissed. . . .

## DEVELOPMENT OF EDITORIAL POLICIES<sup>5</sup>

. . . The period (winter of 1924-35) is an important one, for during it the patterns of American broadcasting took definite shape. Among other things, it was a period devoted to program experiment, to discover just what the radio listener wanted radio to give him. Costs began to rise alarmingly and new means of financing the whole Alladin-like industry were sought. Suggestions that set-manufacturers underwrite program costs proved impractical. Appeals to listeners for voluntary donations to defray expenses met with no response. Other schemes were broached and abandoned.

The way out of the economic *impasse* came in 1925 when Station WEA F announced that its facilities could be hired by any reputable advertiser. The inclusion of the word "reputable" in the announcement suggests editorial policy in embryo. It also points clearly to a desire on the part of the broadcasting station to guard against offending public opinion. Slowly at first and then in increasing numbers, buyers of radio time appeared and found broadcasting an effective medium. Naturally, these advertisers gravitated to the stations which seemed to promise the largest probable audiences. To increase the audiences, more appealing programs were devised, and professionals from theater, concert hall and vaudeville were employed to perfect them. The programs had one

<sup>5</sup> By Merrill Denison. From "Editorial Policies of Broadcasting Companies." *Public Opinion Quarterly*. January 1937. p. 64-82. Reprinted by permission.

positive purpose and one only: to attract listeners by offering entertainment. The negative proscription was equally definite: true to the logic of advertising dogma, the programs might contain nothing that could offend a potential buyer of the advertiser's product. . . .

The economic policies of American broadcasting companies are the direct product of the forces inherent in the system, or of five principal determinants: economic self-interest, the radio audience, pressure groups, advertising sponsorship, and government regulation. Acting one on the other, these influences tend to produce interesting combinations. For example, pressure groups may act directly on the government to institute changes inimical to the wishes of the majority of listeners and to the interests of the broadcaster. The audience and advertiser—as in the case of children's programs—may unite to thwart the combined efforts of a pressure group (represented in this case by parents, teachers, and child psychologists) to provide programs better suited for but distasteful to the audience (in this case represented by the children) and hence of dubious value to the advertiser. Or one portion of the audience may come in conflict with another portion, as happened during the reigns of the crooner, the jazz band, and the blues singer.

Following the formation of the principal networks, the development of editorial policy came about through a process of slow crystallization rather than as the outcome of a basic philosophy of the attitudes to be adopted by the operators of a commercial broadcasting system in a democracy. Dealing with a new and unknown medium, lacking any experience to guide them, the broadcasters' first tendency was to draw upon the experiences of the publishing and theatrical worlds. It was quickly discovered, however, that, while plausible analogies existed, broadcasting involved innumerable problems never encountered by either publisher or thea-

ter manager. The broadcaster, for example, could not exclude a portion of his audience.

In the operation of sustaining activities, however, certain needs soon became apparent. If the broadcasting company, operating on a nationwide scale, was to preserve and increase audience good-will, it must, in addition to providing acceptable entertainment, evolve practices which would at the same time win the approval of the majority of listeners and would forestall, so far as possible, the criticisms of particular groups within the audience. To meet these conditions, the first broad general policies came into being. Fundamental to all others were the policies governing the sale of time, for very early the more farsighted broadcasters saw that they could not permit their facilities to be bought for the purpose of influencing public opinion without promptly offending some portion of their audience. It became a basic policy of both major networks, therefore, to refuse to sell time to groups or individuals or to commercial interests for the discussion of controversial public issues, for special pleading (other than the special pleading of the advertiser who hopes to induce listeners to buy his product or his service) or for the presentation of partisan points of view.

Having adopted the policy of refusing to others the purchase of time for such purposes, the larger broadcasting companies included themselves in such policies. In other words, neither of the major companies has ever used its facilities to support its own points of view in controversies. When a controversial situation arises, they confine themselves to the same channels for reaching the public as those to which their opponents are limited—that is, the press, the public platform, and the printed pamphlet. As a corollary to the restrictions governing the sale of time, the policy of supplying time free of charge for the discussion of questions of public interest was adopted. This policy was shortly extended

to embrace educational and religious broadcasting for which neither large network now sells time. . . .

The one exception to the rule of refusing to sell time for the discussion of public issues is made during the period between the close of the national political conventions and the elections in November. For the weeks of intensive campaigning, time is sold to political parties, groups, and candidates without discrimination between parties. While the giving or selling of time to political speakers is a matter for the broadcasting company to decide for itself, the company is required by law to afford all candidates identical opportunities in the use of its facilities. . . .

While the foregoing section dealt with the evolution of the broad general policies which govern sustaining operations, it should be noted that until comparatively recently neither of the broadcasting companies chose to inform the public of their policies as they were evolved and adopted. The reasons are apparent. Sensitive to any gust of unfavorable public opinion that might arise, the broadcasting companies felt that the fewer specific statements on policy they made to the public the fewer were the chances of becoming involved in public controversy. As a result the few statements issued to the public were general in character and expressed good intentions rather than explicit details. This was particularly the case in connection with the slowly emerging policies—beyond those dealing with slander, libel, obscenity, profanity, and so forth—governing commercial programs.

As was pointed out earlier, the logic of the situation should have furnished an identity of interests between broadcaster and sponsor. Such failing to prove the case, public criticism as to both the character and quantity of commercial continuity rose to a serious pitch by the beginning of 1935, particularly in connection with commercially sponsored children's programs and with

those lauding the virtues of patent medicines. To meet this criticism the Columbia Broadcasting System broke with the cautious tactics that had prevailed theretofore when it publicly announced the adoption of new policies<sup>9</sup> which provided regulations to govern children's programs, and to control the quantity and nature of advertising matter which might in future be broadcast from its stations. This announcement marked a turning point in American broadcasting procedure. In adopting these regulations this company assumed a larger measure of editorial responsibility and accountability than had been publicly acknowledged by any broadcasting company theretofore, and since that time the same company, on numerous occasions, has led the industry in embracing opportunities to state its conception of the duties and responsibilities of private ownership of the country's broadcasting facilities.

While the broadcasting company in many cases actually creates and produces the program of a commercial sponsor—writing the script, selecting the music, engaging the actors and musicians, rehearsing the whole, and delivering the completed performance to the open microphone—the more usual practice is for the sponsor, through his advertising agency, to provide his own program. In such cases, which are greatly in the majority, the broadcasting company has nothing to do with the preparation of the program but only rents the use of its studio facilities and technical equipment for the necessary rehearsal time, and the use of its leased wires and transmitter for a limited period, usually fifteen minutes or some multiple thereof.

Nevertheless, the broadcasting companies maintain rigorous editorial supervision of all commercial programs. Each of the large broadcasting companies is now highly departmentalized and has executives in

<sup>9</sup> *New Policies: A Statement to the Public, Advertisers and Advertising Agencies.* The Columbia Broadcasting System, New York, May 15, 1935.

charge of departments devoted to talks, education, children's programs, women's affairs, current events, to name but a few. The executives heading these departments ordinarily exercise the editorial function of selection. In certain instances, their decisions are guided by or reviewed by company officers. Where policies have been long established, the department head usually makes his own decisions; where new questions arise, as they continually do in broadcasting, they are decided by the heads of the organization.

Each company maintains an editorial or continuity acceptance department whose function is to pass on written matter before it goes on the air. All commercial or advertising continuity passes through these departments together with a considerable portion of sustaining continuity. Both commercial and sustaining continuities are examined first to determine that they are neither slanderous nor libelous; that they contain no indecent, obscene or profane language; that they may be delivered within the rigid time-bracket allotted, and that they conform to the standards of good taste adopted by the company over whose transmitters they will reach the listening public. Whenever any proscribed matter is discovered it is edited as a matter of self-protection since the broadcasting company is liable, as publisher for any damages suffered as a result of statements made over its facilities.

The exceptions to the foregoing procedure are numerous. For example, there are many cases in which talks must be made extemporaneously into the microphone as in the case of sports broadcasts, eye-witness reports and, under unusual circumstances, some commentators, whether these be sponsored or unsponsored. The same sometimes hold true for forum or debate programs. In such cases the only protection the broadcasting company has is to rely on the responsibility of the individual, and if the worst comes to the worst, to cease

transmitting during the course of the broadcast, as happens on rare occasions.

"Censorship does not exist in the sense of asking that the views of a speaker agree with those of any member of the company's editorial staff." Speakers, however, are asked to observe the editorial taboos. Many of these are legal proscriptions and are clear and unequivocal. The only one concerning which there is any ambiguity is that dealing with "good taste." The broadcasting companies admit the impossibility of providing an exact definition for either good taste or propaganda. In both cases, the final decision must rest on editorial judgment.

The most noted instance in which the "good taste" ruling was applied was that of a guest speaker on a series of broadcasts made under the aegis of a medical association over the network of the Columbia system. In the original transcript of an address dealing with venereal disease as a social menace, there occurred a number of times the word "syphilis." The speaker was asked to phrase his speech differently and when this request was not acceded to was refused permission to go on the air.

Charged with exercising censorial powers, the company justified its position on these grounds:

That broadcasting is unique in that it reaches family and social groups, of both sexes and ages, simultaneously; is heard in restaurants and public gatherings as well as homes; its material must offer something of interest to all these groups at various times, and must at no time whatever be offensive to any of them by any established standard whatsoever.

To a certain degree, of course, the question of offensiveness is somewhat subjective; that is, it may be a matter of personal taste and like and dislike; and in this minor degree the editor has to act arbitrarily, trusting to his own personal good taste as being representative of the larger whole. But in broad matters of wide community interest there is small question and much certainty. It is very evident, for instance, that attacks on religious faiths and creeds are offensive to many listeners in the radio audience; and such attacks, therefore, are not permitted by nation-wide broadcasters. . .

Such editorial control means merely that the radio executive is dutifully trying to reflect in his management the best established thought and opinion of his community. Unlike the editors of most newspapers and magazines, he has no "editorial policy" which seeks to promote some particular school of philosophy or economics or morals, either by emphasis or formal argument. . . . In all matters of controversy he tries to present equally and fairly both points of view. He seeks to make broadcasting a great community voice.

The above quotation from a speech delivered by an official of the Columbia Broadcasting System before a Regional Conference on Social Hygiene held in New York City, states the position in regard to matters of taste and the standards used by one broadcasting company to determine what is to be judged as bad taste and what as good.

In education the policies of both companies are practically the same: that is, to refrain from competition with the classrooms, leaving formal teaching to the traditional agencies, and concentrating rather on supplementary programs such as NBC's Music Appreciation Hour with Walter Damrosch and CBS's American School of the Air. In religious broadcasting the companies rely on the judgment of advisers representing all the principal faiths of the country. Time is not sold but is allocated free of charge to the various faiths in proportion to their numerical strength. To a greater extent than in any other field, speakers on religious topics are the nominees of various groups than the choice of the broadcasting companies.

Another field to which special interest attaches is that having to do with international affairs. While broadcasts involving international affairs or foreign speakers require more editorial care than possibly any other type, American broadcasting companies, because of private ownership, are able to adopt a policy impossible under any other broadcasting system in the world. They may bring listeners any foreign program they choose without the interference of or collaboration with

any government department or agency in the United States.

Before any program, commercial or sustaining, is approved by either broadcasting company it must be submitted in manuscript form or, if the company so desires, a "live audition" must be given. To gain acceptance, the proposed program must conform to the standards of the individual broadcasting company. Programs which are refused by one company are sometimes accepted by another, but many programs are turned down by both companies because of their dubious entertainment value, objectionable subject matter, lack of importance or amateurish treatment.

Once a program is accepted, each succeeding continuity must be submitted for editorial acceptance in advance. Controversial matters are excluded from commercial programs; sponsors may not speak in a derogatory manner of competing products; flamboyant advertising claims are frowned upon. And always the advertiser is cautioned to remember that: "The homes which he thus enters are of all types. The broadcast audience includes the farm family, the small-town family, the city family; it comprises practically all members of the family, sometimes singly, sometimes as a group. It embraces persons of all beliefs and creeds . . . these characteristics . . . (and) the intimate personal nature of broadcasting and the wide range and joint listening of its audience primarily determine what properly may be put on the air."

It is evident from the rules and regulations imposed by nationwide networks on the advertising sponsor that this phase of broadcasting has already settled down to a regularized routine. To imagine that this system works automatically, however, is in error. Conflict still continues between the broadcasting company and that minority of sponsors who refuse to be guided by the realities of American broadcasting, who are indifferent

to the fact that the whole intricate organization is dependent for its survival on the continuance of satisfied public opinion. From this conflict come those incidents where practised policy seems at variance with stated policy. To anyone acquainted with the numerical quantity of editorial decisions required in the course of the broadcasting week, the exceptions to stated policy are rare and are more often the result of a failure on the part of editorial personnel than of compromise with principle.

### CENSORSHIP BY THE PUBLIC<sup>1</sup>

News may be censored or news may be freely discussed.

When the dissemination of news is fettered by government censorship, democracy quickly vanishes. When news and its discussion is fettered by social or commercial inhibitions and intolerances, the appearance of democracy may be fairly well sustained, but the ultimate result will be the same.

For the last eight years I have fought the indifference of Mr. Average Man. What he is doing is promoting censorship as vicious as any government censorship anywhere in the world.

The public is the greatest censor in any democracy. A viewpoint may be expressed by an editor over the radio to which Mr. Average Man might take exception. Nine times out of ten he takes exception because his viewpoint is diametrically opposed to that expressed by the editor.

Mr. Average Man takes pen in hand and, if that editor be on a commercially sponsored program, writes in wrathful indignation to the sponsor that so long as he

<sup>1</sup> By Boake Carter, radio commentator. From *I Talk as I Please*. Dodge Publishing Co. 1937. Extract printed in *Literary Digest*, December 18, 1937. p. 28. Reprinted by permission.

retains that editor to edit the news, then he, Mr. Average Man, would not think of buying that firm's products.

So the firm, having to worry about pay rolls (and pay rolls depend upon sales), approaches the editor and says, "Lay off this or that topic." For that counsel, while I disagree with its wisdom in the long run, I do not blame the commercial sponsor. I blame primarily Mr. Average Man. I blame him for mouthing platitudes about his belief in democracy and liberty and then doing the very things which destroy democracy. I blame him for his intolerance. I blame him for failure to heed the sound advice of Voltaire: "I totally disagree with what you say, but I will defend to the death your right to say it."

If Mr. Average Man did not shower commercial sponsors in American radio with the intolerance of threats to destroy their business just because he may disagree with a viewpoint expressed on domestic or world affairs by an editor, there would be a far more sound, intelligent and keen reporting and discussion of radio news and radio news editing.

Whether we like to admit it or not, the memory of humankind is very short. Moreover, it is utterly impossible to please everyone. If that could be done—then no one would listen. People love to write and say: "Dear Sir: I wouldn't buy your dishwasher if it were the last on earth, while you have that loud-mouthed, know-it-all Bill Brown talking on your program." It gives them a sense of power and a feeling that "Well-l-put-that-bunch-in-their-place — they'll-fix-that-guy's-feet." But unless it is an organized boycott, such sporadic denunciations do not mean the loss of sales, even though sales managers fondly believe they do—at times.

A program of news worth listening to is a program that is provocative of thought and argument. If it is

provocative, people listen to be provoked or to agree with the sentiments expressed.

But in either case, I would plead that commercial sponsors bury their jitterinesses at the sight of a denunciatory letter and that Mr. Average Man disagree as violently as he may please with the views of any and every editor, but confess the danger of his intolerance in demanding censorship by indirection upon the commercial company sponsoring the broadcast.

### PRESSURE ON BROADCASTERS \*

Two WMCA advertisers, Mrs. Wagner's Pie Baking Co. and Loan and Finance Advisory Council, have yanked their radio time off the station as a result of agitation and pressure brought on by the Father Coughlin incident. Representative of Wagner Pie Co., queried as to whether time was killed owing to the Father Coughlin fracas, said he could not answer definitely, "but use your own judgment."

\* \* \*

Three thousand wildly excited supporters of Father Coughlin packed the Manhattan Opera House Thursday, protesting alleged radio monopoly and censorship. Meeting, held under the auspices of the "Committee for the Defense of American Constitutional Rights," scored individual stations and the Federal Communications Commission, but leveled its greatest barrage at WMCA, metropolitan outlet which refused time to Father Coughlin on the ground that the broadcast would stir up racial strife. By acclamation, meeting passed a resolution to boycott WMCA and its sponsors, to picket the station Sunday and to bring pressure on the FCC in order to revoke WMCA's license.

\* Extracts from news story headed, "Plan Coughlin Reprisal." *Billboard*. December 24, 1938. p. 4. Reprinted by permission.

Though meeting was precipitated by the WMCA incident, speakers broadened the scope of the protest by including Martin Dies and Boake Carter among those who were allegedly discriminated against by radio interests. Almost without exception, speakers combined religious fervor with excerpts from American history to make out a case against inferred Communistic radio infiltration. . . .

John Cecil, president of the American Immigration Conference Board, spoke on Dies's alleged attempt and failure to buy time on certain stations and charged radio was operating "under an iniquitous system." He added, "The FCC has its foot on radio's Adam's apple." Cecil placed the blame for radio censorship not so much on the stations as on the FCC, and further added that the FCC was not as much at fault as the White House.

George U. Harvey, borough president of Queens, spoke on the alleged suppression of Father Coughlin and Dies, labeled Manhattan as the headquarters of the Communist movement, and added, "I'm fighting this thing a long time." After stating his position as opposed to federal control of radio, Harvey opined local stations were not altogether to blame.

Former Senator John J. McNaboe dragged the networks into the controversy and threw an orchid to NBC, claiming the net gave Dies a hearing eight times and failed to do so once. Grew vitrollic over CBS, however, stating it was the first big radio company to accept a national broadcast by Earl Browder, "a member of the Comintern of Moscow." McNaboe claimed WMCA, while refusing Dies, carried an election series of 26 Communist broadcasts. Raked WOR and WHN over the coals also, stating neither carried Dies, though a Gallup survey showed the Dies Committee has the approval of 74 per cent of the population. . . .

EDITORIAL SELECTION UNAVOIDABLE<sup>9</sup>

. . . Broadcasting, from its very nature, is a doubly limited monopoly. It is restricted, first, by the technical requirement that there shall be no more than a certain number of stations; second, by the hard fact that there are only so many hours in the day. Any community can enjoy as many newspapers as it is financially willing to support, and each one of them can print a theoretically unlimited number of pages in any edition. Nowhere, except in rare instances, is it now possible to secure a construction permit for a new radio transmitter, and no station can by taking thought add a single hour to its effective operating schedule. . . .

This means, of course, that radio time is ardently sought after—though one would hardly think so when hearing how some of it is wasted—and that, in consequence, each station manager becomes in practice a local censor of the first magnitude. Not a blue-pencil censor—there is very little of that—but one who bangs the door in the faces of all applicants of whom he does not approve. He does this, not because he wants to, but because he must. He has only so many hours to deal out, and requests far in excess thereof. He has, furthermore, a definite responsibility to his station audience; he has to protect it so far as he can against the plague of bores, cranks, quacks, and self-exploiters generally who are the bane of his daily existence. When in doubt he plays safe; another dance band program may not add to his glory, but at least it will do him no immediate harm.

A couple of years ago, at a Congressional hearing, I was caught unawares by a sharp-tongued Representative who wanted to know all about "radio censorship."

<sup>9</sup> By Henry Adams Bellows, former member, Federal Radio Commission. Extract from "Is Radio Censored?" *Harper's Magazine*. November 1935. p. 697-709. Reprinted by permission.

In self-defense I hastily coined the euphemism "editorial selection," which sounded well enough, and suggested a pretty parallel between radio and the press. But the analogy breaks down in this, that whereas the editor who rejects a contribution does not thereby prevent its appearance in print, the station manager who declines to broadcast a speech probably keeps it from ever getting on the air at all. Even where there are several competing stations, they are all in the same boat as to time, and there is nothing in radio to parallel the job printing press. My "editorial selection," therefore, as a disclaimer of managerial censorship was essentially just such a quibble as that of the Communications Commission when it says, "We can't censor your programs, but you'll be sorry if you broadcast anything we don't happen to like."

This type of censorship through exclusion seems to be inherent in the nature of broadcasting; it exists everywhere, under government even more than under private management. In the United States it is of necessity particularly marked in connection with national program delivery. There are only two companies operating radio networks which cover substantially the entire country, and, needless to say, their time is at a premium. Since it has repeatedly been held by the courts that broadcasting is not and cannot be a public utility, at least in any sense which would compel it to open its facilities on equal terms to all, a network or station is free to accept or reject programs as it chooses. Not even the President of the United States can legally command radio time, except in case of war or other proclaimed national emergency. So far as possible, both for their own protection and for the guidance of the public, both network companies have formulated and published statements of their general policy in the acceptance of programs, but inevitably there are numerous cases which conform to no set rule. . . .



## PROGRAM POLICIES OF BROADCASTERS

### OFFICIAL POLICIES OF THE COLUMBIA BROADCASTING SYSTEM<sup>1</sup>

As radio broadcasting expands its audience and augments its influence, there devolves upon the broadcaster and the program sponsor an ever greater responsibility.

Similarly, as radio continues to become a more intimate force in the lives of people, they tend to be more sensitive to broadcasting they like and to broadcasting they do not like. It is incumbent upon the broadcaster constantly to examine general policy so as to assure steady progress in building and holding radio's audience. Such watchfulness serves the interests of the audience, of the advertiser, and of the broadcasting companies alike. . . .

Wide variations in viewpoint exist among parents as to programs which they regard as suitable for their children to hear, and similar differences exist between parents and children. The same divergence of opinion is frequently found among authorities.

Commercial sponsors of broadcasts addressed to children are devoting great effort and much money to creating programs that merit the approval both of child and parent. It is also true that there have been instances of poor judgment and careless execution. To eliminate such faults would be gratifying to all those who feel a deep responsibility for the rearing and education of impressionable youth.

<sup>1</sup> Extracts from *New Policies. The Columbia Broadcasting System*, May 15, 1935. Reprinted by permission.

The Columbia Broadcasting System has no thought of setting itself up as an arbiter of what is proper for children to hear; but it does have an editorial responsibility to the community, in the interpretation of public wish and sentiment, which cannot be waived.

In accordance with this responsibility we list some specific themes and dramatic treatments which are not to be permitted in broadcasts for children.

The exalting, as modern heroes, of gangsters, criminals and racketeers will not be allowed.

Disrespect for either parental or other proper authority must not be glorified or encouraged.

Cruelty, greed and selfishness must not be presented as worthy motivations.

Programs that arouse harmful nervous reactions in the child must not be presented.

Conceit, smugness or an unwarranted sense of superiority over others less fortunate may not be presented as laudable.

Recklessness and abandon must not be falsely identified with a healthy spirit of adventure.

Unfair exploitation of others for personal gain must not be made praiseworthy.

Dishonesty and deceit are not to be made appealing or attractive to the child.

We realize that distinctions in aesthetic values and feelings which may be wholly obvious between two given treatments of dramatic material cannot always be specified in words. Thus, for instance, it is not easy to capture in definition the fine distinctions between the pure fantasy which comprises some of the world's greatest literature for children, and the fantastic distortion of realities which is unsuitable for a youthful audience. None the less, the differences between these forms of entertainment become rather obvious when the two are compared side by side.

A program for children of elementary school age should offer entertainment of a moral character in the widest social sense. It should not obtain its entertainment value at the cost of distorting ethical and social relationships in a manner prejudicial to sound character development and economic welfare.

In general, it is worth noting that the literature for children which continues to find their favor through many generations offers heroes worthy of the child's ready impulse to hero worship, and of his imitative urge to pattern himself after the hero model. Such literature, whether created 100 years ago or written today, succeeds in inspiring the child to socially useful and laudable ideals such as generosity, industry, kindness and respect for authority; it opens doors into wide worlds that may be reality or fantasy, but are in neither event ugly or repellent in aspect; it serves, in effect, as a useful adjunct to that education which the growing and impressionable child is absorbing during every moment of its waking day.

It is our hope and purpose to stimulate the creation of a better standard in children's programs than has yet been achieved.

## OFFICIAL POLICIES OF THE NATIONAL BROADCASTING COMPANY<sup>2</sup>

### PRINCIPLES

With the ever widening effect of radio on the thinking of men and women, with the increasing influence that it exerts in forming the thoughts of their children, comes the responsibility, upon broadcasting station and advertiser alike, of broadcasting programs so high in merit and integrity that belief in radio and in the radio message will be instilled deeply in the public mind.

Broadcast advertising derives its value from listeners' enjoyment of programs and their confidence in the statements made by advertisers. Anything which mars their enjoyment or impairs their confidence, not only reacts unfavorably on all broadcasting, but weakens it as a sales promotion vehicle as well.

<sup>2</sup> "Program Policies of the National Broadcasting Company." *The 1938 Radio Annual*. Published by *The Radio Daily*, 1938. p. 149-52. Reprinted by permission.

Radio stations are required by law to serve public interest, convenience, and necessity. Public interest has been held by the courts to mean service to the listeners or, in other words, "good programs." However, our standards are not based upon requirements of law, alone.

The primary responsibility for protecting the public interest rests upon the broadcasters who in turn look to the advertisers for their recognition of this duty and for their cooperation in fulfilling it. This statement, therefore, aims to define, in the light of experience, proper standards of program quality, good taste and integrity, to be set up and enforced by the cooperative effort of the National Broadcasting Company, its advertisers and their agencies. These standards grow out of the special characteristics of the medium itself, as contrasted with other mediums:

In broadcast advertising, the advertiser or his representative speaks directly and personally to his listeners. For the period of his program, he is a guest in their homes, a member of the intimate fireside circle.

The homes which he thus enters are of all types. The broadcast audience includes the farm family, the small-town family, the city family, it comprises practically all members of the family, sometimes singly, sometimes as a group. It embraces persons of all beliefs and creeds.

These two characteristics—the intimate, personal nature of broadcasting and the wide range and joint listening of its audience—primarily determine what properly may be put on the air. The listener, at his receiving set, can exercise no control over the program itself, but he is in a position to accept or reject it. Depending upon the nature of the program, it is necessary, therefore, that programs be so planned as to have the broadest possible appeal.

For example, the broadcast program should provide entertainment or agreeable instruction to most listeners. Its primary appeal should be to the listener's interest. Unpleasant or gruesome statements must be avoided as these may offend a large portion of the listening audience.

Courtesy and good taste should govern the manner in which announcements are made. The most effective method of delivery of an announcement is restrained and persuasive. An aggressive, unduly emphatic manner may be objectionable to a large part of the radio audience.

Since the listener's primary interest is in entertainment or instruction, the advertising message should be in harmony with the rest of the program, should contain information of interest to the public, and should be prepared and delivered with brevity and effectiveness.

Controversial subjects are not good material for commercial programs and their introduction must be avoided.

Statements which tend to undermine an industry by attributing to its products, generally, faults and weaknesses true only of a few, and statements which are derogatory to an individual, an institution, a group or an industry must be avoided. Protection against libel and slander is as essential for the advertiser and his agency as for the National Broadcasting Company.

Tiresome repetition or too much detail should be avoided. For instance, the advertiser's street address and the like should not be reiterated to the point of annoyance to the listening public. The most productive way to obtain direct responses is to have replies sent to the broadcasting station or network.

Offers made to the radio audience should be simple and easy to grasp quickly. Involved and prolonged descriptions defeat their purpose by confusing the public and driving listeners away.

When contests are conducted by the advertiser, decisions should be made promptly and the names of winners must be announced as soon as possible thereafter. The announcement, whenever possible, should be made during a later program of the same series. When the making of the complete announcement is undesirable because of its length, NBC should be supplied with the names of winners and other necessary information so that it may be in a position to answer inquiries which it receives.

Each program should be individual and distinctive and should not resemble too closely an adjoining program on the same network. The entire day's broadcasting must be balanced to furnish variety of entertainment and instruction to listeners. Especially, the advertiser and the network should cooperate to prevent repetition of the same musical numbers in programs occupying nearby periods.

