1626 K STREET, N. W. WASHINGTON, D. C Vol. 9, No. 21, May 29, 1941

WHITE RESOLUTION HEARING

The Senate Interstate Commerce Committee's hearing on the White resolution has been postponed from Saturday, May 31, to Monday, June 2. (For the text of the resolution, see NAB REPORTS, p. 437.)

WOMEN ENDORSE RADIO

General Federation of Women's Clubs on Friday, May 23, adopted the following resolution:

"WHEREAS, the system of radio broadcasting extant in the United States is the most democratic in the world and is the greatest medium for the preservation of democracy, bring freedom of speech and the exchange of ideas and information directly into the homes of millions of citizens, and

"WHEREAS, American radio through its public service programs has contributed tremendously to culture and education, not only in the homes of this great nation, but throughout the world, and as a vehicle for entertainment has served to maintain high morale in these times of stress, therefore, be it

"Resolved, that in order to preserve the freedom of radio for the best interests of democracy, the General Federation of Women's Clubs approves and advocates further Congressional study and investigation of the problems facing the broadcasting system in this country and, be it further

"Resolved, that the General Federation of Women's Clubs be instructed to send a copy of this resolution to the President of the United States, the secretaries of the Interstate Commerce Committees of the United States Senate and House of Representatives, and to the Secretary of the FCC."

ASCAP LOSES IN SUPREME COURT

The United States Supreme Court on Monday, May 26, in an opinion rendered by Associate Justice Black, in *Watson, Attorney General of Florida v. Buck, as President of ASCAP,* and *Buck v. Watson,* sustained the anti-monopoly provisions of the Florida statute which was enacted in 1937.

Two cases involving the Florida statute were before the court for determination. The special three judge lower court had held the entire 1937 statute unconstitutional on the grounds that several sections were unconstitutional and that these sections could not be separated from the remainder of the statute. A second statute of Florida, enacted in 1939, was held by the lower court to be constitutional, with the exception of two paragraphs. The two paragraphs held unconstitutional by the lower court were one which prohibited the copyright owner from imposing a license fee on programs which did not use the material coming under the license and the provision which requires a combination of two or more separate copyright owners to afford licensees the option of paying on a per-piece basis at prices fixed by the individual copyright owner and filed with the Comptroller of the state. The Attorney General appealed from the decision covering the 1937 statute and from the ruling of the lower court that the two sections of the 1939 statute were unconstitutional. ASCAP appealed from the decision of the lower court holding the 1939 statute to be constitutional except with regard to the above-mentioned two sections. The lower court had entered a permanent injunction against the enforcement of the 1937 statute and the two sections of the 1939 statute on the grounds that they violated the federal Copyright Act and the federal Constitution.

The Supreme Court reversed the lower court with instructions to vacate the injunction and to dismiss ASCAP's bill of complaint on the grounds that the monopoly provisions of the 1937 law were constitutional and that *"ASCAP comes squarely within the definition of the combinations prohibited by Section 1 of the 1937 Act."* The opinion then points out that, since ASCAP is a prohibited association within the meaning of the 1937 act, the Court is not called upon at the instance of ASCAP *"to pass upon the validity of other provisions * * * which might cover other combinations not now before us. It is enough for us to say in this case that the phase of Florida's law prohibiting activities of those unlawful combinations described in Section 1 of the 1937 act does not contravene the copyright laws or the federal Constitution."*

The decision leaves both the 1937 and the 1939 statutes in full force and forever lays at rest ASCAP's contention that the copyright laws granted it and copyright owners special privileges. As stated by the Court, *"This contention is based on the idea that Congress has granted the copyright privilege with relation to public performances of music, and that with reference to the protection of this particular privilege, combination is essential. We are therefore asked to conclude from the asserted necessities of their situation that Congress intended to grant this extraordinary privilege of combination. This we cannot do. We are pointed to nothing either in the language of the copyright laws or in the history of their enactment to indicate any congressional purpose to deprive the states, either in whole or in part, of their long-recognized power to regulate combinations in restraint of trade."*

Attorneys express the belief that, since Associate Justice Black wrote the unanimous opinion of the Court, it is proper to consider that opinion in conjunction with Justice Black's minority opinion in the preliminary hearing before the Supreme Court in the same case in 1939. It was in this minority opinion that Associate Justice Black characterized ASCAP as *"a price fixing combination that actually wields the power of life and death over every business in Florida, and elsewhere, dependent upon copyrighted musical compositions for existence."*

Attorneys representing the State of Florida were Tyrus A. Norwood, Assistant Attorney General, Lucien H. Boggs of Jacksonville, and Andrew W. Bennett of Washington, D. C. Thomas G. Haight represented ASCAP.

At the same time, the Supreme Court reversed the lower court in the Nebraska-ASCAP litigation (*Swanson v. Buck, et al.*), in which the lower court had held Nebraska's 1937 statute to be unconstitutional in its entirety. This statute was substantially the same as the 1937 Florida law. The short opinion stated that the case was reversed and remanded with instructions to dismiss on authority of *Watson v. Buck* (the Florida case). The attorneys representing Nebraska were John Riddell, Assistant Attorney General, and William J. Hotz, Special Assistant to the Attorney General. Thomas G. Haight represented ASCAP.

(Continued on page 476)

NAB Reports
The NATIONAL ASSOCIATION OF BROADCASTERS
1626 K St., N. W. WASHINGTON Phone NAtional 2080

ASCAP LOSES IN SUPREME COURT

(Continued from page 475)

The texts of the decisions follow:

SUPREME COURT OF THE UNITED STATES

Nos. 610, 611.—October Term, 1940.

J. Tom Watson (Gibbs), individually and as Attorney General of the State of Florida, et al., Appellants,

vs.

Gene Buck, individually and as President of the American Society of Composers, Authors and Publishers, et al.

Gene Buck, individually and as President of the American Society of Composers, Authors and Publishers, et al., Appellants,

vs.

J. Tom Watson (Gibbs), individually and as Attorney General of the State of Florida, et al.

Appeals from the District Court of the United States for the Northern District of Florida.

[May 26, 1941.]

Mr. Justice Black delivered the opinion of the Court.

In broad outline, these cases involve the constitutionality of Florida statutes regulating the business of persons holding music copyrights and declaring price-fixing combinations of "authors, composers, publishers, [and] owners" of such copyrights to be illegal and in restraint of trade.

The American Society of Composers, Authors and Publishers (ASCAP), one of the appellants in No. 611 and one of the appellees in No. 610, is a combination which controls the performance rights of a major part of the available supply of copyrighted popular music. The other appellants in No. 611 (appellees in No. 610) are individual composers, authors and publishers of music controlled by ASCAP. The appellees in No. 611 (appellants in No. 610) are the Attorney General and all the state prosecuting attorneys of Florida who are charged with the duty of enforcing certain parts of the statutes in question.

These two cases were originally a single action, in which ASCAP and its co-parties sought to enjoin the state officials from enforcing a 1937 Florida statute.[1] A federal district court, composed of three judges under §266 of the Judicial Code, granted a temporary injunction, and this Court affirmed without passing upon the merits of the constitutional questions involved. *Gibbs* v. *Buck,* 307 U. S. 66. A supplemental bill of complaint was then filed, asking that the three judge court enjoin a 1939 Florida statute relating to the same subject.[2] On final hearing, the three judge court again enjoined the state officials from enforcing any part of the 1937 statute, but granted the injunction only as to certain sections of the 1939 act. 34 F. Supp. 510. No. 611 is an appeal by ASCAP and its co-complainants from the refusal to enjoin the state officials from enforcing the remainder of the 1939 act. No. 610 is an appeal by the state officials from the order granting the injunction as to the 1937 act and as to certain sections of the 1939 act.

The court below, without passing at all upon the validity of thirteen out of twenty-one sections and subsections of the 1937 act, held that the remaining eight sections deprived copyright owners of rights granted them by the federal copyright laws, and that the statute must fall in its entirety. This it did upon the premise that the sections held invalid and the other parts of the bill were intended by the Florida legislature to form "a harmonious whole" and to "stand or fall together." The ultimate questions involved are such that we must first determine whether this ruling was correct. We hold that it was not, for the following reasons.

The Florida legislature expressed a purpose directly contrary to the District Court's finding. For what the legislature intended in this regard was spelled out in section 12 of the Act in the clear and emphatic language of the legislature itself. That section reads:

"If any section, sub-section, sentence, clause or any part of this Act, is for any reason, held or declared to be unconstitutional, imperative [sic] or void, such holding or invalidity shall not effect the remaining portions of this Act; and it shall be construed to have been the legislative intent to pass this Act without such unconstitutional, inoperative or invalid part therein; and, the remainder of this Act, after the exclusion of such part of parts, shall be held and deemed to be valid as if such excluded parts had not been included herein."

