

# HEINL RADIO BUSINESS LETTER

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## INDEX TO ISSUE OF OCTOBER 19, 1943

Lea On Spot In FCC Probe; Still Hot After Garey.....	1
Following Exit Of Rep. Cox Press Now Pans Mr. Fly.....	2
Blue Net Board Holds Its First Meeting.....	4
G.E. To Show How Television Covers The News.....	5
Radio Artists Object To CBS-Navy Broadcast.....	5
Zenith Quarterly Operating Profit Is \$1,592,199.....	6
Star Chamber Testimony Out The Window At FCC Probe.....	7
Elmer Again Talks Back In Congress Radio Smear Charge.....	8
N.Y. Education Board Gives First Radio Credits.....	9
Robert Douglas Kirkland Of Mackay Radio Dies.....	9
Trade Notes.....	10

No. 1571

October 19, 1943.

## LEA ON SPOT IN FCC PROBE; STILL HOT AFTER GAREY

Although vigorously denying that he is stalling and proposes to whitewash the whole business, Representative Clarence F. Lea (D), of California, elderly Chairman of the FCC Investigating Committee supplanting Representative Eugene Cox (D), of Georgia, finds himself on a pretty hot spot. Despite the fact that the Administration is supposed to be sitting on his neck trying to get him to shush the proceedings and regardless of the charge that he "is not too celebrated among his colleagues for energetic prosecution of inquiries hitting too close to the White House", Representative Lea declared that his Committee will go right ahead with the investigation.

"It is expected that further progress of the investigation will result in much information yet to be furnished and assembled", Mr. Lea declared.

"The evidence so far presented embraces a large number of accusations against the conduct of the Commission and its personnel which are within the scope of the investigation as directed by the House of Representatives."

New Deal Democrats are known to be moving heaven and earth to oust Eugene Garey, Committee counsel. In this they find themselves in agreement with the Washington Post, which also gives Chairman Lea quite a kick in the pants. In its eighteenth editorial on the subject of the FCC investigation, not counting the first page blast by Publisher Eugene Meyer which was followed within 48 hours by the resignation of Congressman Cox, the Post said:

"High hopes for a fair investigation of the FCC - hopes that arose out of the recent appointment of Representative Clarence F. Lea to succeed the biased and vulnerable Representative Cox - sagged deplorably when the Committee met for the first time under its new Chairman. The brief session was given over entirely to the dumping of star-chamber testimony into the record. If this is a sample of the inquiry the reorganized committee intends to make, it cannot possibly shake off the odium that Mr. Cox gave it.

"The testimony in question was taken behind closed doors with neither the public nor the press allowed access. Often, no member of the Investigating Committee was present. Witnesses were summoned to testify before some members of the Committee's staff. In many instances witnesses were subpoenaed to these star chambers consisting of hotel rooms or private law offices, apparently in violation of law. Some of them were required to take oaths, without any member of the Committee present, also in violation of law. That

part of their testimony which the investigator wished to use for smearing purposes was recorded, the rest was not. \* \* \*

"If the investigation under the new Chairman is to escape from the disrepute that brought the Cox Committee to the end of its rope, it will have to question its witnesses in open hearing. It will have to replace Mr. Garey and hire an attorney who knows how to conduct an investigation as distinguished from a mud-slinging orgy. And it will have to give the FCC itself a chance to tell the Committee what it is doing and to answer the voluminous charges that have been piled up against it through the star-chamber method.

"When the Committee resumed its hearings on Thursday, the FCC was not even notified, and, of course, no representative of that agency was present. We hope that Mr. Lea will remember that he was given this assignment to extricate the House of Representatives from the scandal in which Messrs. Cox and Garey had plunged it. He cannot possibly do that job by continuing the indecent and intolerable procedure that made the Cox Committee a stench in the nostrils of the public."

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#### FOLLOWING EXIT OF REP. COX PRESS NOW PANS MR. FLY

Having built a bonfire under Representative Eugene Cox, an action which seems to have met with the approval of most everybody, the newspapers seem now to be turning their attention to Chairman James L. Fly of the Federal Communications Commission, who is charged with taking entirely too much territory and who, according to one critic, David Lawrence, nation-wide columnist, has stepped so far beyond the line of legal authority that he is subject to impeachment for wrongful use of Government powers.

"Evidence has just been adduced showing that the Chairman of the Federal Communications Commission, James L. Fly, actually is undertaking to dictate what the policies of a radio network shall be and he is using the licensing power of the Commission to enforce his viewpoint", Mr. Lawrence writes.