#### REQUIREMENTS

1. The use of the Deity's name is acceptable only when used reverently or as part of a standard classic work.
2. Statements or suggestions which are offensive to religious views, racial traits, and the like, must be avoided.
3. False or questionable statements and all other forms of misrepresentation must be eliminated.
4. Obscene and off-color songs or jokes, oaths, sacrilegious expressions, and all other language of doubtful propriety must be eliminated.
5. Testimonials must reflect the genuine experience or opinions of a competent witness.

Dramatized commercials, when involving statements by doctors, dentists, druggists, nurses or other professional persons must be read by living members of these professions reciting actual experiences, or explanation

must be clearly made by the announcer that the scenes enacted are fictitious.

When a living character is impersonated, announcement must be made at least once in the program that impersonation was made.

6. Statements of prices and values must be confined to specific facts. Misleading price claims or comparisons must not be used.

7. The National Broadcasting Company cannot act as a distributor for the merchandise of its customers.

8. As a safeguard against misuse of broadcast facilities for unfair competition, commercial programs shall not refer to any competitor, or his products, directly or indirectly, by company name, by individual name, or by brand name—regardless of whether such reference is derogatory or laudatory.

#### PROGRAM PROCEDURE

To secure observance of the requirements set forth in Part 2, the following procedure has been adopted in the interests of advertisers, as well as of the National Broadcasting Company and its associated stations, and will be enforced to serve the public interest.

1. All continuities, including the words of all spoken lines as well as the wording of commercial announcements, must be submitted to the National Broadcasting Company at least forty-eight hours in advance of broadcast, except when the nature of the program does not so permit. This does not affect the advertiser's privilege to submit changes in his commercial continuity, prior to the broadcast.

2. All continuities, including the words of all songs or spoken lines as well as the wording of all commercial announcements and the list of the cast, are subject to the approval of the National Broadcasting Company, which reserves the right to reject any program or an-

nouncement in whole or in part, insofar as such program or announcement is not in accord with the requirements set forth herein or is otherwise incompatible with the public interest.

When a change in a program is required, the National Broadcasting Company will cooperate with the advertiser in an endeavor to arrive at a satisfactory handling of the matter; but if no agreement is reached, the National Broadcasting Company reserves the right to require eliminations or substitutions for any part of the program or announcement which it deems inconsistent with its obligation to serve the public interest.

3. Because of its responsibility to serve the public interest, the National Broadcasting Company reserves the right to require the advertiser or his agency to furnish, in addition to the continuities mentioned in the foregoing paragraphs, a performed audition of a contemplated commercial program.

4. For protection of our clients and ourselves, written lists in duplicate, showing correct titles, composers, and copyright owners appearing on the music to be used on the program, are to be submitted to the National Broadcasting Company at least one week before the broadcast, for a copyright clearance. No changes are to be made thereafter without approval of the National Broadcasting Company music rights department.

5. Evidence of the right to use musical or literary material must be supplied to the National Broadcasting Company at least three days in advance of the broadcast. For any testimonial, the advertiser or his agency must submit to the National Broadcasting Company, at least three days in advance of broadcast, either an indemnification signed by the advertiser or his agency, or a written release authorizing its use for advertising purposes, signed by the person making the testimony and sworn to before a notary public, and must furnish the National Broadcasting Company a full copy thereof.

6. The National Broadcasting Company is anxious to be of service in preventing unnecessary conflict of subject matter and musical numbers. The cooperation of advertisers and agencies is invited to make possible proper coordination between all sponsors. When two or more advertisers using nearby periods on the same network submit programs containing the same musical number, the advertiser or his agent first submitting his detailed program shall have the right to use the number, and the National Broadcasting Company shall notify the other advertisers or their agents to submit a substitute number, subject to the same restrictions as to duplication.

7. The National Broadcasting Company reserves the right to amend this procedure, these principles and requirements, and to adopt new ones when and as, in its opinion, conditions warrant the adoption of such new procedure, principles or requirements for the public interest.

### THE N. A. B. CODE

The National Association of Broadcasters, trade organization of the broadcasting industry with 425 member stations, adopted a Code of Ethics in 1928 which was revised and expanded in 1935. At its Atlantic City convention in July, 1939, the NAB adopted a much more stringent code of ethics. The new Code, as adopted July 11, 1939, is presented below, followed by a resolution relating to standards adopted by the NAB delegates the following day.

### TEXT OF THE N.A.B. CODE

Recognizing the growing importance of radio broadcasting in the national life and believing that broadcasters now have had sufficient experience with the social side of

the industry to formulate basic standards for the guidance of all, the National Association of Broadcasters hereby formulates and publishes the following Code:

*Children's Programs.* Programs designed specifically for children reach impressionable minds and influence social attitudes, aptitudes and approaches and, therefore, they require the closest supervision of broadcasters in the selection and control of material, characterization and plot.

This does not mean that the vigor and vitality common to a child's imagination and love of adventure should be removed. It does mean that programs should be based upon sound social concepts and presented with a superior degree of craftsmanship; that these programs should reflect respect for parents, adult authority, law and order, clean living, high morals, fair play and honorable behavior. Such programs must not contain sequences involving horror or torture or use of the supernatural or superstitious or any other material which might reasonably be regarded as likely to overstimulate the child listener, or be prejudicial to sound character development. No advertising appeal which would encourage activities of a dangerous social nature will be permitted.

To establish acceptable and improving standards for children's programs, the National Association of Broadcasters will continuously engage in studies and consultations with parent and child study groups. The results of these studies will be made available for application to all children's programs.

*Controversial Public Issues.* As a part of their public service, networks and stations shall provide time for the discussion of public questions including those of controversial nature. Such time shall be allotted with due regard to all the elements of balanced program schedules and to the degree of public interest in the questions to be discussed. Broadcasters shall use their best efforts to

allot such time with fairness to all elements in a given controversy.

Time for the discussion of controversial issues shall not be sold, except for political broadcasts. There are three fundamental reasons for this refusal to sell time for public discussion and, in its stead, providing time for it without charge. First, it is a public duty of broadcasters to bring such discussion to the radio audience regardless of the willingness of others to pay for it. Second, should time be sold for the discussion of controversial issues, it would have to be sold, in fairness, to all with the ability and desire to buy at any given time. Consequently, all possibility of regulating the amount of discussion on the air in proportion to other elements of properly-balanced programming or of allotting the available periods with due regard to listener interest in the topics to be discussed would be surrendered. Third, and by far the most important, should time be sold for the discussion of controversial public issues and for the propagation of the views of individuals or groups, a powerful public forum would inevitably gravitate almost wholly into the hands of those with the greater means to buy it.

The political broadcasts excepted above are any broadcasts in connection with a political campaign in behalf of or against the candidacy of a legally qualified candidate for nomination or election to public office, or in behalf of or against a public proposal which is subject to ballot. This exception is made because at certain times the contending parties want to use and are entitled to use more time than broadcasters could possibly afford to give away.

Nothing in the prohibition against selling time for the discussion of controversial public issues shall be interpreted as barring sponsorship of the public forum type of program when such a program is regularly presented as a series of fairsided discussions of public issues and

when control of the fairness of the program rests wholly with the broadcasting station or network.

*Educational Broadcasting.* While all radio programs possess some educative values, broadcasters nevertheless desire to be of assistance in helping toward more specific educational efforts, and will continue to use their time and facilities to that end and in cooperation with appropriate groups, will continue their search for improving applications of radio as an educational adjunct.

*News.* News shall be presented with fairness and accuracy and the broadcasting station or network shall satisfy itself that the arrangements made for obtaining news insure this result. Since the number of broadcasting channels is limited, news broadcasts shall not be editorial. This means that news shall not be selected for the purpose of furthering or hindering either side of any controversial public issue, nor shall it be colored by the opinions or desires of the station or network management, the editor or others engaged in its preparation or the person actually delivering it over the air, or, in the case of sponsored news broadcasts, the advertiser.

The fundamental purpose of news dissemination in a democracy is to enable people to know what is happening and to understand the meaning of events so that they may form their own conclusions and, therefore, nothing in the foregoing shall be understood as preventing news broadcasters from analyzing and elucidating news so long as such analysis and elucidation are free from bias.

News commentators as well as all other newscasters shall be governed by these provisions.

*Religious Broadcasts.* Radio, which reaches men of all creeds and races simultaneously, may not be used to convey attacks upon another's race or religion. Rather it should be the purpose of the religious broadcast to promote the spiritual harmony and understanding of mankind and to administer broadly to the varied religious needs of the community.

*Commercial Programs and Length of Commercial Copy.* Acceptance of programs and announcements shall be limited to products and services offered by individuals and firms engaged in legitimate commerce; whose products, services, radio advertising, testimonials and other statements comply with pertinent legal requirements, fair trade practices and accepted standards of good taste.

Brief handling of commercial copy is recommended procedure at all times.

Member stations shall hold the length of commercial copy, including that devoted to contests and offers, to the following number of minutes and seconds:

*Daytime*

|                               |      |
|-------------------------------|------|
| Fifteen-minute programs ..... | 3:15 |
| Thirty-minute programs .....  | 4:30 |
| Sixty-minute programs .....   | 9:30 |

*Nighttime*

|                               |      |
|-------------------------------|------|
| Fifteen-minute programs ..... | 2:30 |
| Thirty-minute programs .....  | 3:00 |
| Sixty-minute programs .....   | 6:00 |

The above limitations do not apply to participation programs, announcement programs, "musical clocks," shoppers' guides and local programs falling within these general classifications.

*Exceptions:* Because of the varying economic and social conditions throughout the United States, members of the NAB shall have the right to present to the NAB for special ruling local situations which in the opinion of the member may justify exceptions to the above prescribed limitations.

RESOLUTION DEFINING "STANDARDS OF GOOD TASTE."

Whereas, the phrase "accepted standards of good taste" as used in the NAB Code is possible of different interpretations in different parts of our country, and

whereas, a more or less uniform interpretation is necessary because in radio broadcasting wide areas often are covered, therefore, be it resolved

That any interpretation of the phrase "accepted standards of good taste" shall, in addition to the common interpretation such phrase would have in any community, include the following:

Member stations shall not accept for advertising:

1. Any spirituous or "hard" liquor;
2. Any remedy or other product the sale of which, or the method of sale of which, constitutes a violation of the law;
3. Any fortune telling, mind reading, character reading, by handwriting, numerology, palm reading, or astrology, or advertising relating thereto;
4. Schools that offer questionable or untrue promises of employment as inducements for enrollment;
5. Matrimonial agencies;
6. Offers of "homework" except by firms of unquestionable responsibility;
7. Any race-track "dopester," or tip-sheet publication;
8. All forms of speculative finance;
9. Cures and products claiming to cure;
10. Advertising statements or claims member stations know to be false, deceptive or grossly exaggerated;
11. Continuity which describes, repellently, any functions or symptomatic results of disturbances or relief granted such disturbances through use of any product;
12. Unfair attacks on competitors, competing products or upon other industries, professions or institutions;
13. Misleading statements of price or value or misleading comparisons of price or value.

## EDITORIAL SELECTION

### THE PROBLEM OF NON-CONFORMIST PROGRAMS<sup>1</sup>

... With these superior financial resources available, the chains have undoubtedly built superior programs. But what about what may be called "non-conformist" programs? Do the chains hold their facilities at the disposal of groups which are out of harmony with the dominant philosophy or policy in various phases of public life?

To some extent they seek to do so. But the policy of the NBC on controversial questions has been made explicit on several occasions by Mr. Aylesworth,<sup>2</sup> and will be found to have severe restrictions in its catholicity. In the house committee hearings Mr. Aylesworth put his policy in this fashion:

I think everything is controversial that is on the air, and I am not afraid of controversy as long as both sides can be heard, but I want to give you this one answer, which shows our diligence, that if somebody wants to speak on the subject of labor, he is perfectly welcome—that is, if he is a representative of labor. Mr. Green can speak any time he wants to, or any of his vice-presidents or officers; but if Bill Smith came in, and I did not know Bill Smith, and he said, "I want 15 minutes to talk on labor," Bill Smith would not be given that right. A man who talks on a subject must be representative of the subject he talks on, and also, if it is debatable, both sides must be heard.

The trouble with this is that Mr. Aylesworth fails to see that the application of his policy which he uses for illustrative purposes cancels out the policy itself.

<sup>1</sup> Extract from "Is the Air Already Monopolized?" Fourth installment, "The Freedom of the Air," by Paul Hutchinson. *Christian Century*. April 1, 1931. p. 441-4. Reprinted by permission.

<sup>2</sup> At the time this article was written, president of the National Broadcasting Company.

Mr. Green, whom Mr. Aylesworth selects as representing a non-conformist, really represents the *status quo*, as it is in the field of labor. The American Federation of Labor, over which he presides, is the most conservative labor group in the world, and because of the conservatism of its policies—according to the view of many labor leaders—it is rapidly losing in membership and influence. Many of the vice-presidents of the A. F. of L., to whom Mr. Aylesworth also referred approvingly, are even more conservative than Mr. Green. This is particularly true of Mr. Matthew Woll, who has been granted large air facilities. Bill Smith, representing the men within the labor movement who are in opposition to the ultra-conservative policies of Mr. Green and the A. F. of L. as it now is, has a case that deserves public discussion. But if he has to get Mr. Green's approval before Mr. Aylesworth will let him on the air, he can take it for granted that he is permanently muzzled. . . .

### STATION CENSORSHIP<sup>3</sup>

When the radio trust, captained by the Radio Corporation of America, finally perfected its super-organization it inaugurated a program of philanthropic benevolence so self-confessedly altruistic and generous that skeptics at once became suspicious. They lifted eyebrows when the NBC system corralled 74 high-powered stations with the best wave lengths, and have lifted them even higher on learning that out of the 1105 stations operating in 1924 only 611 are still running. The skeptics remember that the only rival of the NBC is the Columbia chain, and that many of the patents used in its 72 stations are controlled directly or indirectly by the ubiquitous R.C.A. What is this, ask the doubting—a monopoly?

<sup>3</sup> By Vita Lauter and Joseph H. Friend. "Radio and the Censors." *Forum*, December 1931. p. 359-66. Reprinted by permission.

It isn't a monopoly, answer the radio gentlemen, because monopolies are forbidden; but even if it were a monopoly, it would benefit Our Vast Unseen Audience. After all, the idea is not to make money: witness General Electric's statement that "the R.C.A. was created in order to carry out the expressed wishes and desires of the United States, communicated by its officers and servants." Witness further Mr. Powel Crosley, Jr., another aerial bigwig, who says wistfully that "we do hope some day to show a small profit from our broadcasting operations and tremendous investments therein, but as income increases it goes into better and better programs and more and more operating costs. The public benefits." Well, maybe. . . .

But the public loses, too, and one of its major losses is the privilege of hearing both side of questions and controversies (and sometimes even one side) which might well be sandwiched in now and then between Kate Smith and the Nitwits. True enough, we enjoy what General Harbord terms "the highest possible grade of entertainment," but the broadcasters have taken it upon themselves to render this entertainment not only palatable but wholesome. This has been accomplished in the usual simple effective fashion—censorship has been instituted. By the use of this sieve, every possibly un-American and harmful ingredient (Bolshevism, Communism, Socialism, sex, free thought, *Naktkultur*, atheism, liberalism, radicalism, pessimism, etc.) has been kept out of the ambrosia fed to listeners-in; and retained has been every worth-while, decent, American, nourishing substance (Evangeline Adams, the Rise of the Goldbergs, Mary and Bob and their weekly True Story). The result of this censorship of broadcasting has been, as in the instance of the movies and the mails, rarely useful, often vicious, still more often comical, and usually diverting and significant.

Radio censorship, practiced by all commercial broadcasters, is governed throughout by the caprice of the

broadcaster, who is limited only by the provisions of the Federal Radio Act of 1927. This act, whereby the Federal Radio Commission came into being, gave to the Commission licensing rights over all commercial radio stations. The licensing authority entailed, however, "no power of censorship or the power to interfere with free speech." It imposed but two obligations on the broadcaster. The first was that "no person may utter any obscene, indecent, or profane language by means of radio communication," and the second that "whenever a licensee permits a candidate for public office to use a broadcasting station he must afford other candidates for that office equal opportunities. The candidates' communications may not be censored by the licensee."

This last dictate means little, and has frequently been ignored with easy grace by the broadcasters. The joker lies in the "obscene, indecent, or profane language" provision, which can be interpreted to suit the whim of each station. Consider the case of one Robert G. Duncan, the "Oregon Wildcat," who, while a candidate for public office (and hence not subject to censorship by the licensee), spoke over KVEP, in Portland, inveighing against chain stores and lumber monopolies and the men who headed them. Prominent Portlanders, feeling themselves to have been libeled and otherwise injured, appealed to the Federal Radio Commission against KVEP with the result that the station lost its license and Mr. Duncan was clapped in jail. Mr. Ira A. Robinson, Chairman of the Commission in 1930, declared: "License to insult one's enemies as well as the decency of American authority has no protection under the Radio Act. It may as well be proclaimed that this Commission knows its province and duty in instances like this and that it may be relied on to fulfil it in the public interest."

Even when no appeal is made to the objectionable language clause, a broadcaster can easily find means to keep an obnoxious political candidate off the air. The

candidate may be told that the station has sold all of its best time and has nothing left save some useless early morning hour. Or he may be put off with a device clearly in violation of the Commission's policy, as happened to Mr. B. Fishback, a candidate for the office of State's Attorney in Orlando, Florida. Mr. Fishback applied to the Orlando Broadcasting Company to buy time and speak over its station. His appeal was granted and the time determined was paid for by him. But soon thereafter he was informed that he must first submit his speech to the company's attorney for approval. This qualification Mr. Fishback refused, and brought suit, complaining "that in his campaign many charges were made against him by an opponent who spoke from the station; that there is no other station in the territory that he can use to fight back, that he will suffer loss if he is not allowed to reply." The case is still pending.

Various other little tricks are employed to keep undesirable political speakers off the air. There is the case of Victor Berger, the late Socialist Congressman and Mayor of Milwaukee. At a celebration of the thirteenth anniversary of the *Jewish Daily Forward*, in April, 1927, Mr. Berger arose to make a speech, cheered on by his fellow Socialists. His words were to be broadcast, arrangements having been made with WJZ, the key station of the Blue Network on the NBC system. Mr. Berger grew more and more fervent in his oratory, and as he came to an eloquent climax, "charging that capitalism had control over the American President, radio, and the schools," the microphone set before him was hastily carried off the platform: the ladies and gentlemen of the radio audience had again been safeguarded from the Red Menace. Mr. Berger interrupted himself only long enough to remark that such a thing would not have happened to Messrs. Coolidge and Hoover, which is certainly true enough, and continued his address. At the station it was explained that the Berger program had run the length of time for which

arrangements had been made and that a hasty switch had been necessitated—a switch to exercises at St. George's Church, of all places. The Federal Radio Commission complacently accepted this excuse, adding that it possessed no power to censor nor any power to act in such a case.

Mr. Berger might have known better. Socialists, pacifists, Communists, laborites, and such are almost always denied the use of the air on one pretext or another. Only the Socialists and laborites own stations from which to circulate their creeds. But WEVD in New York, named in honor of Eugene V. Debs, is weak and ineffectual, for its power is small, its hours limited and poor, and its license continually stands in peril of removal for trifling misdemeanors. WCFL, the station of the Chicago Federation of Labor, has not been able to secure permission to use the valuable evening hours, so that its opportunity of reaching the workers is practically nil. All other minority factions are quite out of the broadcasting jamboree. They rarely can buy time from an important station, and are usually too poor to purchase it when the privilege is extended to them.

Equally amusing as the Berger parable was the plight of Mrs. Mary Al Ford, speaking at an "All Nations' Association" dinner in honor of Mrs. Corson, who was sailing to start practice for her English Channel swim. Mrs. Ford said: "We are proud that Mrs. Corson is a woman, proud that she comes from Denmark, that country which upholds an ideal of peace, that country which said to the enemy, 'If you must cut through our country, even if you must cut through our women and children—'." Whatever else Mrs. Ford may have said remained a dark secret to her radio listeners. As the station manager of what was then WGL of New York explained the next day: "We let her continue to actuate the microphone, but, switched another microphone into the circuit, which picked up the music of another orchestra. The music was much louder than the voice, and

therefore it sounded like two programs overlapping, with the orchestra blanketing the voice so that no one could understand the pacifist plea. . . . We believe in free speech and I have always been willing to extend the use of our station to anyone to express his views, but there are certain things which are dictated by good taste. This was not the time nor the occasion for such a speech."

The station's action was loudly applauded by members and friends of the American Legion, who praised the manager's staunch stand. WGL further confirmed its righteously conservative position when it refused to broadcast the pacifist play, "Spread Eagle." This time the apology was delivered by the broadcasting company's president, Louis Landes, who said: "This action has been decided upon after due consideration of criticism made by veteran organizations, and as this company consists mainly of veterans of the World War it will under no circumstances broadcast anything that has not the full endorsement of veteran and patriotic organizations."

But WGL, shaking off any possible accusations of bigotry and narrowness, vindicated itself in July, 1927, when it received into its bosom one Fred B. Shaw, a fishing expert. Mr. Shaw had been scheduled to speak over Columbia's WABC on the subject of bait for trout fishing, but this was prevented through the machinations of the Izaak Walton Club, of which he was a member. It seems that Mr. Shaw had intended to deliver a speech fraught with praise of worms as trout bait. Now Calvin Coolidge was accustomed to use these same worms, or some very like them, in his searchings after trout: the practice was wholly unorthodox among the best trout fisherman, all of whom used flies. It was very clear, then, that Mr. Shaw's speech in honor of worms was no less than an insidious eulogy of Coolidge and Republicanism. The Izaak Walton Club did not wish to associate itself with political controversy, so Mr. Shaw

was forced to take his oration elsewhere. He went to WGL, where he was welcomed warmly and encouraged to spread the worms-and-Coolidge propaganda.

There are plenty of other fields which provide rich material for radio censorship. Prohibition, of course, furnishes by far the most excitement and fun among the semi-political and consequently, dangerous, topics. Being a matter of controversy, it is supposedly taboo with most broadcasters—but even those urbane gentlemen can hardly ignore the liquor issue this year, 1931; pacifism, Socialism, yes—prohibition, no. Like Presidential candidates, however, they try to avoid the question whenever possible. WHEC, Rochester, New York, refused to allow anti-prohibition speeches in several instances, using each time the excuse that to permit the broadcasting of such matter was to jeopardize the station's license. Among speakers who found themselves barred were ex-Senator James W. Wadsworth and Mrs. Charles H. Sabin; Mrs. Sabin complained that "This looks very much like the beginning of the end of free speech in this country."

It looked like hedging, however, to the Federal Radio Commission which, when asked in September, 1930, whether a station might be endangering its license by allowing speakers to treat of controversial matters, replied that the Commission does not threaten licenses because of speeches dealing with prohibition or any political topic. This plainly puts the responsibility for the censorship of disputed subjects entirely on the broadcasting station. Nevertheless, the broadcasters still continued to use the "afraid we'll lose our license" excuse when they wished to avoid the issue—almost any issue.

There are many such cases on record. An NBC station in Los Angeles refused to allow William G. McAdoo, ex-Secretary of the Treasury, to talk on prohibition unless he first submitted his address for approbation; he declined and did not speak. Hudson Maxim was left talking into a dead microphone when his

remarks on prohibition failed to please the authorities. WBZ-WBZA refused to allow the broadcasting of an anti-prohibition rally which the American Civil Liberties Union was sponsoring in the interests of wet candidates for Congress. The station's program director said that earlier obligations forced the refusal.

Other controversial issues, large and small, provide opportunity for radio censorship to exercise itself. The Hon. Carroll L. Beedy, Representative from Maine, was shut off the air for his attacks on newspapers and journalistic tactics. "Nine-tenths of the putrid detail," declaimed Beedy, "and the revolting accounts of the Snyder-Gray murder and the overtures of the amorous Browning ought never to have been put into public print. . . . They are a disgrace and a serious reflection on the moral standards of those who publish and read them." The impetus for these remarks was a meeting of the Newspaper Publishers' Association of America, where the Scripps-Howard people had boasted of increased circulation resulting from the Snyder-Gray trial and the Hearst organization had bragged about similar happy results from the odoriferous Browning affair. Nevertheless, WNYC, New York's municipal station, saw no good reason why the Hon. Mr. Beedy should be allowed to sully the fair name of the American Press: his speech was controversial, declared the station manager, and not fit to be broadcast.

Liberal opinions, even the mildest and most innocuous, are looked on with suspicion by every respectable broadcaster. If it is forbidden to insult the dignity of chain stores, the Eighteenth Amendment, and the American newspaper, it is obviously much worse to ridicule or even question the actions, theories, or attitudes of our government and its officials. Heywood Broun ran afoul of the flag in April, 1930, when he said in the course of a broadcast speech: "The only mistake that starving unemployed in this country have made is that they did not march to Washington and under the win-

dows of Mr. Hoover in the White House display banners reading 'We are Belgians.'” The next day officials of the station from which Mr. Broun had spoken received grapevine intimation from Washington that they were airing too many liberal opinions.

Military training is as sacrosanct as capitalism, prohibition, and the government. WABC cancelled a speech by Norman Thomas when it was learned that he intended to oppose military training in the course of his address. Whereupon WMCA of New York offered its microphone to Thomas, but on the day scheduled refused to allow him to speak. Municipal ownership, smacking strongly of Socialism and the Red Menace, is also on the list of heretical subjects. When Mr. John R. Haynes sought to speak on the subject of municipal ownership of power in Los Angeles he could find no station willing to sell him time.

With the advent of commercial broadcasting it became clear how powerful an influence radio might be, not alone for advertisers and politicians, but also for religious sects, professional crusaders, evangelists, soul-savers, and quacks of all kinds. These worthies have not been slow to see and seize their opportunities. Many of them are very opulent, and to buy or bribe a broadcasting station is no great feat for them. Hence several stations have arisen chiefly, if not always ostensibly, for the purpose of spreading some sort of religio-moral or pseudo-therapeutic propaganda.

Chiropractors, osteopaths, cancer-curers, electrotherapists, gland-transplanters, and such flock to the radio studios whenever they are given an opening. They meet with opposition, of course, from the American Medical Association, but they have their own defenders. There is one H. B. Anderson who through WEVD denounced censorship of all radio addresses on medicine. He asserts that “much in the field of medicine is a matter of dispute” and declares that licensed physicians are interested in vaccination propaganda only because of the profits derived therefrom.

Nevertheless, there are several instances where censorship has been drastic with these purveyors of panaceas. The Radio Commission put the skids under Dr. John R. Brinkley, who solicited for goat-gland operations over KFKB in Milford, Kansas, although the doctor insisted that his was a valuable service to the rural folk of the middle west. The two lawyers on the Commission voted against denial of the station's license. An injunction and trial were granted. Another gentleman, using KTNT at Muscatine, Iowa, urged cancer sufferers "to keep away from the slaughter house" (by which he meant the university hospital at Iowa City) and boasted that he himself "could cure cancer in any stage." The Iowa Board of Health filed a complaint against renewal of the station's license, saying that this kind of oratory was manifestly harmful to the people for whom health agencies are in existence. The station is still under fire.

Of all the aerial agencies for the spreading of theological-moral fads the most famous is probably Wilbur Glenn Voliva's station in Zion City, Illinois, whence that wizard informs the world that it is not round but flat. But there are others. In Los Angeles one of the more harmless of the evangelists, Robert P. Shuler, owns and operates KVEP. It is his practice to broadcast sermons of a nature irritating to big business interests in America's western Athens, so the Los Angeles post of the American Legion has been incited to see what can be done. An official investigation is now under way, and it is probable that Mr. Shuler's fiery rhetoric will be doused in no long time. In Los Angeles, too, Aimee Semple McPherson fills the air with her particular variety of good news (and in the same lovely city there could not be found a single station willing to permit advocacy of home-rule for India). On the other hand, New York's WEAJ denied Aimee its microphone on the ground that she might prove "too full of dynamite."

