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# HEINL RADIO BUSINESS LETTER

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No. 782

W.P. Galt

December 11, 1934.

## FRIENDS WOULD SAVE HAMPSON GARY

Friends are rallying to the aid of Hampson Gary, Federal Communications Commissioner, who, though his term does not expire until next July, is expected to be succeeded January 1st, or thereabouts, by Representative Anning S. Prall, Democrat, of New York, a personal friend of Senator Bob Wagner, of New York, and also of President Roosevelt. The term of Mr. Prall, who was defeated for renomination, expires at the beginning of the year. The President appointed Representative Prall a member of the old Radio Commission, but with the creation of the Communications Commission near at hand, he was never sworn in, the general impression being that Mr. Roosevelt would appoint Prall to the Commission January 1st. He could not do it sooner because Mr. Prall was a member of the Congress which created the Communications Commission and under the Constitution, could not serve on it until that particular session had expired.

The belief is that President Roosevelt, although appointing Hampson Gary for a year, in effect really asked him to sit in until Mr. Prall could take over the reins. In the meantime, the Broadcasting Division, of which Commissioner Gary is Chairman, has held important hearings on the question as to whether religious and educational stations shall be given additional radio facilities and if so, if this allocation should be made by Congress.

The record of the hearings comprise more than 14,000 pages of testimony, and in the opinion of Henry A. Bellows, who was in charge of the Broadcasters' presentation, "constitutes the most significant statement ever made of the aims, purposes and methods of American broadcasting."

Obviously Mr. Gary, having conducted the hearings and being familiar with all its details, is the man to draft the report. In the short time remaining of his term, if he is to go out January 1st, it will probably be physically impossible for him to do this. So important is the report considered that there are those who believe the Senate will not confirm the members of the Communications Commission until they see how the Commission acts on the highly controversial religious-educational matter, and perhaps will judge them accordingly.

Friends of Mr. Gary argue that unquestionably he has made good as a Commissioner, is ably qualified for the position, has undertaken the task with enthusiasm, has labored without regard to hours, enjoys the work, and therefore should be allowed to continue. It is their contention that having become familiar

with the problems of the broadcasters and in particular being responsible for the all important religious-educational report that it would be a mistake to put a new man in his place, who would have to lose all the time of getting up to where Mr. Gary now is. They contend that this would be a bad thing for the radio industry.

Mr. Gary's supporters, accordingly, believe it would be better, rather than to disturb the present broadcasting set-up, for the President to take care of Mr. Prall elsewhere. As the stories go, Representative Prall, however, is keen on having this particular job.

One solution in favor of Mr. Gary would be the appointment of Judge E. O. Sykes to the U. S. District Court of Appeals, which sits in review on appeals from the F.C.C. Gary could then succeed Judge Sykes. There are, however, no vacancies in the Court of Appeals at the present time.

Several months ago Representative Prall, who is 64 years old, was in an automobile smashup while driving with Senator Wagner, upstate in New York. Both were injured, Mr. Prall sustaining a fractured leg. He has been in the hospital most of the time since but Miss Hildebrand, his secretary, reports that the New York Representative is now able to get around and if there is no setback that he will arrive in Washington shortly before Christmas.

As is the case with Mr. Prall, Mr. Gary, who was formerly Consul General to Egypt, is likewise a Democrat and a personal friend of both President Roosevelt and Senator Wagner.

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#### "WHY SHOULD BROADCASTERS BE TARGET?" L. CALDWELL ASKS

There is no better way of bringing on a Hitler regime over the radio in this country than by having the Government attempt to interfere with private censorship, Louis G. Caldwell, who was the first General Counsel of the old Federal Radio Commission, said, addressing the annual conference of the American Civil Liberties Union in Washington. He said the Union's first target should not be the unfortunate broadcaster over whom the Communications Commission exercises a life-and-death power every six months.

Let me express frankly a measure of disappointment at the position taken by the Civil Liberties Union during the past year or two on freedom of speech by radio", Mr. Caldwell admonished. "I have agreed with its position so regularly in the past on all questions involving liberty of expression - and particularly with regard to post office censorship - that the disappointment is all the greater when I find its representatives advocating



what seems to me an inconsistent and an indefensible point of view on radio censorship.

