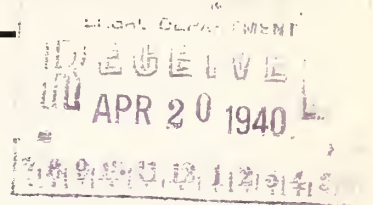


# HEINL RADIO BUSINESS LETTER

2400 CALIFORNIA STREET

WASHINGTON, D. C.



## INDEX TO ISSUE OF APRIL 19, 1940.

House Passes Walter-Logan Bill; Veto Forecast.....	2
Payne Backs Revocation Of Four Texas Licenses.....	5
G.O.P. Publicity Aide Hits FCC On Television.....	6
FCC Grants Permit In Press Tie-Up.....	7
WNYC May Be Leased To Private Operator.....	7
FCC Ignores Labor, Senate Committee Told.....	8
Princeton Prof. Explains The Orson (Mars) Welles Scare.....	9
Trade Notes.....	10
Winning Essays On Copyright Law Published.....	11
Radio Prosperous; Other Media Off.....	12

No. 1227

A collection of handwritten signatures and initials in the bottom left corner. There are several distinct marks, including what looks like a large 'L' or 'J' shape, and some smaller, more complex scribbles that could be initials or signatures.

## HOUSE PASSES WALTER-LOGAN BILL; VETO FORECAST

By a three-to-one majority the House this week passed the Walter-Logan Bill designed to restrict drastically the authority of governmental administrative agencies, including the Federal Communications Commission, and sent it to the Senate.

Although the House spent three days discussing the measure, many members admitted they didn't understand just what it provided. Majority Leader Rayburn sought to have it returned to the Judiciary Committee because of its confusing features.

There was only an occasional passing reference to the FCC during the debate. Most of the members' ire against "bureaucrats" was directed at the New Deal agencies.

The bill was sent to the Senate, which last year passed almost an identical measure before the Administration leaders realized its full significance. They recalled it from the House and a motion to reconsider its passage is pending. Few believe that the Senate will consider the Walter-Logan measure this session and even if it finally is sent to the White House a certain veto faces it, in the opinion of many.

As it passed the House, the bill requires public hearings for all rules and regulations issued in the future by administrative agencies, and, upon request of anyone "substantially interested", for all rules now in force if they have been in effect less than three years.

Once the rules have been issued, they can then be appealed by anyone to the United States Circuit Court for the District. The court can invalidate them if they conflict with the Constitution or a statute, or if the agency exceeded its authority.

In addition to any person who is "aggrieved" by a decision of an officer or employee of an agency is guaranteed a hearing before a special three-man board. If he is still "aggrieved" by the agency's final decision, he may appeal to the Circuit Courts.

The bill covers the 100-odd executive departments and agencies with some exceptions, such as the State, War, Navy and Justice Departments, Federal Reserve Board, Interstate Commerce Commission, Federal lending agencies, Federal Trade Commission, Railroad Retirement Board and National Mediation Board.

Mark Sullivan, newspaper columnist, in a review of the bill suggested that the bill, if it had been a law at the

time, might have had its effect on the FCC in reopening the television inquiry.

Louis G. Caldwell, Washington radio attorney, in an analysis of the bill as published in the Congressional Record appendix by Representative Luther A. Johnson (D.), of Texas, said:

"The bill is really a combination of two bills: (1) to regulate Federal administrative agencies in the making of rules and regulations, in other words, their quasi-legislative functions; and (2) to regulate Federal administrative agencies in the determination of particular controversies, in other words, their quasi-judicial functions. Section 1 is devoted to definitions and section 7 to exceptions and reservations. Both sections are applicable to the two portions of the bill.

"Although the bill has been greatly improved over the original draft submitted to the American Bar Association, it still is full of flaws, ambiguities, and even incongruities. In order not unduly to extend this memorandum, I shall for the most part pass over such matters. Some of the more important will be mentioned under the appropriate headings below. . . . .

"Section 4(e) of the bill provides a procedure for 'independent' agencies, that is, agencies having two or more officers at the head.