Through WHAP, in New York City, Franklin Ford fights Al Smith, papacy, the rabbinical threat, the rising

tide of color, and all such subversive un-American radicalism. Protestant and Republican, Mr. Ford stoutly maintains his utter freedom to say what he pleases when he pleases, and to allow none of his opponents to offer any back-talk over the Ford air. When Morris Ernst, of the American Civil Liberties Union, asked that Ford reconsider his refusal to allow Norman Thomas to speak over WHAP, Ford replied: "There is no inherent right in any individual, whether he be Socialist, such as Mr. Thomas, or anti-Socialist, to demand that a radio station broadcast his views because it has previously broadcast against his views as a matter of principle and conviction."

In April, 1927, Representative Sol Bloom asked the Mayor of New York to use city police power to prevent attacks made on particular persons and sects over WHAP. "At an earlier day," mourned Mr. Bloom, "WHAP's present speakers could have reached only a street corner crowd or a roomful with their declamatory attacks against Roman Catholics and Jews and others. They are now heard by tens and hundreds of thousands and become a municipal nuisance upon a correspondingly extensive scale. If this nuisance is not abated we may also expect that Station WHAP will have imitators." Despite this lament Ford continued to operate. Called before the Radio Commission, he freely and fluently delivered himself: he was going to oppose Smith and Democrats and Roman Catholics, and he was not going to let them speak over his station, because they had WLWL, a higher-powered station of their own. The Commission then said that it did not feel empowered to act.

But the Pope is not wholly without support in the New World, for in Royal Oak, Michigan, Father Charles E. Coughlin spreads the dogma of Mother Church over the Columbia network through WJR in Detroit. Father Coughlin's sermons attained to such popularity that he was forced to employ a staff of secretaries to care for his fan mail. Emboldened by this warm encouragement, he soon began to mix a little anti-Socialism into his ad-

dresses. Norman Thomas asked permission to answer the priest's attack over WJR, but was censored when he attempted direct reply, and accordingly decided not to speak at all.

However, censorship worked two ways here and with a fine flair for justice. When Father Coughlin began to advance upon economics of a more immediately significant character and was found to be interested in unemployment, he was promptly silenced. Rather, the Columbia people "merely asked him to moderate his expressions as to avoid objections." Norman Thomas gallantly protested this gagging of his opponent in a letter to the Federal Radio Commission. The Commission replied by reading Mr. Thomas (who always seems to lose, no matter what he does) a trenchant lecture on the devotion to public interest shown by WJR in "preventing speakers from indulging in personalities over that station."

Christian Science, too, has taken to the air—not, alas, without acrimony, even within the fold. When Sir Henry Japp, representing the "Parent" Church, engaged to speak over the Columbia system, the protests from adherents of the "Mother" Church of the sect were so hot and numerous that the Columbia management canceled his speech. For this action the "Parent" Church brought suit in March, 1930.

Atheists have not been far behind the faithful in trying to get before the microphone. In October, 1928, the American Association for the Advancement of Atheism applied to the Radio Commission for an operating license. This plea was refused on the ground of over-crowded conditions in New York, and the organization was counseled to buy time from some existing station—a preposterous suggestion, since no American station of any consequence will sell time to professional atheists for propagandist purposes.

Birth control has made valiant efforts to get on the air, with little better success than atheism. NBC refused flatly to give or sell time to the Birth Control Conference

because birth control was a "religious issue upon which the three great denominations did not agree." The Birth Control League sent letters to 115 stations, asking for permission to broadcast a series of lectures. Twenty-seven replies were received, eight of which were favorable. The League's program was accepted by the Buffalo Broadcasting Company in March, 1930. The University of Minnesota offered to broadcast a student debate on the subject. The Columbia Broadcasting Company, the Women's Bureau, the Stromberg-Carlson Company, the Tampa *Daily Times*, and the University of Kansas asked to see copies of the speeches. Eight stations refused for reasons of policy; two said the subject was unsuitable; five claimed that their schedules were already full; and four said frankly that they were not interested. Four directors signified personal interest. NBC replied that it was willing to enter the controversial field only in cases where it felt that the public demanded controversy—that is, in political campaigns. There was not a sufficient demand for birth control talks, it declared, to justify them.

Sex is of course absolutely taboo, save when it can be got into clowning dialogue by innuendo or *double entendre*, and in so adroit a way that it is not censored. Any frank or direct mention of the institution is not tolerated in broadcasting. An amusing instance of this kind of censorship occurred in October, 1930, when Columbia cut the following sentence from a speech on Malthus, part of a series of economic-philosophical lectures: "Thomas Robert Malthus, arguing against his father, made some startling remarks about human nature and especially the strength of the sex impulse, which led people to marry as soon as they were able." Columbia explained: "We are not permitted to mention sex over the radio."

There are a great many other such cases of censorship in almost every field of controversy, and in fields where most people can see no controversy whatsoever. More like them continue to happen almost daily. Yet, despite all, we are soothingly assured by NBC and Co-

lumbia that "No ban by the radio broadcasting companies on controversial matters exists in New York City and on the part of the great national chains." As Mr. Hemingway's maimed soldier remarks, it is at least nice to think so.

It will thus be seen that radio censorship in the United States is both an amusing and a melancholy affair, as one may choose to look at it. Stupidity, timidity, hypocrisy, superstition, greed, bribery, evasion, rancor, follies of many kinds, the usual economic despotism, the usual antic idiocies and inconsistencies abound here as in other important departments of the national life. What is to be done about it? That is not an easy question to answer.

In the first place, we must accept several salient and ineluctable facts. One of these is that a system of completely government-controlled broadcasting, such as obtains in England and Russia, cannot now be established in the United States unless by economic revolution. The power interests are too firmly entrenched to be pulled loose in any other way; there is too much capital tied up in the radio business. A government-controlled radio system, whether or not hypothetically desirable, is highly impracticable, almost impossible.

Another fact is that no solution of the present situation can be looked for from the broadcasters. These worthies are in radio for what they can get out of it, despite their sonorous and mellifluent disclaimers. They have found the goose that lays the golden eggs—a true goose, the American public. To expect that they will alter the constitution of the bird so as to make it more intelligent, less prone to superstition, and more open to reason is to believe in neo-Biblical miracles. Obviously the present censorship, as well as the rest of the machinery of broadcasting, is founded on and suited to the ignorance, gullibility, prejudice, and folly of the radio audience. By catering to that audience the broadcasters are enabled to eke out their bare sustenance. Can we then hope that they will try to change the tastes of their

clientele so radically? Such a change would not conceivably mean profit to them, and profit is their sole, their guiding principle; such a change might, indeed, mean something approaching catastrophe.

And the last of these important truths is that the present government control is weak, evasive, and ambiguous, even if we leave out of discussion the possible corruption of which it has given off some fairly strong odors. The Radio Act of 1927 does nothing to insure that freedom of speech which is so near extermination in the present civilized world. Under its two specific provisions—those which concern objectionable language and the right of political candidates to defend themselves from attack—there are possible, as the above record of cases should indicate, a good many inconsistencies, evasions, and excuses. The one provision is violated with impunity; the other is open to so broad an interpretation that it is almost valueless. Clearly, anything which does not suit the taste or doctrines of the broadcaster may be outlawed as indecent, obscene, or profane, whether it be a sober discussion of the sociological implications of contraception, a burlesque skit, a defense of agnosticism, or an oration in praise of beer and pretzels.

That a stronger government control of radio broadcasting would in any way ameliorate the situation is strictly problematical. In all probability no governmental bureau could be free from graft and a measure of stupidity. In equal probability, a decent degree of free speech could not be obtained by giving the Radio Commission greater power to act. That Socialists, pacifists, and other minority groups would find the air free under a new system is dubious. Perhaps the most desirable feature of a hypothetically stronger government control of broadcasting is that it would clear away some of the inconsistency now prevalent in censorship, and make passing the buck a slightly more delicate operation than it now is. We can hope so at least, for hope remains as free as the air once used to be.

SPEAKERS BARRED FROM THE AIR <sup>4</sup>

In their book, *Censored*, Morris L. Ernst and Pare Lorentz list numbers of distinguished speakers who have been barred from the air by broadcasting stations because their opinions were held to be "controversial." Thus, Norman Thomas was rejected by WEA, the head NBC station in New York, because one paragraph of a speech in behalf of the United Parents Association opposed military training in high schools. When station WMCA stepped forward to sponsor the speech, something happened to make it change its mind and withdraw its invitation on the day the speech was to have been given.

Eamon de Valera was kept off the air by the General Electric station, KOA, in Denver, because he was expected to say something which might be taken as "propaganda against the British government." Jed Harris, producer of the effective anti-war play, "Spread Eagle," was barred by WEA, after that station had itself extended the invitation to speak. (The American Legion was responsible for this change of mind) Hudson Maxim, opposing prohibition, was left talking into a dead microphone.

Not long ago an organization in Los Angeles wished to broadcast a program favoring home rule for India. All the four stations approached refused to allow the case for Indian nationalism to go on the air. Los Angeles, by the way, seems to be a center for that sort of thing, even the former secretary of the treasury, Mr. William G. McAdoo, being refused a chance to speak on prohibition over the local NBC station unless he would agree to submit his remarks for advance approval.

One of the most instructive incidents showing the relation of this sort of radio control to issues involving the private power interests happened during an election in that same city recently. A bond issue was to be voted on.

<sup>4</sup> Extract from "Is the Air Already Monopolized?" Fourth installment, "The Freedom of the Air," by Paul Hutchinson. *Christian Century*, April 1, 1931. p. 441-4. Reprinted by permission.

with private or municipal ownership of power facilities in the background. Mr. John R. Haynes sought to purchase time on the air to give his views on the subject, but not a single station in Los Angeles would allow him to use its facilities! This could not have been because of any doubt of Mr. Haynes's ability to pay, for he is wealthy. Neither could it have been because he failed to qualify under Mr. Aylesworth's requirement of being a "responsible" person, for Mr. Haynes is the principal figure in the Municipal Water and Power bureau of his city. No, the only trouble seems to have been that Mr. Haynes planned to speak in favor of municipal ownership, and when it came to doing that, the air was closed to him.

Permit one more illustration. This, note, is supplied by a man who has won such wide acclaim as a gifted radio speaker that he is now commenting regularly on the day's events over the Columbia system. But the experience Mr. H. V. Kaltenborn, when associate editor of the *Brooklyn Eagle*, had with New York's most powerful station was quite different. This is the story as he tells it:<sup>5</sup> "I cautiously expressed this belief (that 'the best way to help the Russian people to a better government is by granting recognition') through station WEAJ in New York city, linked up at the time with station WCAP in Washington. There was an immediate explosion in high places. Just what happened I do not know. The *Brooklyn Eagle's* contract was unceremoniously cancelled without any explanation. Since that time, despite my continued popularity as a speaker through other radio stations and on numerous public platforms, the American Telephone and Telegraph Company barred me from its station. Several times the *Brooklyn Eagle* has offered to pay them the current rate of \$10 a minute to put me back 'on the air,' through station WEAJ, but without avail."

One of the most interesting exchanges of correspondence it has been my privilege to read has been that in which Norman Thomas, socialist candidate for President,

<sup>5</sup> *The Independent*. May 23, 1925.

placed before the radio commission the facts as to the limitations placed upon him in a speech over WJR of Detroit. This station, linked with WLW of Cincinnati and WMAQ of Chicago, had been carrying a series of Sunday afternoon addresses by a Roman Catholic priest, the Rev. Charles E. Coughlin, frequently devoted to bitter attacks upon socialists for their alleged political and moral heresies. On the occasion of a visit by Mr. Thomas to Detroit, his party sought to buy time over the station from which Father Coughlin's attacks originated, for a reply. The contract which the station submitted stipulated that in speaking, Mr. Thomas should make no reply to the statements of this Catholic priest. And when Mr. Thomas protested to the radio commission against this manifest refusal by WJR to allow ordinary fair play, that commission replied in two letters which maintained its inability to do anything in such a case.

But the case was not finished. During the winter of 1930-31 the widespread distress throughout the country moved Father Coughlin to say some pointed things about economic conditions and practices in this country. The radio station immediately made some sort of demand upon him which he took as a threat of censorship, and announced that he would not go on broadcasting under the conditions imposed. In the storm of letters which thereupon descended on station WJR, protesting against the attempt to muzzle Father Coughlin, was one from Norman Thomas. Mr. Thomas made his plea for free speech for Father Coughlin in good temper, but could not refrain from saying, "The thing of which he now complains, you did openly to me. That is to say, you accepted money for me to broadcast an answer to some of Father Coughlin's statements and then forbade me to mention his name or indulge in controversy." A copy of the letter went also to the Federal Radio Commission. And the Commission, through its secretary, responded under date of January 28, 1931, reading Mr. Thomas a lecture on the devotion to the public interest shown by

station WJR "in preventing speakers from indulging in personalities over that station."

### PROGRAM TABOOS \*

. . . Like the Radio Commission, the commercial broadcasters also feel themselves constantly beleaguered by the devil "armed and accoutred, horns and hoofs and tail." At one whiff of his sulphurous breath they hastily disconnect the sacred mike. The fear of the devil and all his works compels them to a most rigid censorship.

You can't really blame them. They are running the show for profit, and in pursuit of that profit they must walk the chalk-line of righteousness drawn by the FRC, for their entire investment rests precariously on the power of the commission to grant or refuse the renewal of licenses. The stations must also guard against the broadcasting of any sort of defamatory comment which might subject them to damage suits. KFAB of Lincoln, Nebraska, learned this lesson when it was held liable for libellous statements sent out through its microphone in a political campaign. The broadcasters must further remember their heterogeneous audience with its innumerable minority groups, ready to rise up at the least offense.

A stammering character will draw the wrath of thousands of stammerers, although a tongue twister who talks like no one on God's earth can get by. The magicians were sore when Thurston gave away trade secrets with his bag of tricks. Taxi drivers objected to the FRC against being portrayed as hand in glove with gangsters and crooks, and when an act trotted out a Joe Miller about laundries pulling buttons off shirts, the laundrymen kept the wires hot bawling out the station for slandering them. Congressman Celler of Brooklyn got in bad for mentioning George Wash-

\* By Mitchell Dawson. Excerpt from "Censorship on the Air." *American Mercury*. March 1934. p. 257-68. Reprinted by permission.

ington's wine drinking habits, and a skit prepared by a comedian for Washington's birthday was barred because it treated the father of our country too facetiously. The lines were saved, however, and used later with the protagonist changed to Joan of Arc, which was worse, for hundreds of thousands of listeners have never forgiven those actors for taking liberties with the name of a saint.

No commercial station can afford to alienate any part of the public, as its profits depend upon showing a favorable response from as large an audience as possible. The effect is naturally stultifying. The continuity editor's pencil swings into action at the least glow of red, and the announcer stands ready to switch off a speaker instantly if he departs dangerously from his approved script.

The hypothetical listener whom they fear to offend is twelve years old and bristles with prejudices. Sex is absolutely taboo—or rather, the word "sex" and any honest reference to the reproduction function. Thus an entire series of talks on child welfare was rejected by one station because it included a discussion of legislation on illegitimacy under the title, "Children Born Out of Wedlock." The objection, of course, is to the direct approach. Innuendo and double entendre (often not so double) usually get by unscathed. To call a person a "pansy" might be considered indecent, but to include a pansy character in an advertising act seems to be all right. So also the May Westian invitation, "Come up and see me some time, if you can take it!" is apparently approved as meaning nothing except to the sophisticated. Suggestive songs now and then enter the best regulated households *via* the radio in spite of Ring Lardner's crusade against them, which only served to tone them down for awhile; but nothing heartily bawdy, like the parody of history privately recorded for a wealthy gum manufacturer, ever has a chance.

Pacifism is on the index of almost all stations. The radio production of the anti-war play "Spread Eagle" over WEAJ was cancelled upon objection by the American Legion; and Norman Thomas, Kirby Page and others have been barred from broadcasting similar matter. On the other hand, a station "which devoted itself very liberally to the national preparedness movement" and at all times extended its facilities to the American Legion and the National Security League was highly recommended by the FRC. That pacifism continues to be anathema was indicated last November when KDKA refused the Rev. Hubert Beecher Hudnut time for a talk on international relations and world peace. He wasn't kept off the air altogether, however, for a competing station took him on.

Unorthodox economic or political views have little or no chance to reach the "great radio audience" over the big networks, unless they creep in under the cloak of the New Deal. A speech by Devere Allen on behalf of the League for Industrial Democracy, scheduled early in March, 1933, over WGY at Schenectady, was called off after the station editor had taken one look at the manuscript which dealt a little roughly with public utilities, banking interests and the Buy American movement. The only explanation offered by NBC was that its rules did not permit anything to go on the air which might undermine "public confidence and faith." In whom or in what was not revealed.

Until last summer, at least, any comment even slightly favorable to the Bolshies threw studio censors into a cold sweat. When Glenn E. Hoover of Mills College, California, submitted for station approval the text of a talk on Russia that a woman's organization had invited him to broadcast, he got it back with a lot of cuts, among which was the following:

"The frequency of bedbugs has been grossly exaggerated."

After stating that in Russia everyone must perform socially useful work in order to get a food card, Mr. Hoover's manuscript read:

"No cards are given to salesmen, criminals, advertising men, prostitutes, realtors, financial counselors, racketeers, priests, Christian Science practitioners, chiropractors, solicitors, osteopaths, herb doctors or night club hostesses. After formulating this list I am again impressed with the profound character of the Russian Revolution."

This, of course, was deleted. It would probably be objectionable even now after the recognition of the U.S.S.R., because it brackets some respectable trades with the disreputable.

Sometimes panic seizes a station management at the last moment, as in the case of Professor William Z. Ripley of Harvard, whose address at a meeting in New York in 1932, scheduled to be broadcast, was switched off the air when it was discovered that he intended to criticize abuses in the issuing of public utility securities and to demand government supervision. Victor Berger had a similar experience when he was cut off right after he had said that capitalism controlled the radio and the schools. In both cases the stations had devious alibis.

Morris L. Ernst, the American Civil Liberties Union and others have from time to time reported similar instances of station censorship. Many of them are now ancient history, but they serve to reveal the general broadcasting bias which has not materially changed. The Rev. Herman J. Hahn, who had been a trifle radical, was told by WGR to confine his remarks to conventional religion. KOA ruled out Eamon de Valera because of anti-British propaganda. Mrs. Mary H. Ford was cut off by WGL in the midst of mildly pacifistic remarks. Patrick J. Fagan, district organizer of the United Mine Workers, was refused time by KQV, because he intended to denounce the killing of a miner by company police.

A debate over American intervention in Nicaragua, scheduled over the Oregon State College Station, was

banned at the last minute. John Nevin Sayre of the Fellowship of Reconciliation asked WHAP for an opportunity to reply to attacks made upon socialists and pacifists, but was refused. The same station rebuffed Norman Thomas, as did also WEAJ and WNYC and other stations. Professor Harlow of Smith College was censored for criticizing our government's foreign policy. Two New York stations declined to let Norman Hapgood defend the American Civil Liberties Union against attacks by the great detective, William J. Burns. Miss Esther Ogden was warned not to criticize Calvin Coolidge during his presidential regime. Carroll L. Beedy, in an address before the Maine Society in New York, got so warmed up against the venality and pruriency of the newspaper press that WNYC shut him off the air. No station in Los Angeles would sell time to John R. Haynes for a speech in favor of municipal ownership of public utilities, although he was able and willing to pay for it.

And among others who have at various times been forced by radio stations to shut up or pipe down are Hudson Maxim, Senator James E. Reed, William G. McAdoo, H. V. Kaltenborn, Sir Henry Japp, Aimee McPherson, Mrs. Charles H. Sabin, ex-Senator James W. Wadsworth and the famous Father Coughlin himself, who has not always been immune to censorship. He has had some trouble with the Columbia network in the past and his future is not absolutely secure. He is going strong now because of his tremendous following and his attacks on the enemies of the New Deal. But he is about the only big bad wolf who has been permitted week after week to snap at the little pigs of privilege over the air. . . .

The air is not free. It never will be unless we discover some way of using an infinite number of wave lengths simultaneously without interference. The very existence of broadcasting at present depends on some form of regulation and control. The proponents of free

speech over the radio start under a handicap which does not exist in connection with any other medium of expression.

But this does not alter one whit the validity of the fundamental social reasons against every form of censorship expounded in that gospel of free speech, Milton's *Areopagitica*, and brought down to date by the American Civil Liberties Union in its booklet on movie censorship in New York, entitled *What Shocked the Censors!*, which stresses the following: (1) that explicit standards with respect to obscenity, indecency, immorality, inhumanity and religion, cannot be arrived at, because of diversity of opinion between individuals and constantly changing social standards; (2) that censorship can never improve our moral standards, because it represents an external, fractional, and negative attack upon mere items in the total equation, our sense of right and wrong deriving as it must from the kind of society in which we live; and (3) that when public agencies assume to formulate and enforce rules of censorship they invariably supply a cure that is worse than the disease by providing a weapon by which those in power may close the channels of criticism. Censorship, in short, is the favorite resort of the despots, oppressors and inquisitors of mankind and is certain to be used as much for suppressing truth as it is for preserving the innocent from the knowledge of evil. . . .

We had a hint of the same sort of thing in this country last August when one of the commissioners stubbed his toe trying to do his bit for the New Deal by sending out a letter to all stations, urging them "as their patriotic, if not bounden and legal duty" to refuse their facilities to advertisers who are "disposed to defy, ignore or modify the codes established by the N.R.A." Reminding them that their continued existence depended on the good will of the FRC, the encyclical said:

"It is to be hoped that radio stations, using valuable facilities loaned to them temporarily by the government, will not unwittingly be placed in an embarrassing position because of the greed or lack of patriotism on the part of a few unscrupulous advertisers."

This warning was taken so seriously by the Columbia network that it cancelled the broadcasting of a speech by Fred J. Schlink scheduled early in January for a nation-wide hook-up when it discovered that the text submitted criticized the N.R.A. The network permitted the broadcast later, but not until after Senators Dill and White had promised to make the drift toward official censorship an outstanding issue before the present Congress. . . .

### MEDICAL TABOOS <sup>1</sup>

. . . The American Medical Association, while duly appreciating the cooperation of the broadcasting interest, nevertheless is constrained to represent to the Commission that certain practises and situations in the field of educational broadcasting require attention and should be modified if possible in the interest of the listening public.

Speakers on scientific topics are limited in what they may say, with particular reference to the following matters:

(1) Medical speakers on health topics are not permitted to make general statements of established fact which may interfere with products advertised by radio, even when no specific product is mentioned and when the truth of the proposed statement is not in question. This is entirely aside from specific objections to certain medical advertising.

(2) Speakers are limited with respect to certain topics, particularly the important public health problem of venereal diseases, by virtue of a public taboo on mention of these topics. It is recognized that this taboo is not a creation of the radio industry, but is merely reflected by that industry. Nevertheless, it puts a great handicap in the way of public health progress. The so-called social or venereal diseases, and particularly syphilis, constitute, in the opinion of many competent observers, the most important public health problem before the United States today.

(3) Radio speakers are required to accept censorship from the owners of broadcasting facilities or incur the penalty of being barred from the air. . . .

<sup>1</sup> Statement at hearings before the Federal Communications Commission, Washington, D.C., May 15, 1935, by W. W. Bauer, M.D., Director, Bureau of Health and Public Instruction, American Medical Association. Printed in *Education by Radio*. July 11, 1935. p. 29-30.

CENSORSHIP CHARGED BY ACLU<sup>8</sup>

"There is a radio censorship."

Roger Baldwin declared it emphatically last week. As director of the American Civil Liberties Union he wants to arouse the public against violation of "civil rights of free speech over the air." A hundred cases of "private radio censorship" neatly typed on legal stationery, back him up.

To find them, Minna Kassner, a woman attorney member of the free speech organization, worked six months. Her records picture broadcasters kow-towing to the Administration and combating Reds with blue pencils, dead microphones, and turned-down thumbs.

Last month, from "confidential sources"—a discharged employee—she received on WLW's stationery two memorandums dated May, 1935. Over the typed signature of Joseph Ries, the 500,000 watt station's educational director, the memoranda advised announcers: "No reference to strikes—to include students strikes and school walkouts—is to be made on any news broadcast on this station."

WLW officials protested their innocence. "Our only instructions are to broadcast news of national and international importance and to broadcast all of it." But Roger Baldwin still awaits the station's repudiation of photostatic memorandum copies from the originals in file in ACLU'S New York offices.

Meantime, he has plenty of ammunition to draw on. Miss Kassner reports that in 1932, Los Angeles stations KTM and KGER refused to allow Neal Jones, new editor of the Scripps-Canfield *Los Angeles Record*, to criticise William Randolph Hearst. Station KMPC barred Jones after his first two talks.

<sup>8</sup> News story titled "Censors: ACLU Declares Radio Gags Speakers with Red Tape." *News-Week*. September 14, 1935. p. 25. Reprinted by permission.

Last January, states Miss Kassner, KTAB cancelled without explanation an already-paid-for broadcast by Leo Gallagher, San Francisco attorney active in the Scottsboro case; and by Albert Hougardy, worker awaiting trial on charge of criminal syndicalism. Two months before, stations KTAB, KROW, KFRC, KJBS, KQW, KPO and KGO ignored or refused the San Francisco Newspaper Guild's request for time to explain its controversy with the *Oakland Tribune* over three editorial dismissals.

According to ACLU, stations exempt large private interests from criticism. Last year the Trendle Kunsky Corporation of Detroit turned down the State Federation of Women's Clubs request for a broadcast on WOOD (Grand Rapids) of Senator Arthur Vandenberg's address on "Munitions Makers." The New Jersey station, WOR, last January cut out references to Rockefeller, Morgan and Ford in a speech by Morris L. Ernst, Manhattan attorney.

Over NBC-WEAF, Henry V. Kaltenborn, radio commentator, declared in 1931, "The best way to help the Russian people . . . is by granting recognition." As a result say ACLU records, "The American Telephone & Telegraph Co. thereafter barred Mr. Kaltenborn from the use of its stations."

Miss Kassner cites Columbia's Washington vice president during 1933 as "frankly stating that no broadcast would be permitted over CBS which was in any way critical of any policy of the Administration and . . . which did not first have President Roosevelt's approval." The same year, an NBC representative warned the Massachusetts American Legion its radio speakers must not "disturb the public confidence in its President." Only last April WHN in New York barred Representative Hamilton Fish Jr.'s attack on Mr. Roosevelt, Postmaster General Farley, and New Deal policies.

The ACLU report rehashes an old issue between broadcasters and their liberal critics. Recently John Royal, NBC program director, summed up his company's position with a denial of censorship: "We are careful whom we invite to broadcast, and once invited we would not expect to censor. We do not expect men and women in public life to say anything we would be ashamed of. . . . We have no rule to see their manuscript in advance."

Columbia, on the other hand, recognizes "no exception to the rule of submitting the manuscripts in advance. If the speech is of a violent nature, leading executives and legal counsel decide whether it should be broadcast. . . . Editorial responsibility is assumed by Columbia itself."

### RADIO CENSORS LABOR °

On the basis of the two confidential memoranda reproduced on this page, the American Civil Liberties Union recently charged the Crosley Radio Corporation, owners of radio stations WLW and WSAI in Cincinnati with unjustified and anti-labor censorship. WLW, which boasts of being "The Nation's Station," is with its 500 kilowatts of power the largest in the country. Only the Moscow station, RVI, is as large. An independent, WLW accepts programs from the National Broadcasting Company and the Mutual Broadcasting System, Inc. WSAI is a local station. They are both controlled by Powel Crosley, Jr., a wealthy manufacturer.

Our news broadcasts, as you have already been told, and which has been our practice for some time, will not include mention of any strikes. This also includes students' strikes and school-walk-outs.

\* \* \*

° "Radio Censors Labor" by Clifton Reed, publicity director for the American Civil Liberties Union, in *The Nation*. September 25, 1935. p. 357.

No reference to strikes is to be made on any news bulletin broadcast over our stations.<sup>10</sup>

According to information secured by Minna F. Kassner, an attorney making a survey of radio censorship for the Civil Liberties Union, these two orders were issued to news commentators and announcers in May by Joseph Ries, director of the Cultural and Educational Department of the two stations. All data in the case were submitted by the A. C. L. U. to the Federal Communications Commission, and to Congressman William P. Connery of the House Committee on Labor, Congressman Joseph P. Monaghan, sponsor of a bill to nationalize radio, and William Green, president of the American Federation of Labor.

