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SEGAL AND SMITH FACE SUSPENSION IN DRASTIC FCC ORDER

Culminating an investigation of alleged irregularities in legal practice before the Federal Communications Commission, the FCC on Thursday adopted a drastic order calling upon Paul M. Segal and George S. Smith, prominent Washington radio attorneys, to show cause why they should not be suspended and disbarred from practice before the Commission.

The lawyers are charged with having set up a dummy applicant in order to defeat other applicants for facilities before the Commission. They are allowed 31 days to file answers under oath to the charges.

While the special committee headed by Commissioner George Henry Payne initiated its inquiry primarily because of charges made against Smith, it also investigated other complaints and implicated Segal as well as Smith in its findings.

Segal denied that his conduct in connection with the matter in question had not been entirely proper and consistent with a sound administration of law and further stated that he had had no opportunity to relate the facts to the investigation committee prior to the recent and present publicity.

Smith had previously been reprimanded for inserting affidavits in FCC files in violation of Commission rules. A docket clerk who assisted him was transferred to another division of the FCC.

The committee which made the inquiry included Commissioners Thad H. Brown and Paul A. Walker, as well as Commissioner Payne. The text of the FCC order is as follows:

"Whereas, The Commission having conducted an investigation into the facts and circumstances concerning the alleged unauthorized and unlawful interpolation of documents into the records of the Commission in the case of Richard M. Casto, Docket 4212, and having inquired into the demeanor, good faith and conduct of Paul M. Segal and George S. Smith, attorneys for the said Richard M. Casto, in the making and prosecution of the application in the said case: and

"Whereas, the Commission having further inquired into the demeanor, good faith and conduct of said Paul M. Segal and George S. Smith in connection with the organization of and filing of applications with the Commission by or for the Palmer Broadcasting Syndicate, Inc., and

"It appearing that the demeanor, good faith, and conduct of the said Paul M. Segal and George S. Smith may constitute unbecoming, unethical and unprofessional conduct and demeanor as practitioners before this Commission; may constitute concealment in obtaining admission to practice before the Commission of material facts with reference to their legal qualifications, professional standing, character or integrity; or may constitute a violation of their oaths taken upon admission to practice before the Federal Communications Commission, that they would demean themselves as practitioners before the Commission uprightly and according to law, and that they would support the Constitution of the United States and would conform to the Rules and Regulations of the Commission, and

"It appearing that charges should be preferred against the said Paul M. Segal and George S. Smith, affording them an opportunity to be heard as to why they and each of them should not be suspended, disbarred, or their right to practice before the Commission revoked, or their further appearance as attorneys before this Commission should not be prohibited;

"It is ordered, that charges be and they hereby are preferred by the Commission against the said Paul M. Segal and George S. Smith for alleged unbecoming, unethical and unprofessional conduct and demeanor; for the alleged concealment in obtaining admission to practice before this Commission of material facts with reference to their legal qualifications, professional standing, character or integrity; or for the alleged violation of their oaths taken upon admission to practice before the Federal Communications Commission, that they would demean themselves as practitioners before the Commission uprightly and according to law, that they would support the Constitution of the United States and would conform to the Rules and Regulations of the Commission, in the following particulars, to wit:

- "1. That the said Paul M. Segal and George S. Smith did, on or about the 9th day of December, 1936, knowingly and with intention to deceive, interpolate, or aid and abet in the interpolation of, certain signed and notarized depositions into the files of the Commission in the case of Richard M. Casto, Docket 4212, contrary to the Rules and Regulations of the Commission.
- "2. That the said Paul M. Segal and George S. Smith did represent said Richard M. Casto in the preparation and filing of his application for a radio station construction permit and in hearings before this Commission on such application, all of which was done with the knowledge that the said Richard M. Casto was not the true applicant, that he did not own the funds as represented, and that he was a subterfuge or

- "2. (Cont'd) dummy applicant for another person, or persons, all of which was done to deceive and mislead the Commission in its consideration of the said application and other applications; and to hinder and delay other applicants from obtaining or operating under authorizations of this Commission.
- "3. That the said Paul M. Segal and George S. Smith did conceive, organize and cause to be chartered the Palmer Broadcasting Syndicate, Inc., for the purpose of using said Palmer Broadcasting Syndicate, Inc., as a dummy applicant for authorizations from the Commission, and for the purpose of deceiving and misleading this Commission in its consideration of applications to be filed by the Palmer Broadcasting Syndicate and applications of other applicants, and to hinder and delay other applicants in obtaining or operating under authorizations of this Commission.
- "4. That the said Paul M. Segal and George S. Smith did knowingly and with the intention to deceive have the said Palmer Broadcasting Syndicate, Inc., file applications before the Commission for stations or construction permits at Portland, Maine, Lewiston, Maine, and Cheyenne, Wyoming, for the purpose of deceiving and misleading the Commission in its consideration of said applications and applications of other applicants, and to hinder and delay other applicants in obtaining or operating under authorizations of this Commission.