This is a flat statement that the Florida legislature intended that the act should stand and be enforced "after the exclusion of such part or parts" as might be held invalid. Unless a controlling decision by Florida's courts compels a different course, the federal courts are not justified in speculating that the state legislature meant exactly the opposite of what it declared "to have been the legislative intent." But the Supreme Court of Florida recognizes and seeks to carry out the legislative intent thus expressed. Speaking of a similar severability clause of another statute, that court said: "The Act as a whole evinces a purpose on the part of the Legislature to impose a license tax on chain stores and Section fifteen provides that if any section, provision or clause thereof, or if the Act as applied to any circumstance shall be declared invalid or unconstitutional such validity shall not affect other portions of the Act held valid nor shall it extend to other circumstances not held to be invalid. Under the liberal terms of Section fifteen it may be reasonably discerned that the Legislature intended that the Act under review should be held good under any eventuality that did not produce an unreasonable, unconstitutional or an absurd result. . . . The test to determine workability after severance and whether the remainder of the Act should be upheld rests on the fact of whether or not the invalid portion is of such import that the valid part would be incomplete or would cause results not contemplated by the Legislature." *Louis K. Liggett Co.* v. *Lee,* 109 Fla. 477, 481. Measured by this test the court below was in error, for there can be no doubt that section 1 and the other sections upon which the court failed to pass are complete in themselves; they are not only consistent with the statute's purpose but are in reality the very heart of the act, comprising a distinct legislative plan for the suppression of combinations declared to be unlawful. For as pointed out by the court below, the sections that were not passed on are those which outlaw combinations to fix fees and prescribe the means whereby the legislative proscriptions against them can be made effective.[3] Since, therefore, that phase of the act which aimed at unlawful combinations is complete in itself and capable of standing alone, we must consider it as a separable phase of the

[1] Fla. Laws 1937, ch. 17807.
[2] Fla. Laws 1939, ch. 19653.

[3] The Court said:
"There remain: Sections 1, 2-C and 3, in effect declaring ASCAP and similar societies illegal associations, outlawing its arrangements for license fees, and proscribing and making an offense, attempts to collect them; Section 7-B making persons, acting for such a combination, agents for it and liable to the penalties of the Act; Section 8 fixing the penalties; Section 9 giving the state courts jurisdiction to enforce the Act, civilly and criminally; and Sections 10-A, 10-B, 11-A and 11-B, prescribing procedure under it." 34 F. Supp. 516. With the possible exception of section 3, nowhere in the course of the opinion were any of these sections held invalid.

statute in determining whether the injunction was properly issued against the state officials.

As a matter of fact, as the record stands the right of ASCAP and its co-complainants to an injunction depends upon this phase of the statute and is not to be determined at all by the validity or invalidity of the particular sections which the court below thought inconsistent with the federal Constitution and the copyright laws passed pursuant to it. The ultimate determinative question, therefore, is whether Florida has the power it exercised to outlaw activities within the state of price fixing combinations composed of copyright owners. But before considering that question it is necessary that we explain why we do not discuss, and why an injunction could not rest upon, any other phase of Florida's statutory plan.

Defendants in the injunction proceedings are the state's Attorney General, who is charged with the responsibility of enforcing the state's criminal laws, and all of the state's prosecuting attorneys, who are subject to the Attorney General's authority in the performance of their official duties.[4] Under the statutes before us, it is made the duty of the state's prosecuting attorneys, acting under the Attorney General's direction, to institute in the state courts criminal or civil proceedings. The original bill alleged that the defendants had threatened to—and would, unless restrained—enforce the 1937 statute "in each and all of its terms and the whole thereof, and particularly against these complainants and others similarly situated . . . ", and that as a consequence complainants would suffer irreparable injury and damages. The supplemental bill contained similar allegations as to the 1939 act. Both bills were drawn upon the premise that complainants were entitled to an injunction restraining all the state's prosecuting officers from enforcing any single part of either of the lengthy statutes, under any circumstances that could arise and in respect to each and every one of the multitudinous regulations and prohibitions contained in those laws. In their answers, the state's representatives specificially denied that they had made any threats whatever to enforce the acts against complainants or any one else. In their answer to the supplemental bill, however, they said that they would perform all duties imposed upon them by the 1939 act. The findings of the court on this subject were general, and were to the effect that "Defendants have threatened to and will enforce such State Statutes against these Complainants and others similarly situated in the event that such Complainants and others similarly situated refuse to comply with said State Statutes or do any of the acts made unlawful by said State Statutes." It is to be noted that the court did not find any threat to enforce any specific provision of either law. And there is a complete lack of record evidence or information of any other sort to show any threat to prosecute the complainants or any one else in connection with any specific clause or paragraph of the numerous prohibitions of the acts, subject to a possible exception to be discussed later. The most that can possibly be gathered from the meager record references to this vital allegation of complainants' bill is that though no suits had been threatened, and no criminal or civil proceedings instituted, and no particular proceedings contemplated, the state officials stood ready to perform their duties under their oath of office should they acquire knowledge of violations. And as to the 1937 act, the state's Attorney General took the position from the very beginning, both below and in this Court, that under his construction of the earlier act no duties of any kind were imposed upon him and his subordinates except with relationship to prohibited combinations of the type defined in section 1.

Federal injunctions against state criminal statutes, either in their entirety or with respect to their separate and distinct prohibitions, are not to be granted as a matter of course, even if such statutes are unconstitutional. "No citizen or member of the community is immune from prosecution, in good faith, for his alleged criminal acts. The imminence of such prosecution even though alleged to be unauthorized and hence unlawful is not alone ground for relief in equity which exerts its extraordinary powers only to prevent irreparable injury to the plaintiff who seek its aid." *Beal* v. *Missouri Pacific Railroad Corp.*, 312 U. S. 45, 49. A general statement that an officer stands ready to perform his duty falls far short of such a threat as would warrant the intervention of equity. And this is especially true where there is a complete absence of any showing of a definite and expressed intent to enforce particular clauses of a broad, comprehensive and multi-provisioned statute. For such a general statement is not the equivalent of a threat that prosecutions are to be begun so immediately in such numbers, and in such manner as to indicate the virtual certainty of that extraordinary injury which alone justifies equitable suspension of proceedings in criminal courts. The imminence and immediacy of proposed enforcement, the nature of the threats actually made, and the exceptional and irreparable injury which complainants would sustain if those threats were carried out are among the vital allegations which must be shown to exist before restraint of criminal proceedings is justified. Yet from the lack of consideration accorded to this aspect of the complaint, both by complainants in presenting their case and by the court below in reaching a decision, it is clearly apparent that there was a failure to give proper weight to what is in our eyes an essential prerequisite to the exercise of this equitable power. The clear import of this record is that the court below thought that if a federal court finds a many-sided state criminal statute unconstitutional, a mere statement by a prosecuting officer that he intends to perform his duty is sufficient justification to warrant the federal court in enjoining all state prosecuting officers from in any way enforcing the statute in question. Such, however, is not the rule. "The general rule is that equity will not interfere to prevent the enforcement of a criminal statute even though unconstitutional. . . . To justify such interference there must be exceptional circumstances and a clear showing that an injunction is necessary in order to afford adequate protection of constitutional rights. . . . We have said that it must appear that 'the danger of irreparable loss is both great and immediate'; otherwise the accused should first set up his defense in the state court, even though the validity of a statute is challenged. There is ample opportunity for ultimate review by this Court of federal questions." *Spielman Motor Sales Co.* v. *Dodge*, 295 U. S. 89, 95-96.

Such "exceptional circumstances" and "great and immediate" danger of irreparable loss were not here shown. Tested by this rule, therefore, and with the possible exception of that phase of the statute outlawing Florida activities by combinations declared unlawful in section 1 of the 1937 act (which we shall later consider separately), neither the findings of the court below nor the record on which they were based justified an injunction against the state prosecuting officers.

In addition to the fact that the situation here does not meet the tests laid down in the decided cases, the very scope of these two statutes illustrates the wisdom of a policy of judicial self restraint on the part of federal courts in suspending state statutes in their entirety upon the ground that a complainant might eventually be prosecuted for violating some part of them. The Florida Supreme Court, which under our dual system of government has the last word on the construction and meaning of statutes of that state, has never yet passed upon the statutes now before us. It is highly desirable that it should have an opportunity to do so.[5] There are forty-two separate sections in the two acts. While some sections are repetitious, and while other sections are unimportant for present purposes, there are embraced within these two acts many separate and distinct regulations, commands and prohibitions. No one can foresee the varying applications of these separate provisions which conceivably might be made. A law which is

[4] The Secretary of State and the State Comptroller were added as parties defendant by a "Further Supplemental Bill of Complaint" filed October 19, 1939. The ground given by the complainants for adding parties was that certain duties were imposed on these officials by the 1939 act. The duties, however, required only that certain fees be collected, and not that actions be brought to enforce the law.