Before he knew that the Civil Liberties Union had these original orders in its files, John L. Clark, general manager of the two stations, issued an indignant and injured denial of all charges. A "great injustice" had been done. Mr. Clark cited his radio log to prove that strikes had been mentioned several times in broadcasts in the last two weeks. And in a long letter to the Union he declared that "competent newspapermen" had been hired to handle the news and that these men had received "no instructions whatsoever regarding the suppressing of any kind of news. The only instructions these men have is to broadcast news of national and international importance, and to broadcast all of it."

When photostats of the orders themselves were submitted to Mr. Clark with a request for an explanation of why they were issued and when the policy described in one of them as "our practice for some time" was reversed, a great silence descended on the station. Newspaper clippings from Cincinnati quote Mr. Clark as calling the matter a "closed incident" and refusing to discuss it further lest he give publicity to the Union and, presumably, to its charges.

<sup>10</sup> The text of the two orders issued by Ries of the Crosley Radio Corporation on May 31 and May 29, 1935, respectively, which appeared in the article.

The Federal Communications Commission, through its secretary, Herbert L. Pettey, in reply to the Union's letter said that the law prevented it "from exercising any power of censorship over radio communications, and consequently the commission is precluded from directing a station to accept or reject any particular program or from exercising any previous restraint over the material broadcast. The sole responsibility for the selection of its program material is placed upon the station licensee."

While legally correct, this application of the principles of freedom of the press to radio is of doubtful social validity. To grant to station owners the same freedom in the selection of material as to newspapers is to ignore the fact that broadcasters function only by virtue of a government license. If the station is large, as is WLW, and has the sole right to operate on one of the ninety available channels, it enjoys a lucrative monopoly. In return it has paid nothing. Its single obligation is to present programs in "the public interest, convenience, and necessity."

The only redress in such censorship cases, then, is for the attorneys for the Civil Liberties Union and the American Federation of Labor to oppose WLW's next application for a renewal of its license on the ground that its orders were not in the public interest. Station licenses must be renewed every six months. An exciting hearing might result, but it is hard to believe that the Crosley Radio Corporation would lose its license.

### CENSORSHIP BY STATIONS <sup>11</sup>

. . . The second phase of our problem is censorship exercised by commercial broadcasters, and here referred to as "private censorship." . . .

<sup>11</sup> By Minna F. Kassner. Excerpt from "Radio Censorship." *Air Law Review*. April 1937. p. 99-111. Reprinted by permission.

Private censorship is exercised in the following manner:

1. A station simply refuses to sell time or fulfill contracts to broadcast;
2. The station demands copies of speeches and requires changes in advance, as a condition to their being broadcast;
3. Speeches are drowned out or cut off in the middle of a program; and
4. Stations will relegate speakers to early morning hours when the radio audience is negligible.

The results of a survey made by the writer, in collaboration with Lucien Zacharoff, under the auspices of the American Civil Liberties Union, reveals an alarming number of instances of censorship as practiced by these private broadcasters.

The survey referred to is the only one of its kind to date, and was necessarily incomplete because of the refusal of those censored to publicize experiences for fear of retaliation from broadcasters or the loss of their jobs or of privileges to speak on future programs.

A review of some of the more outstanding cases of this type of censorship should prove helpful in this discussion.

The stations are very cautious in not permitting any programs which are at all critical of the administration. Thus, the Columbia Broadcasting System key station, WCAU of Philadelphia, scheduled an address by F. J. Schlink, president of Consumers Research, Inc., in January, 1934. When one of the network's amateur censors discovered that the proposed address contained a criticism of the NRA, Mr. Schlink was informed that his broadcast had been cancelled. After Mr. Schlink had succeeded in getting considerable publicity, the president of the Columbia Broadcasting System telegraphed that this action of a subordinate was a "wholly unwarranted and

unauthorized violation of Columbia's practice." The talk was delivered some time later.

Also, Station WBZ in Boston broadcast from its studio in the Hotel Kimball, Springfield, a lecture by Professor S. Ralph Harlow of Smith College, on behalf of the Near East Relief. Midway in his broadcast, the Professor was cut off because he intimated that the administration's foreign policy under Coolidge cancelled practically all the activities of the Near East Relief.

In 1933, the American Alliance of Patriotic Societies approached the Columbia Broadcasting System for an opportunity to broadcast a reply to radio propaganda for Soviet recognition. Walter L. Reynolds, Secretary of the American Alliance of Patriotic Societies, reported:

"Much to our surprise Mr. Bellows frankly stated that no broadcast would be permitted over the C.B.S. that in any way was critical of any policy of the Administration; that the Columbia system was at the disposal of President Roosevelt and his administration, and that they would permit no broadcast that did not first have his approval . . . he felt that President Roosevelt should be supported by the C.B.S. whether right or wrong. . ."

In October, 1931, a group of leading Puerto Ricans approached the independent station WMCA of New York City for a broadcast by Dr. Antonio Barcelo, former President of the Puerto Rican Senate. When the station found that the broadcast contained a plea for Puerto Rican independence, it refused to sell time on the ground that "the Radio Commission might make it hard for them." The group then offered to pay the CBS the regular fee of \$2000 for the same broadcast, but received a similar refusal as the broadcast might "interfere with the Federal Radio Commission."

In the field of labor and labor disputes, and in spite of the fact that trade-unions and their supporters make far less use of the radio in this country than political parties, there have been a number of glaring cases of censorship. For example, WLW, one of the most powerful stations in the world, operating at 500,000 watts, as

compared with 50,000 watts for its nearest competitor in this country, in May, 1935, issued the following memorandum to its news commentators:

"No reference to strikes is to be made on any news broadcasts from this station."

And two days later, although there had been no violation of the first order, another followed:

"Our news broadcasts, as you have already been told, and which has been our practice for some time, will not include mention of any strikes.

"This also includes students' strikes and school walk-outs."

When copies of these orders reached the American Civil Liberties Union, a protest was sent to Powel Crosley, Jr., to the following effect:

"Such an order secretly given seems to us unjustified censorship. It indicates an effort to present a biased picture of current events to your listeners. It is unfair to the organized labor movement and its sympathizers and to the peace groups that have taken part in such events as anti-war strikes in schools and colleges."

The station issued an indignant denial of this censorship; but when confronted with photostatic copies of the orders, it suddenly decided that the matter was a "closed incident."

In November of 1934, the Newspaper Guild of the San Francisco area, an affiliate of the American Newspaper Guild, addressed letters to stations KTAB, KROW, KFRC, KJBS, KQW, KPO, and KGO, all local radio stations in San Francisco. The letters requested the price of a fifteen-minute broadcast for an address explaining the Guild's side of a controversy between the *Oakland Tribune* and the Guild regarding the firing of three *Tribune* editorial employees. The letters to the stations also stated that the speakers would request listeners to cancel their subscriptions to the *Tribune* as a protest against the latter's violation of Section 7a of the N.R.A.

Two of the stations so addressed ignored the letters entirely. The others communicated with the Guild either

by telephone or letter and stated frankly that they were unwilling to accept the responsibility of selling the organization any time for a broadcast of the kind in question.

Subsequently, however, station KJBS agreed to give the Guild fifteen minutes' time gratis, providing the *Tribune* were given an opportunity to reply. Before the broadcast took place, Station KJBS found it necessary to withdraw the offer because, in the course of a telephone conversation with the *Tribune* publisher, the station was threatened with a libel suit "if one word of the Guild's story went on the air."

The various reasons given by the other stations which had replied was to the effect that they feared reprisals from the *Tribune* in the form of withdrawal of the station's programs from the newspaper's columns, and also the fear of legal action by the publishers.

Since the broadcasting companies are corporations which depend upon other large corporations for their income, it is not at all surprising that they should be especially zealous about any attack, real or implied, against public utilities.

In January, 1934, Harry Laidler, executive director of the League for Industrial Democracy, was scheduled to speak on "Concentration of Control in American Industry" over WKY. Upon examination of his script, the station manager informed Mr. Laidler that the speech could not be broadcast unless certain corporation names, such as the "American Telephone and Telegraph Co.," were deleted.

The Columbia Broadcasting system afforded an even more striking example of protective censorship in 1930. At that time, former Senator James R. Reed of Missouri was broadcasting a speech on "The March of Monopoly" over the CBS facilities. In the midst of a bitter condemnation of the Radio Corporation of America Senator

Reed was cut off the air. The objectionable remarks seem to have been the following:

"I invite your attention to the latest piratical development commonly known as the 'radio trust.' It is impossible, by metaphors yet devised, to picture that combination. . . . Its field of operations is the air we breathe and the ether by which we are surrounded. . . . It would seem that human cupidity could not reach so far, or human insolence become so gross as to attempt to control and monopolize the very atmosphere we breathe and to withhold from the public use the instrumentalities of communication through the air; and yet that is exactly what a group of great capitalists are attempting through the organization of a huge monopoly."

A talk scheduled for September, 1935, by George Slaff, counsel for the Utility Users Protective League of New Jersey, over station WHN, was rejected as "controversial" and as likely to "antagonize some factions." Mr. Slaff describes it as a calm presentation of the League's position with which the station must have been familiar before it scheduled the program.

A scheduled speech by John A. Trindhere, chairman of the Utility Consumers' League, on telephone rate abuses was "postponed" the day it was to have been delivered in March, 1936. Station officials alleged that it would be improper to carry the program at that time because the American Telephone and Telegraph Company was being investigated at Washington by the Federal Communications Commission. The station's special feature man who arranged the broadcast was discharged. A few days later it became clear that the postponement was in fact a cancellation.

There seems also to be a fear on the part of stations to extoll too highly the virtues of any other government or system of government.

Thus, a speech by Glenn E. Hoover of Mills College, on Russia, prepared at the invitation of the Alameda County Federation of Women's Clubs in February, 1933,

over station KGO, San Francisco, was severely censored. Among the remarks red-penciled by the station were:

"No cards are given to salesmen, criminals, advertising men, prostitutes, realtors, financial counselors, racketeers, priests, Christian Science practitioners, chiropractors, solicitors, osteopaths, herb doctors or night club hostesses. After formulating this list, I am again impressed with the profound character of the Russian Revolution."

"The Russians plan an experiment while we drift and cling to tradition."

"The political structure of Russia is, I think, the most intelligent in the world."

"If the world has to choose between capitalism with chronic unemployment on one hand and communism with inefficiency on the other, communism ought to win—and probably will."

Mr. and Mrs. Corliss Lamont were to broadcast in August, 1933, about their trip to Russia, over the facilities of Station WABC. A script was submitted in advance and it was agreed to omit from it any reference to birth control. There was disagreement, however, about the last paragraph. The question was appealed to a high executive who approved the disputed matter as long as the word "revolution" was omitted. That was quite satisfactory to the Lamonts. During the broadcast, however, the speakers were cut off just before they reached the paragraph in question. The station said the time was up, while the Lamonts insisted that they had ample time to finish. The disputed paragraph follows:

"And I want to suggest that what the Communists have done compares very favorably with what we Americans achieved in the first ten or fifteen years after our revolution against England. You will remember that we, like the Russians, had a pretty hard time of it for a while."

Alexander Woollcott, the *Town Crier*, was warned in November, 1935, by his sponsors, the manufacturers of Cream of Wheat, that he should make no more references to Hitler and Mussolini since "large racial groups might be alienated." Later Mr. Woollcott was told the program would end December 29, 1935, unless he agreed

to keep off controversial subjects. Mr. Woollcott's last sponsored program on December 29 was a vigorous attack on censorship and an enthusiastic endorsement of the American Civil Liberties Union. Of the order against criticism of dictators, Mr. Woollcott said, according to the *Chicago Daily News*:

"I replied that mine was a kind of oral column, presenting me as a citizen leaning over the fence and talking freely with his neighbors. If the broadcasts had any audience it was because my obliging neighbor enjoyed listening to me report my likes and dislikes on books, plays, pictures and events of the day. I also said I could not in self-respect guarantee to keep silent about Hitler, Mussolini or any other bully, jingo or lyncher. It would be unfair both to myself and my sponsor to try and continue under censorship, for the fact that taboos existed would lessen my own interest in the broadcasts and make them deteriorate in short order."

There are many other instances covering censorship of many subjects. . . .

## INSTANCES OF POLITICAL CENSORSHIP<sup>12</sup>

CENSORSHIP: . . . action taken by any governing authority to prevent the dissemination of false statements, inconvenient facts, or displeasing opinions . . . .

—*Encyclopaedia Britannica*

Quick to realize the possibilities of radio in politics, European countries have taken over stations within their borders and clamped them under an iron censorship. The United States, however, has retained the private status of its networks. Except for the lethargic Federal Communications Commission, American broadcasters have enjoyed practical immunity from government censors.

Last week two political news items thrust the American method of blue-penciling sharply into the foreground:

<sup>12</sup> Extracts from news story headed "Politics: Democrats and Reds suffer from Private Censorship." *News-Week*. September 26, 1936. p19-20. Reprinted by permission.

1. Harrison Holloway, executive manager of stations KFI and KECA, Los Angeles, labeled President Roosevelt's famous fireside chats as "nothing more than campaign speeches" and refused requested air time without payment by the Democratic National Committee.

2. Anning S. Prall, chairman of the FCC, demanded explanations from WIRE (Indianapolis), WCAE (Pittsburgh), and WTCN (Minneapolis) for alleged discrimination against the Communist party.

Political campaign speeches have long been radio sore spots. All stations sell stump time to any candidate—including the President. As Chief Executive, he also has the right to request free time in the public interest. What if a pre-announced "stewardship" speech degenerates into a discussion of political issues?

The National Broadcasting Co. gives a pat answer: "We would not cut the President off . . . but we would donate an equal amount of time to the other parties." Upon the Republican National Committee's complaint that Mr. Roosevelt's August 14 Chautauqua speech was a political harangue, NBC refused payment for Governor Landon's address ten days later.

Columbia shuts its eyes to such a contingency. "The President would not do such a thing. . . ." Mutual stoutly brings up the rear: "We must always believe our President."

Though the recalcitrant California stations—owned by a Packard distributing company—are members of the NBC chain, the network cannot force them to broadcast future fireside talks. Shunted through as sustaining (nonpaying) programs, the talks do not fall within contractual obligations.

Broken contracts spattered the second incident. As counsel for the American Civil Liberties Union, Arthur Garfield Hays on September 11 urged Chairman Prall to make a "sharp public statement" affirming the provision of the 1934 Communications Act. ("All licensed

broadcasting stations shall afford equal treatment to legally qualified candidates for office.”)

He pointed out that WIRE “took upon itself the functions of elections commissioners” by declaring “the Communist party is illegal in the state.” WCAE cancelled a contracted speech because of “an important local commitment,” though “no local commitment could warrant breaking such a contract.” WTCN scheduled a series of Red talks, but when the first speech was submitted, demanded elimination of certain paragraphs. The script was withdrawn and another submitted and approved.

“Just before it was delivered, Sam K. Davis (not himself a candidate) asked permission to make a slight addition. The request was granted. After the talk, the station charged that the Communist party in changing the speech had violated its contract and cancelled the series.”

Monday, the Hearst-controlled Pittsburgh station yielded to an ominously worded FCC request. “WCAE feels compelled to accept the programs of Earl Browder,” wrote Emil J. Gough, station vice president. “To refuse to do so . . . might subject it to revocation of its license . . . a maximum fine of \$10,000 and/or two years imprisonment for its officers or both. . . .”

### THE VANDENBERG INCIDENT <sup>13</sup>

At 8:30 last Saturday night, a Columbia Broadcasting System announcer declared: “The program originally scheduled for this time will not be heard.”

Radio listeners who had expected to hear Senator Arthur Vandenberg in a program billed as a “fireside mystery chat” heard only a studio piano tinkling a time-

<sup>13</sup> News story headed, “Debate: Senator Vandenberg Combats Recorded Voice and CBS.” *News-Week*. October 24, 1936. p. 16. Reprinted by permission.

filling tune. After two minutes the Senator's biting tones suddenly poured from the loud-speaker. An announcer interrupted momentarily to splutter something about "phonograph records."

Then came another jolt. Apparently President Roosevelt entered into a dialogue with the Michigan Republican. For eighteen minutes, Senator Vandenberg directed questions at "Mr. Roosevelt"; a voice few radio owners could mistake replied and the Senator triumphantly ridiculed the answers. Another jarring interruption followed: "Ladies and Gentlemen, we regret that . . . we shall be forced to terminate the present broadcast."

Telegrams and telephone calls deluged CBS officials. They replied by rushing explanatory bulletins on the air and issuing statement after statement: there had been no censorship; by playing transcriptions of past Roosevelt speeches Senator Vandenberg had violated a CBS rule against the use of phonograph records.

H. Leslie Atlass, a CBS vice-president, had learned of the Senator's plans only ten minutes before the broadcast time. Atlass promptly ordered the program off the air, later reconsidered and let it go on, then ordered it off again. Amid the confusion, some CBS stations canceled the program entirely, some broadcast half of it, and some carried it in full.

Senator Vandenberg and the Voice of Roosevelt carried on to the end. The voice repeated the Presidential oath of office, stated budget-balancing plans, and declared that the only thing to fear was fear itself. The Senator, interrupting, reviewed New Deal conflicts with the Supreme Court, accused the administration of extravagance, and declared that fear of the President had slowed recovery.

Senator Vandenberg saved his best dialogue for last.  
Samples:

VANDENBERG: "The platform upon which you were elected said: 'We advocate an immediate drastic reduction of governmental expenditures.' . . . And what did you say?"

VOICE: "That admirable document, the platform which you have adopted, is clear. I accept it 100 per cent."

VANDENBERG: "Instead of reducing Federal expenditures 25 per cent you have increased them 72 per cent . . . And what did you say?"

VOICE: . . . "I accept it 100 per cent."

VANDENBERG: "Then your platform said: 'We advocate a sound currency to be preserved at all hazards.' And what did you say?"

VOICE: . . . "I accept it 100 per cent."

VANDENBERG: "We play with gold; we toy with silver; we revel in greenbacks. . . Time forbids an extension of the inventory. I simply listen, once more and finally, for your sturdy words—"

VOICE: . . . "I accept it 100 per cent."

## RECENT INSTANCES OF "EDITORIAL SELECTION"

### COUGHLIN BARRED FROM WOR<sup>1</sup>

A ruling that WOR will not sell time for controversial or religious programs, adopted some time ago, is the reason for that station's refusal to accept the current series of talks broadcast by Father Charles E. Coughlin, according to Eugene S. Thomas, assistant sales manager. "This decision was reached a couple of years ago," Mr. Thomas said, "due to a fear that our schedule would become topheavy with talks. So, except during political campaigns, we decided not to sell time for programs of a religious or controversial nature, but if they were of sufficient public interest, to broadcast them as special features on a sustaining basis. As long as Father Coughlin maintained his regular schedule we permitted him to be an exception, but when last fall he did not return to the air at his regular time, we felt forced to apply the rule to him as well." . . .

### TOWNSEND SPEECH DELETED<sup>2</sup>

Claim of Dr. Francis E. Townsend that he had been denied freedom of speech on the Don Lee Broadcasting System because a portion of his April 4 prepared Townsend Radio Club speech was deleted, was branded as

<sup>1</sup> Extract from news story headed, "Coughlin Kept Off WOR Under Old Station Policy." *Broadcasting*. February 1, 1938. Reprinted by permission.

<sup>2</sup> News story headed, "Weiss Belittles Charge Made by Townsend Club." *Broadcasting*. April 15, 1938. p. 55.

"childish" by Lewis Allen Weiss, general manager of the network, in Los Angeles.

"One sentence which took a slap at President Roosevelt was deleted from Dr. Townsend's speech," Mr. Weiss said. "This deletion detracted nothing from the effectiveness of the broadcast. So far as an attack on the President is concerned, that is an implied restriction."

Townsend Radio Club program was a weekly quarter-hour feature on 12 California stations of the Don Lee network for several months, and was cancelled by the Prosperity Publishing Co., sponsors, following the misunderstanding. It was scheduled to switch to seven California Radio System stations starting April 11 for 52 weeks, and emanate from KFOX, Long Beach, Calif., the contract having been signed by Lisle Sheldon Advertising, Los Angeles agency. Prosperity Publishing Company plans to add other California stations.

### POLITICAL CENSORSHIP CHARGED IN TEXAS<sup>3</sup>

Inquiry into second instance of political censorship was under way this week, with FCC looking into complaints against the three Houston, Texas, outlets controlled by Jesse Jones, potent Democratic and Roosevelt administration figure.

Study was promised last week by Judge Eugene O. Sykes, acting chairman, following receipt of squawks from County Judge Roy Hofheinz on asserted blue-penciling of political speeches by officials of KTRH, KXYZ, and KPRC. Details are not revealed, under FCC policy of withholding info about bleats against license-holders.

<sup>3</sup> Extract from news story headed "'Nother Political Censorship Case Probed by FCC." *Variety*. August 31, 1938. Reprinted by permission.

RUTHERFORD SPEECH CUT OFF <sup>4</sup>

WORL, Boston, has announced that the program of Judge J. F. Rutherford, head of Jehovah's Witnesses, was cut off the station October 2 after 24 minutes, when he quoted from the book of an ex-Jesuit which condemned Pope Pius XI and the Catholic Church. W. Cort Treat, WORL general manager, said he allowed the broadcast to go on the air in behalf of free speech in spite of many protests before the hour of broadcast; but took it off the air when the particular statement was made. The Rutherford broadcast originated in New York and was sponsored by his Watch Tower Bible & Tract Society. Mr. Treat said that hundreds of communications were received by WORL commending the action but that likewise violent protests came from many of Jehovah's Witnesses of Boston and surrounding suburbs.

RUTHERFORD CUT OFF IN OHIO <sup>5</sup>

Judge Joseph F. Rutherford's Watchtower programs which have run into so much radio opposition throughout the country came to grief here (Akron, Ohio) when station WADC broadcast one of the group's programs. Holding that the Rutherford transcriptions were too offensive to Catholics to be stomached any longer, a delegation of three Catholics and a Protestant minister called on the station during the Rutherford broadcast Sunday and demanded that it be halted. Program was stopped 20 minutes before its conclusion.

Allen T. Simmons, operator of WADC, said that he had permitted the program to go on as he had a con-

<sup>4</sup> News story headed, "Program Cut Off." *Broadcasting*. October 15, 1938. p. 22. Reprinted by permission.

<sup>5</sup> News story under Akron, Ohio, dateline, in *Variety*. October 19, 1938. Reprinted by permission.

tract with the Watchtower society and because an advance copy of Rutherford's address had not been furnished him. Simmons said that he has no future contract for the Rutherford programs and indicated that he is not interested in carrying future speeches by the judge. . . .

### DISCUSSION OF MINORITIES PROBLEM BARRED<sup>6</sup>

CINCINNATI, Nov. 29.—WLW refused to carry the Mennen Co.'s "People's Rally" program Sunday. The station's action, according to explanation by James D. Shouse, general manager, was on the ground that the topic of discussion, "Should there be an embargo on German-made goods because of that government's treatment of minorities," by the program's conductor, John B. Kennedy, was a controversial subject.

Station's position, added Shouse, was to avert acceptance of money for time devoted to such a matter, in accordance with an agreement between WLW and the sponsor when the latter's contract was accepted.

### THREE STATIONS BAR COUGHLIN<sup>7</sup>

Father Charles Coughlin, the Royal Oak, Mich., broadcasting priest, was not heard Sunday (November 27) over WIND, Gary, Indiana, and WJJD, Chicago, owned by Ralph Atlass, nor over WMCA, New York, owned by Donald Flamm. Meanwhile, other stations on his special paid hookup were reported plenty perturbed by the embarrassing spot they were in as Coughlin

<sup>6</sup> Extract from news story headed, "WLW Dodges Trouble." *Variety*. November 30, 1938. Reprinted by permission.

<sup>7</sup> Extract from news story from *Variety*. November 30, 1938. Reprinted by permission.

repeated his first broadcast blast against Jews as prime instigators of Communism. . . .

Standing by everything he said the first time and saying it again by transcription, the cleric expressed horror for Nazi excesses but saw the whole thing as tied up with Communism. He brought in the persecution of Catholics in Spain, Mexico and Russia as events that Jews and the world had not sufficiently deplored.

By declining to make any gesture of appeasement or repudiation of his broad charges (although specifically denying he was anti-Semitic), the priest aroused further racial animosity, in the opinion of many. Coughlin denies any such purpose. But meanwhile, apart from the controversial aspects of the theme proper, its injection into the whole complex subject of radio censorship has created a gigantic dilemma for the industry and perhaps Government.

Coughlin in striking back Sunday in his "An Answer to my Critics," emphasized and reemphasized alleged Jewish control of journalism and radio as implying that he doesn't get a fair shake on publicity. Coughlin is barred from NBC and CBS, which will not sell him or any churchman time. David Sarnoff of RCA and William S. Paley of CBS are thus dragged into the picture as key men of broadcasting and members of the Jewish race. . . .

### MINISTER CUT OFF BY KTAT<sup>8</sup>

Because he was buying time at the religious rate but deviated from his prepared talk to discuss politics, Rev. John Lovell, Baptist minister of Ranger, Texas, known as the "radio preacher," was cut off March 2 by KTAT, Fort Worth, just as he began launching into a tirade against Vice-President Garner, whom he linked with Wall Street.

<sup>8</sup> News story headed, "Pastor Cut Off by KTAT." *Broadcasting*. March 15, 1939. p. 32. Reprinted by permission.

He had been warned during his broadcast series, of which the March 2 sermon was the last under contract, not to deviate from religious subjects. He was paying the 60 per cent religious rate and for political broadcasts the one-time regular commercial rate is charged. On several occasions the preacher had been reprimanded for attacks on Catholics and Jews over KTAT.

### TALK ON RELIGIOUS LIBERTY BANNED<sup>9</sup>

PITTSBURGH, DEC. 6—Scheduled talk on religious liberty by Judge Sara M. Soffel, of Allegheny County Court, over KDKA Saturday morning, was banned by station because management considered it "too controversial." Address was to have been delivered under auspices of Daughters of the American Revolution.

DAR asked Judge Soffel to speak on subject and latter wasn't willing to change her topic when KDKA, after looking over advance script, stated it was unwilling to broadcast speech. KDKA Manager Sherman D. Gregory explained that "so much is being said, so much written and so much broadcast about the subject we thought it was not good policy to carry it. The script was one-sided against the present government in Germany, and it is our policy not to let one side of a controversy talk without giving the other side an opportunity, and that in this case seemed to be impossible."

### SUPPRESSION CHARGED BY WATCH TOWER SOCIETY<sup>10</sup>

Libel suits asking a total of \$375,000 damages have been filed on behalf of Joseph F. Rutherford, head of the

<sup>9</sup> News story headed "Rapped Germany, Talk on Religious Liberty Banned." *Variety*. December 7, 1938. Reprinted by permission.

<sup>10</sup> Extracts from news story headed "Watch Tower Society Files Libel Suits," in *Broadcasting*. January 1, 1939. p. 18. Reprinted by permission.

Watch Tower Society, in Colorado, Georgia and Ohio, according to a statement issued December 21 from the offices of Jehovah's Witnesses, 117 Adams Street, Brooklyn, N. Y. Two bishops and other Catholic prelates and two newspaper firms are among those cited as defendants on charges of "attempting to suppress the broadcasting of Bible truths by Jehovah's Witnesses," the statement said. . . .

In Effingham County, Georgia, Judge Rutherford has sued the Catholic diocese of the State, alleging defamation and libel because of a letter by Bishop O'Hara asking WATL, Atlanta, to reject an October 2 broadcast by Judge Rutherford. WATL and 59 other stations carried the speech.

The Bishop of Columbus, Ohio, founder and honorary president of the Catholic Press Association, and others are named in a suit for \$100,000 damages for allegedly "forcing a breach of a 10-year contract between Columbus station WBNS and the Watch Tower Society." The diocesan newspaper is alleged to have carried an article attacking Rutherford and suggested form letter to stations to put him off the air.

In a second suit in Ohio, the Watch Tower Society claims \$25,000 damages for alleged breach of a contract with WADC, Akron. Three priests and various Catholic laymen are named as defendants responsible for "forcing the station to interrupt the chain broadcast of Judge Rutherford's speech on October 2."