"It is further ordered, That the said Paul M. Segal and George S. Smith shall file with the Commission within thirty-one days from the date hereof, their several answers under oath to the foregoing charges, which shall include a statement as to whether they wish to appear and be heard thereon.

"It is further ordered, That the Commission enter upon a hearing, at a time and place hereafter to be fixed, to determine the truth or falsity of the said charges, and to determine whether the said Paul M. Segal and George S. Smith and each of them should be suspended, disbarred, their right to practice before the Commission revoked, or their further appearance as attorneys before this Commission prohibited."

A statement issued by Paul M. Segal regarding the disbarment proceedings reads as follows:

"Telegraph Commissioner George H. Payne after a preliminary investigation of which he had charge has requested that the Federal Communications Commission hear evidence on charges of improprieties on the part of my associate George S. Smith and myself.

"Of course, the Commission in the face of such charges owes it to itself to hear the testimony and find out the facts. The proceeding by way of citation for disbarment is the only formal proceeding available for this purpose under the Commission's regulations.

"Both Mr. Smith and I are confident that our conduct as practitioners and lawyers will bear any scrutiny by the Commission or by any of the courts before which we have practiced for many years. We also feel certain that Commissioner Payne's colleagues on the Federal Communications Commission will give us a prompt and fair hearing and the vindication to which we are entitled. We intend to give every cooperation.

"In the instance of Mr. Smith, matters of which he is accused have been thoroughly investigated in a previous informal proceeding by the full Commission, after which a letter was written him which, although it reprimanded him, said in part:

"...we do not find that you should be cited to show cause why you should not be disbarred or suspended from practice before this Commission."

"As for the accusation against me, my conduct in connection with the matter has been entirely proper and consistent with a sound administration of law. The most simple explanation on my part will show this. I can only express regret - and I feel that Commissioner Payne's colleagues have not been told - that I have had no opportunity to relate the facts to the investigating committee headed by Commissioner Payne prior to the recent and present publicity. Had I been extended an opportunity to clear up the facts for the committee I am sure the disbarment proceedings would not have been brought.

"On May 3, 1937, a Commission attorney told me over the telephone that I would be given an opportunity to appear before Commissioner Payne's committee; he agreed to telephone back to make definite arrangements for my appearance; I have not heard from him."

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One aftermath of the "Hindenburg" disaster was recounted at the Navy Department this week, recalling that an amateur radio fan frequently reported the destruction of the "Hindenburg" during its trips last year.

The man, a radio experimenter in Chicago, called the Navy on at least three occasions last Summer, reporting that he had just picked up an SOS from the "Hindenburg" while it was over the ocean. Officers could not recall his name, as no record of his reports was available, and added he had not sent in a message during the only crossing this year.

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"MONOPOLY" FEARED IN TRANSFER OF STATION TO NEWSPAPER

Expressing apprehension that the transfer of WREN, Lawrence, Kans. to the Kansas City Star "would be a step in the direction of monopoly", Examiner George H. Hill this week submitted an adverse report to the Federal Communications Commission.

The Kansas City Star had arranged to buy the station for \$295,000 and had put up an option of \$30,000. Station WREN is 22 miles from Kansas City, operates with power of 1,000 watts at nighttime and 5,000 watts in daytime, and delivers a satisfactory signal to Kansas City, Mo.

Although the newspaper is admittedly a pioneer in broadcasting, the Examiner pointed out that the transfer "would place in the hands of the largest newspaper in Kansas City, two of the largest stations now serving this area, and would remove from the Kansas City area a formidable competitor."

The Kansas City Star first became actively interested in broadcasting as early as January, 1922, the report states, and began operating its station a few months after KDKA, in Pittsburgh, went on the air. It now operates Station WDAF on 610 kc. with 1 KW nighttime power, and 5 KW daytime power.

"Up until September 21, 1925, no commercial programs had been broadcast by Station WDAF, and it was not until several years later that the station was put on a paying basis", the report states. "It was shown that approximately \$200,000 was expended by the Kansas City Star Company in the operation of Station WDAF without any direct return on the investment. The company has kept abreast of technical developments in the radio art and has operated the station efficiently.