In the course of this litigation, Florida has had three Attorneys General. The present Attorney General took office on January 7, 1941, and all the parties have joined in a motion to substitute him as a defendant in place of his predecessor in office. There is no objection to the substitution, and the motion is granted.

[5] Cf., e.g., Arkansas Corporation Commission *v.* Thompson, 312 U. S. —, —; Railroad Commission of Texas *v.* Pullman Co., 312 U. S. —, —; Railroad Commission of Texas *v.* Rowan & Nichols Oil Co., 311 U. S. 570, 575; Thompson *v.* Magnolia Petroleum Co., 309 U. S. 478, 483; Ex parte Baldwin, 291 U. S. 610, 619; Gilchrist *v.* Interborough Rapid Transit Co., 279 U. S. 159, 207.

constitutional as applied in one manner may still contravene the Constitution as applied in another. Since all contingencies of attempted enforcement cannot be envisioned in advance of those applications, courts have in the main found it wiser to delay passing upon the constitutionality of all the separate phases of a comprehensive statute until faced with cases involving particular provisions as specifically applied to persons who claim to be injured. Passing upon the possible significance of the manifold provisions of a broad statute in advance of efforts to apply the separate provisions is analogous to rendering an advisory opinion upon a statute or a declaratory judgment upon a hypothetical case. It is of course conceivable that a statute might be flagrantly and patently violative of express constitutional prohibitions in every clause, sentence and paragraph, and in whatever manner and against whomever an effort might be made to apply it. It is sufficient to say that the statutes before us are not of this type. Cases under the separate sections and paragraphs of the acts can be tried as they arise—preferably in the state courts. Any federal questions that are properly presented can then be brought here. But at this time the record does not justify our passing upon any part of the statute except, possibly, that phase which prohibits activities in Florida by combinations declared unlawful. While the proof and findings in this regard are not as clear and specific as they might and should be, we nevertheless, under the circumstances of this case, proceed to this ultimate and decisive question.

In the consideration of this case, much confusion has been brought about by discussing the statutes as though the power of a state to prohibit or regulate combinations in restraint of trade was identical with and went no further than the power exercised by Congress in the Sherman Act. Such an argument rests upon a mistaken premise.[6] Nor is it within our province in determining whether or not this phase of the state statute comes into collision with the federal Constitution or laws passed pursuant thereto to scrutinize the act in order to determine whether we believe it to be fair or unfair, conducive to good or evil for the people of Florida, or capable of protecting or defeating the public interest of the state.[7] These questions were for the legislature of Florida and it has decided them. And, unless constitutionally valid federal legislation has granted to individual copyright owners the right to combine, the state's power validly to prohibit the proscribed combinations cannot be held non-existent merely because such individuals can preserve their property rights better in combination than they can as individuals. We find nothing in the copyright laws which purports to grant to copyright owners the privilege of combining in violation of otherwise valid state or federal laws. We have, in fact, determined to the contrary with relation to other copyright privileges.[8] But complainants urge that there is a distinction between our previous holdings and the question here. This contention is based on the idea that Congress has granted the copyright privilege with relation to public performances of music, and that with reference to the protection of this particular privilege, combination is essential. We are therefore asked to conclude from the asserted necessities of their situation that Congress intended to grant this extraordinary privilege of combination. This we cannot do. We are pointed to nothing either in the language of the copyright laws or in the history of their enactment to indicate any congressional purpose to deprive the states, either in whole or in part, of their long-recognized power to regulate combinations in restraint of trade. Compare *Waters-Pierce Oil Co.* v. *Texas* (No. 1), 212 U. S. 86, 107.

Under the findings of fact of the court below, ASCAP comes squarely within the definition of the combinations prohibited by section 1 of the 1937 act. Section 1 defines as an unlawful combination an aggregation of authors, composers, publishers, and owners of copyrighted vocal or instrumental musical compositions who form any society, association, or the like and the members of which constitute a substantial number of the persons, firms or corporations within the United States who own or control such musical compositions and "when one of the objects of such combination is the determination and fixation of license fees or other exactions required by such combinations for itself or its members or other interested parties." Section 8 of the 1937 act makes it an offense for such combinations "to act within this State in violation of the terms of this Act." The court below found that there were 1425 composers and authors who were members of ASCAP; that the principal music publishers of the country are members; that the Society controls the right of performance of 45,000 members of similar societies in foreign countries; and that the Board of Directors of ASCAP have "absolute control over the fixing of prices to be charged for performance licenses. . . ." Since under the record and findings here ASCAP is an association within the meaning of section 1 of the 1937 act, we are not called upon at its instance to pass upon the validity of other provisions contained in the numerous clauses, sentences, and phases of the 1937 or 1939 act which might cover other combinations not now before us. It is enough for us to say in this case that the phase of Florida's law prohibiting activities of those unlawful combinations described in section 1 of the 1937 act does not contravene the copyright laws of the federal Constitution; that particular attacks upon other specified provisions of the statutes involved are not appropriate for determination in this proceeding; that the court below erred in granting the injunction; and that the bill should have been dismissed. All other questions remain open for consideration and disposition in appropriate proceedings. For the reasons given, the judgment below in No. 610 is reversed and the cause remanded to the lower court with instructions to dismiss the bill. The judgment in No. 611 is affirmed.

It is so ordered.

Mr. Justice MURPHY took no part in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.

[6] We have been referred to a recent consent decree against ASCAP in the federal district court for the Southern District of New York, the theory being that the decree might have some bearing upon the state's power to pass the legislation now under attack. But it has not. In matters relating to purely intrastate transactions, the state might pass valid regulations to prohibit restraint of trade even if the federal government had no law whatever with reference to similar matters involving interstate transactions.

[7] The court below concluded as a matter of law that "enactment of the said Statute was not necessary to protect, nor does it serve the public interest of the State of Florida. . . ."

[8] Interstate Circuit, Inc. *v.* United States, 306 U. S. 208. Cf. Fashion Originators' Guild of America *v.* Federal Trade Commission, 312 U. S. —; Ethyl Gasoline Corp. *v.* United States, 309 U. S. 436.

SUPREME COURT OF THE UNITED STATES

No. 312.—OCTOBER TERM, 1940.

Harry R. Swanson, as Secretary of State of Nebraska, et al., Appellants,

vs.

Gene Buck, Individually and as President of The American Society of Composers, Authors and Publishers, et al.

Appeal from the District Court of the United States for the District of Nebraska.

[May 26, 1941.]

Mr. Justice BLACK delivered the opinion of the Court.

Most of the questions presented by this case are the same as those that were raised in Nos. 610 and 611, this day decided. Here, as there, at the request of ASCAP and its co-complainants a federal District Court composed of three judges enjoined various state officials from enforcing a state statute[1] aimed primarily at price-fixing combinations operating in the field of public performance of copyright music.[2] Here, as there, the complainants alleged, and the defendants denied, that enforcement of the act had been

[1] Neb. Laws 1937, ch. 138.

[2] 33 F. Supp. 377.

threatened. Here, as there, the court below found that threats had been made, that some of the sections of the act were invalid, that the invalidity of those sections permeated the whole, and that the state officials should be enjoined from enforcing any of the numerous provisions of the act. But, as in the Florida case, the court below proceeded on a mistaken premise as to the rôle a federal equity court should play in enjoining state criminal statutes. Here, there was no more of a showing of exceptional circumstances, specific threats, and irreparable injury than in the Florida case. In his brief in this Court, the Attorney General of Nebraska stated that "Appellants, as law enforcement officers, sincerely hope that no action under this law will be required. None was threatened before nor since the suit was started." With one possible exception, the record bears out the statement of the Attorney General; there was no evidence whatever that any threats had been made, but in his answer the Attorney General stated that he would "enforce the act against the complainant Society . . . [if] the complainant Society would operate in the State of Nebraska in violation of the terms of the statute by conniving and conspiring to fix and determine prices for public performance of copyrighted musical compositions. . . ." As we have just held in *Watson* v. *Buck,* it was error to issue an injunction under these circumstances.