## DRAMA BARRED FROM NETWORK PROGRAM <sup>11</sup>

Self-censorship, which has been keeping an increasing amount of material off the air, hit radio again last week. As in the case of the Sam Levene script, the taboo hit

<sup>11</sup> News story headed, "Radio Playing it Safe." *Variety*. February 15, 1939. Reprinted by permission.

the Vallee show for Standard Brands. In the latest case, it nixed Arch Oboler's drama, "The Signal," forcing the substitution of the same author's "Home Town."

As originally written, the play contained an imaginary conversation between Christ and Mussolini, with the dictator finally being persuaded not to carry out an airplane bombing attack on a defenseless enemy town. Nearly all of Christ's lines in that version were taken directly from the Bible.

As a result of the broadcaster jitters, Oboler altered the character in the script, changing Christ to Lincoln, and substituting suitable dialogue. It was still not acceptable, so he next changed the other character from Mussolini to an unidentified dictator. Understood the objection to the script was that it might offend minority groups.

Last week's turn-down of "The Signal" was the fifth time the script has drawn a nix after being set for network ethering. Drama was originally scheduled three years ago as a Christmas play over NBC. Next, it was set for Lucky Strike sponsoring, but was yanked at the direct orders of George Washington Hill. It was pencilled for airing by Kate Smith last year and subsequently set by Mutual, but in each case it was deemed "too hot" for radio.

## THE POLICY OF EQUAL OPPORTUNITY

In both the 1927 and the 1934 Communications Acts, the principle was laid down that in the case of political broadcasts, stations permitting one candidate to make use of their facilities must make time available to all opposing candidates, on the same basis. In other words, as regards political broadcasting, radio is bound by statute to a policy of "equal opportunity" for both sides or all sides.

The same policy is widely advocated as regards all controversial questions. Most of those who have expressed themselves on the subject favor a general policy of complete freedom of discussion on the air—of permitting free expression of opinion on all policies of government, on all important social, political or economic questions. But to free the broadcasting station from the charge of bias—only two or three stations have been willing to assume, as stations, a definite editorial position on any public question—the policy has been developed of permitting no presentation of a controversial question, without making sure that both sides of the question will be presented.

The networks have taken the lead in this approach to the problem. Except in the case of political campaigns—and in a limited number of other instances—discussions of controversial issues are barred from paid commercial programs, on the theory that minority groups cannot compete in the purchase of radio time. Instead, the networks have adopted the policy of granting free time to "responsible representatives" of varying points of view,

for discussion of controversial matters. Many individual stations follow the same policy.

Of course, in practice, the principle does not always work out completely. A network may give equal time to two speakers, taking opposing points of view on some important question. But member stations are not required to carry sustaining programs, unless they wish to do so; and it sometimes happens that where the representative of one side of the controversy may be put on the air by 30 or 40 stations, the speaker presenting the opposite viewpoint finds himself appearing on a network of only eight or ten stations.

This difficulty would disappear, in large part, if member stations as well as networks accepted the doctrine of "equal opportunity" in their own handling of controversial issues. The number of stations carrying each party to the controversy would be more nearly equal, although, of course, the possibility of local commitments by member stations at the time of broadcast will probably make an exactly equal allotment of facilities difficult.

The policy of complete freedom of discussion, in connection with the granting of equal opportunities to both sides in discussions of controversial issues, is recommended by the American Civil Liberties Union as the best safeguard against the harmful use of radio for propaganda.

### RADIO MUST PRESENT BOTH SIDES<sup>1</sup>

The radio is not comparable to its contemporary—the newspaper. Over the air the speaker's words reach the listener directly—there can be no misquotation or color-

<sup>1</sup> By Senator Burton K. Wheeler of Montana. Extract from an address before the Federal Communication Bar Association, December 10, 1938, in Washington, D.C.

ing of his views. Nor can hours be added to the day as are pages to the newspaper.

Because of this very aspect, broadcasters cannot reserve their facilities for the presentation of a single viewpoint or creed. Radio should not have an editorial policy. It must be an instrumentality by which the public can be reached in the presentation of the pro and con of issues and views. If, in the first instance, a station permits its facilities to be employed to present a particular viewpoint, in my judgment, it must afford opposing factions equal opportunity, whether it be labor seeking to answer capital, liberal who desires to oppose the conservative, or Catholic who does not see eye to eye with the Protestant. . . .

### FAIRNESS ON THE AIR<sup>2</sup>

If I were talking about broadcasting in the countries of the dictators, I should have a simple story to tell. In those countries broadcasting has been owned by the state and used by the state to mold the people to its will, with the people compelled to listen to what their rulers wanted them to hear and barred from hearing anything else.

In America it has been different. We were pioneers and there was no authoritarian hand to mark out a path for us. . . .

Naturally, once so powerful a thing as broadcasting had proven itself, all sorts of people and all sorts of interests wanted to use it for all sorts of purposes. Manifold evidences of this desire forced us to think, to decide, and to act. Particularly in the realm of public affairs did we need, as we grew in experience, to develop a code of ethics. We were under a very compelling

<sup>2</sup> By William S. Paley, President, Columbia Broadcasting System. Excerpts from an address given in Chicago, Illinois, November 29, 1937, entitled "The American System of Broadcasting." *Congressional Record*, Volume 82, part 3. p. 265.

necessity to do our best. Public confidence and good will was the only thing we could rely on to perpetuate the system in which we believed. Seldom, if ever, has private enterprise had stronger motives for trying to serve the public interest. I come now to some of our major conclusions, the practices which flow out of them, and the reasons for them. Most fundamental in my own mind is this: Broadcasting as an instrument of American democracy must forever be wholly, honestly, and militantly non-partisan. This is true not only in politics but in the whole realm of arguable social ideas.

To put it another way, we must never have an editorial page, we must never seek to maintain views of our own on any public question except broadcasting itself. Moreover, we must never try to further either side of any debatable question, regardless of our own private and personal sympathies. Of course, I do not mean that any broadcaster as an individual may not on occasion express his own views like any other citizen. I state this principle of nonpartisanship first, and I state it as emphatically as I can because I believe this is the cornerstone of democratic broadcasting. . . .

Let me next define freedom of the air as I and nearly all other broadcasters understand it. Freedom of the air means the right of a speaker to express any views he may hold on any question of general interest. He must be guarded, and he is guarded in that right, regardless of how the operators of network or station may themselves feel about the thing he discusses. If he is not libelous or otherwise unlawful, if he is not obscene, if he does not seek to provoke racial or religious hatred, he may say whatever he pleases over the air. I admit that ordinary questions of good taste or good manners sometimes arise, but virtually always they can be satisfactorily settled by consultation with the prospective speaker.

Right here I want to admit, too, that isolated instances of violation of this canon can be found. Most of them lie in what is for radio the distant past. Occasionally one is due to sudden emergency and lack of time for proper consideration; now and then someone, somewhere blunders. . . .

The next great principle in keeping American broadcasting forever keyed to the needs of our democracy is "fairness of the air." By that I mean that no discussion must ever be one-sided so long as there can be found anyone to take the other side. The party in power must never dominate the air. No majority must ever monopolize. Minorities must always have fair opportunities to express their views. Again, because the number of broadcasters is limited by physical necessity and since, in the case of networks, millions listen at one time, it is imperative that all sides be fairly treated. Moreover, the dramatic velocity with which ideas reach the nation through this new medium, the compelling attention gained by those who, in this modern way, contend in person in the public arena of thought and opinion, the degree to which our people have come to rely on the radio for first-hand contact with men and events, all thunder this same democratic moral of freedom and fairness. For us willfully or by the force of others, to do differently would be an unforgivable betrayal of the people themselves.

This discussion of fairness leads me naturally to the next cardinal principle evolved out of experience. Let me describe another and a costly policy maintained by Columbia and, I believe, by virtually all broadcasters as a further safeguard to the fair and democratic use of our medium. We sell time to sponsors solely for the advertising of their goods and services. We do not sell time for propaganda.

By propaganda we mean any attempt to influence legislation, regulation, taxation, and the like. Despite

the tempting revenue we might have derived from such sales, we decided against them, first of all, because we believed it was part of our public obligation to provide time for the discussion of controversial issues.

An even more compelling reason was the danger that the side with the most money would win the argument, and often that special interests would drown out the voice of the public. Moreover, if we did sell time for such uses, the amount of talk on the air would be wholly dependent on the willingness and ability of proponents and opponents of issues to buy it. Obviously we could not sell time for such use to some and refuse to sell it to others, and thus we should be unable to maintain anything like program balance. The sole exception we make to this policy is the sale of time to political parties during an actual election campaign. This exception is made because the parties want to use, and are entitled to use, more time than we could possibly afford to give away. . . .

### RADIO GIVES EQUAL OPPORTUNITIES<sup>3</sup>

Because of radio's vast audience, its power to motivate immediate action and its strong appeal to the emotions, broadcasters guard it carefully against misuse, Lenox R. Lohr, president of NBC, told members of the Advertising Club of New York at a luncheon meeting on April 7. Speaking on "The Social Significance of Radio," Mr. Lohr stressed that radio cannot, because of limitations of available frequencies and hours, duplicate the freedom of speech afforded speakers on street corners or in halls, or the freedom of the press. Radio, he said, offers instead "equal opportunities for discussion" on all controversial subjects of general interest.

"We speak a good deal about freedom of the press," he said. "I can find no application of that phrase to

<sup>3</sup> News story headed "Freedom of Speech Defined by Lohr." *Broadcasting*. April 15, 1938. p. 30. Reprinted by permission.

radio, even though we sometimes use it rather glibly. I see freedom of the press as the right of a publisher to publish that which he thinks best for his newspaper, himself, his community. He can be entirely partisan. He can color his editorials in any way that he sees fit. If he wishes, he can even color the news to put forth that particular phase of it which he himself or his editorial board believes in.

"Now, that is not possible in radio. In the first place, if there is any desire for an opposition to the press, it is easy enough for someone else to hire a press and set up an editorial office to present the other side. Due to the fact that broadcast frequencies are simply not available, if broadcasters took the same stand it would stop the other side from giving an answer, because no one could go out and acquire a radio station.

"Freedom of speech is the right of any one to stand on a soap box on a corner and say what is in his mind without fear of molestation by the police, or speak on any occasion freely and frankly. But for purely practical reasons that can't be done in radio. Hours are too limited. Too many people would want to speak. Programming would be terrible. Listeners would tune out; the expense would be prohibitive. Therefore we do not have freedom of speech *per se* over the radio. What we do have is the freedom for equal opportunity for discussion on controversial public questions."

Defining a controversial issue as one on which substantial groups of citizens differ—these groups being large enough so that the question is of interest to a large number of the public who may be affected by the outcome—Mr. Lohr stated that in such cases radio welcomes the opportunity to put speakers on the air and endeavors to see that both sides are adequately covered by speakers of equal prominence, on an equal number of stations, and at equally favorable times. Such programs are kept on a strictly sustaining basis, he said, pointing out that the

broadcasters themselves had set up a rigid set of rules and a rigid code of ethics governing their policies because they realize the fact that the side with the most money could undoubtedly win its point if time were sold for discussion of public issues. He cited the question of the death penalty for holding companies, with the utility companies ready to spend millions to tell their side of the story, but with no organized group with enough money to make an equal presentation of the other side.

### FCC RULE ON SALE OF POLITICAL TIME <sup>4</sup>

IT IS HEREBY ORDERED That the following rules be included in the Rules Governing Standard Broadcast Stations (Chapter III, Part 36):

*Rule 36a 1.* No station licensee is required to permit the use of its facilities by any legally qualified candidate for public office; but if any licensee shall permit any such candidate to use its facilities, it shall afford equal opportunities to all other such candidates for that office to use such facilities, provided that such licensee shall have no power of censorship over the material broadcast by any such candidate.

*Rule 36a 2.* The following definitions shall apply for the purposes of Rule 36a 1:

(a) "A legally qualified candidate" means any person who has met all the requirements prescribed by local, state or federal authority, as a candidate for the office which he seeks, whether it be municipal, county, state, or national, to be determined according to the applicable local laws.

(b) "Other candidates for that office" means all other legally qualified candidates for the same public office.

<sup>4</sup> Rule promulgated by the Federal Communications Commission in July 1938. *Broadcasting*, July 15, 1938.

*Rule 36a 3.* The rates, if any, charged all such candidates for the same office, shall be uniform and shall not be rebated by any means, directly or indirectly; no licensee shall make any discrimination in charges, practices, regulations, facilities or services for or in connection with the service rendered pursuant to these rules, or make or give any preference to any candidate for public office or subject any candidate to any prejudice or disadvantage; nor shall any licensee make any contract or other agreement which shall have the effect of permitting any legally qualified candidate for any public office to broadcast to the exclusion of other legally qualified candidates for the same public office.

*Rule 36a 4.* Every licensee shall keep and permit public inspection of a complete record of all requests for broadcast time made by or on behalf of candidates for public office, together with an appropriate notation showing the disposition made by the licensee of such requests, and the charges made, if any, if request is granted.

## THE POSITION OF THE AMERICAN CIVIL LIBERTIES UNION <sup>5</sup>

### A. GENERAL—FREEDOM OF EXPRESSION

1. We define censorship as any interference by a public agency (legislative, judicial or administrative) with the freedom of expression in any medium. Censorship may involve one of three things: (a) Previous restraint, as when a motion picture is suppressed in advance of public showing by a state board of censors. (b) Threat of subsequent punishment. (c) Indirect equivalents of these methods, such as undue tax burdens and discriminatory regulations.

<sup>5</sup> "Report of the National Council on Freedom from Censorship on the Question of Radio Censorship." A mimeographed statement issued by the American Civil Liberties Union, March 8, 1939.

2. We believe that the ordinary private enterprise has the right to refuse its facilities to anyone with whom it does not choose to deal. We do not believe that such refusal constitutes censorship. If a newspaper declines a paid advertisement, if a periodical rejects a manuscript, if a picture gallery refuses to hang a painting or if a motion picture theatre decides not to show a certain film, that is not censorship.

3. This does not mean, however, that the Council should never take action when a private enterprise denies equal facilities of expression to all applicants provided the enterprise is of such nature and scope as to warrant the use of its facilities in this fashion. The Council has two functions:

- (a) To combat censorship as herein defined.
- (b) To use its good offices to encourage freedom of expression in all media.

In line with this latter function, the Council will continue to protest against private agencies which, though holding themselves out as dealing impartially and objectively in ideas, are less than fair either in the selection of material or in the mode of presentation.

#### B. THE RADIO AS A MEDIUM OF EXPRESSION—GENERAL

1. The inherent physical limitations of radio are such as to render the existence of some central supervisory body inevitable if chaos is to be averted on the air. There are only about 800 wave-lengths available for use. Since wave-lengths cross state lines, the task of regulation falls upon the Federal Government which created the Federal Communications Commission to perform this function.

2. Radio partakes of a dual character. To the extent that it affects masses of people and to the extent

that it operates by virtue of a governmental franchise, it is a public utility. As regards ownership and profits, it is a private enterprise. The provisions of the Communications Act emphasize its dual nature and suggest that some clarification of the whole field is necessary.

3. The Commission decides who may have the wavelengths. The radio broadcasting stations, in other words, the successful applicants decide what shall be broadcast.

4. According to the definitions in Section A, censorship on the radio can refer only to the activities of the Federal Communications Commission, a governmental body. But the Commission's selection of licensees, in and of itself, does not necessarily involve censorship. Nor does the kind of selection and discrimination which radio stations must exercise constitute censorship.

What would be unlawful and dangerous as a matter of public policy for the FCC to do in censoring programs, may quite properly be done by self-regulation through the radio stations themselves. If, as is contended, programs involving racial or religious prejudice are undesirable on the air, they should be left off, not by any action whatever by the FCC or by unofficial pronouncements by its members, but by the radio industry itself. But if radio stations permit such programs, they should give equal facilities to all sides of the issues and should be subject to public pressure so to do until the law is changed as to require it.

5. Radio stations are restricted in the selection of their material by several risks:

(a) Their licenses may be revoked or suspended if their broadcasts violate the federal radio law;

(b) They may subject themselves to civil suits for libel;

(c) They may incur liability for any violation of the law.

Section 326 of the Communications Act of 1934 under the heading CENSORSHIP: INDECENT LANGUAGE provides that:

Nothing in this Act shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication. No person within the jurisdiction of the United States shall utter any obscene, indecent, or profane language by means of radio communication.

### C. THE FEDERAL COMMUNICATIONS COMMISSION

1. As it now stands, the Communications Act itself directs the Commission to distribute wave-lengths "to serve the public interest, necessity and convenience." From this it would follow that the Commission has discretionary power of selection. The criteria of selection are not specified in the Act, nor has the Commission ever promulgated any set of rules for its own guidance.

2. From the point of view of civil liberties, the Council sees three alternatives that confront the Commission when it makes its selections among competing applicants for licenses:

(a) The matter may be left as now to the discretion of the Commission as each case arises without defining "the public interest, necessity and convenience." In every case of refusal the Commission's decision can be tested by appeal to the courts. The development of criteria of what constitutes "public interest, convenience and necessity" would then be left to the decisions of the Commission and the courts.

(b) Either Congress or the Commission might more precisely define "the public interest, convenience and necessity."

(c) A general standard might be imposed by statute upon the Commission requiring it to:

1. Give preference to stations dealing with public issues and maintaining free speech for all sides of controversial questions.
2. Take into account the records and policies of stations in the territory served, and grant licenses on the basis of new and different points of view in that territory so as to encourage the greatest possible diversity.

The Council's choice among these alternatives is to favor legislation furthering the purpose of (c), which are not mutually exclusive but complementary.

#### D. THE RADIO STATIONS

In discussing the Federal Communications Commission, the Council has suggested various procedures for limiting the selective process, thus cutting down on individual prejudice. The same procedure should be applied to radio stations.

#### E. COMMERCIAL PROGRAMS

The evils which beset the use of paid time for controversial discussions are best illustrated by W. J. Cameron on the Ford hour. Such one-sided presentation can be avoided only by prohibiting the discussion of controversial issues on commercial programs, or by requiring that more than one viewpoint must in good faith be presented.

#### GENERAL CHECKS AND BALANCES

(a) It may be desirable to require each radio station to keep and file a public log. The log would contain full

data as to applications for time, whether they are granted or denied and why. Such a log, recording the prejudices of the station, would guide the Commission in weighing the station's application for the renewal of its license. The Council favors such legislation.

(b) To assure adequate presentation of informative programs, the law might be amended by requiring radio stations to devote a specified percentage of the total broadcasting time at desirable hours to informative programs, of which a specified percentage would have to be devoted to controversial issues.

(c) At the present time, the Act requires that a radio station which extends its facilities to a *candidate for public office* must extend the same facilities to any opposing candidate. This practise should be extended so that whenever a controversial issue is discussed, radio stations shall afford equal facilities to at least one exponent or advocate of an opposing point of view.

(d) No action, civil or criminal, should be prosecuted against any radio station license in any court because of matter broadcast on any public issue: provided that this shall not apply to matter broadcast by any agent of a licensee.

### EQUAL OPPORTUNITIES NOT ALWAYS GIVEN \*

. . . The great objection to the Federal Communications Commission is that it is created by and is subject to the control of the Federal Government. Recent experience with radio in European countries suggests that there is a real danger to democracy in turning over to any central government more than the necessary mini-

\* By S. Howard Evans, secretary of the National Committee on Education by Radio. Excerpts from a statement at the Monopoly Hearings of the Federal Communications Commission during the week of March 14, 1939. *Congressional Record*. Volume 84. March 20, 1939. p. 4215-17.

mum of authority over what shall be spoken on the air. As a result the indications seem to be that few Americans would favor any attempt by the Commission itself to set social and economic standards. This attitude represents a philosophy of government and is no reflection on either the Commission or its personnel.

There is less popular objection to the proposal that the additional standards which are needed should be developed by the industry through self-regulation. This is because many people believe that self-regulation offers the best way to establish and maintain freedom of the air. If this belief were well founded it would create an overwhelming reason for leaving the entire matter to the broadcasters.

Unfortunately, the facts are on the opposite side. They indicate that, while some of the elements of freedom may be present, at least one grave danger exists. This danger grows out of another conflict between the conditions under which they are used.

Under the conditions of each broadcasting license issued by the Federal Government, the individual station is given full authority and has to assume full responsibility for its operation. Under present conditions of use many individual stations become part of broadcasting networks and carry programs which may originate hundreds of miles away. This network relationship creates a divided responsibility and, in the handling of controversial issues, at least, opens the door to serious abuses of the freedom of the air.

Generally speaking, controversial issues on the networks are handled in accordance with a carefully worked out formula. This formula provides that controversial issues shall be barred from sponsored programs and shall be discussed, if at all, on sustaining time. It also provides that, in the interests of fairness, any responsible group protesting against the presentation of a contro-

versial issue shall be given an opportunity to state its point of view.

The formula reads well and serves as a complete answer to any charge of prejudice on the part of the networks. However, it offers no guaranty that opposing sides of a controversial issue will be given an equal opportunity to put their case before the listening public. The reason is that since these programs are not on advertising time, and member stations of the networks are not under contract to carry them, the coverage of any specific program depends upon the number of individual station managers who choose to broadcast it. Under such conditions one program may be put on the air by nearly a hundred stations, and the answer to it may be transmitted by less than a dozen stations.

There is at least one case on record in which the President of the United States discussed a controversial issue over the facilities of the three major networks with practically all of their affiliated stations carrying the program. A United States Senator, trying to answer that broadcast on the following evening, was given a single chain and not all of that. There is another case in which certain stations refused to carry a network broadcast by a representative of the Communist Party, but did lend their facilities later to another broadcast designed to be an answer to the Communist speech.

If the present practice could be continued and if public confidence in it could be maintained, it would be possible for an unscrupulous political party in power nationally to bring such concealed pressure on individual stations, subject as they are to Federal license, that it could give itself what might amount to an effective monopoly on the radio discussion of controversial issues. There could be no greater threat to freedom of the air. So long as conditions within the industry make possible the continuation of such a potential danger self-regulation can never be more than a phrase.

THE NETWORK RECORD <sup>7</sup>

In general, it is the policy of radio to present as many important and varied views as possible on developments of outstanding public interest and significance. Radio seeks scrupulously to avoid taking sides when it is determining what, out of the great mass of material offered for its use, shall actually go out over the air, and into your homes. It strives to avoid prejudicial weighting of one faction or viewpoint against any other. In its attempt to achieve fairness, it does not hesitate to resist improper pressures.

In the Supreme Court controversy, the issue was clear-cut and there were but two sides of major importance. Thus it was that Columbia, in presenting more than seventy speakers, was able to come to the end of the struggle with the two sides lacking but fifteen minutes of being in perfect balance in time.

There are more varying interests involved in the Far Eastern conflict. Hence, up to today, Columbia has attempted to deal with even-handed justice by putting on the air within six weeks four leading Chinese officials, four Japanese, four neutral American newspaper men, one British writer from London, and three broadcasts by American refugees who have suffered from the fighting in Shanghai.

In the field of labor, the interests are so diverse and numerous that any attempt to give on the air a cross-section of them all is patently impossible. Columbia ran throughout May, June, and July a series of twenty-four talks on labor problems—ranging from interviews with unemployed, WPA workers and industrial workers not unionized, through to the heads of the American Federation of Labor and the Committee on Industrial

<sup>7</sup> By Stirling Fisher, Director of Talks, Columbia Broadcasting System. Extract from "The Radio and Public Opinion," *Public Opinion Quarterly*: Supplement, January 1938, p. 79-81. Reprinted by permission.

Organization, to the Secretary of Labor and the Chairman of the Board of National Manufacturers' Association. And in spite of all these, there remain phases of the situation that could not be presented without greatly overtaxing listener interest.

In the field of political campaigns, radio has adopted the policy of declining to sell time for speeches by party representatives prior to the primaries. Instead, it seeks to provide adequate opportunities free of charge, and in this way assure that all sides shall have an adequate hearing regardless of their financial standing. It is only after the primaries, when demands for time for political speeches become so tremendous as to be impossible of accommodation on sustaining time, that sale of time for them is permitted.

## PROS AND CONS OF CENSORSHIP

### IS RADIO CENSORSHIP NECESSARY?<sup>1</sup>

Intellectually and culturally, our interpretation of the proper uses of radio has lagged far behind the mechanical perfecting of the device itself.

Censorship of ideas is not new. Organized society has been under a constant pressure to protect the rights of free expression on the one hand, and the morals and minds of citizens on the other. There is the constant fear that attempts to suppress the exotic, vulgar, or profane in ideas may visit a penalty upon society graver than the corruption resulting from the dissemination of unsocial literature and ideas.

On the other hand, civilized peoples have long realized that vulgar, salacious, or obscene literature has a decidedly deleterious effect upon all who read it, more particularly the young whose minds are impressionable.

Freedom of conscience, freedom of the will, and freedom of expression are involved in this nice question as to society's right to protect itself against abuses of the right of free expression.

In this country that question had been solved. Freedom of expression was an integral part of individual and collective sovereignty, circumscribed by certain necessary social restraints.

With the advent of radio the head of every household was confronted by a new phase of the social problem of freedom of expression.

<sup>1</sup> By Hon. Clyde L. Herring, United States Senator from Iowa. Prepared especially for this compilation in March 1939.

Our police force in every village, town, and city is charged with the duty of protecting the citizenry from acts of violence or other social abuses visited upon the community by intruders.

The medium of radio destroys the sanctity of the home in that it permits strangers to enter at almost any hour of the day. It is true that every radio is equipped with a device enabling the user to turn off such programs as are deemed objectionable, but the average parent is face to face, first with the problem of surveillance and, secondly, and perhaps more important, with the question of destroying domestic tranquility by requesting the minor members of the household to refrain from listening to programs which, in the judgment of mature minds, are unfit for juvenile consumption.

The United States government recognizing radio as a primary means of universal communication sought to establish social control of this great utility through the licensing of broadcasters under authority of the Federal Communications Commission. There has been a reluctance on the part of government to impose federal censorship, and it is quite certain that it will be resorted to only if other means of bringing about voluntary censorship fail.

Just as I am a staunch believer in the capacity of business to run itself and to set up, voluntarily, fair trade and labor practices for the governing of industry by management, so I believe that the radio industry is able to regulate itself.

The radio companies should voluntarily establish a code of ethics binding upon all broadcasters. This would at once obviate the necessity of further efforts at governmental control and, I believe, produce results infinitely more satisfactory from the standpoint of both the industry and the public. . . .

None of us desires an arbitrary pressure applied by government, our neighbors, or the elders of a household to force upon us unwelcome knowledge.

On the other hand, we can hardly afford the disquieting effects of overstimulation of our nervous systems through the constant impingement upon consciousness of the "sleepy-time nightmares" presented by some commercial sponsors to juvenile radio listeners. Many sponsors present their advertising monologue or dialogue in such a manner as to start a first-rate war between parents and children as to how much of the family budget shall be devoted to the purchase of this or that.

I believe that the radio station and the commercial sponsor could collaborate to find a better way of presenting the subtle appeal of the particular product, and I am even more convinced that the "blood and thunder" programs presented for children, particularly during the early evening hours just before the time for children to retire, should be greatly modified by voluntary censorship in the interest of the youth of America.

Recent statistics with regard to juvenile delinquency and crime reveal an increase of nearly 11 per cent last year over 1937. I should not wish to claim that this was in large measure due to the impropriety of radio programs, but that a goodly measure of inspiration for unsocial conduct is gathered from stories of banditry and law-breaking presented in radio programs can hardly be denied.

There should be a re-examination on the part of broadcasters of their responsibilities in the conduct of radio stations and they should realize the importance and value of the service which they are licensed to render, bearing in mind at all times that the licenses which are granted them for use of air frequencies are in the nature of grants of special privilege for the use of airways which are the property of the people of the whole Nation.

The granting of any special licenses imposes automatically an obligation to be mindful of the public welfare. The method of licensing is invoked as society's means of safeguarding itself against trespass and abuse.

