

# HEINL RADIO BUSINESS LETTER

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No. 1545

## DID FDR FALL INTO TRAP IN BILL FIRING SUSPECT TRIO?

The question is being asked if the rider on the Urgent Deficiency Bill which provides the President will have to renominate the three alleged subversives, Dr. Goodwin Watson and William Dodd, Jr., of the Federal Communications Commission and Dr. Robert M. Lovett of the Virgin Islands, by November 15th if they are to stay on the Government payroll was not a carefully laid political trap to embarrass Mr. Roosevelt by putting him on the spot with regard to the New Deal and Communism at a time when the fourth term issue was apt to be most hotly discussed. As it appears to some observers, the House passed the buck to the Kerr Committee, the Kerr Committee passed it to the House, the House passed it to the Senate and the Senate passed it back to the House and after much battling back and forth, the Senate and House conferees neatly passed the buck to the President. Mr. Roosevelt was thus given a difficult choice and one which either way might affect his Fourth Term aspirations.

President Roosevelt, nevertheless, took the bull by the horns declaring that he regarded the Deficiency Bill rider limiting the conditions for employment of three Government workers as an unwarranted encroachment on the prerogatives of both the executive and judicial branches of the Government. He would have vetoed the measure if it had not provided funds vitally needed for the war effort.

Mr. Roosevelt, who indicated he felt very strongly about the matter, said he proposed to send a message to Congress when it reconvenes explaining his attitude.

He said he could not yield in this instance without placing his views on record, declaring that he not only believed the rider was unconstitutional, but that it was definitely objectionable.

He declined to say whether the men would be reappointed, amplifying that he would let the matter stand just where he had put it by his statement.

He said there had been no suggestion that these men had not been loyal to the Government, and added that similar action might have been taken with regards to other Federal personnel - even members of the Supreme Court, which he said would be an interesting idea, or members of the Cabinet.

Conclusions drawn from the President's bitter attack on the rider are that he will either renominate Messrs. Watson, Dodd and Lovett or go to court about it, that he is squarely behind Chairman Fly, who also had warmly defended the trio, and that he

will fight the thing out with the House in the Fall - which would mean still another White House-Congressional squabble.

President Roosevelt said that his message to Congress will argue that the rider is, in fact, a Bill of Attainder, under a Supreme Court decision holding that legislation which punishes without judicial trial shall be so considered.

Section 9, Article I of the Constitution specifically states that "no Bill of Attainder or ex post facto law shall be passed."

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# REACTION ON PRESIDENT'S FCC STAND SEEMS MIXED

Because of the fact that most of the members of Congress were away from Washington, it was difficult to secure opinion with regard to President Roosevelt's objection to the Goodwin Watson-Dodd-Lovett Deficiency Bill rider. Senator Thomas (D), of Utah, backed Congress, though he said that he had opposed the rider. Senator Revercomb (R), of West Virginia, did likewise. Representative Hendricks (D), Florida, said:

"We have not discharged any individual. We have limited an appropriation, and I believe the courts will so hold."

Representative Hobbs (D), of Alabama, took the opposite view thus:

"There is no doubt that the rider is unconstitutional. It provides the punishment without trial and violates the separation of powers doctrine implicit in the Constitution. In my opinion this rider is a bill of attainder in that this legislative action inflicts punishment without judicial trial."

Secretary Ickes, referring particularly to Dr. Lovett, who is under the Interior Department, described the rider as "the final step in the travesty of justice which has taken place in this witch hunt."

The New York Times said though a grave constitutional issue had been created, it was not so much that as orderly procedure and fair play that would interest most Americans:

"The House of Representatives Committee, proceeding in its customarily reckless and high-handed manner, never produced evidence that the organizations in question were actually subversive or, if they were, that the accused men had other than an innocent connection with them. In fact, the Dies Committee's list of subversive groups is long enough and indiscriminate enough to catch almost any group or individual that the Committee does not care for. The three victims were railroaded through the Committee and railroaded again in the House.

"We think that something should be done to check the practice of character assassination by irresponsible Congressional committees. Perhaps no new interpretation of the Constitution is needed. Congress itself could work the reform by laying down rules of procedure for committees of inquiry that would have some relationship to the time-tried and revered principles of Anglo-Saxon and American justice."

The Washington Star said:

"The President seems to have been intentionally equivocal in saying that he does not consider the law denying salaries to three Federal officials to be 'binding' upon the Executive or the Judiciary.