"It should first be noted that the bill does not prescribe any procedure for such agencies. It is simply permissive or contingent. In effect, it states that such an agency may provide by rule that 'where any matter arises out of the activities' of such agency it may be heard in the first instance by one of its trial examiners. If the agency so provides by rule, the examiner shall file his written findings of fact and separate decision after public notice and a full and fair hearing, copies to be sent by registered mail to the aggrieved party. There follow rigid provisions giving the aggrieved party an opportunity within 30 days to file written objections; and if he does so, the agency shall not enter its decision without first according a public hearing upon reasonable notice to the party. There are other details which may be passed over.

"The foregoing is objectionable for the following reasons:

"1. Even if it be conceded that the procedure is meritorious, no independent agency is required to follow it, and any such agency may evade it by simply not providing by rule that matters may be heard by trial examiners. In fact, most of the statutes governing the important commissions specifically prescribe or authorize the delegation of the power to hear and decide controversies in the first instance to individual members or groups thereof, employees, examiners, etc., and it seems probable that the specific provisions of such statutes will not be considered to be repealed by the general and ambiguous language of the bill.



"2. The machinery now available at most of the important commissions is at least equal to, and in a number of instances is better than, the procedure specified in the bill.

"3. The bill attempts (on a contingent basis) to prescribe rigid details of practice such as the requirement of service by registered mail and the specification of a 30-day period; such matters should not be enacted into law without study of their actual effect upon existing procedures. It is my impression that in some instances the 30-day period is probably too long and in others too short. The Federal Communications Commission, for example, allows a longer period under certain circumstances for parties from the Pacific Coast, Hawaii, and Alaska than it does for parties farther east. Corresponding differences will be found in the procedures of other commissions, usually built on years of experience.

"4. So far as is apparent from the face of the bill, no existing evil in any of the independent agencies will be cured by its provisions.

"At this point a comment may be made that applies both to this and the preceding subheading. It is to be feared that, if enacted into law, the bill will have the effect of hindering or preventing any fundamental or far-reaching reform of Federal administrative agencies such as has frequently been proposed and as was endorsed by the President's Committee on Administrative Management. This type of reform would, broadly speaking, consist in returning all the regulatory functions of independent commissions, other than their quasi-judicial functions, to the executive departments, and setting up really independent quasi-judicial boards for the hearing and determination of controversies on the model of the Board of Tax Appeals."

In his conclusion Mr. Caldwell criticized the recent report on FCC procedure by the Attorney General's Committee.

"I do not want to leave the subject without advertting briefly to developments which represent a point of view at the other extreme from the Logan-Walter bill", he said. "It is evidenced by the monographs now being made public under the auspices of the Attorney General's Committee on Administrative Procedure, submitted to it from time to time by its staff. While the monographs do not as yet have the approval of the Committee, they reveal a uniform approach which to me is just as far from leading to any remedy for the evils of the existing situation as is the bill. . . . Its monograph on the Federal Communications Commission, for example, is so inaccurate in describing and commenting on that agency's procedure that no person not already familiar with the subject may safely use it as a source of information. While I believe that the other monographs so far published do not exhibit inaccuracy or want of objectivity to the same extent, some of them reveal that the Commission's procedure is tacitly used as a measuring rod and all of them reveal the same a priori approach. The staff's philosophy may or may not ultimately prove to be correct. My point is that the issue, which is at least highly controversial, should not be determined in advance or on the strength of faulty evidence."

X X X X X X X X



## PAYNE BACKS REVOCATION OF FOUR TEXAS LICENSES

Recommendation that license revocation orders be affirmed in the cases of four Texas radio stations -- KTBC, Austin; KNET, Palestine; KRBA, Lufkin, and KGKB, Tyler -- was made to the Federal Communications Commission this week by Commissioner George Henry Payne as a result of hearings which he conducted in that State during March. In his opinion, the charges of hidden ownership made in connection with all four stations "have been fully sustained".

At the same time, Commissioner Payne has signed an order remanding the case of a fifth Texas station, KSAM, at Huntsville, for further hearing.