The major broadcasting companies have already undertaken a critical examination of radio programs, particularly those provided for the entertainment of children. There can be little doubt as to the successful outcome of their efforts, and much of which we have at this moment just cause to complain, will in all likelihood, be overcome.

One of the important questions constantly before broadcasters is: What should be allowable in public speeches, political and otherwise, delivered over the radio? The broadcasting companies have endeavored to keep a check on this type of radio presentation as well as dramatic productions, which by their nature might be misleading to radio listeners, such as Orson Welles presentation of "The Men from Mars," and the "Adam and Eve" sketch for which Mae West has been so severely censored and for which, I understand, she was only responsible for reading the lines. The scripts in both instances were the products of other minds and ample opportunity should have been afforded for the ascertaining of public reactions before the public presentations were made.

The need for a nationally coordinated effort to voluntarily control this vast medium of communication is becoming increasingly apparent.

It has long been my belief that there should be established a National Council for Radio, Press, and Moving Pictures composed of the most able, sincere, and patriotic members of those industries. That National Council should be charged with the duty, first of all, of exercising a general supervision of the standards as to what is acceptable from the standpoint of the general welfare and the public good.

Secondly, in addition to a general code of ethics as to what is acceptable and unacceptable, this Council should be charged with the specific obligation of presenting a well integrated program covering a period of from three to five years having for its especial object first the inculcation of patriotism, founded upon a knowledge of the principles underlying the American systems of government and industry, and incorporating a knowledge of the great historic events and historical characters responsible for the trends and achievements of American life. Such a well planned program would teach a profound respect for the government and history of the United States, and develop a sense of social responsibility for the improvement of cultural standards and scholarship, which within the next two decades, if properly carried forward, would result in a much improved public taste.

This Council should have as its head some outstanding public citizen, chosen from outside the industries, whose ability, integrity, and patriotism are universally well recognized, to serve all three of these industries in somewhat the manner in which Will Hays has served the moving picture industry, and Judge Landis has supervised national baseball.

The Voice of America would be made articulate, not only in the civic and social affairs of our great country, but throughout the world.

The radio industry has the fullest measure of opportunity to voluntarily establish such a Council, with the cooperation of press and moving pictures, and to automatically create a code of ethics and a definite and far-sighted national program, the value of which would be of incalculable worth to the nation as a whole. Like many other worthy enterprises, it would likely pay for itself, and the necessity of governmental censorship would thereby be avoided.

In the absence of such voluntary action on the part of broadcasters, efforts will be made to impose some sort of governmental censorship. Such an effort would be expensive, the administration would be necessarily cumbersome, and great hardship might easily result, particularly to the small stations least able to bear any additional expense. . . .

### THE NAB POSITION <sup>2</sup>

Radio has become a new force of tremendous power and influence in our life. It must be used in the public interest and not subjected to irresponsible abuse.

The particular problem which we confront today is that of preserving the precious right of freedom of speech. However, the same Constitution which guaranteed us freedom of speech, also guaranteed other rights, such as freedom of religion; and in protecting one right we must not violate other rights.

The right of free speech is a right which extends to every American citizen. It is a right which broadcasters interpret as one requiring that equal opportunity be available for the expression of honest divergence of opinion. But in administering this responsibility, we must also be cognizant of the fact that radio by its very nature reaches all classes of our fellow citizens, regardless of race, religion or conviction, and that there is no obligation to broadcast a speech which plays on religious bigotry, which stirs up religious or racial prejudice or hatred. Such a speech is an abuse of the privilege of free speech and unworthy of American radio.

It must also be recognized that broadcasters are responsible under the law of our land for anything that may be said over their facilities which is libelous or

<sup>2</sup> Statement by Neville Miller, president of the National Association of Broadcasters, on broadcasting of controversial issues by religious groups, issued December 22, 1938. *Broadcasting*. January 1, 1939. p. 18.

slanderous. In a number of instances suits have been filed and judgments have been rendered against broadcasters in favor of the aggrieved, where libel or slander was proved. These decisions have placed the responsibility for libel or slander squarely upon the broadcaster.

No obligation of free speech or of public service could justify broadcasters in allowing this great new social force to strike at the harmony of the nation. In a country of many races and many religions amicably dwelling together, broadcasts inciting racial and religious hatred are an evil not to be tolerated. In these troubled times throughout the world, there is a great need for national unity. And in the hearts of the vast majority of our people I believe there is a great yearning for unity.

The responsibility for the content of programs rests upon the broadcaster; to determine what is in the public interest requires the exercise of an informed and mature judgment. He is well within his rights to demand an advance copy of any proposed radio talk. He is well within his rights to close his facilities to any speaker who refuses to submit it. He is well within his rights to refuse to broadcast a speech plainly calculated or likely to stir up religious prejudice and strife.

Such action is merely an act of good stewardship, distinctly in the public interest, and is not an abridgment of the right of free speech. The situation parallels the example once given by the late Justice Oliver Wendell Holmes of the United States Supreme Court, when he declared that free speech did not give a man the right to yell "fire" in a crowded theater.

The responsibility to accept or to reject broadcast material is one placed squarely on the shoulders of the American broadcaster. It is up to him to evaluate what is and what is not in the public interest. This responsibility the American people have delegated to him in his license to operate a radio station. The National

Association of Broadcasters will defend his right to discharge that responsibility.

### FOR FREEDOM OF THE AIR <sup>3</sup>

There is one thought that I would like to leave with you. We have had in this country ever since its inception freedom of speech, we have had freedom of the press, we have had freedom of religion. We have a new freedom now, freedom of the air, and some of the aspects of that new freedom have been commented on this evening. But anything that is greatly in the public eye and in which there is a great public interest attracts a number who for purposes of their own would seek to destroy it, and this is an age apparently where those things that are established are to be torn down in favor of untried things.

Any effort that is made that will interfere with freedom of the air, anything that infringes upon that, will in the same measure serve as a detriment to these other freedoms. As those freedoms go, so goes American democracy, and I ask that the strong voices around this table be raised in defense of their freedoms.

### BROADCASTERS SHOULD CONTROL PROGRAMS <sup>4</sup>

What about Federal censorship? Is the Government going to blue-pencil the dance programs, and the crop reports and the bed-time stories? I wish to make my own position very clear on that; and I don't know of

<sup>3</sup> By Lenox R. Lohr, President, National Broadcasting Company. Extract from talk given May 23, 1938, at a dinner in New York, celebrating the fifteenth anniversary of national religious radio broadcasting. Printed in *The Church in the Sky*. Federal Council of Churches of Christ in America. 1938. p. 37.

<sup>4</sup> By Frank R. McNinch, Chairman, Federal Communications Commission. Extract from an address broadcast over the National, Columbia and Mutual networks, November 12, 1938.

anyone who takes the contrary position. Here is my own.

The Communications Act imposes squarely upon each broadcasting station the responsibility for censoring its own program material. Each station must also determine who and what shall and what shall not, go on the air. The law provides for regulation by the Communications Commission only through periodic granting, or renewal, or denial, of licenses to broadcast. The control of programs by the broadcaster is a field of public service which requires the exercise of an informed and mature judgment. It requires a high degree of discrimination to the end that the listening public may reap the benefits, but without hurt or offense, from the magic of radio. Obviously, the power of censorship and selection must be lodged somewhere, and the broadcaster is the one to exercise this power and answer to the public for the manner in which he exercises it.

Censorship by the Communications Commission or by any other Governmental body is, in my opinion, impracticable and definitely objectionable. It runs directly counter to the genius of our democracy.

As far as I know, no one has advocated Government censorship. But if, perchance, any such measure should be brought before the Congress for consideration, conviction would impel me to do battle against it. Out of any such Pandora's box would spring to plague us innumerable and unimaginable evils.

So, let us lay the ghost of censorship by the government which some summon to frighten us against our insistence upon the broadcasters censoring themselves. They must censor themselves, even if now and then it costs them money. Broadcasters hold valuable Government licenses for the use of frequencies which belong to the whole people. These frequencies should be used primarily for the service of the people. The license

privilege carries with it the high duty to keep constantly in mind, the public weal.

Many of them are scanning their programs critically and trying to better them. I understand that the three national networks, NBC, CBS and Mutual, over whose joint facilities I am reaching you tonight, are studying children's programs and bedtime stories to preserve or even build up their entertainment value and at the same time improve their quality. If this effort succeeds, as I believe it will, the regional networks and the local stations are likely to follow their example. . . .

#### IN FAVOR OF SELF-REGULATION <sup>5</sup>

. . . . When we turn to the realm of program service, we meet a broader question than is involved in the regulation of technical facilities. Here we deal with a vital force, a great servant of mankind when used properly, but, when abused, capable of destroying human rights. It is the social impact of radio which has raised the all-important question of social responsibility.

The Communications Act provides that your Commission shall have no power of censorship over radio programs, and that you shall adopt no regulation which interferes with the right of free speech. Therefore, we must find within the broadcasting industry itself a solution which will adhere to American traditions, and at the same time meet this social responsibility.

The broadcasting industry was gratified to hear Chairman Frank R. McNinch state so clearly in his nationwide broadcast last Saturday evening—and I quote his words—"Obviously the power of censorship and selection must be lodged somewhere; and the broadcaster

<sup>5</sup> By David Sarnoff, President, Radio Corporation of America. Excerpt from statement on Network Broadcasting, before the F.C.C., November 14, 1938. Printed in pamphlet form by the Radio Corporation of America, with the title, *To the Stockholders*. 1938. Reprinted by permission.

is the one to exercise this power and answer to the public for the manner in which he exercises it."

The record of network broadcasting in America proves the efforts that have been made here to safeguard public interest, to advance culture, and to provide unbiased news and wholesome entertainment. In spite of its youth and the great complexity of its problems, the industry can take pride in its accomplishments in this respect.

In the National Broadcasting Company we have our own code of program policies, formulated over a period of twelve years. . . . Other networks, and individual stations as well, have program codes of their own. The National Association of Broadcasters has a code of ethics adopted in 1935.

But the time has come for more positive action. The fate of broadcasting in other nations and the attacks on democracy throughout the world clearly indicate the necessity for finding a democratic solution for the problems of the American system of broadcasting—a solution which on the one hand, will enable us fully to meet the social obligations of radio, and on the other, will protect our traditional freedoms.

I would therefore like to take this opportunity to advocate to the broadcasting industry that it establish a voluntary system of self-regulation in its field of public service, and that it take the necessary steps to make that self-regulation effective.

My recommendation is that the experience of the different groups within the industry should now be combined and correlated. An industry code should emerge that advances beyond all previous standards. Such a code should be an act of voluntary self-regulation on the part of the entire broadcasting industry in the United States.

In writing this code, the industry should gather the views of broadcasters, of groups representative of public

opinion, and of this Commission. After the code is formulated the public should be made thoroughly familiar with it. All broadcasting networks and stations should be invited and encouraged to adopt it. The code should be subject to periodic review by the industry, and kept up to date. It should be administered by a suitable agency representative of the entire industry.

I make this recommendation in the belief that such self-regulation is the American answer to an American problem. In every consideration of radio broadcasting, the public interest we are pledged to serve is that of the entire nation. This public interest is reflected directly by the 27,000,000 receiving set owners who represent an overwhelming majority of the country's homes. By their control of the nation's radio dials, they give approval or disapproval to radio programs, and decide the ultimate fate of the broadcaster. Here we find legitimate censorship by public opinion.

It is the democratic way in a democratic country.

### WE NEEDN'T BE SPOON-FED<sup>6</sup>

We wouldn't be misunderstood as defending peddlers of any unjustifiable kind of hate. But we do think calamity howlers are taking the radio censorship business too seriously.

Various serious thinkers are worrying in public about the situation, aggravated of late by partially successful efforts to keep the Rev. Charles E. Coughlin and Representative Martin J. Dies off the air. So people go so far as to say that we ought to de-mike peddlers of all kinds of antagonisms—religious, racial, class, etc., etc.

After all, what is the radio? It is only a comparatively new and highly effective means of passing around

<sup>6</sup> Editorial under the same title, in *Collier's*. February 25, 1939. p. 66. Reprinted by permission.

information, ideas and entertainment. Press, orators, theater and pulpit have been doing that for hundreds or thousands of years. The radio is a good deal less than the "great new social force" the advocates of censorship believe it to be.

Since America began, America has had ranters of all kinds: merchants of religious, racial, class and every other type of hatred. Since the Bill of Rights was adopted, these people have ranted practically without restriction, on paper, on soapboxes, in hired halls, even in churches—and generations of Americans have listened to them.

If any one of those generations had lost its head and gone whooping down the trail pointed out to it by any one of those ranters, our present generation would most likely be living thinly off the husk of a once great country—if there was a present generation of Americans.

No such thing happened. What did happen in every case was that the American people gave the current spellbinders a fair hearing; talked over and thought over what they had to offer; perhaps committed one or two of the barrel of mistakes the spellbinders wanted committed; and then decided against the spellbinders and snapped back to horse sense.

We've been kidded by experts, down the years—by Greenbackers, Know Nothings, Fenians, Populists, Knights of Labor, Free Silverites, Ku Kluxers, prohibitionists, inflationists, Technocrats. But none of these has kidded the shirts off us.

We're being kidded now by all manner of New Deal and Old Deal economic and money-magic faddists, third-party dreamers, war propagandists, merchants of racial and religious and class hate. Up to now, any of these people who can scare up the money can buy radio time, just as in the past they could publish pamphlets or books, mount soapboxes, hire halls or buy advertising space in newspapers or magazines.

Are we in any more danger of being led into lunacy now than we ever were? It seems most unlikely.

President Miller of the broadcasters' association, Chairman Frank R. McNinch of the Federal Communications Commission, and kindred headshakers and hand-wringers seem to think the majority of Americans are mental slobs, whose delicate ears must be shielded from "harmful" broadcasts.

Well, we aren't mental slobs, and the ears of most of us are not over-delicate. Generation after generation, we have proved capable of telling a sow from a Siwash.

Reader censorship is all the censorship the magazines and newspapers ever have needed. They haven't needed, and don't need, "czars" to police or regulate them. Most Americans, we believe, are smarter than they look, and smarter than the much-publicized wartime intelligence tests indicated. At least that is the theory on which this magazine proceeds, and more than 2,600,000 Americans have been buying it from week to week for quite a while now.

Listener censorship is all the censorship the radio needs. It's so easy to turn the dial and find a different tune.

We think President Miller of the broadcaster's association had better forget about any supposed duty of his to keep "dangerous thoughts" (Japanese expression) off the radio. All he needs to worry about, so far as we can see, are the ordinary standards of decency and discretion that govern the American press.

And we think Chairman McNinch of the Communications Commission had better begin confining himself strictly to regulation of technical radio details, and drop the motions he has been making recently toward government radio censorship. Or if Mr. McNinch persists in trying to stick his fingers in the ears of American radio listeners, we think Congress had better shackle his official hands.

Like the press, the radio can be free, or it can be a slave, but it can't be both.

### STATIONS HAVE RESPONSIBILITIES<sup>1</sup>

The never-ending free speech problem which is vexing the National Association of Broadcasters is not essentially different from that which American newspapers have faced for a century and a half. They have the right of free speech, but when they exercise it in such a way as to violate the laws of libel, they must take the consequences. There are fairly well defined limits which are recognized everywhere. As the late Justice Oliver Wendell Holmes said, in his well-remembered comment, nobody has the privilege of yelling "fire" in a crowded theater and thereby causing a panic.

There is not only a legal restraint on the press. There is another obligation which they discharge instinctively. That is the moral duty of not publishing material of any kind which tends to cause racial and religious animosity. The newspapers must not toss fuel on the fire of bigotry and hatred—flames which, unfortunately, can never be extinguished completely. As unwritten law underlies, surrounds and transcends the restrictions put into statutes and court decisions. It is to the great credit of the American press that gross abuses, which are not prohibited by law, are extremely rare; and it is a mark of the acute perception of the people that they recognize such transgressions and act accordingly.

A newspaper which publishes a libelous letter from a person not connected with it cannot claim immunity because of the source of the authorship. The circulation of the libel makes a paper fully responsible. The aggrieved person may sue the writer or the disseminator. And so with broadcasting of slander, which is oral

<sup>1</sup> Editorial. *Boston Herald*. December 26, 1938. Published in *NAB News Review*. January 18, 1939. p. 18. Reprinted by permission.

libel. There is no doubt that the broadcasting stations and the broadcasters personally can be held strictly to account for broadcasting a slander. They have been, will be and should. The difficulty of proving positively that this or that person or station was involved in the transmission of the slander is a negligible detail.

The moral responsibility of a broadcasting station does not differ in the slightest from that of a newspaper, and the penalty for ignoring the non-written law is about the same in each case. A radio chain may, if it wishes, alarm people by announcing an attack from Mars, or may cause belly-laughs by a vulgar presentation of the Garden of Eden, or may allow lay or clerical rabble-rousers to incite classes to racial and religious hatred. A station may deride or viciously characterize a dead person without running the risk of a lawsuit, as dead persons cannot be slandered or libeled under our law. But, when a station blunders badly, when it lends itself to the stirring up of base emotions or exceeds the bounds of reasonably good taste, it not only weakens its hold on the public, but invites ultimate disaster.

The statement of Neville Miller, president of the National Association of Broadcasters, that a station can properly "demand an advance copy of any proposed radio talk" and deny its facilities "to any speaker who refuses to submit it," puts the matter simply and clearly. A station cannot, of course, be expected to expose itself to suits for damages. If the radio broadcasters as a whole do not establish a proper code of procedure and observe it rigorously, they will encourage a heavy-handed censorship by federal authorities. There can be no disagreement with Mr. Miller that salutary action within the industry would be "an act of good stewardship" and "not an abridgment of the right of free speech." This is a b c doctrine.

A PLAN FOR PROGRAM CONTROL<sup>8</sup>

As an alternative to strict governmental control which conceivably could make radio in this country follow the highly objectionable pattern of broadcasting in some of the European countries, or to the kind of industrial control which has been lax enough to permit objectionable commercial announcements and overstimulating children's programs, to mention only two of its faults, members of the listening audience may want a system of control through which they can have some participation in determining program policies.

At the present time there are no adequate channels through which public opinion can be organized and made vocal on such matters. Individuals and isolated groups can bring pressure on local stations or write to the Federal Communications Commission but these processes are at best only additional manifestations of the aforementioned handicraft stage in radio. They are out of date. If citizens are really to have a voice in determining program policies, the old channels must be abandoned in favor of some instrumentality designed to be more effective in dealing with current conditions.

Possibly there are several kinds of organization which might be developed for this purpose. The National Committee on Education by Radio has planned and is developing one of them. It has been called by a variety of names, such as the Public Radio Board plan and the Cooperative Radio Council plan.

Briefly, the idea behind the plan is this: to organize on a local, regional, or national basis those institutions and agencies interested in radio so that they may pool their resources for the purpose of (1) cooperating with broadcasting stations, (2) preparing and producing better radio programs, and (3) representing a cross

<sup>8</sup> Extracts from Editorial, "Toward a More Democratic Radio." *Education by Radio*. February 1939. p. 5-8. Reprinted by permission.

section of organized public opinion on any questions of public policy in radio about which the cooperative body may be consulted.

The administrative organization through which to implement such a plan is very important. It should be entirely democratic. Every institution or agency accepted as a constituent member should have an equal voice with every other member. Each should be free to send a candidate of its own choosing who would be the representative of the institution or agency to serve during its pleasure.

In case there are participating in the plan in any given area so many organizations that, as the board of directors, they cannot be called together conveniently to pass upon all questions requiring attention, an executive committee may be created with such authority as the group sees fit to give it. Members of any such committee should be elected rather than appointed. . . .

How can such a plan be financed in a given area? Only the people of the area can answer that. The beginnings of such a plan can be very small. A start may be made through the contribution of materials and services or perhaps a small amount of money on the part of member organizations. Another possible source of assistance is the securing of a similar contribution of services or funds from broadcasting stations, which may find the plan of benefit to themselves. There is always the possibility that philanthropic funds can be secured. There is also the possibility of securing an appropriation of funds by some public body in recognition of the plan as a public service, because that is what it is above everything else.

While the plan offers a very specific method of dealing on a mass basis with the preparation and production of noncommercial radio programs in any given area, it also offers a more representative and democratic method of selecting programs for radio than either

governmental or private commercial control have been able to produce. This democratic service to be rendered by the plan is the most compelling reason for its adoption.

### RADIO MUST NOT BE CENSORED<sup>9</sup>

The first Voice of the People mail delivery yesterday morning brought in 191 letters, and the bulk of these concerned Sunday evening's nation-wide "invasion from Mars" radio scare.

Practically all our correspondents were in a rage when they wrote. About half of them were mad at the people who were hoaxed into taking the broadcast seriously; the other half were mad at Orson Welles, who put on the "War of the Worlds" radio rendition of H. G. Wells's novel of the same title, for having done the job so vividly and convincingly.

We can't work up a mad against either of these targets.

It seems to us that Welles, by this performance, showed that he has a lot on the ball for a man of 23. When it came time to put an hour-long horror yarn on the air Welles scared thousands of people out from under their hair—which was the job he was hired for.

Nor can we blame the thousands of people who rushed out of homes and theaters or into churches, or who made ready to commit suicide before the Martians could get to them. That just goes to show the jittery state of mind induced in large numbers of people by the recent European war scare and the nerve-wracking radio broadcasts and newspaper stories that it produced.

The only parties to the excitement that we're mad at are the Federal Communications Commission, for making such a fuss about it, and Senator Clyde L. Herring

<sup>9</sup> Editorial. *New York Daily News*. November 3, 1938. Reprinted by permission.

(Dem., Iowa), who has seized the incident as a pretext for renewing his drive for government radio censorship.

We wish the FCC would relax and go back to sleep. We hope the next Congress, and as many Congresses thereafter as necessary, will smack flat all radio censorship bills with the avalanche of "NO's" they deserve in a free-speech, free-press, free-religion, free-assemblage country.

### THE QUESTION OF FREEDOM <sup>10</sup>

Responsible persons everywhere will approve the action of those radio stations that refused to broadcast a speech plainly calculated to stir up religious prejudice and strife. These stations acted, as they were entitled to act, on their own responsibility. But it is clear that we are only at the beginning of certain thorny problems dealing with the whole question of freedom of the air.

The amazing development of the radio has presented us today with problems which the classic defenders of liberty were unable even to imagine. When John Milton argued with unforgettable eloquence against censorship, he was writing chiefly about books. To allow a book to be published the government does not have to perform any positive act; it merely refrains from interference. When John Stuart Mill wrote his carefully reasoned essay on liberty, the most dangerous immediate situation he could think of was that of an individual addressing a crowd small enough to come within range of his voice. Mill could not envisage one man's voice being heard at once by a whole nation. He could not foresee thousands of groups, in homes, in public places, on farms, in cities, only dimly aware of each other's presence, but all listening to, all simultaneously affected by, the voice of the same man. He could not foresee the immense possibili-

<sup>10</sup> Editorial, *New York Times*. December 29, 1938. Published in *NAB News Review*. January 18, 1939. Reprinted by permission.

ties of quick harm, of omnipresent panic, through an instrument of which he had never heard.

There is still another aspect of the radio that distinguishes it from the book, the magazine, the newspaper, or the ordinary unamplified speech to a single assembly. The existence of one publication does not make physically impossible the existence of another. Practically we can print as many books as we like. But clear air channels are limited in number. The government, so to speak, by the physical necessities of the case, grants each station a monopoly of some particular air channel. It necessarily selects from among applicants. It unavoidably favors one applicant as against another. It can properly make this selection only on grounds of public policy. But because it makes such a selection and grants such a monopoly at all it must assume certain responsibilities regarding radio stations—and what they broadcast—that it does not assume toward ordinary publications or the unbroadcast utterances of individuals.

The right of free speech has never been unlimited. There have always been laws against obscenity and libel. As the late Justice Holmes once remarked, freedom of speech cannot mean the right to cry "fire" in a crowded theatre. The particular problem we confront today is that of preserving the precious principle of freedom of speech while at the same time preventing the irresponsible abuse of a new instrument of tremendous influence and power. That problem calls for much more serious and careful thought than it has yet received.

### LIMITS ON FREEDOM OF SPEECH <sup>11</sup>

One of the most intelligent of all the recent comments on the free-speech-on-the-radio issue came the other day

<sup>11</sup> Editorial, *Reading Times*. December 28, 1938. Published in *NAB News Review*. January 18, 1939. Reprinted by permission.

from Neville Miller, president of the National Association of Broadcasters.

The American guarantee of speech, said Mr. Miller, does not compel any radio station to turn its air waves over to an orator who appeals to racial or religious prejudice. There is nothing in radio's social responsibilities, he added, which requires it to contribute to an assault on the harmony of the nation. . . .

"The particular problem which we confront today is that of preserving the precious right of freedom of speech," remarked Mr. Miller. "However, the same constitution which guaranteed us freedom of speech also guaranteed us other rights, such as freedom of religion, and in protecting one right we must not violate other rights."

Mr. Miller has made an excellent point there, and the nation might well take time to ponder over it a little.

Freedom such as we Americans enjoy is a broad thing with no sharply-defined limits. Perhaps the simplest way to define it is to say that it gives every man the right to speak or act absolutely as he pleases, provided that in so doing he does not infringe on the rights of others.

That means that freedom is not quite unlimited. Freedom of the press, for instance, does not give an editor the right to commit libel without paying for it. Political freedom does not give any citizen the right to get down on the floor of Congress and disrupt business by yelling his head off. The citizen's freedom to do as he pleases with his own property does not permit him to erect a slaughterhouse in his back yard, or to maintain a commercial building without due regard for the fire regulations.

And so it is with freedom of speech. You may have the right to say what you please; but if you elect to stir up race hatred and religious prejudice, you have no business trying to hide behind the freedom of speech clause.

For you are using your kind of freedom to try to destroy another kind of freedom—and both are equally vital to the maintenance of the liberty we are used to.

Let that point be clearly understood. Tolerance is the greatest fundamental of our democracy. No conceivable right of free speech gives any man the right to try to destroy it.

### NEED FOR PROGRAM STANDARDS<sup>12</sup>

. . . Protests from all sections of the country have come to me over the evil effects on children's minds of the so-called blood and thunder, kidnapping children's programs. The letters come from parents who find themselves confronted with a problem with which they are unable to cope. Fortunately these protests are having some effect, for the head of one of the large networks sent word to me the other day that they had abolished the blood and thunder thrillers and were broadcasting in the children's hours intelligent and interesting stories that had the approval of educators and parents' associations.

But unfortunately, if there is evidence of some desire to reform in the matter of blood-curdling children's programs, there is no such evidence in the matter of programs that are outwardly indecent or replete with double entendre and objectionable innuendoes. These and the sale of deleterious drugs and food products constitute the basis of the most serious criticism that can be launched against broadcasting. . . .

What, therefore, shall we do with radio?

First, we must establish in practice what has been accepted in theory and law—that the radio waves are the inalienable property of the public. Program standards must be established, corresponding to technical standards.

<sup>12</sup> By George Henry Payne, member, Federal Communications Commission. Extract from a speech before the National Conference on Educational Broadcasting, December 1, 1937. Printed in the *Congressional Record* for January 12, 1938.

The broadcaster should be required at regular intervals to account for his stewardship, and if he has not met the standards set, the frequency he enjoys should be thrown into the public domain and made available for assignment to those who can and will meet the program standards, for program standards are more important than technical standards.

I hope that all this can be done by the Federal Communications Commission under the existing law. If it cannot, then further legislation may be necessary. . . .

### THE AIR MUST BE FREE <sup>13</sup>

Senator Wheeler, we think, is right, and President Miller of the National Association of Broadcasters wrong on the question of censoring Father Coughlin (or anybody else) off the air by any flat refusal of radio stations to permit opinions that they consider wrong to be broadcast.

It is the principle of freedom of expression that is at stake.

We do not like some of Coughlin's speeches, either. Quite likely he wouldn't like some of our utterances. We do not want him ever to have the power to say we must shut up. We therefore would not, if we had it, exercise the power to make him shut up.

Either our American people are capable of hearing, eventually discounting, and not being dangerously influenced by wrong arguments and challengeable "facts," or it is not capable of that. If it is not capable of it, then democracy is unworkable. We haven't come to that conclusion and do not expect to come to it. . . .

