

HEINL RADIO BUSINESS LETTER

2400 CALIFORNIA STREET

WASHINGTON, D. C.



NOV 1 1943
FRANK E. HEINL

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FCC CALLS CBS ON CARPET; CHARGE NET RULES VIOLATION

The Federal Communications Commission again cracked the whip this week in a manner calculated to make the broadcasters sit up and take notice. It was a stiff demand that the Columbia Broadcasting System explain contracts being made with its affiliates which the Commission deemed in violation of three of the new network regulations.

"Such contracts would appear to hinder, if not to prevent, a station from exercising the degree of freedom specified in the Chain Broadcasting Regulations", the Commission pointed out.

The Commission also noted that a circular letter sent by CBS to its affiliates June 7, 1943, appears to set up a time schedule not in compliance with the requirements of the regulation which specifies that a chain may not option more than three hours of a station's time in any one of the four segments of the broadcast day.

At least some of the CBS affiliates appear to have accepted this time schedule, thus entering into an express agreement or understanding which may violate this regulation, the Commission asserted.

The Commission letter asks CBS for its comments concerning both the written contracts and the agreements outlined in the circular letter. These comments will be considered in connection with applications for the renewal of licenses of stations having such contracts or such arrangements or understandings with the Columbia Broadcasting System, the letter states.

Copies of the letter were also sent to all CBS affiliates.

The regulations involved are 3.101 which prohibits contracts preventing a station from broadcasting the programs of more than one network; 3.102 which prohibits a network from making a contract with a station preventing another station serving substantially the same area from broadcasting the network's programs not taken by the former station, or which prevents another station serving a substantially different area from broadcasting any program of the network organization; 3.104 which prohibits a network from optioning more than three hours in any one segment of the broadcast day.

Columbia has signed the contracts in question with Stations WPAD, Paducah, Ky.; WHOP, Hopkinsville, Ky.; KEYS, Corpus Christi, Texas; KGBS, Harlingen, Texas, and perhaps others, the Commission notes.

The Chain Broadcasting Regulations were adopted by the Commission on May 2, 1941, after an extensive investigation and hearings. They were contested by the National Broadcasting Company and by the Columbia Broadcasting System, which carried the case to the United States Supreme Court. The Supreme Court upheld the regulations on May 10, 1943, and they became effective in June, 1943.

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STILL HOT ON TRAIL OF GAREY, FCC PROBE COUNSEL

Continuing to whet the axe for the legal adviser of the House Committee investigating the Federal Communications Commission, the Washington Post ran an editorial (about its twentieth on hammering the investigation) this one captioned "Mr. Garey's Whitewash", which read:

"Presumably the Lea Committee investigating the FCC has not yet decided whether to carry on with the counsel who helped to bring the Committee into disrepute under the chairmanship of Representative Cox. A speech by that counsel, Eugene L. Garey, before the Radio Executives Club in New York the other day should help the Committee to make up its mind. Mr. Garey told the radio executives that the charge to the effect that Mr. Cox's resolution 'was introduced for the purpose of visiting reprisal on the FCC for certain so-called evidence it claimed to have discovered in connection with Judge Cox is false.' 'If you get down to what came first, the hen or the egg,' he went on to say, 'the thing that came first was the resolution.'

Here are the facts as they were related by Commissioner Clifford J. Durr, with thorough documentation, in his petition to Speaker Rayburn which lead to Mr. Cox's resignation from the Committee chairmanship. Twice in 1940 Mr. Cox commended the FCC and demanded an investigation of the broadcasting industry. One reason he gave for sponsoring such an inquiry was that the industry was inspiring an attack upon the Chairman of the FCC. The Congressman changed his tune two days after the FCC received a letter, in response to its inquiry into the stockholdings of two individuals who had testified in another case, revealing the existence of the Albany Herald Broadcasting Co., theretofore unknown to the Commission. It was this company in which Congressman Cox had become a stockholder as a reward for his 'legal services'. (He had importuned the FCC to license the station in question, WALB.) As soon as the cat was out of the bag Mr. Cox denounced the FCC as an 'ambitious Gestapo' and announced that he would introduce a resolution to have it investigated. His resolution came along five days later, but it died with the Seventy-seventh Congress.