In other material respects also, this case is like the Florida case. The court below failed to pass on what we consider the heart of the statute because of what it regarded as the pervading vice of the invalid sections. But section 12 of the Nebraska statute is similar to section 12 of the Florida statute and provides that "If any section, subdivision, sentence or clause in this Act shall, for any reason, be held void or non-enforceable, such decision shall in no way affect the validity of enforceability of any other part or parts of this Act." The legislative will is respected by the Supreme Court of Nebraska,[3] and the court below should have followed state law in this regard. That part of the statute on which the court did not pass—and the part which the Attorney General said he stood willing to enforce if violated—set up a complete scheme for the regulation of combinations controlling performing rights in copyright music. On the authority of *Watson* v. *Buck,* the decision below is reversed and the cause is remanded with instructions to dismiss the bill.

It is so ordered.

Mr. Justice MURPHY took no part in the consideration or decision of this case.

[3] See Petersen *v.* Beal, 121 Neb. 348, 353, quoting and approving the following excerpt from Scott *v.* Flowers, 61 Neb. 620, 622-623: "The general rule upon the subject is that where there is a conflict between an act of the legislature and the constitution of the state, the statute must yield to the extent of the repugnancy, but no further [Citing authorities]. If, after striking out the unconstitutional part of a statute, the residue is intelligible, complete, and capable of execution, it will be upheld and enforced, except, of course, in cases where it is apparent that the rejected part was an inducement to the adoption of the remainder. In other words, the legislative will is, within constitutional limits, the law of the land, and when expressed in accordance with established procedure, must be ascertained by the courts and made effective."

Sales

HOW TO IMPROVE COMMERCIALS

In response to numerous requests from NAB members who attended the Sales Managers' meeting at the convention and heard the talk by Horace Schwerin on "Improving Your Commercials," this digest is provided.

Mr. Schwerin is General Manager and Director of Research of the Raymond Spector Agency of New York City, and his talk was the result of research carried on during the past several years with the "Program Analyzer" machine, developed by Dr. Paul Lazarsfeld and Dr. Frank Stanton.

Thousands of typical radio listeners were tested for their reaction to radio commercials, in conditions as closely as possible approximating normal home listening. The machine recorded their likes and dislikes, and after a great number of tests were conducted on all types of programs and all types of commercials, it was possible to work out a practical application of these findings. Subsequent tests showed that the new commercials, written according to the new principles, enjoyed much greater attention and acceptance from listeners.

Mr. Schwerin explained in detail the methods used, illustrating his discussion with charts, graphs, transcriptions, phonographs and other material. Admitting the possibility of some errors and not claiming infallibility for the tests, he nevertheless stated that several advertisers, participating in the research, had applied its finding with their definitely improved results. He suggested that sales managers confer with their program and continuity departments in a discussion of these points, and that by working cooperatively each station could improve results for its advertisers. The conclusions reached following the tests are:

1. Program personalities should give all the commercials. This means that in news programs, for example, the newscaster should deliver the commercials.
2. The style of the commercials should be in the same tempo as the program content. For example, in a variety show the commercials should be in dialogue.
3. The commercial sentence structure should follow the same general pattern as the rest of the program (indicating collaboration between commercial copy writer and program writer). For example, news commercials should be written in short, pithy sentences.
4. Axioms make poor openings for news commercials, although they may be effective on other types of programs. The opening: "How many times have you heard it said that what you don't know will never hurt you" is a typical example of a bad opening for a news commercial.
5. The lead into a commercial should tie-in with the mood, or "gestalt", of that program. For example in news, one effective way of doing this is to refer directly to the news itself, even if this reference is a very general one. For example: "All the news of war and blockades these days," and "News is the story of change", are both highly effective openings when used in commercials. However, leads into news commercials need not be news items.
6. Do not allow listeners to "anticipate" commercials. This can be avoided by shifting the middle commercial forward or back from day to day; closing commercials should be followed by part of the program; there should never be a noticeable pause, change of tone or different emphasis and delivery at the beginning of any commercial, and commercial should not be "telegraphed" by the use of certain opening words such as "Friends," "Well, friends," etc.

MILLINERS BLAME RADIO

P. W. Judah, of the Associated Millinery Industries, St. Louis, Mo., writes NAB as follows:

"The millinery industry of America, giving employment to approximately 100,000 people, has been very materially and adversely affected in the past two years by radio entertainers making jokes on the styles of the hats of today.

"We realize this harm has been done in an unconscious way, and not at all maliciously; however, this entire industry is having quite a struggle at this time, and I am sure any influence you men can exert to forestall these jokes in the future, will be highly appreciated."

It is suggested that you call this to the attention of those who are responsible for writing comedy at your station.

IMPORTANCE OF LOCAL BUSINESS

FTC figures show that the smaller the market, the more the radio station depends on local advertising. In cities of less than 25,000 population, 74 per cent of a station's revenue comes from local advertisers. This drops to 67 per cent in cities of 25,000 to 50,000 and to 50 per cent in cities of more than 50,000.

IS RADIO ADVERTISING ECONOMIC?

The charge that radio advertising is an economic waste, so often made, is eloquently answered by Richard R. Deupree, president of Proctor & Gamble Co. Using the soap business to illustrate, he said that in 1880-90 the housewife paid 5 cents for Ivory Soap,

and still paid only 5 cents in 1941, although raw materials have doubled in price and wages have risen tenfold, and Federal taxes, unknown 50 or 60 years ago, now cost the manufacturer a sum equal to his factory payroll.

"It does not seem possible," he stated, "that expenses such as I have mentioned could be absorbed if we had not advertised Ivory almost continuously since 1882. If through false reasoning or any other cause, honest advertising is crippled and hampered, it would be the death blow to real industrial development."

HOTELS INCLUDE RADIO

It was reported to NAB that the current cooperative advertising campaign sponsored by hotels, with payment on a duebill basis, would exclude radio. Upon investigation, we are assured by the American Hotel Association that all media are equally acceptable in the campaign and will be treated impartially, provided radio stations, like other media, are willing to accept duebills in payment. Many NAB members report that they are now refusing this type of payment.

DEFENSE STAMPS AS PRIZES

Station WKAT, Miami Beach, is awarding National Defense Stamps in place of cash awards on quiz and similar programs. The suggestion has been made that if this plan were adopted by a large number of stations, it would result in increased savings, and widespread and continuing publicity to defense stamp sales.

WHY ADVERTISING IS ESSENTIAL DURING THE NATIONAL DEFENSE EMERGENCY

Some business men are prone to believe that during the period of capacity production brought about by business stimulation of the national defense program, it is unnecessary to maintain an advertising campaign. During such periods demand often exceeds supply; a "seller's market" exists, and sometimes the problem is not one of distribution and sales, but rather of producing enough to satisfy the market. Advertising expenses therefore, they say, can be curtailed or eliminated altogether.

That this reasoning is economically unsound has been demonstrated during similar periods in the past, notably 1915-1919. Chief reasons why advertising should be continued by every business man are:

1. To maintain his market, his established routes of distribution through jobbers and dealers, consumer acceptance of his product and consumer consciousness of his brand name, so that when the crisis is over and the impetus of national defense is taken away, he can continue operating on a normal pre-crisis basis. Otherwise all these factors in successful selling may be lost to more aggressive competitors who seize upon this opportunity to establish their competitive brands.

2. During periods of national emergency we must have the highest efficiency possible in manufacturing and distribution. It is admitted that advertising contributes much to this efficiency, and therefore is of extreme importance to the economic welfare of a nation during an emergency period.

3. The nation's economic and social life must be maintained as nearly normal as possible, because normalcy in a democracy is a contributing factor to success. Advertising helps make normalcy possible in a social economy that has been so dependent upon advertising.

4. Civilian morale in a democracy requires that we maintain a standard of living unknown under dictatorships. Advertising contributes greatly to our higher standard of living, and thus to the maintainance of civilian morale.

5. We must strive for a reasonable price stability. Advertising and a free competitive system aid greatly in stabilizing prices. As an example, consider P & G Ivory soap, a common household item: In the past 60 years, the price of raw materials for this product has doubled, wages have increased 10-fold, and taxes have been increased enormously. At the same time, research and constant improvements in manufacture and distribution have given the consumer a much better product—without a penny of increase in the price. Without advertising this would have been impossible.

6. During this period it is necessary to eliminate unemployment insofar as possible, so that all those not engaged in national defense can earn salaries to help pay the costs of defense, rather than be an added burden upon government or public charity. Advertising contributes directly and indirectly to greater employment in private industry.

7. Civilian morale likewise depends greatly upon a firm belief in the democratic system. and in its features of free enterprise and competition. Advertising is of extreme importance in their maintainance.