"Mr. Fly has no power under law or under the First Amendment to the Constitution to constitute himself a policeman on the 'mechanics of free speech'. Congress never delegated such power to him and even if Justice Frankfurter's opinion did say that Congress had a right to control the business of the networks, there is nothing in the statute or in the debates which preceded its passage to justify any inference of such intent by the legislative body.

"Mr. Fly has as much privilege as any other citizen to make speeches criticizing the broadcasters' code. But when he undertakes, as a part of an official proceeding, to determine whether a commercial sale of network property should be permitted to a new owner, what the 'general attitude' of that owner is, and to indicate his



disapproval of a given policy, he is in reality using the licensing power of the FCC to intimidate the broadcasting stations of America.. He is in truth making himself the judge of what is or is not a proper policy on controversial issues and this is not the function of any governmental agency because censorship is expressly forbidden by the radio communications law.

"The FCC should be confined to the regulation of the wave lengths from the standpoint of allocating physical facilities to given areas and to prevent collisions in the air as between mechanical facilities. It should neither be given nor usurp power to tell licensees what views they may or may not hold in order to get or hold a radio station license."

Variety, the trade paper of the entertainment world, joins in:

"The broadcasting industry wouldn't be amiss if it construed FCC Chairman James L. Fly's speech before the Radio Executives' Club as his notice that he has moved full-flush into the field of programming, and that henceforth he will have much to say about what goes on, or does not go on, the air. As a mover-inner, Fly has proved himself the most circumspect of Washington bureaucrats. His sensitive little finger properly moistened, is almost constantly poised upward, catching the drift of the winds of public opinion and reaction. As a barometer that little finger has accumulated a pretty good average of 'rights', and apparently it has indicated to him that the time is ripe for his next big reach over the radio industry.

"A glance over Fly's four-year career as head of the Commission will make it pointedly clear that he doesn't act on hunches. He makes sure of his law, waits for public opinion to crystallize, takes complete inventory of his objective's weaknesses and foibles and is quick to take advantage of openings. The broadcasting industry has given him plenty of openings but none has been as wide as that through which he is making his present entry into the field of programming. Some of the policies that have been espoused by high-placed factions in the business make it appear as though Fly had been beckoned to come in and make himself at home.

"Fly's flights into rhetorical admonitions during his speech before the Radio Executives' Club was frequently marked by contradictions and inconsistencies. Just to take one instance: Fly argued that broadcasters ought to sell time on controversial subjects as one means of balancing their program schedules. And in almost the same breath he inveighed against the suggestion that the forum type of program be sponsored. His affirmation and negation in this case doesn't seem to add up to the average broadcaster's conception of program balance."

Mr. Fly was also taken for a ride and pretty much along the same lines by Frank Waldrop in the Washington Times-Herald.

Charging that Mr. Fly did an about face on news broadcasts, the Washington Daily News, a Scripps-Howard paper, commented:



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"Mr. Fly criticized the new Columbia Broadcasting rule forbidding news analysts from expressing personal opinions.

"'Perhaps all Americans are to enjoy free speech except radio commentators', Mr. Fly said.

"FCC files show that it was Mr. Fly, however, who insisted on banning editorialized news comment in granting a renewal of license to the Yankee Network Station WAAB.

"A pledge exacted by Mr. Fly from President John Shepard III of the Yankee network is cited in the FCC renewal ruling. The pledge is contained in affidavits wherein Mr. Shepard promised not to let any WAAB or any sponsor of programs inject editorial comment into WAAB broadcasts.

"The affidavits were made following conferences of Mr. Shepard and his attorneys with the FCC Chairman. Commenting on statements contained in the affidavits, Mr. Fly, at a hearing September 26, 1940, said:

"'Now I have gone over those, (affidavits) and I think they are quite comprehensive, but I just want to be sure on one point. In view of the emphasis that is placed upon "employees" in your second statement, I want to be sure that the first statement is intended to represent, as the existing and as the future policy of the station, that there would be no editorializing either by the employees or by any sponsor of programs.'

"Assured on this point, Mr. Fly concluded:

"'And in case the Commission should conclude to renew the license, it might well want to rely upon these explicit representations.'

"So renewal was granted, Jan. 16, 1941, and the pledge by Mr. Shepard stands as follows:

"'That the Yankee network has no intention to and will not broadcast any so-called editorial hereafter.'"