"Whatever the means chosen by the President to sustain his contention that the law is not binding, he was unequivocal enough in stating his objections. And rightly so. For whether or not this punishment of men for their beliefs is in a strictly legal sense a bill of attainder prohibited by the Constitution, or is an encroachment on executive functions, there are few who can agree that the action of the House in choosing this method of showing its disapproval of the officials concerned is in accord with accepted principles of justice. The men were never accused of anything prohibited by law.

"While the prejudice indicated may have temporary popular approval, it is not to be condoned without inviting others even more dangerous.

"The President was forced to sign the bill. He was right in protesting, and it is to be hoped that he will find the ways and means to make his protest stick."

The Washington Post, which has endorsed the FCC so repeatedly of late, says:

"The President was wholly justified in his denunciation yesterday of the Kerr amendment forbidding the payment of salaries to Messrs. Watson, Dodd and Lovett. That he felt obliged to sign the urgent deficiency appropriation bill is understandable enough in view of the need to meet payroll obligations long past due. It is regrettable, nevertheless, that the President's name should appear upon a measure so flagrantly violative of the Constitution. Here is fresh illustration of the evil involved in the attachment of wholly irrelevant riders to essential legislative acts. The Executive has, in effect, been robbed of his veto power.

"The courts must now be looked to for protection of the three proscribed individuals. Only in the courts, moreover, can the constitutionality of the procedure laid down by Congress be determined. The Post believes, therefore, that the President should not make himself a party to this procedure. If he were to nominate these men for appointment to offices they already legally hold, and submit their names to the Senate for confirmation, he would be giving at least the appearance of approval to this course. The precedent would be, in our opinion, a very dangerous one."

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## "DO WE WANT U.S. CONTROLLED RADIO?" SATEVEPOST ASKS

The question of the "freedom of the air" what it is, who is to protect it and how it is to be regulated - has been passed back to Congress the Saturday Evening Post says in its leading editorial this week (July 17). After setting forth details of the recent Supreme Court decision, it continues:

"At a time like the present, there is always the risk that debates on these matters will generate more heat than light. The debate in Congress sometimes exceeded the bounds of reason. Nevertheless, it seems to us reasonable to say that before any Government commission is given the right to determine the 'composition of the traffic' over the ether of news, entertainment and opinion, Congress should make its own declaration on the issue.

"Since it is the intent of Congress which is being debated, there can surely be no objection to asking Congress whether it agrees with Commissioner Fly and the Supreme Court majority or with the radio industry, a considerable portion of the listening public - which thinks that radio broadcasting is pretty good - and the court's minority.

"The alternative to a new determination by Congress upon its actual intentions is to hand over to an administrative agency powers which seriously threaten freedom of expression on the air. The issue is not whether a broadcasting station should contract to hold free time at the disposal of a network or whether a network should withhold from competing stations programs which have been rejected by a network station. There are various opinions as to whether or not this or that of the Commission's regulations would improve broadcasting or wreck it. The primary issue is not the merit of the rules, but the right of the Commission to promulgate and enforce regulations which make fundamental changes in radio. What Congress must decide is what becomes of free broadcasting if a Government commission has power to 'determine the composition of the traffic'.

"In less critical times, we might be accused of taking an alarmist view. But the Administration does too little to dispel alarm on the subject of free communication. The President's frequent gibes at the newspapers, the suit against the Associated Press, the continual preoccupation of Government spokesmen with the supposedly venal and one-sided character of such media: all this conspires to build up in the public mind a new fear, one which we supposed had been dispelled for all time - namely, that the heavy and unimaginative hand of bureaucracy is groping for control of thought and information in the United States.

"The social and economic views of many policy makers in the administrative agencies do not dissipate this fear. There is in the administrative agencies too much agreement with the opinion expressed by Milton Freeman, Assistant Solicitor for the Securities and Exchange Commission, who said, in response to a question by Repre-

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sentative Boren, of the House Committee on Interstate Commerce, 'I believe any law of Congress or any rule adopted under it, if it in any way conflicts with a law of a state, supersedes that law.'

"According to the Constitution and a long procession of judicial decisions, the situation is not quite so cut and dried. But if Mr. Freeman represents the legal philosophy prevalent in agency circles, the revolt in Congress is not surprising. Precision in the delegation of powers to agencies is the minimum requirement for the preservation of our system of government. As applied to radio, we predict that Congress will take the view that no administrative agency is qualified to decide what shall be the 'composition of the traffic', in so far as that means control over the ideas and information which Americans shall be permitted to hear."