8. In a democracy, to build civilian morale, it is important that we continue our media of entertainment and enlightenment: the press, the magazines, and the radio. Advertising supports all of these and makes them possible.

9. During times of national emergency it is important that consumers be given adequate market information: where to buy what they need, when to buy, and how to buy, in order that they may get the most out of the products and services they purchase. It is also important to regulate supply and demand, and to diversify as much as possible the spending of consumers, so that all business may prosper. Advertising is of the utmost importance in all these efforts.

10. An intangible value, and yet one of the most important possessed by any business man, is the "franchise value" of his product or business, established over a period of many years at great effort and expense. Advertising protects this priceless ingredient until return to normalcy.

11. Staggering national defense costs must be borne by taxes, which can only be paid by business and by wage earners in business. Therefore sales, wages. incomes and profits must not only be maintained but increased if possible. Advertising is of material aid along these lines.

12. Finally, advertising is a vital, inherent and integral part of our national economy. To stifle or curtail it would be to upset the economic balance; to foster and maintain it would be to preserve that balance, so essential to efficiency and national well-being.

NO MOVIE CHISEL FOR CISLER

Attempts by the movies to chisel free time have increased many fold since the MBS-ASCAP rapprochement, according to evidence collected by Steve Cisler, general manager of station WGRC, Louisville.

Harry Loud, Air Trailer Division, Metro-Goldwyn-Mayer was the writer of one of the letters to Mr. Cisler which solicited free time.

"Now that the ASCAP controversy has been settled and ASCAP music is returning to Mutual affiliated station," he wrote on May 15, "we believe you will be interested in Metro-Goldwyn-Mayer's Hollywood Radio Reporter recorded programs," etc.

Mr. Cisler replied:

"Your letter of May 15 is one of the reasons this station and others don't want ASCAP music back on the air. You movie people are getting out the chisel once again with this offer of movie radio trailers that some stations are just crazy enough to accept.

"For your own information, WGRC did not vote yes on the Mutual deal with ASCAP because we didn't think it was worth the money, and we knew that the chiseling would start from movies with plugs on this or that picture, etc.

"Your local theaters are especially abusive in not buying radio time. It is chisel, chisel, chisel, free, free, free.

"So stop kidding yourself and radio that you have something we need . . . free. Take some of that big money you pay newspapers, billboards, and magazines and BUY radio.

"So far as Louisville radio . . . movies . . . and WGRC the rule is 'no cashee . . . no talkee . . . no singee'."

In a memorandum, same day, Mr. Cisler said to Fred Weber, general manager of Mutual:

"I am alarmed at the rising tide of chiseling by the movie boys in connection with Mutual's return of ASCAP music.

"It was my understanding that the new Mutual agreement did not require the announcement of movie or show titles with the playing of ASCAP tunes.

"The 'Adventures in Rhythm' show on Wednesday—May 21—specifically mentioned 'Last Time I Saw Paris' . . . from the *forthcoming* MGM picture . . . blank blank.

"Today I received this chisel letter from MGM. The answer is 'NO.'"

"ASCAP publishers are flooding us with mailed music, asking in practically all cases that the show or movie be credited when the number is used. We are returning all such music.

"Fred, the radio business is never going to get one dollar from movies if we keep giving it away. How about considering the evil and ask originating stations to lay off such credits?

"We have instructed our program department to refuse all movie premieres, Hollywood chatter and to have the control man pull the switch on any network announcer who *seems about* to put in a plug for a movie or show.

"Plenty of radio stations didn't like these free plugs for movies on all networks prior to 1941, and lots of us don't want them restored now."

NATIONAL DEFENSE

Local recruiting personnel of the United States Army will no longer solicit time on broadcast stations. This change in practice became effective by order from Washington to Commanding Generals of all Corps Areas.

The weekly transcribed programs, being broadcast by more than 700 stations and the live announcements handled from NAB headquarters comprise all of the programs released in finished form for the air in behalf of recruiting.

This entire change will be discussed in detail in a letter, dated June 2, addressed to all stations by Arthur Stringer.

Radio Branch, Bureau of Public Relations, War Department

This Branch, headed by Ed Kirby, prepares nothing for broadcasting in finished form. It operates on the theory that what the Army does is news, purely from the standpoint of audience interest; and that a richer variety will be provided if it depends upon the various interpretations placed upon factual information by individual stations.

The Radio Branch is ready to serve all broadcasters even to the extent of doing necessary research for any program or series of programs a program manager may have in mind. Write, teletype or telephone. The number is Republic 6700, Extensions 3887, 4787 and 4788.

Army Maneuvers

This summer U. S. Army maneuvers will be the biggest in peacetime history of any country in the world. They involve 1,500,000 men.

Such an outstanding event, occurring at this time, will naturally be covered by radio as well as by the press, magazines, syndicates and news reels. But it is much easier for fifty correspondents, armed with pencils, to cover maneuvers than for radio.

Accordingly, the Radio Branch of the Army has assigned four men from headquarters to establish a radio pool of interest and prepare schedules of events so that the stations can make a broadcast:

> Ross Worthington will officiate in Texas; Jack Harris in Tennessee; Brooks Watson in Louisiana and Bob Coleson on the West Coast where he is already in action.

What a Station Can Do in Advance

Stations can tell the public what these maneuvers mean. The purpose is to test the combat effect of the Army by simulating warfare. The boys are going to miss their meals and they are going to get dirty and dusty. The Army is going through a hardening process. Like all athletes, the boys must have conditioning and training.

And the stations can do this: in these simulated combat areas the highways will be crowded with trucks carrying troops and supplies. Because of the simulated warfare there will be no advance announcement of troop movements. When the news of a troop movement is known, the station can explain that it is unwise from a safety point of view for civilian motorists to cut through the line of travel of the convoy. These soldiers are driving trucks under order. They are instructed to observe safety measures, yet they must remain in convoy. If the residents of your service area understand these facts, accidents will be avoided. This can also be done in advance.

Two New News Services

This week the Radio Branch inaugurates a special service for news announcers. It contains undated material processed for radio and prepared at the request of numerous smaller stations that wished to have a human interest story or a fact or two readily included in a news show.

The other news service is the story of our Army throughout the entire range of American history. In reality it is a daily diary, in one or two sentences especially prepared for radio. The facts can be used in a chatter program, a home economics program, a variety show or news.

Educational Bulletin

The Radio Branch issues each week an educational bulletin to the educational directors of stations.

Red, White and Blue Network

This is the name given to stations near Army camps which may care to use, on already scheduled "early bird" shows, bits of information concerning the group in their immediate neighborhood. Through the efforts of Gordon Hittenmark, late of station WRC, the public relations officer of the camps, the station managers and the "early bird" announcers have been brought together. The idea of this procedure is simply to facilitate the supply of suitable material for the stations.

History of 55 Divisions

The Script Section, Radio Branch, War Department, Bureau of Public Relations has in preparation a brief history of each of the 55 Army Divisions. The information already distributed for radio writers and radio producers concerns The "Fighting First" Division and its component units. These short histories have been condensed from hundreds of pages in the files of the War Department. Writers and producers interested in additional facts can secure them by writing directly to: Radio Branch, Bureau of Public Relations, War Department, Washington, D. C.

Stations Can Work Out Special Stunts

Stations that desire are naturally free to work out special stunts. The local public relations officer will lend assistance. And, on request, the Radio Branch, Bureau of Public Relations, will supply stations with needed information for the preparation of programs.

Warning

At the same time if an individual comes to station executives proposing some spectacular stunt, such as a black-out, it is advised that stations check with the Radio Branch, Washington, address as above, before making commitments and issuing publicity.

IRE CONVENTION

The Institute of Radio Engineer's summer convention will be held in the Hotel Statler, Detroit, Michigan, June 23-25. The program this year will be of unusual interest to broadcast engineers and among other subjects, are the following: UHF Antennas; Frequency Modulation; Television; Electronic Applications; Broadcast Transmitters; Standard Band Transmitting Antennas; Rectifiers; Transmission Lines; Mechanical Calculation For Di-

rectional Antenna Patterns; UHF Tubes; Plate Modulated Amplifiers; Square Waves and UHF Propagation.

Interesting inspection trips have been scheduled and among these are: Trip to Harper Hospital to inspect electronic medical apparatus; trip to Edison Institute Museum and Greenfield Village; trips to automobile factories and a trip to the Shrine of the Little Flower.

An interesting program has been laid out for the entertainment of the ladies.

Full details concerning the Convention can be obtained by addressing the, Institute of Radio Engineers, 330 West 42nd Street, New York City.