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#### BLUE NET BOARD HOLDS ITS FIRST MEETING

Immediately after Edward J. Noble handed that nice little check for \$7,000,000 (having previously given him a retainer of \$1,000,000) last week, a meeting was held of the Board of Directors of the Blue Network Company, which was newly constituted with the resignation of five former Directors. Mark Woods, President of the Blue Network, and Edgar Kobak, Executive Vice-President, remain as Directors, and the following new Directors were elected: Mr. Noble, Franklin S. Wood, counsel to Mr. Noble; Earl E. Anderson, Vice-

President of American Broadcasting System, Inc., and C. Nicholas Priaulx, Secretary-Treasurer of American Broadcasting System, Inc.

New officers elected were: Mr. Noble, Chairman of the Board; Mr. Priaulx, Vice-President in Charge of Finance, and Robert D. Swezey, who is counsel of the Blue Network, Secretary. Mr. Woods, Mr. Kobak and other officers continue in their present capacities.

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#### G.E. TO SHOW HOW TELEVISION COVERS THE NEWS

General Electric, in conjunction with the Albany Times-Union will put on a television show Friday night, November 5th, portraying how "Television Covers the News".

"As you may or may not know, General Electric has pioneered in television, just as it has in both long and short-wave broadcasting", C. D. Wagoner of the G.E. News Bureau, writes. "Our studio, WRGB, here in Schenectady is now operating on a more complete schedule than any other television station. We also have the only television relay station, being able to pick up NBC programs from the Empire State Building (130 miles away and 7,900 feet below the line of sight) and retelecasting from our station. There seems little doubt but that television will be an important industry after the war."

There will also be an inspection by the invited press and radio guests of the General Electric television and relay station both in the Helderberg mountains and Schenectady.

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#### RADIO ARTISTS OBJECT TO CBS-NAVY BROADCAST

The American Federation of Radio Artists protested in Chicago against the appearance of 50 sailors on a Columbia Broadcasting System coast-to-coast radio program, known as the "Blue Jacket Choir", calling it a violation of CBS contract with AFRA.

An AFRA spokesman pointed out that the sailors do not belong to the union.

H. Leslie Atlass, CBS Vice-President, said the Minneapolis-Honeywell Company bought 25 minutes every Sunday for 13 weeks and presented it to the Great Lakes Naval Training Station at 11:05 each Sunday morning.

The naval station's commanding officer, Capt. R. R. M. Emmet, said: "The Great Lakes Choir is a fine thing for the morale of the men in training here. Comments from families and friends of Navy men indicate that they also derive a great deal of pleasure from the broadcast."

The broadcast went on as usual last Sunday morning.

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## ZENITH QUARTERLY OPERATING PROFIT IS \$1,592,199

The Zenith Radio Corporation reports an estimated consolidated operating profit for the first quarter ended July 31, 1943, of its current fiscal year, amounting to \$1,592,199 after depreciation, Excise Taxes and reserves, including reserves for voluntary price reductions on war contracts, but before provision for Federal Income and Excess Profits Taxes. Federal Income and Excess Profits Taxes on this profit are estimated at \$769,146 net.

"The Company's high rate of production of vital and highly secret equipment for the war effort continues and is expected to be further accelerated during the Winter months", Commander E. F. McDonald, President, reports.

"Production of the Company's recently announced hearing aid is now under way. It was originally the intention of the management to withhold the production and marketing of this product until after the end of the war. However, because of the existing manpower shortage and the possibility of placing large numbers of deaf persons in war plants by making a low cost quality hearing aid available now, the Company has been able to secure the necessary material allocations for immediate production.

"The Zenith Radio Corporation intends to employ immediately 800 to 1,000 workers with deficient hearing and thus augment its force of war workers. Each new Zenith employee with deficient hearing will be supplied with a hearing aid gratis, which hearing aid will become the employee's property after he or she has been in our employ for 60 days.

"We have the assurance of our present employees that the fullest cooperation and help will be extended to these new employees with deficient hearing to help them rehabilitate themselves in their new surroundings in war work. Every additional worker we can put into industry in this manner will aid the Government's manpower problem in this time of war.

"The figures submitted herewith are believed to fairly set forth the extent of the Company's progress for the period. They are, however, subject to price renegotiation and to verification by our auditors when they make their annual examination at the close of our fiscal year."