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#### BROADCASTING INDUSTRY POST-WAR PLAN PROMISED SOON

Chairman James L. Fly of the Federal Communications Commission appears to be optimistic as to the possibilities of the broadcasting industry's post-war plan. Mr. Fly said that it was making decided progress and he believes the industry will have a program that everybody will agree to in a short time.

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#### CAPITAL METROPOLITAN WAR AREA TO GET TWO-WAY RADIO

For the better wartime protection of the suburban area of Washington, a modern two-way communication system for the Montgomery County, Maryland, Police Department, when the County Commissioners authorized the purchase of a radio system similar to one recently tested. (Montgomery County immediately adjoins the Nation's Capital).

The Board directed H. Leslie Carlin, Chief of the County Police Department, to place the maintenance and operation of the system under command of Capt. Guy L. Jones of the County policy force. Captain Jones was authorized to take any course of instruction deemed advisable and to obtain the license required.

Captain Vollten of the County Detective Bureau, said the proposed system would save the County approximately \$2,000 annually in telephone tolls. The cost of installation was placed by Commissioner Shaw at around \$14,000.

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## REP. COX OUT ONLY TO SEIZE HEADLINES, FLY CHARGES

Making public a memorandum alleged to have been written by a press agent and sent to committee members by Eugene L. Garey, its counsel, devising a system of trying to shut up any rebuttal from the FCC Chairman, James L. Fly led with another one to the chin of Representative Eugene Cox of Georgia in the Federal Communications Commission investigation publicity slugfest. Mr. Fly endeavored to show that Mr. Cox and the House Committee were simply out to grab the headlines for their side of the case and to prevent the public from hearing any comeback from Chairman Fly or the Commission.

In the meantime Representative Cox dispelled rumors that the Committee stymied by President Roosevelt refusing to allow Army and Navy officers to testify, would stall along until Congress reconvened by saying that hearings would be resumed Monday (July 19) and probably might run along for the rest of the week.

It was also made known that Mr. Garey was laying definite plans to endeavor to have Mr. Fly and Harold D. Smith, Director of the Budget cited for contempt for their balking at testifying before the House Committee last week.

Mr. Fly's latest blast at Chairman Cox and the House Committee follows:

"The real character of the 'impartial and wholly constructive' investigation which Chairman Cox at the opening hearing publicly assured the Commission, the Congress and the people is now clear.

"The memorandum from the Wall Street counsel to the members of the Cox Committee merely confirms and formalizes the plan adopted by the Committee in assembled meeting on July 6. It is to be noted that this plan which was prepared by a representative of the International News Service sets forth 'principles' to govern the Committee's public proceedings. These 'principles' are carefully designed to accomplish two results:

1. The seizure of the headlines.
2. By adroit use of the gavel, the effectuation of the principle that the Committee must keep the Commission's side of the case from reaching the public.

"I cannot believe that the House of Representatives of the United States ever intended to authorize its delegated representatives to

'Decide what you want the newspapers to hit hardest and then shape each hearing so that the main point becomes the vortex of the testimony. Once that vortex is reached, adjourn.'

Nor can the House of Representatives have meant to authorize an investigation which, in the first instance, would treat the Commis-

sion as 'the opposition', and then would formally adopt a plan to preclude 'the opposition' from the 'opportunity to make . . . . replies.'

"It is difficult to believe that the Congress meant to delegate to Congressman Cox as Chairman of the Committee the arbitrary power to swing the gavel and recess or adjourn the hearings so that he would 'keep the proceedings completely in control so far as creating news is concerned.'

"Nor can one easily come to believe that the Congress wanted this so-called investigative Committee to smother out the statements of 'witnesses which might provide news that would bury the testimony which you want featured'.

"There is nothing new in the procedures for creating publicity with scandalous and unsupportable charges and then promptly shutting off any possible opportunity for the Commission to be heard on those charges, or even to present its case to the press. Ultimately, the greater injury here must be to the Committee itself when Congressman Cox and his Wall Street counsel have the temerity to adopt procedures which abuse the great Congressional power of investigation by a calculated bid for headlines and by a deliberate plan to avoid any hearing on the charges until after a startling publicity has taken its toll.

"Despite the unhappy auspices under which this so-called investigation was given birth, I cannot believe that the United States House of Representatives has ever fully understood what its Committee is doing in star chamber proceedings, in the secret eliciting of 'testimony' in the downtown hotels of the City of Washington, and in the now publicly confirmed unfair principles governing its conduct of public hearings."