The March hearings developed that the technique used in securing the licenses of KTBC, KNET, and KRBA and of transferring the rights under them was practically the same. Commissioner Payne said in his preliminary report:

"First, James G. Ulmer prevailed upon three local men of excellent reputation and financial stability to organize a copartnership for the sole purpose of securing a station license. Next, he directed all the important details . . . and finally had his own lawyer, James H. Hanley, file the papers . . . Soon after the construction permit had been secured, the partners entered into a contract authorizing Ulmer (or one of his co-workers) to finance, construct and operate the station. Thus, in the early history of the station, did the partners assign their license rights without the knowledge or consent of the Commission.

"The partners made no capital investments and received no income from the station . . . All, or almost all, of the profits found their way into Ulmer's pockets or the pockets of one of his close associates. The partners had no control of the station's bank accounts, receipts or expenditures . . . They continued to sign papers because they were the licensees of record in order to deceive the Commission.

"It is clear that the partners were simply puppets manipulated by Ulmer who was the puppeteer. It was Ulmer, or one of his associates, who financed, constructed and operated the station. It was he who controlled the programs and the station policy. It was he who hired or fired employees and enjoyed the profits.

"The partners signified under oath by their application and associated papers that they would finance and control the station. This they never intended to do, thus perpetrating fraud upon the Commission. In several instances the partners submitted sworn statements showing that the partnerships involved possessed substantial assets, whereas, in fact, such partnerships possessed no assets whatever. Station assets belonged to Ulmer or one of his associates."

Ulmer is also identified with Station KGKB but this case, points out Commissioner Payne, involves a corporation and differs somewhat from the partnership cases. According to the report:

"Here Ulmer gained voting control of the East Texas Broadcasting Company by means of stock purchases, without the knowledge or consent of the Commission . . . Here, too, the license rights were illegally assigned and illegally exercised by the assignee, who again was Ulmer.

"Ulmer's conduct is reprehensible in more ways than one. He has induced honest and self-respecting men to violate the law and participate in an intricate scheme of deception. Most of these men made themselves parties to Ulmer's machinations through honorable intentions - a desire to serve their communities. Some of them even tried to break through the net in which Ulmer had caught them. But Ulmer's own conduct was prompted wholly by greed. Ulmer has cast a shadow upon the business of broadcasting."

Orders of revocation were issued by the Commission against Stations KTBC, State Capitol Broadcasting Association, Inc., KNET, Palestine Broadcasting Association, and KRBA, Red Lands Broadcasting Association on February 7; in the case of KGKB, East Texas Broadcasting Co., on February 13, and that of KSAM, Sam Houston Broadcasting Association, on February 8.

X X X X X X X X X

#### G.O.P. PUBLICITY AID HITS FCC ON TELEVISION

Further indications that the current television controversy may have repercussions in the national political campaigns was seen this week.

Franklyn Waltman, Publicity Chief for the Republican National Committee, in his weekly column "Looking Forward", reviewed the argument in 1,000 words, quoting from Commissioner Craven's letter to Senator Lundeen and summarizing with characteristic hostility the Federal Communications Commission's reasoning. He ridiculed the logic behind the FCC's "edict", declaring that suspension of the rules is a typical instance of New Deal unfriendliness toward business.

"No person in this country with enough money to buy a television receiver expects that the set now purchased will be as good as those available two or three years hence", Mr. Waltman said. "Nevertheless, many thousands of persons now would like to have a television receiver. But the FCC says they cannot . . .

"The action of the FCC in this case illustrates the real purpose of the New Deal better than any 10,000 words. Not only does it completely reverse itself in less than a month, but it undertakes to suppress - or at least hold back - a new industry which some day will supply employment for many thousand persons."

X X X X X X X X X



## FCC GRANTS PERMIT IN PRESS TIE-UP

Efforts to prevent close affiliation between newspapers and radio broadcast stations, particularly in small communities where there might be an interlocking management of both facilities, failed this week when the Federal Communications Commission granted a radio station construction permit at Martinsville, Va., to a co-partnership, known as Martinsville Broadcasting Co., one of the members of which owns the only daily newspaper in the town.