"The evil to be avoided - if we have any regard for the lessons of history - is governmental restraint on liberty of expression, whether imposed by hereditary monarchs or democratic majorities. Yet this organization, at least in its recent appearances in Washington, is directing some of its shafts at a phantom which it calls private censorship, apparently not realizing that if there is such an evil it is due above all to what ought to be considered an unconstitutional censorship by a governmental agency."

Here it was that Mr. Caldwell said that in his opinion there is no better way of bringing on a Hitler regime over radio in this country than by having the Government attempt to interfere with private censorship - "which, in most cases", Mr. Caldwell added, "is simply perfectly legitimate editorial selection - and by seeking additional governmental interference with broadcast programs. In a word, it seems to me that some of your efforts have been directed at increasing the very evils which you have usually combatted."

Mr. Caldwell's assigned topic was, "Freedom of the Air."

"I shall waste no time discussing freedom of speech by radio in time of war. In my opinion, if the statutes now on the books be given effect, no such freedom exists, since the President can close down any station for any reason. He can also do this on proclamation of a national emergency. I shall resist the temptation to speculate as to what this means", the speaker said getting into his stride.

"In time of peace - or of non-emergency - the situation is bad enough. We have seen that a newspaper may not be suppressed for publishing defamation of public men, no matter how scandalous or how regularly continued. Yet a broadcasting station can be put out of existence and its owner deprived of his investment and means of livelihood if it is used for the oral dissemination of exactly the same language.

"The power to suppress a broadcast station is exercised principally by refusing to renew a license because of utterances previously disseminated over the station, on the ground that the utterances do not meet the test of 'public interest, convenience or necessity.' The story of how the intent of our forefathers as expressed in the First Amendment, and the intent of our modern lawmakers as expressed in the Radio Act, have been successfully circumvented is one of the most interesting and instructive in the annals of administrative law. We can only glimpse at some of the chapter headings.



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"The crux of the matter is that each broadcaster must come to the Government every six months as a supplicant for the right to continue in business. The agency to which he must apply for renewal of license is the Federal Communications Commission, formerly the Federal Radio Commission. This agency has the power to issue licenses for a three-year period. There was a period during which licenses were limited to three months, but that period expired several years ago. Still, the Commission persists in the six-months' limitation."

Mr. Caldwell cited the following as more or less obvious conclusions of a preliminary character:

1. Broadcasting has succeeded the public platform. It has become an agency of mass communication comparable to the press, and is at present far and away the most impressive claimant for protection under the constitutional guaranty of the freedom of speech just as the newspaper is the principal claimant for protection under the sister guaranty of the freedom of the press.

2. The test to apply is not whether there is now any visible government restraint of that freedom, but rather it is the power, under our Constitution and our laws, to impose such a restraint.

3. A proper basis for comparison, if we can find it, is the present scope of the freedom of the press.

"The statute, now the Communications Act but before that the Radio Act, has, ever since 1927, contained a section specifically prohibiting any censorship of radio programs and any abridgment of free speech by the licensing authority. I think the section means what it says", Mr. Caldwell concluded.

"I can prove it by references to the legislative history of the Act, including the debates. It was intended to maintain the policy of complete non-interference with broadcast programs which had previously been followed by the Secretary of Commerce during the several years prior to 1927 in which he had the regulation of broadcasting."

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## MULLEN RCA INFORMATION HEAD APPOINTMENT CONFIRMED

Confirmation is at hand with regard to the creation of a Department of Information by the Radio Corporation of America with Frank E. Mullen, formerly Director of Agriculture of the National Broadcasting Company at Chicago. Mr. Mullen also takes over the duties of Glenn I. Tucker, who resigned.

"The reorganization takes cognizance of the constantly increasing number of requests to the Radio Corporation for information relating to all branches of radio", an RCA statement explains. "The public and the press look upon RCA as an authoritative source, since its companies represent broadcasting, transoceanic, domestic and marine radio-telegraphy, and manufacturing.

"Mr. Mullen is no stranger to the 'RCA family', having been with the National Broadcasting Company since its formation in 1926. His first NBC assignment was the organization of an agricultural service, which he started at Station KFKX at Hastings, Nebraska. He soon was transferred to Chicago, and opened the offices and studios of NBC there.