The memorandum alleged to have been sent to the Cox committee by its counsel, Mr. Garey, follows:

"1. Decide what you want the newspapers to hit hardest and then shape each hearing so that the main point becomes the vortex of the testimony. Once that vortex is reached, adjourn.

"2. In handling press released, first put a release date on them, reading something like this: 'For release at 10:00 A.M. EWT July 6', etc. If you do this, you can give releases out as much as 24 hours in advance, thus enabling reporters to study them and write better stories.

"3. Limit the number of people authorized to speak for the committee, to give out press releases or to provide the press with information to the fewest number possible. It plugs leaks and helps preserve the concentration of purpose.

"4. Do not permit distractions to occur, such as extraneous fusses with would-be witnesses, which might provide news that would bury the testimony which you want featured.

"5. Do not space hearings more than 24 or 48 hours apart when on a controversial subject. This gives the opposition too much opportunity to make all kind of counter-charges and replies by issuing statements to the newspapers.

"6. Don't ever be afraid to recess a hearing even for five minutes, so that you keep the proceedings completely in control so far as creating news is concerned.

"7. And this is most important: don't let the hearings or the evidence ever descend to the plane of personal fight between the Committee Chairman and the head of the agency being investigated. The high plane of a duly-authorized Committee of the House of Representatives examining the operations of an Agency of the Executive Branch for constructive purposes should be maintained at all costs."

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#### NEW METHODS FOR RADIO AND PHONOGRAPH PRICE FIXING

New methods by which maximum prices are determined on radios and phonographs assembled by retailers and distributors were established today (Friday) by the Office of Price Administration.

The action provides more effective control over ceilings on a scattered number of radio dealers and distributors who since the Summer of 1942, when regular manufacturing ceased, have become extensive assemblers of household radio receiving sets from parts which they accumulated.

These methods, embodied in Maximum Price Regulation No. 430 effective July 26, 1943, will make prices to the public more uniform and in many instances lower than levels that have been prevailing. Hitherto these articles have been under the General Maximum Price Regulation with highest March 1942 prices as ceilings.

Regular manufacturers of radios are specifically excluded from the new regulation. Sales of radios or phonographs by householders also are not affected. OPA consulted with representatives of distributors and retailers in formulating the regulation.

Ceilings now are established by two formulas, one for distributor-assemblers, the other for retailer-assemblers.

Distributor-assemblers determine their maximum prices by taking the unit direct cost of the model being priced, adding 122 percent to determine the dealer's retail price, and subtracting 40 percent from the latter to arrive at their own maximum selling prices to retailers. For sales at retail by the distributor-assembler, maximum prices are determined by adding 82 percent to the unit direct cost of the model.

Retailer-assemblers will add 82 percent to the unit direct cost to establish the retail level.

The unit direct cost is determined by the assembler by taking either the invoice cost to him of the radio or phonographs parts, or the ceiling prices for the chassis, cabinet and other parts to the class of purchaser to which the assembler belongs as established under the applicable regulations for these parts, whichever is lower.

Mark-ups established are based on average March 1942 practices in the trade.

Prices when determined by the assembler are to be submitted to the nearest Regional Office and the models are not to be offered for sale until 15 days thereafter. If OPA does not direct otherwise, the model may be offered for sale at the expiration of the 15-day period. The ceilings so established are subject to adjustment at any time by OPA. Minor changes in the model will not affect the established ceiling. However, if a change reduces the unit direct cost by more than \$1.00 or prevents the set from offering fairly equivalent serviceability, a new ceiling must be established.

In the case of any radios or phonographs assembled by other than the two classes of assemblers covered by this regulation - persons who are not manufacturers, or radios which are not guaranteed as specified in the regulation - maximum prices will be specifically authorized by the Washington office of OPA. All models prices pursuant to the formula must have a written guarantee for 90 days, the regulation stipulates.

Sellers are required to attach a tag to each radio or phonograph stating the maximum price, the stock number and the guarantee. The tag must stay on until the article reaches the ultimate consumer.

Regular manufacturers, who are excluded from this regulation, continue under Revised Price Schedule No. 83 (Radio Receivers and Phonographs). Manufacturers, however, were practically removed from production by Limitation Orders L-44A and L-183 of the WPA.

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#### WLB PETRILLO DECISION EXPECTED SOON

A decision from the War Labor Board in the Petrillo case may be forthcoming at any time. One report is that the Board will take jurisdiction but will not declare that a strike of the American Federation of Musicians exists against the transcription companies but will name a special board to look into the situation. It would simply make recommendations as to some form of compromise agreement between the warring factions.