"The present construction program of Station WDAF involves an expenditure of from \$125,000 to \$135,000."

Discussing the proposed purchase price, Examiner Hill said:

"It is apparent that approximately 77% of the proposed purchase price would represent what the transferee contends is 'good will' or 'going concern' value, while approximately 23% of the purchase price would represent what the appraiser for the applicant designates as sound value of the property sold to a going concern. Since the record discloses that Station WREN has been operated at a loss in excess of \$37,000 during the period it has operated, it is difficult to understand how the station can be operated so as to earn a reasonable return (which is fixed by the transferee at 10% or more of the purchase price) on an investment of \$295,000, and in addition furnish radio service in the public interest. Therefore, should the applica-

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tion be granted, the existing rates for time on Station WREN must be increased or additional time must be sold in order to bring a fair return on the proposed investment of the Kansas City Star Company, and either an increase in existing rates or the sale of additional time may adversely affect public interest."

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ZENITH CONVENTION ORDERS JUMP TO \$12,000,000

With the signing up of more than \$12,000,000 worth of business at the annual Zenith Radio Corporation distributors' meeting, unprecedented in its history this company, just getting into its stride at the new Chicago plant, expects to turn out a maximum of 10,500 radio receivers in eight hours.

"The enthusiasm with which the new 1938 Receivers were accepted is evidenced by initial orders placed by Zenith distributors for immediate delivery totaling \$12,234,920 at factory prices, believed to be the largest volume ever booked by any radio manufacturer at a distributor convention", Commander E. F. McDonald, Jr., said. "These initial orders are principally for dealers' stocks and display purposes, and indicate what the demand for the Zenith line may be during the coming season.

"The above figures of orders taken at the distributors' convention just closed are approximately three times the \$4,187,384 of initial orders placed at the corresponding Zenith Convention a year ago. Further evidence of growth is shown by the fact that two years ago, Zenith Retail Dealers numbered 3,500. A year ago this had increased to 13,000 and at present Zenith has over 20,000 dealers handling its products in the United States. It is also sold in 97 foreign countries.

"Because of the steadily increasing public acceptance of the company's products, the above large orders were to some extent anticipated and production scheduled accordingly. Shipments against these initial orders have already begun and should be completed by August 1.

"During the past year the Company did not at any time have any distress merchandise and there were no cut-rate sales or price reductions. To that same end Zenith will continue to rigidly control production this year."

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TWO ADDITIONAL CHANNELS RECOMMENDED FOR RCA

Allocation of two additional point-to-point radio channels to R.C.A. Communications, Inc., was recommended to the Federal Communications Commission this week by Examiner R. H. Hyde. The channels specified are 2776 and 2780 kc.

The Examiner found that the additional frequencies are necessary for RCA to maintain service between New York and Washington, New York and Boston, and San Francisco and Los Angeles. He stated that frequencies now used by RCA are adaptable to night service for these areas and that the company has been forced to use leased wires for some of its business.

"The frequency of 2770 kc is employed by the Labor Department Immigration and Naturalization Bureau", the Examiner pointed out, for service along the Canadian border. No interference would be caused to this service under present conditions, but the fact that the border service may be extended to the Mexican boundary suggests the remote possibility that some conflict might develop later between the two services in the vicinity of Los Angeles. This same frequency of 2770 kc is also employed by the Interior Department, National Park Service, but existing geographical and frequency separations appear to be adequate to prevent interference to that service. It also appears that the separations with respect to Naval Reserve Stations operating on 2772 kc at Key West and Seattle are adequate to prevent objectionable interference.

"From examination of all the evidence relative to the question, it appears improbable that the proposed use of the frequencies of 2776 and 2780 kc. would cause interference to any existing service.

"The applicant proposed to employ the frequency of 2776 kc for communication from San Francisco (Bolinas) to Los Angeles and by duplication of the use of the frequency for communication from Washington, D. C. to New York City, and to employ the frequency of 2780 kc for communication from Boston to New York City. These frequencies, which are lower in the spectrum than the frequencies available for use at the applicant's San Francisco, Washington, D. C. and Boston stations under present licenses, excepting the temporary assignment of 2776 kc to the Washington station, are requested by the applicant for the purpose of improving existing service from San Francisco to Los Angeles and from Washington and Boston to New York. The lowest frequency available to the applicant under present licenses for service from San Francisco to Los Angeles is 4550 kc.; the lowest available at Washington under a regular license is 5105 kc; and the lowest available at Boston for service to New York is 5180 kc. The frequency of 3275 kc is licensed to the Boston Station WQEL, but cannot be used for service to New York because of its use in service from New York to Washington."