"'The National Farm and Home Hour', the noon broadcasting program that numbers a host of farmers and city dwellers interested in agriculture among its followers, was organized by Mr. Mullen six years ago. His work in directing that program has given him an exceptionally wide acquaintance throughout the country.

"Before entering radio work, Mr. Mullen was a newspaper man. He was born in Kansas and spent his boyhood and high-school days in South Dakota. He was a journalism student at Iowa State College when the United States entered the war, and he enlisted in the Army, in May, 1917. After serving overseas with the Tenth Engineers from September of that year until February, 1919, he completed his course at Ames and began newspaper work immediately after his graduation. This led directly to his interest in radio, when he was assigned in 1923 by the National Stockman and Farmer, a weekly farm paper published in Pittsburgh, to organize the first radio broadcasting service to farmers ever undertaken in the United States."

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## COMMUNICATIONS NOTABLES GRIDIRON GUESTS

Among those from the Communications industry present at the Gridiron Dinner in Washington last Saturday night were:

M. H. Aylesworth, President, N.B.C.; James G. Harbord, Chairman, R.C.A.; Richard C. Patterson, Jr., NBC, Davis Sarnoff President, R.C.A.; Judge E. O. Sykes and Hampson Gary, Federal Communications Commission.

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## PACIFIC RADIOPHONE CARRIES U. S.-JAPAN FELICITATIONS

The inauguration of the radio-telephone between the United States and Japan brought with it a cordial exchange between Judge E. O. Sykes, Chairman of the Federal Communications Commission in Washington, and Takejiro Tokonami, Japanese Minister of Communications in Tokyo. This followed a conversation between Arthur W. Page, Vice-President of the American Telephone and Telegraph Company, and Seichi Shindo, Director General of Telecommunications, and preceded the talk between Secretary Hull and Minister of Foreign Affairs Koki Hirota.

Addressing Judge Sykes, Mr. Tokonami said that the United States and Japan at last have become the two great neighboring countries bordering the Pacific Ocean.

"Just at this moment it is very significant that a radio telephone link has been established between Japan and the United States", the Minister continued. "This new service, I believe, will make cultural and economic ties of the two countries closer and closer and develop our traditional friendship to a great extent."

"This is but another marvelous achievement whereby our Nations are brought closer together and should further promote the cordial relationships existing between these countries", Judge Sykes replied.

"I must refer, with a great deal of pleasure, to the sincere cooperation which has always existed between your delegations and ours to international radio-telegraph conferences. We very much appreciate this cordial relationship and feel sure that it will continue in the future."

The voices from Japan were heard distinctly and as someone observed "with an unmistakable suggestion of great distance." The first Japanese speaker began by saying, "Good Morning", which brought a smile at this end of the line for, though it was 10 o'clock Saturday morning in Tokyo, it was but 7 o'clock Friday night in Washington. As is usual in these affairs, none of our diplomats spoke the language of the other country. The Japanese all spoke English.

Those listening at the State Department here were Dr. Stanley K. Hornbeck, Chief of the Division of Far Eastern Affairs; Harry A. McBride, Assistant to the Secretary of State; Hugh S. Cumming, Jr., Executive Assistant to the Secretary of State; Maxwell M. Hamilton, Assistant Chief of the Division of Far Eastern Affairs; Leo D. Sturgeon, Division of Far Eastern Affairs; Michael J. McDermott, Chief of the Division of Current Information; Hiroshi Saito, Japanese Ambassador; Keinosuke Fujii, Counselor of the Japanese Embassy; Takemi Miura, First Secretary of the Japanese Embassy; L. B. Wilson, President, Chesapeake and Potomac Telephone Co and J. W. Adams, Division Manager, American Telephone and Telegraph Company.



Those in Tokyo were:

Kensuke Horiuchi, Chief, Bureau of American Affairs; Joseph C. Grew, American Ambassador; Chokuro Kadono, Chairman, Japanese-American Trade Council; and G. W. Gilman, Bell Telephone Laboratories.

The commercial service was formally opened Saturday afternoon by conversation between Mayor LaGuardia, of New York, and Mayor Ushizurka, of Tokyo, and Takitora Ogata, editor-in-chief of the Tokyo Asahi and Edwin L. James, Managing Editor of the New York Times.