On the order of Mr. Petrillo, who was declared to have threatened the network with a strike if it was not obeyed, the

Mutual Broadcasting System Thursday cut off sustaining programs to WSAY, its affiliate in Rochester, N. Y., which the AFM is fighting because the station refused to increase its musical staff from three to five. Miller McClintock said that Mutual "is not a party to the dispute between WASY and the American Federation of Musicians and has no power or authority to intervene in any manner in the issues which are involved." The action taken by Mutual was "to prevent the violation of our network commitments and program schedules" and was "the only practical alternative available to us under the circumstances."

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### BELIEVED ELMER WILL STICK AT OWI .

Although still pretty much in the eclipse, it begins to look as if Elmer Davis may not resign although this isn't definitely determined. Mr. Davis, who is now enroute to England to inspect the London branch of the Office of War Information, complained in a speech in New York about the small amount the Domestic Branch, which was hit by the Congressional cyclone, had to work with but gave no intimation that he intended to quit or that the European junket was a cooling off period prior to that. Mr. Davis said that now the radio, motion picture, and other industries would have to do a good deal of the work themselves that OWI had been doing for them. While Mr. Davis is away, his weekly broadcasts have been taken over by Bill Henry, chief correspondent of the Columbia Broadcasting System Washington News Bureau.

Among the recommendations for reorganizing the Domestic Bureau made by the new OWI Advisory Committee, of which Roy Roberts of the Kansas City Star is the Chairman, were the following:

"The American people are entitled as a right to full and purely factual information concerning public events and the acts of public officials, entirely free of propaganda.

"It is vital that such information be disseminated only through the existing media of public information such as newspapers, trade journals, magazines, radio and the motion pictures.

"OWI can perform a highly useful and necessary function in gathering and coordinating the news of the vastly complicated and far-flung activities of the Government, but in this process it should not in any wise shut off the press and other media of information from direct access to the sources of news.

"The committee suggested that the OWI call into conference representatives of the corps of Washington correspondents, both press and radio, in order to further cooperation in the collection of news and to keep open the primary channels of information as far as is consistent with national security.

"The committee received conflicting reports as to the effect of the abolition of the field service. The committee will request OWI to poll newspapers and radio stations as to their desire for the recreation of a field service operating under the same principles that govern OWI's Washington activity."

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## OWI BEGINS S-W EXPANSION WITH TWO NEW 50 KW SENDERS

Construction of two 50-kilowatt high-frequency shortwave transmitters, which will be the first to go into operation under the Office of War Information's plan to expand American international broadcasting facilities, was begun last Monday in New Jersey on the grounds formerly occupied by the transmitter of Columbia Broadcasting System's key station WABC.

"Realizing the urgency of putting its expansion plan into effect at the earliest possible moment, the OWI selected the CBS site because of its ideal facilities, which include a specially-constructed transmitter building ready to receive the new equipment, underground conduits for power and radio circuits, and many acres of property completely cleared of trees and other obstructions, factors of great value in the construction and operation of a radio station", a CBS release explains.

The two ultra-modern transmitters will be able to work into several modern directional antennas, greatly increasing their effectiveness and coverage."

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### TRADE NOTES

Upon the authorization of the Board of Directors, the American Society of Composers, Authors and Publishers last Monday distributed to its membership and associated societies \$1,260,000 in royalties for the second quarter of 1943, which ended June 30th. This figure represents the largest royalty distribution made in any one quarter since 1940.

Mark Woods, President of the Blue Network, will be host at a luncheon in honor of Lunsford P. Yandell, Vice-President of the Blue today (Friday) in the Louis XVI room of the St. Regis Hotel. Mr. Yandell recently returned to New York and his offices at the Blue after a 10-month stay in England, where he assisted in the organization of Red Cross activities for United States troops in Great Britain.

Station KFMB, Worcester Broadcasting Corp., San Diego, Cal. had its amended application approved by the FCC for consent to transfer control of the Worcester Broadcasting Corp. from the Estate of Warren B. Worcester, deceased, to the First National Trust and Savings Bank of San Diego, and renewal of license application for a period of one year.

Two Kentucky stations, WHOP, Hopkinsville, and WPAD, Paducah, will become affiliated with the Columbia Broadcasting System July 18. Both stations are owned and operated by the Paducah Broadcasting Company, Inc. and join the network as special basic supplementary stations.

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