"Station WALB later asked the FCC to renew its license, change its frequency and assign its license to the Albany Herald Broadcasting Co., in which Congressman Cox was still a stockholder. The Commission instructed its staff to proceed with hearings on these applications on January 5, 1943. The next day Mr. Cox again denounced

the Commission in a statement to the press for alleged terroristic control over communications and reintroduced his resolution. Its approval by the House was accompanied by one of the most malicious attacks that has ever been made on a Government agency by Mr. Cox or any other member of Congress.

"In the face of this damning record Mr. Garey has the effrontery to whitewash his former boss in a public address and to pretend that the charges which forced Mr. Cox's resignation are false. It is difficult to imagine a more complete demonstration of his unfitness to continue directing the investigation of the FCC under the rules of fair play laid down by the reorganized committee."

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CLAIM ICKES SHUFFLING LOVETT NOT DUPLICATED IN FCC

There was a quick affirmation at the Federal Communications Commission that Dr. Goodwin Watson and William Dodd, Jr., were still holding their old jobs and that there had been no switch in titles as claimed had been done by Secretary Ickes in transferring Robert M. Lovett from Secretary to Assistant to the Governor of the Virgin Islands, which so aroused Representatives Keefe (R), of Wisconsin, and Church (R), of Illinois. Congress last June barred Messrs. Watson, Dodd and Lovett from Government employment after November 15th unless they were reappointed by the President and confirmed by the Senate. It is reported in Washington that Secretary Ickes and the FCC have no intention of obeying the Congressional order. The shuffle of Dr. Lovett from one position to another by Secretary Ickes was pointed to as the first maneuver to outwit Congress. It was said that if finally ousted, the trio would sue for their salaries arguing that the Congressional ban was unconstitutional.

The fact that the Interior head had pulled a fast one on them was revealed by Representative Keefe in the House Tuesday, who said:

"Secretary Ickes taking his cue from the statement of the President that in his opinion the action of the Congress was not binding either upon the executive or the judicial branches of the Government has now determined to deliberately snap his fingers at the Congress and to retain Robert Mors Lovett upon the Federal pay roll notwithstanding. In a conversation yesterday with Mr. Ickes he advised me that he had just appointed Mr. Lovett to the position of Executive Assistant to the Governor of the Virgin Islands. He further advised me that such a position existed in the set-up down in the Virgin Islands and that he felt at perfect liberty to appoint Mr. Lovett to perform those functions. By the way, the appointment to this position does not require senatorial confirmation under general law."

"In his order he (Secretary Ickes) stipulates the duties and responsibilities of the office of Executive Assistant to the Governor of the Virgin Islands. It is very remarkable, because having checked the substantive law that defines the duties and responsibilities of the Secretary of the Virgin Islands, I find on a reading of this order that Mr. Ickes, attempting to be very clever as he usually is, has provided that whenever the position of Secretary of the Virgin Islands shall be vacant then this new Executive Assistant has all of the powers that are stipulated in general law as belonging to the Secretary transferred to him. The office of Secretary of the Virgin Islands, I am advised by virtue of the action of the Secretary of the Interior, is now vacant and Mr. Lovett whom this Congress tried to remove repeatedly from the pay roll of the Government has now been appointed by Mr. Ickes in clear and plain defiance of the expressed attitude of the Congress of the United States to another position in the Virgin Islands to which he has transferred the powers, the duties, and responsibilities of the office of Secretary of the Virgin Islands that he formerly occupied."

"The question is squarely up to the Congress again. I wonder what the Congress is going to do about it. I wonder what the Appropriations Subcommittee on the Interior Department is going to do about it. That Committee held hearings in addition to those that were conducted by the Kerr Committee and in their report when that appropriation bill came before the Congress took the same attitude as did the Kerr Committee. Are we as a Congress going to express our determination and then allow an executive officer of the Government to flout the Congress before all the people of the United States?"