SEND NAMES TO NAB

NAB has been requested to secure the names and present whereabouts of radio men who have been drafted into the Army. Will station managers please send this information to NAB headquarters immediately? The request was made by the War Department in the hope that many of these men could fill public relations posts.

LARRY SUNBROCK

S. A. Cisler, Radio Station WGRC, Louisville, Kentucky, would appreciate a collect wire from anyone knowing the whereabouts of Larry Sunbrock. Sunbrock promoted a thrill show and rodeo in Louisville recently.

NAME BAND TAX

The Bureau of Internal Revenue advised the NAB this week that it was appealing a lower court decision which held that the leader of a name band was not liable for social security taxes for band members. (Griff Williams v. Collector of Internal Revenue). Under the lower court decision, a broadcaster would be responsible for social security taxes on payments to name bands.

The NAB intends to review for its members soon all applicable social security tax regulations.

INSURANCE

The manual rates for compensation insurance enumerated in the NAB Reports, Page 368 of April 25th are adjusted each year to comply with the experience of the insurance companies writing compensation insurance. The rates quoted in the bulletin of April 25th are as of the date of April 4, 1941. Please correct Minnesota's rating under Code #8742 from 8 cents to 57 cents. Michigan's rating under Code #8742 should be changed from 8 cents to 39 cents. Since April 4, 1941, the rate in Utah (Code #7609) has changed from $1.13 to $1.33 and the rate under Code #7610 in Maine has been changed from 9 cents to 12 cents.

BMI

BMI Receives Canadian Fees

Broadcast Music, Inc. was recognized as a new competitive performing rights society by the Canadian Government in a decision made public on May 12th. The Canadian Copyright Appeal Board granted BMI a tariff of 1¢ per licensed set, the amount requested in October 1940 when BMI was required to file its proposed tariff for 1941. This was at a time when the music heard on the air was predominantly ASCAP's and before BMI was licensing the catalogues of many of its more important publishers.

The Canadian body, looking forward to 1942, announced that there should be a comprehensive study of the problem of performance fees. Recognizing that the basing of copyright fees upon actual use is the most satisfactory method, it requested an appropriation of $5,000 to defray the cost of making an investigation. In speaking of the necessity of a survey of this kind, the Board said:

"The entry of a second musical works licensing company in the Canadian field of radio broadcasting introduces a problem of considerable difficulty, and if this continues it is one that may require in the early future a careful reconsideration of the whole question of the licensing and performance of musical works in so far as radio broadcasting is concerned."

Britain Accepts BMI

The BMI hit, *There I Go,* received its first major broadcast in Great Britain recently by Bebe Daniels. Bebe and her husband, Ben Lyon, are among the best loved personalities in Great Britain. Their radio program, "Hi, Gang", has enjoyed the longest run 'on the air' of any show produced since the war began.

Another popular American in England, band leader Carroll Gibbons, introduced *There I Go* and *So You're the One* to British listeners, sharing the honors with the British band leaders, Jack Payne and Geraldo.

BMI FEATURE TUNES
June 2 - June 9

1. MY SISTER AND I
2. WALKIN' BY THE RIVER
3. WISE OLD OWL
4. FRIENDLY TAVERN POLKA
5. G'BYE NOW
6. WHAT D'YA HEAR FROM YOUR HEART
7. HERE'S MY HEART
8. WITH A TWIST OF THE WRIST
9. I WENT OUT OF MY WAY
10. THE RELUCTANT DRAGON
11. ALL ALONE AND LONELY

Hollywood Report

Hi, Neighbor, a new BMI song by Jack Owens, cowriter of the *Hut Sut Song,* will be sung by the Merry Macs in the new Universal picture, *San Antonio Rose.* One of the Macs, Ted McMichael, collaborated with Owens on the *Hut Sut Song.*

This information is brought to New York by Harry Engel, head of BMI's west coast division, who points out that everyone in Hollywood with the exception of the motion picture producers owning music publishing companies is completely satisfied with the music situation as it is.

"We have had no complaints of any kind for the past three months," said Mr. Engel. "The advertising agencies and performing artists, as well as the broadcasters, are finding all the material they want for performance without difficulty. We are continuing to receive the same favorable comment from the Mutual stations that we received in the past."

Songwriters All

A galaxy of the people in all walks of life who write songs will be staged soon in the Grill Room of the Hotel Taft by Frankie Masters who has asked BMI for as large a company of talented and photogenic writers as can be assembled in New York. Those who write songs as a hobby as well as those who have become prosperous from the fat checks received from their creation will be included. Frankie will endeavor to play as many as his high standard of entertainment permits.

Among the many BMI candidates are: Joan Whitney, night club singer; Jack Baker, business executive; Helen Bliss, department store clerk; Lanny Ross, vocalist; Kent Cooper, head of Associated Press; Robert Sour, broker; Hy Zaret, lawyer; Jean Barry, clerk in Macy's; Norman Weiser, magazine writer; Leah Worth, clerk in Hosiery shop; Kay Twomey, model and designer; Sylvia Dee, housewife.

They Buy Ballads

Romantic ballads lead all other types of popular songs by a big margin in popularity with the radio audience, it is revealed in a survey of the best selling numbers published by BMI. Radio listeners buy about four times as many ballads as rhythm numbers and novelties. In the first year of operation, BMI has had some twelve outstanding hits—an unusual record for any one publishing house, and, of these, only three fell in the rhythm and novelty classification, *Practice Makes Perfect, So You're the One,* and *The Wise Old Owl.*

Of BMI's twelve big sellers, nine are ballads, headed by *I Hear a Rhapsody,* a 200,000 copy number that is 1941's most popular song thus far. Other BMI ballads that have been great favorites all over the country are *There I Go, You Walk By, High On A Windy Hill, May I Never Love Again, I Give You My Word, Walkin' By the River, It All Comes Back To Me Now,* and *My Sister And I.*

My Sister And I, the newest hit to come from BMI, is creating a sensation along Tin Pan Alley—comparable to the furor aroused by *I'll Never Smile Again* last year. Written by BMI's 'Big Three', Hy Zaret, Joan Whitney and Alex Kramer, the touching ballad retells in song the recollections of a little Dutch boy and his sister who were forced to leave Holland by the Nazi invasion. Although the number has just begun to hit its stride, it has already sold more than 100,000 copies, including arrangements, and is a best seller on nine phonograph records.

"All Alone and Lonely"

When Jimmy Dorsey's Decca recording of *All Alone and Lonely* was released last week, a lot of people were very happy. Swing master Dorsey was certain that he had another topnotch record to follow his last great success, *Amapola.* BMI, publisher of the new song, felt that *All Alone and Lonely* was another hit song to add to the string of BMI hits that began last August with *Practice Makes Perfect.* But David Sanders and Al Pearson, the two Detroit boys who wrote the song, were probably the happiest of the lot.

A few months ago they had given up hope of becoming songwriters. Music publishers in Detroit were not very receptive and neither one of the boys could leave home and try to interest publishers in Chicago or New York. But you can't keep a good song down these days. After passing through the hands of many musicians who had heard *All Alone and Lonely,* played by the four piece rhythm band David Sanders leads in Detroit's 'Frog's Club', a copy of the song found its way into the hands of Jimmy Dorsey.

Jimmy Dorsey, who is billed as the "World's Greatest Saxophonist" might well add "World's Greatest Tune Picker" to his billing. One of the first leaders to see the potential of *High On A Windy Hill, I Hear A Rhapsody, Amapola* and a score of other Hit Parade favorites, Dorsey played the new song once and put it down for immediate recording. Convinced of the commercial possibilities of the ballad, he brought it to BMI and within a few days contracts were signed with Pearson and Sanders for immediate publication of the song.

All Alone and Lonely marks the first successful venture into songwriting for this newest team of composers. Sixfooter Sanders plays the piano, organ, and solovox, and has been a professional musician since the age of sixteen when he was regular organist at a Baptist Church in Wilmington, Delaware. Following that ecclesiastical booking, he went to work in Toledo speakeasies as pianist and eventually formed the small rhythm band he is now leading. His major ambition is to "be a good songwriter" and everybody at Broadcast Music, Inc. is convinced that he is on his way.

Al Pearson, the other writer of the song, is a guitarist who studied at the Detroit Conservatory of Music for three years. He has played in night clubs as master of ceremonies, tenor vocalist and featured guitarist. Pearson is still a little dazed by his new found success. After he had signed the publication contract he asked that he be notified by wire whenever his song is played on the air. If Jimmy Dorsey has picked another hit song, and BMI succeeds in making a spot on the Hit Parade for it, there'll be a long line of messenger boys making its way to the Pearson front door.