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FTC ORDER HITS DEALERS IN RADIO SETS

A group of manufacturers of and dealers in radio sets and radio parts, located principally in Washington, Philadelphia and in New York and vicinity, has been ordered by the Federal Trade Commission to cease and desist from unfair methods of competition in the interstate sale of their products. The order also is directed against two companies manufacturing and selling escutcheons and name plates for use on radio products.

The order prohibits the respondents from using as marks or brands on their products certain well-known and long established names of other manufacturers and dealers in the radio and like industries without consent of the lawful owners of such names.

According to findings in the case, among the names, brands and symbols adopted and used by the respondents, without authority from the owners, are Marconi, Edison, Bell, Victor, Majestic and Brunswick, and the letters R.C.A. and G.E., standing alone or with other words, or colorable imitations or simulations thereof.

Metal Etching Corporation, 1001 Essex St., Brooklyn, and M. Hermann, an officer of the company, and Crowe Name Plate and Manufacturing Co., 1479 Grace St., Chicago, and its officers, E. C. Coolidge and I. Robinson Smith, are ordered to discontinue selling or distributing escutcheons and name plates bearing the trade-marks and names in question to manufacturers, assemblers or dealers in radio products, except to the owners of such trade names or marks, or to the licensees of the owners.

The order further directs that the respondent manufacturers of and dealers in radio products cease representing, directly or indirectly, through use of trade names or marks of which they are not the owners, and without the permission of the lawful owners, that such products are those manufactured, sold, endorsed or licensed by the late Thomas A. Edison; Thomas A. Edison, Inc., American Telephone & Telegraph Co., Western Electric Co., Marconi Wireless Telegraph Company of America, Radio Corporation of America, Victor Talking Machine Co., Brunswick-Balke-Collender Co., Warner Brothers Pictures, Inc., and its subsidiary, Brunswick Radio Corporation, Grigsby-Grunow Co., or Majestic Radio and Television Corporation, and General Electric Co.

The respondent manufacturers of radio products and dealers who are ordered to cease and desist from unfair methods of competition, together with their officers or agents, are: Knight Electric Co., Inc., Temple Electric Corporation, Acme Radio Corporation, Pirate Radio Corporation, and Gillet Radio Corporation, all of 16 Hudson St., New York City, and their officers, Eric Houser, David I. Morrison, A. M. Frank, Arthur and Charles Dreher, and Ruth Wasserman; Harvard Radio Tube

Testing Stations of Pennsylvania, Inc., 208 North Broad St., Philadelphia, and Julius M. Schoenberg; Ross Distributing Co., 2020 Chancellor St., Philadelphia, and Larry B. Ross; Sun Radio and Service & Supply Corporation, 938 F St., Washington and Emanuel Rosenweig; Schiller Bros., Inc., 922 F St., Washington, and Louis S. Schiller; Petter Robbins, trading as Robbins Radio Co., and as Ambassador Radio Co., 940 F St., Washington, and F. C. Scruggs, trading as Call Radio Co., 636 H St., N.E., Washington.

The complaint was dismissed as to the following respondent companies and their officers for the reason that there was no evidence to establish the allegations made against them: Etched Products Corporation, Long Island City, New York; and Albert Nierenberg and Walter H. Miller; Electro Chemical Engraving Co., New York City, and F. E. Switzer, N. L. Jacobus, Robert Schlesinger, Julius Erdoes and L. S. Southwick; Premier Metal Etching Co., Long Island City, New York, and Herbert Pape, Karl D. Johnson, Ernest A. Rottach and Hugo Lehrfeld; and Leon C. Sacks, Charles Johannes, Morris A. Weiner and J. R. Rosenberg.

The case was closed without prejudice as to Radio Products Corporation, Franklin Sales and Distributing Co., Inc., and S. Buchman.

According to findings in the case, all the respondents except those concerning whom the complaint was dismissed or the case closed without prejudice, cooperated among themselves and with one another to deceive the public and to compete unfairly with other manufacturers and dealers in radio products.

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NEW STATION AUTHORIZED; ANOTHER IS RECOMMENDED

The Federal Communications Commission this week issued a construction permit for the building of a new broadcasting station at Greenville, Texas, by the Hunt Broadcasting Association. The facilities to be used are 1200 kc. with 100 watts power, daytime.