"I want to add this one to the specifications that are contained in that speech (made on Monday): I ask any citizen if he cannot see in this a situation where the Executive tells the people of this country that neither he nor the judiciary are to be bound by an act of the Congress of the United States."

Replying to a defense of Mr. Ickes by Representative McCormack (D), of Massachusetts, Representative Keefe said:

"The gentleman with his usual great intelligence apparently fails to see the point at issue at all. I do not think that he fails to see it. I think he sees it the same as Dr. Goodwin Watson said he saw it when he was before our Committee. He is one of the great intellectual leftists of this country. He clearly pointed out the grave danger that is facing our country due to the spread of this doctrine that grows out of the centralized control that is being exercised over the lives of our people through unrestrained bureaucracy."

Representative Gwynne (R), of Iowa, interjected:

"This question has troubled me a great deal: How far under the Constitution may the Congress go in virtually removing an employee of the Executive branch of the Government by refusing to appropriate for his salary?"

"That is a question which Mr. Ickes and those associated with him claimed they were going to take immediately into the Supreme Court of the United States for a determination", Mr. Keefe replied. "I stated on the floor of this House that I wished they would do so. I hope that question will be determined. I do not want it determined by the subterfuge that he has adopted of creating a new job and appointing Lovett to that job without attempting to solve the basic constitutional question that may be involved."

Addressing Mr. Keefe, Representative McCormack declared:

"The gentleman has created a new theory, something new - the road of economic fascism. Of course, anybody who is an impartial observer or analyzer of current events realizes there is no foundation to that.

"Further, he picks out this Lovett case as an illustration to support his theory. I remember that years ago a famous and outstanding President of the United States, when Chief Justice Taney, as I remember, made a decision, the then President did not like, said, 'Let Chief Justice Taney enforce the law.' Certainly that is an outstanding observation, but I would never call it fascism."

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McGRADY DOESN'T TAKE DOCTOR'S DEGREE TOO SERIOUSLY

One of the few we ever heard of who showed a sense of humor about a Doctor's degree is Edward McGrady, Vice-President of the Radio Corporation of America, on leave for the duration, and former Assistant Secretary of Labor. It is revealed by Drew Pearson as follows:

"A few years ago, Ed McGrady, labor adviser to the Undersecretary of War, was bundled into a taxicab by irate Elizabeth City, Tenn., businessmen and driven across the State line with the warning that if he ever came back, they would bury his bones up in the Tennessee hills.

"But today McGrady is one of the best liked figures in Washington. And this week he will receive an honorary doctorate of laws from Holy Cross University, Worcester, Mass.

"Think of it', says McGrady. 'Me, a doctor of laws! What the hell are values these days?'"

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The first attack by German planes using radio-guided glider bombs against a Mediterranean convoy was revealed last Monday in an RAF report which said five of the raiders were destroyed or damaged. The attack occurred off North Africa and the 25 Heinkel and Dornier bombers were met by Airacobras flown by French pilots.

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SARNOFF IS MEMBER OF PRESIDENT'S NEW INDUSTRY BOARD

David Sarnoff, President of the Radio Corporation of America, was among those chosen by President Roosevelt to serve on the Chief Executive's newly formed Industry Advisory Board. This group met with the President for its first session last Wednesday and he stated that from time to time he expected to consult with them further on all matters concerning the participation of business and industry in the war. The next meeting is scheduled for the latter part of November.

The formation of such a body was proposed by Eric A. Johnston, President of the Chamber of Commerce of the United States, suggested by the fact that the President meets with similar labor and agricultural representatives. It was appraised by an observer as being a 4th term move on the part of Mr. Roosevelt to woo business and industry ahead of the 1944 campaign after, as one critic put it, "having kicked them all over the place".

At the first meeting, James F. Byrnes, War Mobilization Director and Jesse H. Jones, Secretary of Commerce, also attended. All those invited to serve accepted and were present at Wednesday's meeting. They were, besides Mr. Johnston and Mr. Sarnoff, F. C. Crawford, President of the National Association of Manufacturers, New York; K. T. Norris, President of the Norris Stamping Co., Los Angeles; Benjamin F. Fairless, President of the United States Steel Corp.; Richard R. Deupree, President of Proctor & Gamble, Cincinnati; George H. Mead, President of the Mead Corp., Dayton, Ohio, and Cason Calloway, cotton textile manufacturer, Hamilton, Ga.