We consider the idea of setting up a censorship by the radio interests against controversial speech-making both inexpedient and wrong. We consider Senator Wheeler's

<sup>13</sup> Editorial. *Des Moines Register*. December 28, 1938. Published in *NAB News Review*. January 18, 1939. p. 3. Reprinted by permission.

insistence on preserving freedom of the air as part of the broader freedom of controversial expression, even when it irks, thoroughly sound.

### FREEDOM MAY BE ABUSED<sup>14</sup>

If Neville Miller were the kind of person who "shoots off his mouth" impulsively, more concerned with the velocity than the weight of his opinion, his statement regarding the freedom of speech and the rights and duties of broadcasters could be appraised as an argument from the spokesman for the National Association of Broadcasters.

But we in Louisville who have heard him in a political campaign and during the acute emergency of a flood and watched him in action as Mayor, know that he is studious and deliberate in getting under way, conservative in statement, sure of his ground before he takes a step. He is a good lawyer. No one here doubts that Neville Miller had made a special study of the freedom of speech, as it affects and is affected by the medium—"this great new social force"—over whose destinies he has been chosen to preside as president of the Association.

Not only is a station owner "well within his rights," but in his opinion, it "is merely good stewardship" to refuse the privilege of the air to a person who declines to submit an advance copy of his speech. That "is not an abridgement of the right of free speech," says Mr. Miller, and he declared that broadcasts "inciting racial and religious hatred are an evil not to be tolerated."

There have always been limitations on the freedom of speech and they relate to the medium, more drastic on the newspaper than on the individual. The newspaper carries farther. Even the volume of the sound

<sup>14</sup> Editorial. *Louisville Courier-Journal*. December 23, 1938. Published in *NAB News Review*. January 18, 1939. p. 2-3. Reprinted by permission.

has something to do with it. A man may say at the top of his voice in the remote depth of a forest what he must not mutter audibly in a crowd. Mechanical facilities which amplify the sound or penetrate the sanctity of the ohme with the words don't change the principle, only increase the circumspection with which one must speak.

That abuse of the freedom of speech is aggravated by indulging in it through a medium which enters the homes and resounds along the highways and streets the length and breadth of the land is an understatement. That which might be said in a hall to an audience voluntarily assembled, desiring to hear it and able to challenge a statement, may become abuse of the right on the air. It is aggravated by the fact that the speech stands unchallenged, bearing the prestige of the very medium employed for educational and cultural purposes.

Quite proper are programs lauding the merits and services of religious bodies, praising the virtues of race and blood; but to emulate the Ku Klux on the radio to arouse hatred against the believers in any religious creed or a whole race in a land of religious freedom and the equality of man is a poisonous form of intolerance the only antidote for which is the benign tolerance of public policy.

### NO CENSORSHIP BY GOVERNMENT <sup>15</sup>

Many readers will dislike the above heading, on the ground that it is cheap, weak writing tactics to try to attract attention by the use of profane language.

We agree. The reason why we are using that language this morning is that we want to call all the attention we can to a ruling day before yesterday by the

<sup>15</sup> Editorial headed, "Damn It to Hell, It's Dangerous!" *New York News*. (Date not given). In *NAB News Review*. October 19, 1938. p. 1. Reprinted by permission.

Federal Communications Commission. By a vote of four to one, with two members absent, the FCC decided Thursday to silence a lot of radio stations for having broadcast Eugene O'Neill's "Beyond the Horizon" last July 28 as a part of an NBC Blue network educational drama series.

O'Neill is one of our greatest playwrights; some would call him the greatest living playwright writing in English. "Beyond the Horizon" is one of his more important plays. The reason given by the FCC for this ruling was that three expressions in the O'Neill play—"damn," "hell," and "for God's sake"—are "obscene and indecent."

The FCC member who voted "no" was Comdr. T. A. M. Craven, U.S.N. Ret., who denounced the ruling as an FCC attempt to "censor the air."

We agree with Commander Craven. And we believe that now is the time for citizens, broadcasters, newspapers, magazines, etc., etc., to get up on their hind legs and do some fighting on Commander Craven's side.

This paper will not be barred from the mails for publishing the above headline. But readers are entitled to stop reading any paper whose language they don't like. Barring use of a handful of well-known English words which all agree are too dirty to print, that is the only censorship to which the press should be subject—reader censorship.

The same reasoning applies to the radio. When Mae West broadcast her Adam and Eve skit, some months ago, various Legion of Decency sympathizers had a perfect right to make the protest which they did make—or go on and boycott the stations broadcasting the program or the advertiser sponsoring it if their protests were not heeded.

But the dangerous line is crossed when attempts are made to have Government cut off newspapers or radio programs. And it is a very dangerous line indeed.

We have all seen evidence in the last few days of the terrific power of the radio—in Hitler's fierce war speech from Berlin, in Mussolini's various trumpet-voice orations, in Chamberlin's tired-old-peacemaker speech.

It may well be that whoever can control a nation's radio facilities in the future will control the nation. If we want a totalitarian United States, one way to bring it nearer fast, is for us to take these censorship rulings of the FCC without protest—to let the FCC gradually increase its power over the radio until it runs the radio.

If we don't want totalitarianism here, we must keep the FCC within bounds, and narrow bounds at that.

We believe that President Roosevelt, himself the greatest master of radio delivery in the world today, must understand the vital necessity of keeping the radio free if democracy is to survive here. We appeal to the President to give his personal attention to what the Federal Communications Commission, an agency of his Administration, is doing to the freedom of the radio.

### VOLUNTARY ASSOCIATIONS FOR PROGRAM SCRUTINY<sup>16</sup>

Emphasizing freedom of speech as a priceless possession, the Federal Council of the Churches of Christ in America, as a result of a survey entitled "Broadcasting and the Public," urges that the control of radio in America must be democratic and censorship strictly avoided.

The purpose of the study, which constitutes an analysis of the problems of public policy in the radio industry, was "to reveal the difficult process of building up social controls in the form of law and usage for the governance of a private enterprise which seeks to utilize

<sup>16</sup> News story, headed "Church Body Finds Free Radio Vital." *New York Times*, October 11, 1938. Printed also in *NAB News Review*, October 19, 1938. Reprinted by permission.

discoveries and inventions in which the community has much at stake."

Pointing to government censorship as dangerous, the report says:

No administrative government agency is wise enough to be entrusted with power to determine what people shall hear. Freedom of radio is almost if not quite as important as freedom of the press. If either is curtailed, our political and religious liberties are imperiled. For this reason we believe that any attempt to regulate utterances over the radio by an administrative government agency, except within canons of decency, propriety and public safety clearly defined by statute, is dangerous and contrary to public policy.

Since the council recognizes that radio channels "constitute a natural monopoly," it is suggested that ways should be found to keep wave-lengths in the hands of broadcasters who serve the public "interest, convenience and necessity."

To accomplish this it is proposed that the Federal Communications Commission, which is charged by law with the responsibility of assigning frequencies, should be responsive to community opinion concerning the merits of past services rendered by applicants for the use of wave-lengths.

To guard against political interference and undue influence by self-appointed critics, the survey recommends that permanent voluntary associations representing the cultural interests of the community accept responsibility for appraising radio programs. Such groups would include educational associations, chambers of commerce, labor unions, medical societies, religious bodies, and other permanent cultural associations which represent a valid community interest.

To avoid an increased centralization of cultural activities under the government voluntary associations must function more vigorously and conscientiously in the development of standards to govern broadcasting, the survey contends.

"We cannot fairly demand," it says, "that the industry be responsive to public need without making provision for the intelligent and considered expression of that need."

Of the process of democratic control the report declares:

The continual evolution of standards that reflect the intellectual, esthetic and moral judgment of the community and bear testimony to a will on the part of the industry to be responsive to the demands of the community—this is the heart of the problem of social control in a nation which deliberately rejects an unlimited concentration of power in the hands of government.

### WHAT CONSTITUTES "ABUSE"?<sup>17</sup>

The recent declaration of Neville Miller, president of the National Association of Broadcasters, that radio could not tolerate "abuse" of freedom of speech indicates a profound lack of understanding of what freedom of speech means. It is, indeed, only when a man says something which many people do not like, which many people would quickly call an "abuse" of free speech, that free speech needs to be preserved.

No legal right is necessary to safeguard the saying of the innocuous thing, the popular thing. Real freedom of speech means the right to say the unpopular thing, the thing which a majority might like to suppress. Of course no speaker has the right to unrestrained indecency; no speaker has the right to incite other men to violence. But if freedom of speech means anything it means the right to voice unpopular ideas and doctrines which thoughtless men might wish to suppress. Certainly it means that no men shall be strong enough (as none are wise enough) to put limits on speech by calling freedom "abuse."

Once free speech is limited by interpretation as to what constitutes "abuse," free speech is ended. Any-

<sup>17</sup> Editorial. *Raleigh News-Observer*. December 28, 1938. Published in *NAB News Review*. January 18, 1939. Reprinted by permission.

body can speak freely in Germany today who does not "abuse" free speech as Nazis interpret "abuse." But if that constitutes free speech then Germany is the land of liberty.

### FREEDOM IMPLIES RESPONSIBILITY<sup>19</sup>

Challenging a recent statement by President Neville Miller of the National Association of Broadcasters that broadcasts "inciting racial and religious hatred" are an "evil not to be tolerated," Senator Wheeler of Montana asks:

"Who is Mr. Miller that he should set himself up to say when free speech should be denied to any citizen of the United States?" The senator misses the point. The question is not one of denying free speech. It is a matter of preventing the abuse of the privilege of free speech.

Senator Wheeler, for example, is free to express any opinion he pleases but no newspaper is under any compulsion to print his statement and no radio station can be compelled to broadcast it. Agencies which disseminate information have rights, as well as individuals. And as long as they are responsible for what they publish or broadcast they are entitled to use discretion. The right of free speech carries with it responsibility for any abuse of that right.

### AGAINST GOVERNMENT CENSORSHIP<sup>20</sup>

In Germany, it is understood that the strongest control is exercised over all information that goes on the air. We have reason to believe that there is much false

<sup>19</sup> Editorial. *Denver Post*. December 27, 1938. Published in *NAB News Review*. January 18, 1939. p. 15. Reprinted by permission.

<sup>20</sup> By Frank R. McNinch, Chairman, Federal Communications Commission. Extract from address broadcast over the Columbia Broadcasting System, November 19, 1938.

propaganda, and that no Jewish or Christian group is allowed any representation.

Such a condition in the United States is unthinkable. Should there ever be an attempt here by anyone to so debase radio as to use it as an instrument of racial or religious persecution, the Communications Commission would employ every resource it has to prevent any such shocking offense. President Roosevelt would, of course, support us to the limit in such a stand. He has consistently sought the safeguarding of radio as an instrument of democracy, never to be used to injure any racial, religious or other group.

### INDUSTRY MUST SOLVE ITS OWN PROBLEMS <sup>21</sup>

There recently has been much criticism concerning program content. Some of this has been justified, while other criticism fails to consider some practical factors inherent in the American system. I am personally opposed to any form of censorship, either direct or indirect, but I do suggest that the public relations department of your organization might consider most carefully existing public reactions and seek to develop a constructive program of improvement, particularly with reference to advertising continuity. . . .

Broadcasters have a great responsibility in keeping open their medium of communication to responsible groups who desire to use such facilities for reaching the public, particularly on questions affecting the welfare of the nation, and there is a duty in seeing that broadcasting facilities are widely available rather than confined to the very few who have the price to purchase all of the time on all of the available facilities.

<sup>21</sup> By Commander T. A. M. Craven, member of the Federal Communications Commission, in speech before the NAB convention, February 15, 1938. Printed in *Broadcasting*, February 15, 1938. p. 22.

It is recognized that in many instances this involves a practical problem, particularly in view of the fact that you must render a balanced program in order to maintain continued interest of the public. In addition, there are problems concerning libel and slander and the necessity of avoiding the demagogic utterances of irresponsible quacks who seek to arouse public passion and prejudice. Nevertheless, in my opinion, this whole broad question is one of the problems which requires solution by the industry itself, and demands the most farsighted consideration from both social and economic viewpoints.

### SET OWNERS OPPOSE CENSORSHIP <sup>22</sup>

A majority of radio set owners oppose government censorship of programs, according to a nation-wide survey by the Institute of Public Opinion, directed by Dr. George Gallup. The Institute, whose findings are syndicated to leading newspapers, learned that 59 per cent of set owners believe that Government censorship of programs would be harmful, with 41 per cent believing it would "do good." The question asked of a cross-section of set owners was, "Do you think Government censorship of radio would do harm or good?"

Another question was, "During the past year, have you heard any broadcast that has offended you by its vulgarity?" The replies were overwhelmingly in the negative, only 15 per cent saying they had been offended, while 85 per cent said they had not.

"The main objection, judging by comment from voters, is that direct Federal censorship would be dictatorial usurpation of power which would soon lead to censorship of other media besides radio," the Institute said. Impairment of free speech was given as a further reason, with some fearing censorship would become a

<sup>22</sup> From news story headed, "Set Owners Found Against Censorship." *Broadcasting*. February 15, 1938. p. 40. Reprinted by permission.

political expedient. Both public opinion and broadcasting companies themselves are exercising a sufficiently effective censorship, others declared.

In favor of censorship, it was suggested that better programs might result, with elimination of misleading advertising.

## MISCELLANEOUS

### THE BOAKE CARTER CASE<sup>1</sup>

The slight man with the bristling red mustache and bristling manner advanced to the front of the stage.

"Hello, everyone," he curtly greeted nine hundred and fifty assembled citizens of Oshkosh. It wasn't necessary to add "Boake Carter speaking." These nine hundred and fifty Oshkosh citizens knew that. That's why they had packed the Little Theater of Oshkosh State Teachers College. They knew Boake Carter was off the air now. They had heard that there was something mysterious and politically sinister about the case and they anticipated a speech full of Carteresque punches.

Boake Carter didn't leave them long in wonder. "Thanks to Mr. Roosevelt," he said, "I am enjoying a vacation after eight years of being a slave to the radio."

The good people of Oshkosh leaned forward and licked the lips of their curiosity. Here was dynamite and drama. Here was a man who had commanded the greatest regular audience up to that time of any radio commentator, an audience estimated conservatively at 5,000,000. . . .

He was slightly older, perhaps a bit wiser and certainly a much sadder man than the national figure that had been launched on the public consciousness by the Lindberg kidnapping 1932. The historians might call the case "The Rise and Fall of Free Speech on the Air" if Carter's viewpoint is correct. . . .

<sup>1</sup> Excerpts from article entitled "What's Happened to Boake Carter?" *Radio Guide*. Vol. 8. April 29, 1939. p. 4-5. Reprinted by permission.

We may well consider the Boake Carter situation and its implications very carefully, for if his contentions that he was the victim of official speech-gagging and that he was squeezed off the air by coercive force from Washington are true, then his predicament may have far-reaching significance for us and our radio system. . . .

Commentators influence, to some extent, a large portion of public opinion. One may easily fall into the practice of assuming the role of a superior oracle on many subjects. If a commentator's confirmed opinions and strong expressions are opposed to the incumbent administration, they may and often do become very embarrassing. Boake Carter's case was a precise example of this sort of situation.

Among his candid comments was strong talk concerning the United States Army and Navy and the stupidity of its executive officers. The Army and Navy did not enjoy it. Blasting the government in the cause of an independent flying-force, Carter got under the official hide to such an extent that it was reported they were considering a move to deport him on the grounds that he lacked naturalization papers. Boake practically told them to go rub their noses on his citizenship papers. They found he was really a bona fide American citizen, though born in Baku, Russia, the son of a British consular official. About his naturalization, Boake wrote the following pertinent passage (*Commentator*, April 1937, condensed in *Reader's Digest*):

"The cardinal sin that I commit is that I should be so despicable as to criticize out loud in public forum. It just is 'not done,' which to the British is the same thing as betraying tradition. That is the sin I committed in becoming an American citizen! But it is a sin I shall ever be thankful that I had sense enough to commit."

Trouble came, too, from labor factions. In the course of Carter's denunciation of labor situations he incurred the active disfavor of the Philadelphia C.I.O. They picketed station WCAU and caused worry in general for the station, for Philco and for Carter. . . .

It might have been pressure from labor, fear of governmental disfavor, sliding sales-figures or just business judgment which caused Philco to terminate the association with Carter early in 1938. Presently, however, he had interested General Foods in the audience that he commanded, and they turned over to him the promotion of Post Toasties and Huskies. Immediately the toreador of the air began again waving his red scarf and grabbing all the available bulls by the horns. Once more the bulls proved to be no flower-smelling Ferdinands.

The C.I.O. of Philadelphia threatened a boycott of General Foods. Boake went into a huddle with them and emerged to declare an armed truce. Economic self-preservation usually precedes preservation of opinion, so Boake announced he would suspend all direct comment on labor, adding as a prop to his stubborn convictions that he would thus let the labor group flounder in obscurity.

Still he continued to flail the New Deal administration and to insist privately that he was being pulled apart on the Washington rack. Newspaperman Paul Y. Anderson reported that Ambassador Joseph E. Davies, whose wife is a member of the General Foods board of directors, wanted to fire Carter from his cereal-selling radio job, but that Colby M. Chester, president of General Foods and a persistent administration heckler, turned thumbs down on any bouncing of Boake.

Be that as it may, came the termination of Carter's contract with General Foods, and it was not renewed. All parties concerned announced that there were no governmental implications, but that fall-time changes caused Carter's program to reach the West Coast too early and no better time was available. So on August 26 of last year Carter sang his swan-song, and General Foods put Joe Penner in his air spot.

Immediately thereafter, Carter set out on a speaking-tour across the country to keep the echoes of his down-

fall ringing. From Schenectady to Sacramento he packed them into auditoriums.

Everywhere he went he told the same story in forceful, specific terms. The story was, in effect, that indirectly the "Great White Father in Washington" had forced him off the air. He said Stephen Early, White House press secretary, had "suggested" to the CBS lobbyist that the radio would possibly be "unable to find time for General Foods."

It is the Carter theory that, since radio stations must apply to the Federal Communications Commission every six months for renewal of operating licenses, and since the F.C.C. has the power to determine whether the stations have acted in the public interest, all broadcasting is in the throes of indirect censorship. There is yet no official censorship in radio, but it is undeniable that the licensing and judging power of the F.C.C. is a potential whip. . . .

### CASES RAISING THE CENSORSHIP ISSUE <sup>2</sup>

A campaign for full government censorship of radio confronts this Congress. Thirty senators and representatives will try to push bills through. Most articulate is Senator Clyde L. Herring, of Iowa. His proposed amendment to the Communications Act, which now grants freedom from official federal censorship, would create a radio censorship board. Broadcasters under the Herring bill would not necessarily have to submit scripts for approval, but would have to answer to the Federal Communications Commission if uncensored material proved objectionable.

<sup>2</sup> Extracts from an illustrated article titled, "Do You Want Radio Censorship?" *Look*, February 14, 1939, p. 6-11.

The sections quoted here were for the most part captions under illustrations which composed the article. Permission to print the material in its present form granted by the editors.

The anti-Jewish crusade of Father Charles E. Coughlin and the Orson Welles "Men from Mars" hulloaloo have spurred this drive to put government further into radio. Without excusing the Mars incident or Jew-baiting, *Look* believes most Americans prefer the occasional wrongs of self-regulation to the greater wrong of government censorship of radio.

*Captions under Illustrations.* General Hugh Johnson considered himself censored when NBC wouldn't let him say "syphilis." . . . "I've learned what you can say," declares Walter Winchell, radio's most closely edited star. . . . Senator Vandenberg got the gong when he tried to debate the President, using FDR's speech records. . . . Gen. Smedley Butler agreed to use only two "hells" and three "damns" every ten minutes on the air. . . . Until he learned to conform, Norman Thomas, leader of the Socialists, was often cut off the air. . . . Despite the law granting equal right to buy political time, WIRE banned Communist Browder. . . . He wouldn't soften his attack on dictators, so Alexander Woollcott quit a sponsored program. . . .

*Programs Criticised by Listeners.* Mae West caused one of radio's most indignant waves of protest by turning the Biblical story of Adam and Eve into a burlesque act. NBC apologized for it. . . .

Boris Karloff made opponents of radio horror broadcasts doubly mad by dramatizing Edgar Allan Poe's terrifying story, "The Tell-Tale Heart," near supper time, when mothers were in kitchens and children around the radio. . . .

Fred Allen was criticised for announcing that "next Sunday Rev. Dr. Jones will preach on 'Skiing on the Sabbath' or 'Are our Young Women Backsliding on their Week Ends?'" He emphasized "ends." . . .

Maxine Sullivan, blacklisted by several stations for "swinging" the classic, "Loch Lomond," said, "I sing it the way I feel it." . . .

Tommy Dorsey is one of several orchestra leaders who distress music purists by "swinging" Bach and other classic composers. The New Jersey Bach Society has asked FCC to suspend stations which permit such "offenses." . . .

"Air racketeers" is the term Senator Herring uses to describe such programs as the "Gang Busters." Intended as a crusade against crime, he believes they sometimes have the opposite effect and are too exciting for youthful listeners' nerves. Herring says he receives hundreds of letters of protest.

*Political Influence over Radio.* The radio is Adolf Hitler's, and other dictators', best means of distributing propaganda. Nazi Propaganda Minister Goebbels has divided the world into six zones, and each receives German radio programs adapted to its psychology. To keep foreign broadcasts out of Germany, Hitler has ordered the 40,000 German radio dealers to feature low-powered sets, which receive only local programs. Radio also is dictator-controlled in the U. S. S. R., Japan, Italy; is government operated in Great Britain, Canada, South Africa.

A President of the United States could, if he desired, wield a whip over the radio industry through the Federal Communications Commission. The party in power always has a majority on the Commission. It is no more swayed by political considerations today than in the days of Coolidge and Hoover. Except for unnecessary internal bickering, the present commission is doing a good job of seeing that all parts of the country get adequate broadcasting service with the minimum of government direction. Despite its faults, the American system of commercial broadcasting is superior to any suggested by politicians or educators as a substitute.

CENSORING ENTERTAINMENT  
PROGRAMS <sup>3</sup>

Miss Sally Rand, the celebrated fan dancer, thought she knew all about censorship and how to get around it, until she tangled with radio. The danseuse was invited, not inappropriately, to appear on a radio program called "For Men Only." An articulate young female, able to say it with words as well as with ostrich feathers and balloons, she insisted on preparing her own lines.

The script she submitted contained tested material, exactly the kind of stuff she had been using on women's clubs and chambers of commerce when persuaded, as she often is, to lecture on her art. But the agency in charge of the program handed her script back to her as if it were toxiferous, and proceeded to write its own script. Sally rejected that one. Together they compromised on a third version, which was promptly rejected by the program's sponsor. The sponsor, the agency, and Sally eventually agreed to agree on a fourth rendering. By now the thing seemed as insipid as a weather report. Broadcasting officials paled, nevertheless, when they read it.

A fifth script was hastily assembled by the broadcasting company itself. There was a strange gleam in Sally's eyes as she accepted this final effort and promised to follow it faithfully. The broadcasters didn't like that gleam. Three station executives and a lawyer were in the control-room when Sally stepped up to the mike. They were ready to pull the plug the moment she deviated by a word.

That gives some idea of how jittery the broadcasters have become in the last year. On guard against government censorship, radio has clamped its own hand over its own mouth in a self-censorship as rigid as, if

<sup>3</sup> By Earl Sparling. Excerpt from "Radio Gets the Jitters." *American Magazine*. March 1939. p. 42-3+. Reprinted by permission.

not more rigid than, anything the government could order.

The jitters began with Mae West's burlesque of the Garden of Eden, and reached chronic proportions with Orson Welles's recent "War of the Worlds" debacle. Today the broadcasters are scared silly. Their every decision is dictated by fear—fear of a club held over their heads by a handful of political appointees in Washington, the Federal Communications Commission, who, in turn, are at the whim of any Nice Nelly in the country.

Let the Commission try to overlook the complaints of a few Nice Nellies, and immediately some congressman is up on his feet to defend the fireside and demand an investigation. The result is that if even one Nice Nelly objects to something he has heard over the air, the Commission may threaten to revoke the license of the offending station. All of which is causing thinking people to wonder if radio isn't being rapidly Prim Pollied into a state of innocuous desuetude.

The lid is down so tight that even a joke about Caspar Milquetoast might be eyed twice. Would it cause all the Caspar Milquetoasts in the land to rise up in protest? A speaker wanted to refer to Muscle Shoals as "the dam from which all blessings flow." That was ruled out—on the grounds that someone might object to the word "dam" in conjunction with a phrase of religious significance.

The Broadway hit, "Hellzapoppin," cannot be mentioned on the air. The Federal Communications Act prohibits profanity, and over a loud-speaker "Hellzapoppin" might sound a bit different from the way it looks in type. And, who knows, some darned fool might really think it was popping and rush forth to rouse his neighbors.

But what of the political candidate who tries to say, "The road to hell is paved with good intentions?" Poli-

ticians and preachers have been saying that ever since I was old enough to pump an organ, but our air-minded statesman was asked to change his phrase to, "The road to the nether regions. . . ." The station preferred that he discard the phrase altogether. He did. Is that a trifle on the scared-silly side, or isn't it?

And what do we have, if anything, when one chain won't allow the use of the word, "flask," and another bars the word, "tattoo"? Flask would imply illicit drinking. Just what tattoo might suggest, I don't know. A drunken sailor, perhaps. And if this kind of thing can make trouble for a politician, who, under the law, can demand to say anything he wants to, give a thought to the harassed gag writers. The gagsters have always had enough trouble supplying radio with something new to laugh at every night. This progressive puritanism is driving them nearer and nearer to the booby hatch, which is maybe where a gag writer belongs anyway.

Take this quip: the highly paid radio comic was supposed to say, "And then a skunk came into the church." The stooge asks, "Did he have to stand up?" The great comic cracks, "No; he brought his own pew." It took two harassed gagmen hours to think that one up. Then the chain censor took a hand. The word "church," the censor ordained, must be changed to "animal temple." Get it? "Then a skunk came into the animal temple." And even that would not be allowed today. The word "skunk" is now also taboo, if "taboo" hasn't been added to the list. . . .

The problem of keeping a station out of trouble involves more than merely keeping everything sweet and clean. If you had, say, a million dollars invested in a radio station, what would you do if a comic wanted to crack, "My radio is so old it still gets Herbert Hoover." You, as did the people who actually had to make that decision, would probably rule it out. Why take a chance on offending a lot of Republicans and

giving them the opportunity to get political publicity by complaining to the FCC?

One popular program came up recently with a hilarious skit between a farmer and a government agent who came to kill his hogs. The government hog killer had to be changed to a city gangster. The network didn't want any trouble with the New Deal.

The same thought was at work when General Smedley C. Butler, making a speech to the Veterans of Foreign Wars, was kept from talking about "turning food into fertilizer." The outspoken general prefaced his microphone remarks with, "I can't talk to soldiers before these deodorizers, so prepare for seventeen minutes of tripe and bedtime stories."

Phil Baker, in one of his programs, wanted to count off the ages of the justices of the United States Supreme Court: "Sixty-two, sixty-eight, seventy-two, seventy-five . . ." Bottle, the straight man, was to say, "Bingo!" The chain censor said, "Nix." You can't make passes at dignity over the radio, and dignity covers all kinds of digs.

In their recent press-agent feud Jack Benny and Fred Allen got into the well-publicized habit of calling each other anemic. Letters—not many—drifted into the stations, something like this: "Do you think it is funny to be anemic? I have been suffering from anemia for years." Fred and Jack had to stop calling each other anemic. . . .

After the Mae West episode gag writers fell over one another trying to get Adam and Eve quips into their scripts. Miss MacRorie (program editor for NBC) protected the ether by ruling that Mae West must not be mentioned in any program. Similarly, she ruled out a Fred Allen sequence after the Orson Welles thing. Here is the way Fred wanted to kid the panic:

ALLEN: In view of the recent happenings in radio, I think it would be better, before we start, if I made a sort of announcement.

VON ZELL: It would be safer, Fred.