The policy was inaugurated during the regime of Frank R. McNinch, and was considered of such importance that Chairman James L. Fly filed a two-page dissenting opinion.

The Chairman held that the Commission's latest action was inconsistent with a ruling in 1938, when a station was granted to an applicant other than a newspaper, which also was an applicant, on the ground it would furnish a competitive medium.

The views expressed in that case, the dissenting opinion said, "were of course not intended to be applied generally to all newspaper applicants, but only when a grant would tend toward creating a local monopoly in the channels for the public expression of opinion and in the dissemination of news and information and when at the same time a competing application was granted. In my opinion, this policy is sound, and I find no sufficient justification for failure to apply it here."

Commissioner Paul Walker, supporting the majority ruling, said he agreed with the policy regarding monopoly of news through unity of ownership of all means of communications, but the "instant case is not the proper one for beginning the application of this policy".

X X X X X X X X

## WNYC MAY BE LEASED TO PRIVATE OPERATOR

WNYC, New York City's own station, may be leased for private operation. The Citizens Budget Commission this week recommended such action to the Board of Estimate.

Tracing the growth of WNYC, the city radio station, from a \$6,600 agency in 1923 to a \$118,405 agency this year, the Commission report recommended that the station be leased to private interests with appropriate reservations for public use, and that its appropriation be dropped from the budget. The report described the station as "an unnecessary luxury".

The change will save the city \$118,405 a year, the Commission predicted.

X X X X X X X X X X

## FCC IGNORES LABOR, SENATE COMMITTEE TOLD

The Federal Communications Commission has hampered telegraph operators in their efforts to protect communication workers from "uncontrolled mechanization", the Monopoly Committee was informed yesterday (Thursday) in its inquiry into the machine age's impact on unemployment.

Daniel Driesen, legislative representative of the C.I.O. American Communications Association, charged that the FCC had not even "considered the viewpoint of labor" in its report on proposed merger of major telegraph companies.

The Commission, in a report last December 23, "indicated that the telegraph companies by consolidation at the expense of workers' jobs will be financially able to introduce technological changes which will enable them to lay off further workers and reap additional profits", Driesen asserted.

Telegraph companies merely report to the FCC the rate of compensation to their employees, requiring no statistics on "actual wages paid, despite the fact that so large a percentage of workers employed in the industry are now on part-time", the witness said.

Driesen said the number of workers in the telegraph industry has declined 31,600 since 1930, a drop of approximately 30 percent. Chiefly responsible for the decline, he stated, was replacement of the Morse key with the automatic multiplex telegraph and the keyboard printer.

The industry today is again in the process of "almost complete remechanization" through development of the superimposed circuits, automatic switching between circuits and automatic facsimile telegraphy, Driesen asserted.

He said that "wherever union organization is not present to prevent it, this mechanization results in unemployment, reduction in wages, increase in speed-up and worsening of working conditions".

James B. Carey, President of the United Electrical Radio and Machine Workers, testified that technological advances through elimination of jobs are destroying purchasing power faster than they cheapen prices.

Senator O'Mahoney (D.), of Wyoming, Committee Chairman, has suggested experiments with Federal tax reductions for industries and employers who create employment opportunities.

X X X X X X X X



## PRINCETON PROF. EXPLAINS THE ORSON (MARS) WELLES SCARE

The 1,200,000 Americans who were stricken with terror on Hallowe'en night of 1938 by a radio dramatization of a fantastic invasion of the earth by the inhabitants of Mars laid bare "a specific ailment in the social body", Dr. Hadley Cantril, Associate Professor of Psychology in Princeton University, declares in his report of a scientific study of the incident, published this week by the Princeton University Press.

Development of critical ability, extensive educational opportunities and political and economic stability are the panic-preventive medicines prescribed by Professor Cantril in the book which is entitled "The Invasion from Mars".