Although the conferees would say nothing of their discussion to reporters who awaited their departure, Mr. Byrnes issued a formal statement in their behalf saying that the President's purpose was "not only to have these gentlemen meet with him but to hold meetings to which they will invite other leaders of industry and, as a result of such meetings, present to him the views of business men large and small, as to problems affecting industry."

"The President emphasized to the group", said Mr. Byrnes, "that the meetings were to be informal and they should feel free to present to him any essential problem. Today the discussion involved not only the problems of war mobilization, but also the problems incident to demobilization."

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NETWORKS PREPARE FOR WORST AS PETRILLO STRIKE LOOMS

There seems to be a definite feeling in the industry that Jimmy Petrillo as his trump card in settling the recording walkout will shortly call a musicians' strike on NBC and CBS. These companies are making every preparation for the biggest battle in their history and in this it is expected that they will be backed up by the other two major nets - the MBS and the Blue.

It has been felt all along that Mr. Petrillo would consolidate his gains in the disc controversy by sweeping down on the networks which is understood to be the big objective he has had in mind for years. RCA and Columbia gumming up the game in a settlement of the transcription strike will, it is believed, give him the excuse which it is said he has been seeking to start - a war on the chains in an effort not only to force a settlement of the present strike but to make the chain stations hire more musicians.

A report comes to Washington that in an off-the-record conversation last week, Petrillo declared himself as proposing to "move against radio in three weeks".

Another victory for the American Federation of Musicians' Chief was the settlement reached with WSAY at Rochester, N. Y. The principals got together at the suggestion of Justice John C. Wheeler, after he reserved decision on a defense motion to dismiss the suit filed against the Union musicians.

Gordon P. Brown, owner of the station, made a compromise agreement to employ a four-piece orchestra for 12 weeks, the leader to get \$54 a week and the three others, \$36, an expenditure of \$1,944. He also agreed after January 17, when contracts with WHAM and WHEC expire, the station will sign a contract on the same basis as the other stations, the number of musicians to depend on a percentage of the gross income.

Immediately after the agreement, which included dropping WSAY's suit against Petrillo and the Musicians Union, Harry Steeper, Petrillo's assistant, telephoned New York and brought about lifting of the ban on live music from Mutual and the Blue network that had cut off many programs over WSAY since last July 15th.

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MORRIS LEAVES OWI TO GO WITH GARDNER COWLES

Seymour Morris has resigned from the Office of War Information in Washington to become an assistant to Gardner Cowles, Jr., President of the Des Moines Register and Tribune, the Iowa Broadcasting Co. and Look Magazine. One of the new aide's first assignments will be to establish a new Cowles Research and Survey Department in Iowa.

Before going with OWI, Mr. Morris was an account executive at Compton Advertising, Inc., New York, and earlier was associated with Benton & Bowles and Lord & Thomas.

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BUSY REPORTER PROVES GOOD GUIDE TO RUSSELL - MAYBE

Frank M. Russell, Washington Vice-President of the National Broadcasting Company, while addressing the Advertising Club of Washington discovered a new way to keep from sticking his neck out - he hopes. Mr. Russell is the contact man for the Radio Corporation of America and NBC with the Federal Communications Commission, Congress and the White House and therefore must be very discreet in his public utterances.

As he began to speak at the Ad Club, Mr. Russell, in his first speech in 20 years, he noticed way over in the corner a reporter who, judging from the discriminating way he took notes, knew his stuff. So every time Frank saw the reporter getting busy, he sensed he was getting on dangerous ground and quickly changed the subject. At that Mr. Russell hardly had time to get back to his office, it was said, before a request came popping in from the FCC for a copy of the speech.

Commenting on wartime difficulties of radio, Mr. Russell said enough tubes would be available for receiving sets to maintain at least one radio set in every home. Despite wartime operational and manpower problems, he explained that the industry has been able to carry on without shutting down one station.