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It is reported that the destruction of radio factories in Germany and Holland is seriously handicapping the equipping with radio of enemy planes.

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## STAR CHAMBER TESTIMONY OUT THE WINDOW AT FCC PROBE

One direct result of the recent ousting of Representative Eugene Cox (D), of Georgia, as Chairman of the Federal Communications Commission investigation is that from now on the star chamber procedure complained of so bitterly by James L. Fly, Chairman of the FCC, and Commissioner Clifford J. Durr is out. Following an executive session of the House Investigating Committee Monday, attended by all five members, Representative Lea (D), of California, who succeeded Mr. Cox made it clear that at no time would the investigation again be turned over to the lawyers but that at least one of the Committee members would have to be on the job all the time to supervise what was going on. This was taken as a rebuke to Eugene Garey, of New York, counsel for the Committee, who was accused of cross-examining witnesses without benefit of Committee supervision.

The House Committee at the Monday session formulated the following new rules of procedure:

"All hearings of the Committee shall be presided over by one of its members instead of by a member of the staff.

"All hearings shall be open to the public unless, because of military secrets or other public interest, the Committee shall determine to meet in executive session with a quorum present.

"The FCC shall be notified in advance of all hearings.

"Oaths shall be administered to witnesses by the presiding chairman of the Committee at any hearing.

"All witnesses shall testify under oath.

"It is the purpose of the Committee to allow the Commission full opportunity to present, in due time, any facts relevant to the subject matter of the hearing."

Indirectly, Chairman Lea said that the previous procedure of the Committee had violated the intention of the resolution which set it up.

He said that the Committee had now agreed that under the resolution which created it, "hearings can be conducted only by a member of the Committee and the presence of such member during the whole of such hearing must be regarded as within the intention of the resolution."

An immediate result of the Committee's action was to bar from the record temporarily the testimony of two officials of a New York radio research firm until they could be heard in an open session with a Committee member present.



10/19/43

Chairman Lea said that the statements of the two of four officials of Short Wave Research, Inc., were taken "without the presence of any member of the Committee at any time, and that, in the case of one of the other witnesses a Committee member was in attendance only a part of the time."

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#### ELMER AGAIN TALKS BACK IN CONGRESS RADIO SMEAR CHARGE

Continuing to indulge in the precarious practice of a Government employee talking back to Congress, his employer, Elmer Davis, head of the Office of War Information, lashed back at Representative Brown (R), of Ohio, Monday when the latter charged that some Government sponsored radio programs about the home front are so worded as to smear Congress.

During testimony of Mr. Davis at the Newsprint Investigating Committee, Representative Brown made the accusation without specifying the programs. Mr. Davis told him OWI passes on some broadcasts of Government messages about rationing and other wartime matters.

"On several of these the truth has been twisted deliberately to smear or besmirch Congress", Mr. Brown said. "Did your agency pass on these?"

"You would not think an agency whose life depends on Congressional appropriations would try to smear Congress, would you?" Mr. Davis replied.

The Overseas Branch has sent 500 tons of newsprint to Cairo, 700 tons to Algiers, and 100 tons to India, he said, most of it for leaflets. OWI duplicating machines used 23 tons of paper in September.

"I am informed", Mr. Davis told the Committee, "that an average Sunday edition of the New York Times uses 788 tons of newsprint. If that is correct one edition of the Sunday Times would take care of our mimeograph paper needs for about three years."

Mr. Davis said OWI has reduced by more than 42,000,000 the number of Government publications sent out in a year. He said it has forced agencies to stop serving general mailing lists or sending news releases by telegraph.

He estimated the agency - which handles "news releases" and other public reports for all the war agencies - would use 18,000 tons of paper this year.

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## N.Y. EDUCATION BOARD GIVES FIRST RADIO CREDITS

For the first time in the history of broadcasting, the Board of Education of New York City has approved for full credit two courses for teachers based on radio programs, it was announced by Dr. James Rowland Angell, NBC Public Service Counsellor.

The programs thus honored are "Lands of the Free" and "Music of the New World", both presentations of the NBC Inter-American University of the Air.

Recognition for these programs follows a six-month experimental period during which both courses were accredited as approved In-Service courses for teachers but without credit. Under today's approval, teachers satisfactorily completing these courses will get full credit toward annual salary increments.

"Lands of the Free" is a historical series dealing with the growth and development of the American nations and is broadcast over NBC Sundays at 4:30 P.M., EWT. "Music of the New World" is a series dealing with the growth of music in the Americas, featuring an orchestra under the direction of H. Leopold Spitalny, and is broadcast Thursdays at 11:30 P.M., EWT.