Conservative figures indicate that 6,000,000 persons listened to the presentation by Orson Welles and the Mercury Theatre on the Air of a radio adaptation of H. G. Wells' "The War of the Worlds". Because of the dramatic technique employed, 1,700,000 of the listeners believed that the broadcast was an actual news bulletin. Seventy percent of those who thought it was a news broadcast were frightened by what were apparently eyewitness descriptions of the landing of the Martians near Princeton and the irresistible march of their towering fighting machines toward New York, destroying soldiers, civilians and countryside with heat rays and poison gas. Telephone calls increased 39 percent above normal in metropolitan northern New Jersey. Panic, however, was not confined to that area but was general throughout the country.

Economic and political upheavals of the last decade have created a sense of insecurity and a feeling of bewilderment in the average person, Professor Cantril states, and points out that instability is a fertile field for the panic-seed. Other contributing causes, found by Professor Cantril in individual cases of terror, were intense religious beliefs regarding the end of the world, a feeling that because of the disturbed international situation an attack by a foreign power was not unlikely, a notion that scientists have fantastic powers and imaginations inflamed by stories and comic strips of interplanetary exploits.

"Psychologically", Professor Cantril reports, "most persons who tuned in to the broadcast as a news report were unable to verify the interpretation they heard because 1) they possessed standards of judgment that adequately accounted for the events and made them consistent with latent expectancies, 2) because they did not have adequate standards of judgment to distinguish between a reliable and an unreliable source of confirmation; 3) they had no standard of judgment and felt the need of one by means of which they could interpret the reports, thus accepting the interpretations provided by the 'observers' of the events and by the prestige of radio, and 4) they had no standard of judgment and unhesitatingly accepted the one provided."

Explaining why those who were terror-stricken became so frantic, Dr. Cantril writes: "The coming of the Martians did not present a situation where the individual could preserve one value if he sacrificed another. It was not a matter of saving one's country by giving one's life, or helping to usher in a new religion by self-denial, of risking the thief's bullet to save the family silver. In this situation the individual stood to lose all his values at once. Nothing could be done to save any of them. Panic was inescapable."

X X X X X X X X X X

:::  
 ::: TRADE NOTES :::  
 :::

World radio market series issued by the U. S. Bureau of Foreign and Domestic Commerce recently include Macao, Union of Soviet Socialist Republics (regulations), Liberia, Brazil, Luxemburg, Jamaica (regulations), Andorra, and Ireland.

Supreme Court Justice Graham Witschief in White Plains, N.Y., has approved the petition of the Huguenot Yacht Club to sell Little Pea Island -- about a mile off Glen Island in Long Island Sound -- to Columbia Broadcasting System. CBS will pay \$17,000 for the island and subject to approval of the Federal Communications Commission, will build a new transmitter, replacing the present WABC tower at Wayne, N. J.

Dave Driscoll has been appointed Director of Special Features for WOR, effective May 1, according to Alfred J. McCosker, president of the station. His appointment follows the resignation of G. W. (Johnny) Johnstone, since 1934 Director of Special Features and Press, who becomes Director of Radio for the Democratic National Committee on May 1. Under the new WOR set-up, publicity will be handled by a separate department. Mr. Driscoll, who has been associated with Mr. Johnstone for more than four years, joined WOR in 1936 as a part-time sports and special features announcer, shortly becoming a regular member of the staff.

The Columbia Broadcasting System, Inc., reported Wednesday for the thirteen weeks to March 30, subject to audit, a net profit of \$1,552,031, equal to 90 cents a share on combined 1,716,277 shares of \$2.50 par Class A and Class B stocks. This compares with \$1,163,947, or 68 cents a share on 1,708,723 shares for the thirteen weeks to April 1, 1939.

Paul W. Keston, Vice President, replying to a stockholder's question at the annual meeting in New York, declined to make specific comment on CBS television activities pending the outcome of the recently opened television hearings by the Federal Communications Commission in Washington.

X X X X X X X



## WINNING ESSAYS ON COPYRIGHT LAW PUBLISHED

The American Society of Authors, Composers, and Publishers this week was distributing bound copies of the "Second Copyright Law Symposium" containing the five essays adjudged as best among the papers submitted from seventy-six law schools which participated in the Nathan Burkan Memorial Competition.