The Government has discovered, Mr. Russell continued, that commercial programs are the best for getting over messages. And that the head of OWI's radio section revealed that within the next six months commercial programs would give over three hundred million dollars' worth of time to the war effort.

Mr. Russell said that material for such a station was already on flatcars when the war broke out, but was diverted for more essential use of the armed forces.

At the same time, he told of a new television transmitter - not bigger than a cigar box - that had been developed in the last few months which, when placed at 50-mile intervals on poles, would be able to send television across the Nation "as straight as a rifle". He added that the discovery of frequency modulation by which static is eliminated and other improvements would revolutionize the radio field after the war.

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WOULD NICK WINCHELL, JERGENS & BLUE FOR \$2,000,000

Walter Winchell, radio and newspaper gossip columnist, the Andrew Jergens Company, of Cincinnati, his sponsor, and the Blue Network, Inc., were sued for \$2,000,000 libel damages in the United States District Court in Chicago by George Washington Robnett, author and Executive Secretary of the Church League of America. The suit is based on Winchell's radio promotion of the book "Under Cover" written by John Roy Carlson. This is the second suit by Robnett in the case. On October 14 he filed suit for \$100,000 damages against E. P. Dutton & Co., publishers of the book.

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JUDGE ASHBY ANNOUNCES NBC LEGAL STAFF CHANGES

Robert P. Myers, a senior attorney in NBC's Legal Department for a number of years, has resigned to accept a position as Assistant General Counsel in the RCA Legal Department, A. L. Ashby, NBC Vice President and General Counsel, announced this week.

Joseph A. McDonald, who has had charge of NBC legal work in Chicago, will return to New York as Assistant General Counsel. Henry Ladner, a senior attorney in the New York office, also has been appointed Assistant General Counsel.

The new arrangements and transfers are expected to be completed by Monday, November 1st, Judge Ashby said. Mr. McDonald's successor in Chicago will be announced soon.

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KFEL SUES PAPER TO GET DAILY PROGRAM LISTING

Station KFEL, Denver, is suing to compel the Denver Post to list programs broadcast by the station along with the listings of Stations KOA, KLZ and KVOB.

KFEL alleges that the Post, which has two daily news programs on KOA, injures KFEL and destroys its competition with the paper's newscasts and other outlets in the region. In addition to asking an injunction to prevent the Post from publishing program lists omitting KFEL broadcasts, the station also is seeking triple damages of \$2,395.

The damage suit is based on a payment of \$798 spent by KFEL with the Post from Feb. 1, 1942, to March 31, 1943, during which period, the suit alleges, the paper charged KFEL \$5 per line for program listings, but printed programs from the other stations mentioned without charge. The Post does not list programs of KYMR, an independent.

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William J. Cooksey, also known as Ross Dyar, trading as World's Medicine Company, whose mailing addresses are post office boxes in Columbus, Ohio, and Indianapolis, has been ordered by the Federal Trade Commission to cease and desist from misrepresentation in the sale of a medicinal preparation designated "World's Tonic". The Commission finds that in advertisements disseminated by means of newspapers, circulars and other advertising media, and in radio broadcasts, the respondent falsely represented that the preparation, which is manufactured for him by a commercial laboratory in Columbus, is a cure or remedy for a great many diseases and ailments.

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 ::: TRADE NOTES :::
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Among the things listed by a Gallup Poll that people would like to buy if they were able to now are 1,100,000 radio sets. About 500,000 more need parts or repairs, tubes especially.

Addressing the Overseas Press Club in New York, Elmer Davis expressed resentment over the tale that the reason he had hired his former employer, William S. Paley, radio executive, was that he hoped to get his job back after the war.

"If I do work for Mr. Paley again, I hope that I get more than I am paying him, which is \$1 a year", Mr. Davis commented.