Torch Tune

BMI's *I Went Out Of My Way,* is being hailed with the same professional enthusiasm that greeted *My Sister And I.* Six recordings have been made or scheduled: Joan Merrill (Bluebird), Teddy Powell (Bluebird), Jan Savitt (Victor), Orrin Tucker (Columbia), Frankie Masters (Okeh), and Connie Boswell (Decca). Both words and music are by Helen Bliss who wrote *The Moon Won't Talk.*

STATE LEGISLATION

FLORIDA:

H. 1429 (BURWELL, et al.) MUSICAL COPYRIGHT—COLLECTIONS—Relating to the collection of fees and royalties from persons doing business in this state for the privilege of using, selling, performing or broadcasting, publicly or privately, any musical device of any nature, compositions, songs, or plays. Referred to Committee on Finance and Taxation.

FEDERAL COMMUNICATIONS COMMISSION

FLY DISCUSSES TELEVISION, FM

Progress of FM broadcasting and television are not likely to be interfered with because of government priorities, FCC Chairman James Lawrence Fly said at a press conference early this week. Mr. Fly said that he has not received any official reports on this subject and the Commission is keenly alive to the problem.

The Chairman said that naturally as requirements become heavier there will be less and less supply of everything. He said that it particularly and naturally affects the entire radio field in terms of new production. He stated that priorities are inclined to weigh heavier on FM than on a going outfit, such as standard broadcast. Mr. Fly said that he doubted whether the Commission should delay commercialization of FM and television. He doubted the wisdom of such a move contending that postponing this would only be another disturbing influence. He said that he didn't think that the Commission should move in and out in such a way. Even under present conditions, he said, the industry has an opportunity to square away and use the time to good advantage.

SUPPLEMENTAL FORM ADOPTED

Pursuant to its new chain broadcasting regulations, the FCC has adopted a supplemental form (FCC Form No. 335, "Supplement Concerning Chain Broadcasting to Application for Standard Broadcast Authorization"), in which all applicants for such broadcast facilities must attest to network affiliation, if any. Licensees are required by Section 43.1 of the Rules and Regulations to keep the Commission informed of contracts and arrangements, including changes, covering chain affiliations.

To fulfill the assurance given in the Commission report on chain broadcasting, the Rules of Practice and Procedure have been amended (Sections 1.71 and 1.81) to provide a hearing in cases where the applicant desires to enter into or retain a contract not in conformity with the chain broadcasting rules.

NEW FCC RULE

FCC has adopted Section 2.92 of the General Rules and Regulations under the heading "National defense-emergency authorization" as follows:

"The Federal Communications Commission may authorize the licensee of any radio station during a period of national emergency to operate its facilities upon such frequencies, with such power and points of communication, and in such a manner beyond that specified in the station license as may be requested by the Army or Navy."

RULE AMENDED

FCC amended its Rules of Practice and Procedure by striking the third proviso of Section 1.71 thereof, reading as follows:

"Provided, further, That in cases where an applicant desires a modification of a rule or regulation, he shall submit a formal petition setting forth the desired change and the reasons in support thereof."

The Rules of Practice and Procedure are amended by adding the following new provision:

"AMENDMENT OF RULES"

"Sec. 1.81—*Requests for amendment of rules.* Any person may petition for amendment of any rule or regulation. Such petition shall show the desired change in the rules and regulations and set forth the reasons in support thereof.

* * * * *

Paragraph (b) of Section 1.72 of the Rules of Practice and Procedure is hereby repealed, and the following provisions adopted in lieu thereof:

(b) If an applicant is requested by the Commission to file any documents or information not included in the prescribed application form, a failure to comply with such request will constitute a defect in the application.

(c) Applications which are not in accordance with the Commission's rules, regulations or other requirements will be considered defective unless accompanied either (1) by a petition in accordance with Section 1.81 to amend any rule or regulation with which the application is in conflict, or (2) by a request of the applicant for waiver of, or an exception to, any rule, regulation or requirement with which the application is in conflict. Such request shall show the nature of the waiver or exception desired and set forth the reasons in support thereof.

(d) Defective applications will not be considered by the Commission."

The Commission also extended the effective date of Section 3.32(b) of Standard and High Frequency Broadcast Rules which prohibits broadcasting of commercial programs under experimental authorizations, to July 29, 1941.

SHORT WAVE PROPAGANDA

James Lawrence Fly, Chairman, Federal Communications Commission, gave the following address before the Committee on Communications, American Bar Association, at luncheon, May 23, 1941:

I am happy to be here with you this noon, and to join you in showing appreciation for the services rendered by the editors of the Federal Communications Bar Journal. All of us know how important it is to have a medium for the reporting of legal news and the discussion of legal problems in the communications field. Such a medium is important for the functioning of any bar group, and these young men are to be congratulated for having undertaken this significant task, and for having devoted their time to it so unselfishly.

My subject this noon is foreign short-wave propaganda, and the Foreign Broadcast Monitoring Service, recently established by the Federal Communications Commission to record, transcribe, and analyze foreign short-wave programs.

The amount of this stuff aimed by various countries at the United States is really amazing. Thus, the Italian radio sends us more than four hours of broadcasts a day; the British Broadcasting Company (BBC), about six and one-half; and the German radio nearly eleven. Japan's North American service now runs to about four and one-half hours daily. To this total must be added various programs directed at American audiences by radio stations in Australia, the Soviet Union, and fifteen or twenty other nations. To increase the possibilities of good reception, programs are usually broadcast on three, and often as many as five frequencies.

The contents of these broadcasts range from dance music to learned discourses on economics or anthropology, with regular news the standard fare for stations in almost every country. All sorts of devices are used to attract listeners. Lord Haw-Haw was Germany's chief drawing card, but his popularity, I am informed, has declined. Both England and Germany announce lists of prisoners taken, in order to build up audiences on the other side; they know that relatives and friends of soldiers at the front will listen for familiar names. Other devices are used to attract American listeners: Britain has its equivalent of our March of Time on the Air; Germany has Fritz and Fred, an "ersatz" version of Lum 'n' Abner or Amos 'n' Andy. The Rome radio has a musical request program for American listeners; Berlin spends much radio time reading and replying to cables and letters from the United States. ASCAP music was available on the short waves throughout the period when favorite ASCAP tunes could be heard on few American stations.

No one really knows just how many Americans listen to these broadcasts. Private surveys indicate that there are few regular short-wave listeners in the United States; my own guess is that foreign broadcasts—except, of course, those relayed over American networks—reach a relatively small American audience. For example, I doubt whether more than half a dozen of you have listened to a foreign short-wave propaganda broadcast during the past month. How about that? How many of you have actually listened in on short-wave to British, German, Italian or other foreign broadcasts during the past month?

Experts in the field inform me that few of the propaganda devices used in broadcasting are new; they are chiefly the old devices of exaggeration, suppression, distortion, appeals to vanity, pride, and self-interest, and exploitation of previously existing jealousies and hatreds. Thus, the Germans point to the period of the American Revolution and the War of 1812; the Englsh point to the century of good feeling which has existed since.

Even a slight difference in emphasis may have very real significance. When the Italians seized the British fort Sidi Barrani last fall, for example, the Italian radio acclaimed the victory as of great importance. When the British recaptured it thereafter, Italian announcers called it a "miserable victory," and depreciated its importance. Similarly, during the very first days of the Greek campaign when the Greeks were retreating, the British radio talked about the *Greek* army. But when the tables were turned and the Italians were hurled back into Albania, the British radio stressed the Italian defeat at the hands of *"allied forces."* You seldom hear much about "German victories" over the Italian radio; it always speaks of "Axis victories."

In general, programs beamed at the United States are of three types. Some are intended to appeal to Americans in general. News broadcasts and talks on current issues are of this type. A second type of program is aimed at particular groups of Americans. One night last week, for example, BBC broadcast to the United States a program appealing primarily to American ministers of the gospel, while a simultaneous German program was appealing primarily to tenant farmers, share croppers, and the Oakies portrayed in "Grapes of Wrath." In general, the BBC seems to concentrate upon American groups which are in a position to influence public opinion, while Germany caters to larger but less articulate sections of the American public.

A third type of propaganda program is aimed specifically at Americans of foreign descent. Frequently these programs are in a foreign language, and it is interesting to contrast the news broadcast to the United States in English with the news broadcast immediately before or after by the same foreign station in its own language.

The real significance of such programs is seldom visible upon their face. The German radio, for example, hinted not long ago of certain frictions between the French government at Vichy and the German government, and portraying the French government as taking a firm stand. Did this indicate actual friction between the two? Probably not. The underlying significance was presumably either an attempt by Germany to paint the French government as independent of German domination, in order to procure for Vichy a more favorable treatment from the United States; or else a move to prepare American listeners for some new action by the French. Other examples can be given of how motives, and hence probable future actions, can be inferred from propaganda by radio.