The commercial rate is \$30 for three minutes. Speculating upon what uses the Japanese might make of the service for diplomatic purposes, someone remarked,

"They will not do a great deal of talking at that rate."

"The deuce they won't", a listener continued, "the Japanese Embassy in Washington thinks nothing of spending \$400 to \$500 on a single message to Japan."

The press arrangements in connection with the Japanese telephone inauguration as carried out by the new A. T. & T. Information Bureau in Washington, in charge of Edwin F. Hill, were highly commended by the correspondents. With Mr. Hill on this occasion was W. J. O'Connor, Assistant to President Gifford of the Telephone Company.

Anticipating the difficulty the newspaper men might have with the Japanese names and taking down the formal speeches, they were supplied in advance with a list of the participants at the State Department and at Tokyo, with continuity, telling exactly when who in Washington would call who in Japan and vice versa, what they would say to each other when they did. There was also the full text of the formal greetings of the Americans and Japanese and finally photographs of the wireless receiving stations in Japan, the Japanese telephone operators, and a map showing the new radio circuit from San Francisco to Tokyo.

Thus it was only necessary for the correspondents to follow their copy and as they listened through specially provided headphones, to jot down departures from the planned conversation such as Mr. Saito, the Japanese Ambassador, wishing Mr. Grew, the American Ambassador in Japan, "luck with his golf as well as his official business", and the unexpected greeting of Mr. Grew's daughter, who was at the State Department with her father in Japan.

Everything, including the slightest details, were worked out in advance for the convenience of the correspondents. It must have taken many days, if not weeks, to gather the text and photographs from Japan to say nothing of the miracle anyone has to perform to get anything ahead of time, if at all, from our own State Department.

For the accommodation of the correspondents, since the ceremonies came at the dinner hour, a buffet supper was served. Here, too, was something different. It seems to be the general idea that at any affair in connection with the press there has to be enough liquor to float a battleship. There wasn't a drop at the A. T. & T. supper which, on a working assignment, was fitting and proper, in the opinion of this writer (who is far from being a day). The result was that by 7:30 o'clock, most correspondents were back in their offices with the complete story, with clear heads to write it, and with plenty of time to catch the early edition. After all, what the newspaper men want in covering an assignment like this is service, and they got it at the A. T. & T. Japanese telephone opening with a capital "S".

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#### DUAL CARRIER OFFICER RESTRICTION DEFINED

At its general session last Friday, the Federal Communications Commission issued Commission Order No. 8, which reads as follows:

"The Commission having under further consideration the matter of regulations governing authorizations of persons, under Section 212 of the Communications Act of 1934, to hold the positions of officer or director of more than one carrier:

"IT IS ORDERED, That the regulations prescribed in Commission Order No. 4 adopted on October 9, 1934, as amended in Commission Order No. 7 on November 2, 1934, apply to any person authorized by or undertaking for each of two or more carriers to perform the duties, or any of the duties, ordinarily performed by a Director, President, Vice-President, Secretary, Treasurer, General Counsel, General Solicitor, General Attorney, Comptroller, General Auditor, General Manager, General Commercial Manager, Chief Engineer, General Superintendent, General Land and Tax Agent, or Chief Purchasing Agent."

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#### TOM SHIPP IS LAID UP

Thomas R. Shipp, well known publicist and personal representative in Washington of A. Atwater Kent, is sojourning at the George Washington Hospital as a result of cranking a motorboat at his country place. Mr. Shipp sustained injuries to his back necessitating an operation. However, he is now progressing nicely and expects to leave the hospital within two weeks, if not sooner.

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## BROOKLYN EAGLE'S RADIO PLEA HEARD

When questioned as to the financial ability to operate a radio station in Brooklyn, M. Preston Goodfellow, publisher of the Brooklyn Daily Eagle, testified that the Eagle was making a profit and could support a first class station. The Eagle has applied for the frequencies now being used by four other Brooklyn stations and if successful in this, hopes to combine them into a single station.

Mr. Goodfellow estimated that it would cost \$50,000 to set up the proposed new station and \$150,000 to operate it the first year. He said that a considerable part of this money would be available immediately, under a financial arrangement contingent upon the issuance of the license.