In the new revenue bill voted by the House Ways and Means Committee the following increases were recommended for radio, telegraph and telephone messages:

Telephone	<u>Present rate</u>	<u>Committee action</u>
Local % of charge	10	15
Long dist. % of charge	20	25
Telegraph, cable, radio -		
Domestic % of charge	15	20
International % of charge	10	15
Leased Wires -		
Nonservice % of charge	15	20
Service % of charge	5	7

"Representatives of all the principal radio forums met in New York last week", Leonard Lyons writes, "to decide that they should not accept commercial sponsorship or permit the radio chains to assign unfavorable time-spots to them."

The Federal Communications Commission has granted transfer of control of Worcester Broadcasting Corp., licensee of Station KFMB, from the First National Trust and Savings Bank of San Diego, to O.L. Taylor and Jack O. Gross, for a consideration of \$95,000.

Sylvania Electric Products, Inc., earned \$1,005,697, or \$1.13 a share in nine months ended September 30, compared with \$636,225 or \$1.02 a share a year ago.

In accordance with instructions received from the Federal Communications Commission, the call letters of General Electric's frequency modulation station, W85A have been changed to WGFM, effective November 1. The change comes on the eve of the station's third anniversary and only affects the call letters. The station will continue to operate on the same wave length as before, according to Emerson Markham, Manager of the station.

A total of approximately 137 hours was contributed to the war effort in September of this year by the Blue Network as compared with 86 hours in September, 1942, and the 119 hours in August, 1943.

Press Wireless, Inc., was denied applications for authority to communicate with Palermo, Sicily, to operate a cue channel to Algiers, Algeria, and to communicate with Oran, Algeria by the Federal Communications Commission.

The Commission, considering a motion filed by Press Wireless, Inc., to extend the general investigation of its rates and charges to include the other international carriers and to postpone the hearing indefinitely, adopted an order postponing the hearing presently scheduled for November 17, 1943, to January 17, 1944. The further hearing involving rates of Press Wireless, Inc., for ordinary press service between the United States and China, will proceed on November 17th as scheduled.

The marriage of Joyce Hayward, dramatic actress and writer, to Corporal Edgar Hubert Kobak of the U. S. Army, son of Edgar Kobak, Executive Vice-President of the Blue Network, was announced by her mother, Mrs. Alfred E. Hayward of New York. The late Mr. Hayward was a well-known Philadelphia cartoonist.

Station WTBO, Cumberland, Md., has been granted by the Federal Communications Commission acquisition of control of Associated Broadcasting Corp. licensee of the station by Aurelia S. Becker, for a consideration of \$10,484, representing 50 additional share of capital stock; also granted construction permit to change frequency from 820 to 1450 kilocycles, and hours of operation from limited to unlimited, subject to engineering condition.

Among the topics in the October issue of "Radio Age", published by the Department of Information of RCA, are: "Radio Relays for Television"; "Phosphors Brighten Radio Picture"; "Radio Crystal Bottleneck Broken"; "Occupied Nations Hear NBC"; "Production Wins 3 Awards", RCA Victor, Radiomarine Workers Honored; "'What's New?' Is Radio Hit", Critics Praise RCA's New Broadcast Program; "RCA Workers Launch Ship"; RCA Sets Aid Sicily Fight; "Listening-In from 'Middle of Nowhere'", Sarnoff's Son Writes from South Pacific; "Plan Post-War Television".

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MBS TO HONOR NAVY CHAPLAINS

Miller McClintock, President of the Mutual Broadcasting System, will give a luncheon at the Statler in Washington next Friday at which the first copies of the book, "A Minute of Prayer" will be presented to Chaplain William R. Arnold, Chief of Army Chaplains, and Chaplain Robert D. Workman, Chief of Navy Chaplains.

"A Minute Of Prayer" is a book just published by the Garden City Publishing Company. The collection of prayers, submitted by Ministers, Priests, Rabbis and Christian Scientists, is based on the Mutual Network's daily radio program, "A Minute Of Prayer". Proceeds from the sale of the book will be donated to the United Service Organizations, Inc. Cooperating in the presentation of the radio program and the publication of the book are The Federal Council of The Churches Of Christ in America; The Catholic Charities of the Archdiocese of New York; The Synagogue Council Of America and The Christian Science Committee on Publication for the State of New York.

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