ALLEN : Ladies and Gentlemen, before this radio presentation starts, I would like to announce that this is a comedy program. Any dialogue or sound-effects heard during the next hour will be purely imaginary and will have no relation to any living sounds. If you hear a phone ringing, like this (telephone rings), do not pick up your receiver. If you hear a knock, like this (door knock), do not run to open your door. Ignore everything you hear on this program. Just sit back and relax. Nothing is going to happen. And to prove that the offering is positively crammed with nothing, we plunge instantly into the latest news of the week.

Some of the decisions are easy. A scrip referring to "pool room complexion" was vetoed because all the pool room proprietors might protest. Another comic wanted to say times were so bad that "the doctors are meeting their patients on Broadway to check their pulses by a Times Square clock." Out, because it might make the doctors sore. The line, "This is a John L. Lewis cocktail; one drink and you sit down," was made safe by changing the phrase to "striker's cocktail."

In another skit George Washington was to complain about the cooties in his blankets. The producers produced documents to prove he really had. Out anyway. To protect the patriots, "The Star Spangled Banner" must be played in whole or not at all. Most taboo of all is Abraham Lincoln. Abe pulled some pretty good jokes in his lifetime but the censors have discovered that the public resents the mildest lightness concerning him. . . .

#### INSTANCES OF COMMISSION ACTION <sup>4</sup>

. . . Congress in its wisdom gave the Federal Radio Commission control over radio transmission, but denied

<sup>4</sup> By Mitchell Dawson. Excerpts from "Censorship on the Air." *American Mercury*. March 1934. p. 257-68. Reprinted by permission.

it the power of censorship and forbade it to make any regulations interfering with the right of free speech. Yet for fear that the commissioners might surrender the air to the bawdy and irreverent, Congress further provided that "No person within the jurisdiction of the United States shall utter any obscene, indecent or profane language by means of radio communication."

General Smedley D. Butler ran up against this clause a few years ago when he was cut off in the midst of a broadcast for saying, "Hell!" If "Hell" is legally profane, which some jurists may dispute, the general might have been fined as much as \$5,000 and sent to jail for as long as five years under the Federal Radio Act. Perhaps he still can be, for quite recently KOIL of Omaha took a chance and booked him for fifteen minutes, during which he ran true to form and let loose "more cusswords than have been heard over the air here in three years," according to a correspondent of *Variety*.

Robert Gordan Duncan, the Oregon Wildcat, did not get off so lightly. He detested chain stores, monopolies, venal newspapers and political and business grafters of all sorts, and he said so over the radio in crude but racy terms. The persons whom he attacked might have sued him for libel or slander but that would have put in issue the truth of his remarks. They apparently preferred to have him prosecuted for using bad language in violation of the Radio Act. It appeared that he had called one man

"a doggoned thieving, lying, plundering, doggoned corrupt crook, that goes out there and rams a (naming a well-known brand) milk contract through the schools, and has the little children of this town a-drinking putrid milk. . . . Doggone his lousy picture. He's not fit for the penitentiary. . . . He is the lowest of the low, the vilest of the vile, the dirtiest thievin' grafter that ever disgraced the school board in any country."

He referred to another person as "the lowest, dirtiest, vilest grave robber on the Pacific Coast," and he

accused a newspaper of protecting "sodomites and concealing murder, arson and burglary and waxing rich from the wages of thieves. But instead of stopping there, he foolishly went on and used the words "damn scoundrel" and "by God!" and threatened to "put on the mantle of the Lord and call down the curse of God" on certain fellow-citizens.

Observe then how Brother Duncan was roped and thrown. He was tried and convicted of broadcasting "obscene, indecent and profane language," and when he appealed, his conviction was sustained—on the profanity count alone, however, the court pointing out that his language had been neither obscene nor indecent. If he had left out the "damn," "by God!" and "curse of God," he would have been let off. Up to this point there had been no censorship. Duncan was merely paying the penalty for violating the law. But note how this decision was used as a basis for muzzling the Wildcat completely. The broadcasting station which had been his mouthpiece could not get its license renewed because of its past conduct in permitting a man like Duncan to use the air, which clearly showed, according to the FRC, that the station's future use of radio channels would not be in the public interest. To the layman this would look like censorship, but the courts have held that it is not—at least within the meaning of the Radio Act. . . .

In performing this divine function of deciding what is good for the public, the commissioners have worked out certain general rules. They hold, for instance, that it is not in the public interest to have the air channels used for personal controversy, attacks on individuals or the exploitation of the personal views and business of the licensee. It was on this ground that Jacob Conn of Providence, Rhode Island, lost his license and that certain stations in Pennsylvania were placed on probation for carrying on a back-fence squabble over the air.

W. K. Henderson of Shreveport, Louisiana, also ran afoul of this rule. You will perhaps remember his "Hello World" programs in which he gave picturesque hell to the chain stores. When he applied for a renewal of his license about two years ago, he was turned down on the ground that he had used his station primarily as a personal mouthpiece and that his derisive and abusive language was inimical to the moral and aesthetic development of the youth of America.

In the spring of 1931 the American Newspaper Publishers Association asked the FRC, among other things, to promulgate an order banning the broadcasting of lottery and gift enterprises. The commission declined on the ground that such an order would violate the statutory provision against censorship.<sup>5</sup> But shortly afterward the commission authorized a press release to the effect that complaints from a substantial number of listeners against any station permitting the broadcasting of lotteries would result in causing that station's application for a license to be set for hearing, a threat sufficient to keep most stations in line. . . .

The Radio Commission has also disapproved of fortune-telling programs. It denied the application of KFWI of San Francisco for the renewal of its license partly because of broadcasts by one Alburtus, an astrologer; and the activities of two other star-readers, Zoro and Kobar (the latter now broadcasting "character analysis" in Chicago), were among the reasons for refusing a license to KTAB.

The role of protecting the public against the devil, once assumed, involves ever-widening responsibilities. Having taken a stand against lotteries and fortune-

<sup>5</sup> In spite of the Commission's refusal on the grounds of censorship, the Radio Act was amended in 1934, Section 316, as follows:

"No person shall broadcast by means of any radio station . . . and no person operating any such station shall knowingly permit the broadcasting of, any advertisement of or information concerning any lottery, gift enterprise, or similar scheme. . . . Any person violating any provision of this section shall, upon conviction thereof, be fined not more than \$1,000 or imprisoned not more than one year, or both for each and every day during which such offense occurs."

telling, the FRC had to make up its mind about fake medical broadcasts.

A few years ago an army of spielers familiar with the methods of the street corner Indian medicine man was exploiting the gullibility of the radio audience through the sale of stomach and kidney remedies, hair growers, cancer cures, and devices similar to "Wilshire's magic horse collar," which were widely offered to the ill and hypochondriac at a "nominal" price. Dr. J. R. Brinkley of Milford, Kansas, was one of the first of this enterprising gentry. He had acquired notoriety through his goat-gland operation which he advertised as a cure for "High Blood Pressure, Hard Arteries and *Impotency*. Ah, that last one is the big factor!"

The money was, in fact, already rolling in from the goat-gland business, when Doc Brinkley conceived the notion of starting radio station KFKB at Milford, over which he conducted a "medical question box." The bleats of the mutilated tribe of capricorn were not put on the air, but the good doctor, without charge, daily diagnosed the ailments of radio listeners who had described their symptoms to him by letter. On one occasion he prescribed for forty-four patients, and in all but ten cases he advised them to procure from one to four of his patent remedies which were sold by the Brinkley Pharmaceutical Association. His line ran like this:

"Here's one from Tillie. She says she had an operation, had some trouble ten years ago. I think the operation was unnecessary, and it wasn't good sense to have an ovary removed with the expectation of motherhood resulting therefrom. My advice to you is to use Women's Tonic No. 50, 67 and 61. This combination will do for you, what you desire, if any combination will, after three month's persistent use.

"Sunflower State, from Dresden, Kansas. Probably he has gall stones. No, I don't mean that. I mean kidney stones. My advice to you is to put him on Prescriptions No. 80 and 30 for men, also 64. I think that he will be a whole lot better."

The American Medical Association soon brought its guns to bear upon Brinkley and induced the FRC to cancel his broadcasting license because his activities had been "inimical to the public health and safety." He appealed from this ruling on the ground that the commission had violated the constitutional and statutory guaranties of free speech, but the court again upheld the commission's right to consider the character of programs previously broadcast by a station in determining whether the renewal of its license would serve the public interest.

Pressed hard by the medical profession, the FRC mowed down another prairie flower, Norman Baker, who operated KTNT at Muscatine, Iowa, over which he sold a cancer cure, characterized by the American Medical Association as the "old Hoxsey fake." In refusing to renew his license the commission said:

"This commission holds no brief for the medical associations and other parties whom Mr. Baker does not like. Their alleged sins may at times be of public importance, to be called to the attention of the public over the air in the right way. But this record discloses that Mr. Baker does not do so in any high-minded way. It shows that he continually and erratically over the air rides a personal hobby, his cancer cure ideas and his likes and dislikes of certain persons and things. Surely his infliction of all this on the listeners is not the proper use of a broadcasting license. Many of his utterances are vulgar, if not indeed indecent. Assuredly they are not uplifting or entertaining.

"Though we may not censor, it is our duty to see that broadcasting licenses do not afford mere personal organs, and also to see that a standard of refinement fitting our day and generation is maintained."

It might be well to bear this pronouncement in mind as you listen from day to day to some of the patent quackery and other guff that pours in from stations whose conduct is apparently approved by the commission. No intelligent person will waste tears over the exclusion of charlatans from the air. But in joining the medical profession in condemning men like Brinkley and Baker,

there is serious danger that we may lose sight of the main question, which is whether the responsibility of determining what is or is not high-minded, uplifting, entertaining and refined should be entrusted to the FRC or any other official group.

This question emerges more clearly (and perhaps with less embarrassment to the proponents of free speech) in the case of "Fighting Bob" Shuler of Los Angeles. As pastor of the Trinity Methodist Church, South, the Rev. Dr. Shuler discharged over radio station KGEF, which was operated by the church, a barrage of invective against bootleggers, gamblers, politicians, the local board of health, Jews, Catholics, newspapers, the Governor, bankers, brokers, usurers, but most indiscreetly of all against the local bar association, the sheriff, and certain judges. He warned his listeners to watch the lawyers and the courts "for fear they play crooked and contemptible games in which criminals, big and vicious, are released and let to prey upon the public," and he purported to expose certain political machinations which were intended to aid defendants in criminal cases then pending in court. This last indulgence was foolhardy, for it provoked the majesty of the law to swing into action against him. Shuler was cited into court and fined and sentenced to jail for trying to influence and intimidate judges in pending proceedings. . . .

The next step (again paralleling the Duncan case) was to see that Trinity Church's application for the renewal of its license to broadcast should be denied. It was; the FRC, of course, resorting to that gloriously broad rule of reason—"the public interest, convenience and necessity." The commissioners stressed Dr. Shuler's conviction for contempt of court and said that his broadcasts had been "sensational rather than instructive."

"Fighting Bob" carried his case to the Circuit Court of Appeals of the District of Columbia, but the judges coldly disapproved his plea for freedom of the air, hold-

ing, in effect, that the guarantees of freedom of speech and of the press do not apply to radio:

"Appellant may continue to indulge his strictures upon the characters of men in public office. He may just as freely as ever criticize religious practices of which he does not approve. He may even indulge private malice or personal slander—subject, of course, to be required to answer for the abuse thereof—but he may not, as we think, demand, of right, the continued use of an instrumentality of interstate commerce for such purposes, or any other, except in subordination to all reasonable rules and regulations Congress, acting through the Commission, may prescribe."

As the Supreme Court of the United States declined to review this decision, *it is apparently the law of the land that radio, like the movies and talkies, is not a medium for the free expression of opinion.* The provisions of the Radio Act enjoining the FRC from interfering with the right of free speech would therefore seem to be just one more of the numerous abortions spawned by a trusting but unsophisticated Congress. . . .

### TRADE COMMISSION REGULATION OF RADIO ADVERTISING<sup>6</sup>

Before specifically discussing the subject of radio advertising, I wish to call attention to the authority and the duty of the Federal Trade Commission under the law, as well as to outline what the Commission has done to regulate and improve the character of other forms of advertising.

The Federal Trade Commission Act of September 26, 1914, declares "unfair methods of competition in commerce" to be unlawful, and empowers and directs the Federal Trade Commission to prevent such methods.

The courts have uniformly held that false or misleading advertising constitutes such unfair methods within the meaning of this act.

<sup>6</sup> By Ewin L. Davis, chairman of the Federal Trade Commission. Excerpts from "Regulation of Radio Advertising." *Annals of the American Academy.* January 1935. p. 154-8. Reprinted by permission.

From the time the Commission was organized, it has waged war against advertisers who resort to false or misleading representation to sell their products.

The Commission has published sixteen volumes of its orders. These cover a period from its organization, early in 1915, to July 1932. In these sixteen volumes, 2,781 cases are reported in full, giving the facts found and the orders issued. Of these 2,781 cases, 1,993 related to false and misleading advertising. The remainder, 788, related to commercial bribery, restraint of competition, price fixing, and various other offenses under the Federal Trade Commission Act or the Clayton Act. Of the 1,993 cases relating to false advertising, 456 involved food, drugs, or cosmetics, and 1,537 related to other articles of commerce such as household goods, furniture, lumber, forest products, seeds, clothing, fabrics of all kinds, and so forth.

These reported decisions represent a comparatively small percentage of the cases handled by the Commission. An overwhelming percentage of all advertising cases have been settled amicably, usually by stipulation, without the issuance of formal complaint.

It should be clearly understood that the Federal Trade Commission neither claims the authority to censor advertising, nor has any desire to do so. Its sole purpose is to curb unlawful abuses of the freedom of expression guaranteed by the Constitution. To put it tersely, the Commission does not dictate what an advertiser shall say, but may indicate what he shall not say.

The processes of the Commission are not punitive, but injunctive. How successful this procedure has been is indicated by the fact that during the nearly twenty years since the Commission was established, it has seldom had to appeal to the courts to discipline respondents for disregarding its cease and desist orders.

A few years ago the Commission began a more intensive drive against false advertising. When this campaign was begun, estimates were made that false and mislead-

ing advertising was costing the American public \$500,000,000 annually.

Ethical advertisers—and they include the great majority—require little or no regulation. Their own self-respect and regard for the proprieties prompt them to tell the truth. However, among our vast population, there will probably always be some unscrupulous advertisers, and unless curbed by some authority, they are likely to trespass upon truth and decency.

Not a small part of the mischief lies in the fact that unrestrained, dishonest advertisers have in times past set a pace of gross exaggeration, if not outright falsification, which the advertising agents of more ethical houses feel necessary to follow in some degree, at least, in order to get, or hold, business.

The result of regulation of printed advertising has been that accurate claims are now the rule, not the exception. Readers of reputable publications have come to understand generally they can safely rely upon what they read. . .

A code of fair competition for the radio broadcasting industry was approved by the President November 27, 1933. Among other things this code provides against "the broadcasting of any advertisement of, or information concerning any lottery, gift enterprise, or similar scheme," and so forth.

While the statute directing the Federal Trade Commission to prevent unfair methods of competition in commerce, including false and misleading advertising, applies equally to all forms of misrepresentation, yet until recently the Commission has generally dealt with printed advertising and has had only an occasional radio case. This was due to the fact that radio advertising is a comparatively new development, and also that it was more difficult and expensive to scrutinize and deal with it.

As a matter of fact, the Federal Government is under a higher duty to keep radio broadcasts free from unlaw-

ful advertising than to regulate any other form of advertising. No broadcasting station can operate without a license from the Federal Government to do so. Aside from the fact that with such licenses are given, without cost, very valuable and much-sought privileges, the Government certainly cannot afford to be placed in the attitude of licensing stations to violate the law or permit others to do so. . . .

Last spring, the Federal Trade Commission definitely determined to take steps looking to a closer scrutiny and more rigid regulation of the large volume of radio advertising. Conferences were held with leading executives in the industry, who displayed a fine spirit of helpful cooperation. As a result of various conferences and a careful study of the problem, it was decided by the Commission to request the networks, the transcription companies, and the individual broadcasting stations to file with the Commission copies of their advertising continuities. The first call for these advertising continuities was issued on May 16, 1934, the request being made for such continuities to be filed commencing July 1 and until further notice.

In response to the Commission's request, all of the 10 networks and all of the 596 broadcasting stations complied. . . .

The Commission received 183,877 separate advertising continuities under this initial call. By October 1 the Commission's staff had completed a preliminary detailed examination of all such continuities, of which 161,466 were found unobjectionable and filed without further action. A total of 22,411 were referred to the Special Board for further study and possible investigation. However, it is probable that only a small percentage of this number will prove to be unlawful. . . .

The Commission has been very much gratified by the splendid spirit of cooperation shown by those engaged in the radio broadcasting industry. It is refreshing that

such an overwhelming percentage of the industry are so deeply interested and so fully appreciative of the importance of permitting only truthful and honest advertising over the radio—thus not only preventing the violation of the law through that medium, but also preventing advertisers from defrauding the public and thereby causing a loss of listener confidence in radio advertising.

### OFFICIAL CANADIAN PROGRAM REGULATIONS <sup>7</sup>

The following regulations were passed at a meeting of the Canadian Broadcasting Corporation held at Toronto, in the Province of Ontario, on the 8th day of September, 1937, as and for the regulations of the Canadian Broadcasting Corporation, and were made under authority of subsection one of section twenty-two of the Canadian Broadcasting Act, chapter twenty-four of the Statutes of 1936, which reads as follows:

The Corporation may make regulations (a) to control the establishment and operation of chains or networks of stations in Canada; (b) to prescribe the periods to be reserved periodically by any private station for the broadcasting of programs of the Corporation; (c) to control the character of any and all programs broadcast by Corporation or by private stations; (d) to determine the proportion of time which may be devoted to advertising in any programs broadcast by the stations of the Corporation or by private stations and to control the character of such advertising; (e) to prescribe the proportion of time which may be devoted to political broadcasts by the stations of the Corporation and by private stations, and to assign such time on an equitable basis to all parties and rival candidates. . . .

#### REGULATIONS GOVERNING PROGRAMS IN GENERAL

##### 7. No one shall broadcast

- (a) anything contrary to law;
- (b) the actual proceeding at any trial in a Canadian Court;

<sup>7</sup> Excerpts from "Rules governing Canadian Broadcasting Stations," promulgated by the Canadian Broadcasting Corporation. *The 1938 Radio Annual*. p. 415-16. Reprinted by permission, *The Radio Daily*, publishers.

- (c) abusive comment on any race, religion or creed;
  - (d) obscene, indecent or profane language;
  - (e) malicious, scandalous, or defamatory matter;
  - (f) advertising matter containing false or deceptive statements;
  - (g) false or misleading news;
  - (h) upon the subject of birth control;
  - (i) upon the subject of venereal disease, or other subjects relating to public health which the Corporation may from time to time designate, unless such subjects be presented in a manner and at a time approved by the General Manager as appropriate to the medium of broadcasting;
  - (j) (i) programs presenting a person who claims supernatural or psychic powers, or a fortune-teller, character analyst, crystal-gazer or the like, or programs which lead or may lead the listening public to believe that the person presumed claims to possess or possesses supernatural or psychic powers or is or claims to be a fortune-teller, character analyst, crystal-gazer, or the like.  
(ii) programs in which a person answers or solves or purports to answer or solve questions or problems submitted by listeners or members of the public unless such programs prior to being broadcast shall have been approved in writing by a representative of the Corporation.
8. (1) Political broadcasts are governed by subsections (3), (4) and (5) of section 22 of The Canadian Broadcasting Act, 1936, which read as follows:—
- “(3) Dramatized political broadcasts are prohibited.
  - “(4) The names of the sponsor or sponsors and the political party if any, upon whose behalf any political speech or address is broadcast shall be announced immediately preceding and immediately following such broadcasts.
  - “(5) Political broadcasts on any Dominion, Provincial or Municipal election day and on the two days immediately preceding any such election day are prohibited.”
- (2) Each station shall allocate time for political broadcasts as fairly as possible between the different parties or candidates desiring to purchase or obtain time for such broadcasts.

GOVERNMENT CENSORSHIP IN EUROPE <sup>8</sup>

Broadcast propaganda, both national and international, economic and political, is the bane of European radio today. The European ether is suffused with excellent things—beautiful music, drama, ethics, and poetry—but all this is shot through with propaganda, just as American radio is shot through with advertising. Only, while you can always detect advertising, the cloven hoof of propaganda is often more subtly concealed.

Before we examine the various kinds of propaganda, it is well to be clear about who "owns" the European air. At the risk of repetition, let us summarize thus: Out of 30 European national broadcasting systems, 13 are State-owned and operated, nine are government monopolies operated by autonomous public bodies or partially government-controlled corporations, four are physically operated (engineered) by the government and privately serviced as to programs, while only three are privately owned and run. In two countries, France and Yugoslavia, government and privately-owned companies exist side by side.

But all these organizations, whether government or private, are under more or less rigorous state supervision as to their policies. In 15 of them, political broadcast matter is forbidden outright, except that which is broadcast by the Government or at its behest. This, it is needless to add, includes all the authoritarian countries as well as some others, including Germany, Italy, the U.S.S.R., Austria, Bulgaria, Estonia, Finland, Hungary, Danzig, Poland, Portugal and the Irish Free State. In at least two more countries, namely, Czechoslovakia and Yugoslavia, all political controversial talks are censored by the State, and in most other countries, democratic or other-

<sup>8</sup> Extracts from "Propaganda Poisons European Air," by César Saerchinger, former director of European radio for the Columbia Broadcasting System. *Broadcasting*. April 15, 1938. p. 20+. Reprinted by permission.

wise, some sort of censorship is exercised by the broadcasting officials themselves, though in most cases simply by the standards of law and good taste.

In Great Britain all supervision is suspended during election campaigns, and the same is true of some other democratic countries. Turkey—a phenomenon in this respect—boasts a total absence of supervision, but considering the undeveloped state of radio in that dictatorship, the boast need not be taken too seriously.

Even non-political talks are subject to one kind of control or another. Aside from the state-operated organizations, some, such as the Czechoslovakian and Yugoslavian, must submit *all* manuscripts to government censorship, and in many cases there is a direct control of the actual words as they are spoken over the air. Far from regarding it a disadvantage, most countries seem to approve of all this supervision and control. Broadcasting officials are glad to escape responsibility. Commendatore Gino Montefinale, radio chief of the Italian Ministry of Communications, giving his expert opinion to an international committee, made a point of saying that Italian radio programs are "rigorously controlled by the State," and that even economic and financial news must be previously submitted to the government, and that "nobody is allowed to speak before the microphone of an Italian station unless the E. I. A. R. has previously obtained government permission."

It would seem, then, that there is precious little freedom on the European air. In the authoritarian states we know that the motive of control is political, and the object is the total elimination of opposition or criticism of the government, the country, and its institutions; further than that, the elimination of favorable comment on certain other countries and their institutions, acts and policies—in short, complete dictation for nationalistic ends.

On the other hand, in democratic countries such as the Scandinavian kingdoms, even State control does not

necessarily mean the abrogation of free speech, any more than the state operation of posts and telegraphs necessarily means the censorship of communications. Denmark, for example, has a state-owned and operated broadcasting system, yet the control exercised over speakers is wholly on the basis of decency and good taste.

Norway considers that all propaganda, whether political or religious, is out of place on the air; hence the only political speeches allowed are those at election time. The B.B.C., through its license arrangement with the British Post Office, is subject to a certain amount of parliamentary control. Yet there is no greater liberality anywhere in Europe when it comes to the broadcasting of controversial matter. Speakers from the extreme right to the extreme left, including Fascist and Communist, have had access to the microphone; though, as in the United States, one opinion must be balanced against another if violent protest and attack are to be avoided.

But in the last analysis the air belongs to the governments, and it is the policies of the governments which determine the degree of freedom, or otherwise. In dictatorship countries and in countries living in the shadow of dictatorship, freedom in the air does not exist.

### PROPAGANDA ON EUROPEAN RADIO<sup>o</sup>

It's getting so that you can't believe what you hear on the radio. . . . Almost any night, desirous of informing yourself on current affairs, you may fix the knob on one of these stations, sit back and drink in what, camouflaged as "authoritative news," may be pure propaganda.

Take the Ethiopian controversy. In October 1935, Mr. Edgar Ansel Mowrer, correspondent in Geneva of

<sup>o</sup> By Frank C. Hanighen, former European news correspondent, co-author of *Merchants of Death*. Excerpts from "Propaganda on the Air," *Current History*. Vol. 44. June 1936. p. 45-51. Reprinted by permission.

an American newspaper, thought it would be a good idea to arrange a radio debate from that forum of international controversy and let the American public in on both sides of the battle, via the Columbia Broadcasting Company. Accordingly, on October 10, he took the "mike" and said, "I am sure you would all like to hear Mr. Tecla Hawariate."

The head of the Abyssinian delegation thereupon stepped up and made an appeal, which was none the less impressive for its broken English. It concluded with: "I thank you all for the great interest you are taking in the affairs of my poor country."

The next night Baron Aloisi, Mussolini's mouthpiece in the League of Nations, was ready to present his side of the case. But he and Mr. Mowrer had reckoned without the British Foreign Office and the British Broadcasting Company. It happens that these transatlantic broadcasts are relayed from the British station at Rugby, one of the most powerful in the world, and well-called the "world's switchboard."

At six o'clock the authorities at Rugby were informed by the Government that their station could not be used to broadcast the Italian defense. According to the London *Daily Express*, the Foreign Office took the view that, while the British Government had no objection to Italian propaganda of any kind, it was not justified, owing to the present state of affairs, in allowing British facilities to be placed at the Italian's disposal.

Of course, the British Government had no objection to Mr. Hawariate telling America his views, which at the time, incidentally, were those of the British. And they were anxious to prevent America, which could spoil their sanctions policy, from hearing and being influenced by the other side.

Mr. Mowrer probably was not at all surprised. Like most of the American correspondents abroad, he must have been aware of the extent to which the British color world news. It is the same old story, amply

demonstrated during the World War by the British propaganda system working through the international cable "slot" in Fleet Street, which is truly "the news switchboard of the world." The significant thing is that the Ethiopian incident marked the entrance of this system into radio and gave America a foretaste of what it can expect during a future war. . . .

Let us look at a land where "unofficial observers" are unknown and where the radio problem is simplified. Germany is *par excellence* the land of Government radio regulation.

All German radio transmitters are owned and operated by the German Post Office. Their programs are supplied by the *Reichs-Rundfunk-Gesellschaft* (The German Broadcasting Company), which is owned by the Government. This data will mean more to you if you realize that the man who controls all this is none other than that master of propaganda, Dr. Goebbels. He holds the power of appointments and dismissals and this goes for all the directors of the R.R.G. as well as the *Intendenten*, or directors of the regional stations, who are responsible for the non-political programs of each individual station. The political programs, of course, are controlled by Berlin and Dr. Goebbels. . . .

This is the depressing picture, then, of Government broadcasts and dissemination of news in one of the most important countries in Europe. In no other country is radio diffusion so efficiently organized to keep people from weighing the pros and cons. . . .

But these are dictatorships, you may say. Under a democracy, surely, there can exist wise control which will permit both sides of domestic questions to be heard. Well, let us look at Czechoslovakia, a little island of democracy in the midst of a sea of fascist dictatorships. There the various political parties (27 in number) are too numerous for each to be accorded radio time; there are no political debates on the air. But the State broad-

casting station at Prague gives such political views from time to time as it sees fit. "As it sees fit" is the catch.

In the eastern end of Czechoslovakia are some half million Hungarians who naturally feel a sentimental attachment to their former country. To preserve these racial feelings, Budapest sends out comforting broadcasts in Hungarian telling her lost children that some day they will return to the mother country, if only they agitate strongly enough for the revision of the Treaty of Trianon, which handed them over to Czechoslovakia. Prague, furious (because it does not consider the complaints of this minority "fit" to be broadcast from the Government station), installed a more powerful transmitter to drown out this subversive propaganda from Hungary. Budapest retorted by increasing her own broadcasting power.

So even under democracies where "wise" government regulation prevails, there is always some problem which the government wants to slur over. . . .



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