Inquiries about a broadcast "Little Red School House" over Station WVFW, Brooklyn, were made by Thomas P. Littlepage, Jr., counsel for the Brooklyn Eagle. Miss Anna Dimin, of WVFW said that the Station had no connection with the feature. Miss Dimin explained the announcer invites children supposed to have talent, to come up for auditions.

"They are charged a fee, are they not?" Mr. Littlepage inquired. "Have any of the children who came up there ever been turned down?"

Miss Dimin said she didn't know. Miss Gladys Pickell was mentioned as a teacher of dancing, but having no connection with the station.

"She is paid nothing, but she pays the station for the broadcast", Miss Dimin explained.

"What sort of split does this lady have with the station for the money taken in on the program of the Little Red School House?" Mr. Littlepage inquired. "Is there any relation between the broadcasting time paid for with the amount of money which is taken in as fees?"

Miss Dimin replied she did not know anything about the financial end of the station.

Referring to Messrs. Gilard, Croninberg and Di Angelo, owners of WLTH, WARD and WVFW, all in Brooklyn, Charles D. Isaacson, who acted as program director of these three stations, said:

"I gradually came to the conclusion that those men were temperamentally unfit to operate a radio station; that as far as Brooklyn was concerned, they had no real interest in the community; that they had no interest excepting operating the station for the cheapest and pettiest kind of commercial purposes whatever, and whatever we did of a civic or educational character was done only



as a gesture to fool the community, and whatever they did was only for immediate commercial purposes."

Having reached this conclusion, Mr. Isaacson said that he resigned.

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# DECLARES TELEGRAPH COMPETITION MAKES US RIDICULOUS ABROAD

When Sosthenese Behn, President of the International Telephone and Telegraph Company, was asked by Dr. Irvin Stewart, Chairman of the Telegraph Division of the Federal Communications Commission what has been the effect upon American interests of competition in the foreign field, that is, competition with the American communication companies, he replied:

"If I may use the word, making us ridiculous. That is really the answer. If I go to London to discuss something they consider what they want, and discuss it with the Western Union, the Radio Corporation and ourselves, and they play one against the other. That is true of France. It is true of Germany. It is true of Switzerland."

Dr. Stewart asked if the companies within the British merger had been better off or worse off or in about the same condition than they would have been if the merger had not taken place?

"I think they are distinctly better off", Mr. Behn replied. "In fact if the merger had not taken place, there would have been all kinds of failures, very disastrous conditions. And the British Government decided that it was in the best interest of the people, the public interest, to conserve these interests by unifying them."

"Is it a matter of keeping the cables from being junked?" Dr. Stewart inquired.

"The British Naval officers perhaps attach more importance to cables than our officials have. I certainly believe that the cables still have a part to play between shore to shore, but the radio has made great strides and I must admit we are very radio-minded, but we still believe the cables have a part to play, and that they will gradually be substituted and supplanted by radio, with the art developing as it is."

Addressing David Sarnoff, President of the Radio Corporation of America, Dr. Stewart said he thought perhaps a statement Mr. Sarnoff had made might be open to the interpretation that a merger would only be salvaging something for the owners of the cable.

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"I had not intended to make that statement but I have made it", Mr. Sarnoff replied. "That inference is inescapable. I would not recommend a merger for the purpose of salvaging the cables. I do say that a merger may save the cables."

Mr. Sarnoff said that he would not favor one company to control all forms of communication, - telegraph, telephone radio.

"I would favor one unified telegraph to compete with the present unified telephone company in its own field", the RCA head declared.

There was some extra entertainment for the spectators when later Mr. Sarnoff, discussing the matter of unemployment which might be caused by a merger said:

"I noticed in the testimony yesterday that Colonel Behn referred to the possibility of a few Vice-Presidents, perhaps, losing their jobs, but he said that was not important.

"I will go him one better and say that perhaps a few presidents might lose their jobs and that would not be important."

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#### CANADA CHARGES RADIO INTERFERENCE TO U. S.

The Canadian Radio Broadcasting Commission announced yesterday (Dec. 10) at Ottawa, the Associated Press reports, that representations have been made to Washington concerning the alleged blanketing of Canadian stations by stations in the United States. In particular, the Commission said many complaints had been caused by the blanketing of Station CFRS, in Toronto, by Station WLW, in Cincinnati.

The Commission requested that action be taken for the removal of such interference.

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