The winning papers were judged by Herman Finkelstein, of the New York bar. The winning essays and the writers were:

"The Extent of Copyright Protection for Law Books", by Paul P. Lipton (University of Wisconsin); "Analysis, Criticism, Comparison and Suggested Corrections of the Copyright Law of the U. S. Relative to Mechanical Reproduction of Music", by Charles W. Joiner (State University of Iowa); "Some Copyright Problems of Radio Broadcasters and Receivers of Musical Compositions", by George W. Botsford (University of Arizona); "The Motion Picture Distributor and the Copyright Law", by Irvin E. Bernstein (Yale Law School); and "Copyright Laws in Georgia History", by W. Marion Page (University of Georgia).

Mr. Botsford in his review of the copyright problems of radio broadcasters came to the following conclusions:

"To the writer, it appears that the exclusive right of public performance for profit given a composer should not be curtailed to any extent, especially since radio broadcasting has resulted in a very marked diminution of royalties received from the sale of copies of a given musical composition. It is said that the life span of a modern song, even when it is of more than average popularity, is only three months. The reason assigned for this change is that radio broadcasting, by its very number of performances of the composition within a short time, dulls the taste of the public for hearing a rendition of the particular music.

"To the writer, it likewise appears that the construction of the courts that radio broadcasting and reception are performances within the statute is logical and that the operation of the statute under such a construction is fair. The test of the fairness of a statute is how it works in practice. All radio broadcasters, because of the statute, are, in practice, made to obtain licenses for their performances. There would seem to be no quarrel with this result. In respect to radio receivers, as a practical matter, only those who receive broadcasts for the benefit and enjoyment of a large number of persons are forced to obtain licenses. The composer, as represented by ASCAP, does not, for example, go to the corner drugstore and force the proprietor there to obtain a license for the performance of his musical compositions over the radio. The composer does, however, go to a large hotel, which is engaged in providing music to several hundred guests, for the guests' enjoyment and require a license in that case. Can there be any quarrel with this result? To attempt, by a specific statement of exceptions in a statute, to obtain this same result would, on the other hand, very possibly open the door

to undesirable abuses of the author's rights, and would, further, accomplish nothing. Therefore, I would suggest that, for the present, at least, the statute be left untouched.

"Having finished a discussion, in some detail, of the composer's rights in radio broadcasting and of the problems confronting a radio broadcaster or receiver, the answers to the questions originally put in connection with the Copyright Act of 1909 readily appear. The question - When does one have a valid copyright? - may be answered by saying that a person, who is one entitled to enjoy the statute, who has performed the necessary formalities required by the statute to obtain protection, and who has a manuscript which is subject to protection under the statute, it being not immoral and an original, having literary merit, and not having been published before obtaining the copyright, has a valid copyright.

"The last question - When is there a performance infringing that copyright? - may be answered by saying that there is an infringement when there is a performance, to the public, for profit, without the consent of the copyright owner."

X X X X X X X X

#### RADIO PROSPEROUS; OTHER MEDIA OFF

"Radio is enjoying a lush springtime this year, at a time when United States business generally is decidedly off and while other advertising media have ample occasion for complaint", Variety comments this week. "In partial explanation of this brilliant exception to the prevailing rule, the master minds are crediting the healthy condition to the radio industry's insistence upon 13-week cycles and to the whole discount structure of radio which practically forces advertisers to follow sound principles of advertising, namely, regular, consistent, fixed campaigns over long periods. Radio does not permit sponsors to jump on and off the bandwagon as they blow hot or cold.

"In the two months during which Variety has compiled its box-office reports on radio time sales in key cities, the following change has been noted between the first and most recent reports (totals are weighted for omissions):

	Percent
Network business	+2.7
National spot business	+4.5
Local business	+12.4

"Although the upturn in radio time sales this Spring was not altogether unexpected, it is the result (according to the trade's best master minds) of cumulative trends, rather than any particular new event or strategem. More specifically, radio today has maneuvered itself into the position where it is capitalizing on the advertiser's goodwill at the expense of other media."

X X X X X X X X X X