Simultaneously, Examiner Robert L. Irwin recommended that the application of the Northwest Publishing Co., of Danville, Ill., be granted a construction permit to build and operate a station on 1500 kc. with 250 watts daytime subject to approval of a transmitter site by the FCC.

The Northwestern Publishing Co. is a subsidiary of the Gannett chain of newspapers. It publishes the Danville Commercial News.

Stations already owned or controlled by the Gannett Company are: WHEC, at Rochester, New York, and WTHT, at Hartford, Connecticut. The company also owns 40% of the stock of the Olean Times-Herald, which owns WHDL, at Olean, New York. It also owns all the stock of the Press Company, and the latter company in turn owns 25% each of the stock of Stations WOKO and WABY. The Elmira Star-Gazette is solely owned by the Gannett Company, and the paper handles all the programs of Station WEST under a contract with Cornell University.

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SOME RADIO LAWYERS RUINING PROFESSION, PAYNE SAYS

An attack on some of Washington's radio lawyers by Commissioner George Henry Payne in an address before the National Lawyers' Guild in New York recently was disclosed this week when the text of the address was published in the Congressional Record.

As no advance copies of the address were distributed to the press and little publicity was given to the speech when it was delivered, the Record scored a "scoop" when it carried Commissioner Payne's address under an extension of remarks of Senator Alben W. Barkley (D.), of Kentucky.

While the speech was made prior to the dinner of the Federal Communications Commission Bar Association, at which Commissioner Payne was lampooned, its publication this week served as an answer by the New York Progressive Republican.

Highlights of Commissioner Payne's address follow:

"It was Sidney Smith who said that there is nothing of which nature has been more bountiful than poets. They swarm, he said, like the spawn of codfish, with a vicious fecundity. Had the reverend doctor lived in Washington in our day, when a new and lucrative industry is forging ahead with cyclonic fury, he would have concluded, I fear, that poets are, as to lawyers, a mild and not unpleasant itch in the face of a devastating plague.

"It was remarked one day by a fellow Communications Commissioner that it was impossible to go out into the hall of the Federal Communications Commission's offices in Washington without stepping on a few radio lawyers. I would not say a word in disparagement of the many fine men who have a profession and legal interest in the regulations of the industries coming under the Federal Communications Commission, but just as you have found it is necessary to organize for law reform in the broader and larger field, so reforms among those guilty of champertous practices will be necessary in Washington.

"In no field is there a greater need for broad and humane consideration of the problems that confront us than in that section of the law that devotes itself to radio. The enormous future, the prospects of wonderful discoveries and developments, make this new art, industry, and science the most attractive of activities. With 27,000,000 receiving sets in existence, practically covering the homes of the country, the responsibility of the men solving its law problems is unique.

"How much or how little time there is given among the radio lawyers to weighing this responsibility I would not venture to guess, but I do know that able men of high character, and leaders of what is known as the Federal Communications Commission Bar Association, have come to me to say that certain men are ruining the profession. Then they add, rather pitifully, that they can't do anything about it because no one has the courage to come forward.

"The other day an attorney was found to have changed documents in the docket room concerning a case before the Commission through the weakness of a young employee. It was Joseph Choate who said that there are two kinds of lawyers - those who know the law and those who know the judge. Now, they say in Washington that the two kinds are those who know the law and those who know the docket clerk.

"It is all rather pitiful; but there is hope. Hope, indeed, when out of the welter of selfishness there is courage and idealism enough to organize such a movement as yours - a truly historic event."

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RADIO-PHONE BETWEEN U. S. AND CHINA OPENED

Mrs. Franklin D. Roosevelt participated in a ceremony on Wednesday opening a Bell System radio telephone circuit between the United States and China. The exchange was between Washington and Shanghai.

Formal greetings were exchanged by Secretary Hull and Dr. Wang Chung-hui, Minister of Foreign Affairs of China and acting president of Executive Yuan.

The reception over nearly 10,000 miles of wire and radio circuits over the Bell System was exceptionally clear. All the conversation was in English. The ceremony was held in the Office of Secretary Hull and in China at the Palace Hotel in Shanghai.

Among others who conversed between the two countries were A. S. Prall, Chairman of the Federal Communications Commission and General Yu Fei-peng, Chinese Minister of Communications; Secretary Hull and Nelson T. Johnson, Ambassador to China; Dr. Sao-ke Alfred Sze, Ambassador to the United States, and Dr. Want; and T. G. Miller, Vice-President of the American Telephone & Telegraph Co. and Peng Shueh-pei, Vice Minister of Communications of China.

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