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## ROBERT DOUGLAS KIRKLAND OF MACKAY RADIO DIES

Robert Douglas Kirland, 36 years old, an engineer of the Mackay Radio and Telegraph Company, died last week in Port Washington, Long Island, after an illness of several months.

A graduate of the University of California in 1928 with a B.S. degree in electrical engineering, and specializing in radio communications, Mr. Kirkland was born in Vallejo, Calif. April 27, 1907. For a short time he was connected with R.C.A. Communications, and in 1929 joined Mackay Radio and Telegraph Company as California district engineer.

In 1941 Mr. Kirkland was transferred to headquarters in New York City, where one of his major assignments was the installation of the Columbia Broadcasting System's short wave transmitter at the Mackay Radio station, Brentwood, Long Island.

Mr. Kirkland was a member of the Institute of Radio Engineers, and is survived by his wife and two children.

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 ::: TRADE NOTES :::  
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The Board of Directors of the National Association of Broadcasters will meet in Washington, D. C., on November 17-18.

Everett C. Parker, recently ordained Congregational minister, has joined NBC's Public Service Department as guest staff member. Rev. Parker will carry out a three-month study of public service broadcasting.

On motion of the Government's Antitrust Division, the U. S. District Court of Chicago yesterday (October 18) dismissed a civil suit filed in 1941 against the Radio Corporation of America and the National Broadcasting Company to break up NBC's Red and Blue Networks.

The suit was dismissed because the National Broadcasting Company had complied with the Government's demand that one of the networks be sold.

The Columbia Broadcasting System and the eight Columbia-owned stations were jointly judged "one of the Fifty Direct Mail Leaders" in the 1943 Contest on Wartime Direct Mail and Printed Promotion.

A special Showmanship Plaque also was given CBS and the Columbia-owned stations for "promotion campaigns including the most effective use of showmanship." The contest was held by the Direct Mail Advertising Association.

A newspaper circulation record of 43,374,000 daily was set in 1942, according to an analysis from the New York Trust Co., which also stated that more than 40% of all persons over 10 years old buy newspapers and create an average demand for  $1\frac{1}{2}$  copies daily by each of the Nation's 35,000,000 families. Tremendous growth of reader interest assures stability for the newspaper industry, the analysis concluded.

Treasurer and Chief Engineer of the Selector Manufacturing Corporation William A. Bruno died in Brooklyn last Sunday. Mr. Bruno at the time of his death was directing the making by his company of component parts of radar. He was a pioneer in the development of the teletype and later was employed as a consultant by the Hearst newspapers to experiment in transmission of news by radio-controlled teletype and short-wave radio.

Light operas, news commentaries and full length plays are first, second and third choice of the Troy-Albany-Schenectady area audience of WRGB, General Electric's television station in Schenectady, based on a survey of 499 programs in 31 different classifications telecast during the last 18 months.

10/19/43

The Treasury's annual report lists the salary of William S. Paley, President of the Columbia Broadcasting System, as \$202,155.

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Electric and Musical Industries, Ltd., in London, reported in a preliminary statement for the nine months ended on June 30 a profit of £174,357 after charges, taxes, reserves and exceptional contingencies. Direct comparison with a year earlier was omitted because of a change in the company's fiscal year, but for the year ended on September 30, 1942, profit amounted to £153,560. A dividend of 6 percent less tax and a bonus of 2 percent were declared on the common shares. A year ago the dividend was 6 percent.

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During the absence of Davidson Taylor, who will accompany William S. Paley, President of CBS, on his trip abroad for the Office of War Information, William H. Fineshriber, Jr. will serve as Special Assistant to Douglas Coulter, Director of Broadcasts for the Columbia Broadcasting System.

Fineshriber will transfer temporarily from his post as CBS Director of Shortwave Programs, returning to those duties when Mr. Taylor's Government service is concluded.

John W. Hundley, CBS Shortwave Assistant Director of Programs and Traffic Manager, will assume Fineshriber's duties during this period.

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A terse indication of the part FM may be playing in the battle against the Axis is hinted at in a recent letter received by J. R. Poppele, Chief Engineer of W71NY-WOR, from North Africa. His correspondent writes: "It may also interest you to know that our radio communications are mostly FM (frequency modulation, for the benefit of the censors)."

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