The significance of such broadcasts often lies less in what is said than in the frequency with which it is said and the proportion of time devoted to saying it. The various themes which each foreign station dwells upon can be charted in almost the way that the rise and fall of a stock on the stock exchange can be charted. The former director of the Princeton University listening center, now on the FCC Monitoring Service staff, has prepared a chart showing the shift in emphasis of Nazi broadcasts to the United States which occurred about May 1940, when Belgium and Holland were invaded. Prior to that time, somewhat more emphasis was placed upon praise of United States isolationism than upon criticism of the United States. After May 1940, more than twice as much emphasis was placed upon criticism of the United States as upon praise of isolationism.

One of the chief motifs of German broadcasts today seems to be the attempt to drive a wedge between the American people and what the German radio now calls "Washington politicians." Another is the driving of a wedge between Jews and non-Jews in the United States. This German short-wave anti-Semitism appears to be aimed less at injuring the Jews of the United States than at attempting to stir up American disunity and domestic strife.

I should say that the British broadcasts aimed at the United States have vastly improved in effectiveness during recent months. The British Broadcasting Company once sent us learned but dull discourses by university professors about the niceties of international law, or descriptions of Buddhism by retired army officers. Today, listeners on short-wave can hear Somerset Maugham, a novelist popular with the American public, or Leslie Howard, an actor well-known to American movie audiences. Similarly, the North American broadcasts of the French Government station, Paris-Mondial, were, when first inaugurated in the spring of 1938, extremely dull and uninspired. With the invasion of Denmark and Norway in April, 1940, a significant change occurred. "Cultural" talks and features designed particularly for women and students of art and literature were substantially replaced by news and comment designed to inspire confidence in France and hatred of Germany.

Frequently American listeners are given varying treatments of the same theme from different sources almost simultaneously. Thus, when our ambassador to England, Mr. John G. Winant, spoke at a luncheon in London some days ago, the British transcribed his address and broadcast portions of it that very evening. German listening posts evidently picked it up and transcribed it, for the following evening the German radio carried portions of the speech, interlarded with German analysis and comments. Similarly each major American speech or diplomatic move is variously interpreted from London and Berlin. In such cases, the American short-wave listener has available something approaching the forum debates broadcast over domestic stations, except that on the short waves he must tune to various stations to get various points of view.

The first American agencies to engage in systematic rather than casual listening to foreign short-wave broadcasts were probably the newspapers. Various newspapers, news gathering agencies, and the news divisions of our broadcasting networks set up listening posts during 1939, as a supplement to their more formal news gathering routines. Shortly thereafter, political science and journalism departments in our universities took an interest; listening posts were established at Princeton, Leland Stanford, and elsewhere. The Federal Communications Commission has had the aid and advice of these pioneers in establishing its own Foreign Broadcast Monitoring Service.

The first step in this monitoring is to record the programs picked up on phonograph records, a task performed by the regular FCC National Defense Operations Section, and then to transcribe the records to paper. This transfer of the programs to paper is essential, for as repeated psychological studies have shown, human beings accept spoken words less critically than written words. With a typed script before you, you can analyze, criticize and deduce. When listening to spoken words, the tempo is such that you can only accept or reject.

Once scripts are reduced to writing, and those in foreign languages translated into English, the task is to condense. The British alone broadcast each week more words than are contained in the Bible or in the works of Shakespeare; this flood of material must be reduced to manageable proportions.

In sifting the grain from the chaff, trends are often more important than specific statements. A discussion of the invasion of England from a German station, for example, or a discussion of Far Eastern developments from Great Britain, may have little significance. But if an increasing proportion of German radio time were to be devoted to invasion stories, or an increasing proportion of British radio time to the Far East, we might safely infer the preparation of some move in these directions. Likewise, much is to be learned from a comparison of daily broadcasts sent to different parts of the world. Thus, while the Nazi broadcasts aimed at Britain and North America in the summer of 1940 dealt menacingly and often with invasion of England, domestic German broadcasts seldom alluded to the subject. The obvious deduction was that early invasion was not actually contemplated since the German home front was hearing little or nothing about it and was not being led to expect it.

Careful analysis of foreign short-wave broadcasts should keep the United States informed of the objectives which other countries are pursuing, and of their attitude toward the United States. The Report Section of the FCC's new Foreign Broadcast Monitoring Service will prepare confidential daily summaries, both factual and interpretative, of foreign broadcasts. These summaries will be made available for the information of various government departments.

Fear has been expressed in some quarters that foreign propaganda aimed at the United States by short-wave may corrupt the American listening public. I am very much inclined to doubt it. Listening in over the short-wave band of my own radio, and then turning back to the domestic broadcast band, I do not believe that any appreciable proportion of Americans are going to rely upon broadcasts from abroad so long as American broadcasting stations adhere to high standards of impartiality and completeness in their news and discussion programs. In a country where neither the press nor the radio is free, propaganda broadcasts from abroad may have considerable influence. But so long as the public trust in the impartiality of domestic news and discussion is maintained, few if any listeners will be misled by partisan propaganda from abroad.

FROM THE FCC MAIL BAG

Various letters suggesting that broadcasts in foreign languages be discontinued by domestic radio stations have been received by the Federal Communications Commission. The Commission advises that it has issued no ruling which precludes such broadcasts. An extensive study, however, has been made of foreign language programs. Each licensee has the initial responsibility under the law for the selection of program material, and foreign language broadcasts are subject to the same considerations that govern general broadcast service. Specific complaints regarding programs which appear to be contrary to the public interest receive prompt attention.

To a national group which urged that foreign language programs be not "ruled off the air without further consideration," Chairman James Lawrence Fly stated these personal views:

"In my opinion foreign language broadcasts are of considerable value. I believe that it would be a serious mistake for either the Government or the broadcast stations to take any action at this time to discontinue or curtail them. These programs have an important place in the lives of foreign-born citizens and residents, and it is likely that their elimination would be regarded as a senseless discrimination, arousing antagonism and hostility. In particular, I wish to concur in your opinion that these broadcasts can play an important role in the 'Americanization process.' It seems clear to me that any persons . . . who are bringing pressure on stations to discontinue all foreign language programs are pursuing a shortsighted policy and should not be encouraged."

The Commission has received numerous letters regarding alleged refusal of broadcasting time to Charles A. Lindbergh. Such inquirers are informed:

"Broadcast stations are expressly declared by the Communications Act not to be common carriers and, accordingly, determination as to who shall appear on programs is a matter resting in the first instance with the individual broadcast station. Broadcasters have the duty of serving the public interest, convenience, and necessity and the discretion left to them in the selection of who may use broadcast facilities and the conditions with respect to such use is subject to this legal requirement.

"In carrying out the obligation to render a public service, stations are required to furnish well-rounded rather than one-sided discussions of public questions. This duty does not imply any requirement that the use of broadcast facilities shall be afforded to any particular individual or group. In other words, the duty of the station is to present both sides of public issues fairly rather

than to allow any one man to use its facilities. The Commission will give consideration to any evidence that both sides of the questions upon which Colonel Lindbergh sought to speak are not being fairly presented by any radio station."

To a woman who wants to be guest on the "I'm an American" program, the Commission reiterates that it is without authority to put anybody on or take anybody off the air; that such determination rests with the individual broadcast station. The same explanation is given to another woman who would force radio stations to use a particular song, and to a Dayton listener who protests rendition of classical music in syncopated style, and to a citizens' group which adopted a resolution favoring "less time for broadcast programs of an emotional nature and more time for programs with constructive and educational features." In the case of letters objecting to particular programs the Commission suggests that such comments be transmitted directly to the station involved.

FEDERAL COMMUNICATIONS COMMISSION DOCKET

Following broadcast hearings are scheduled to be heard before the Commission during the week beginning Monday, June 2. They are subject to change.

Monday, June 2

NEW—Symons Broadcasting Company, Ellensburg, Wash.—C. P., **1110 kc.,** 1 KW, unlimited time.
WHB—WHB Broadcasting Company, Kansas City, Mo.—C. P., **710 kc.,** 5 KW, DA-night and day, unlimited time.
WTCN—Minnesota Broadcasting Corp., Minneapolis, Minn.—C. P., **710 kc.,** 10 KW, unlimited time, DA-night.

Monday, June 2

Hearing to be held in Pensacola, Florida, beninning June 2 and continued thereafter in Panama City, Florida, and Ocala, Florida, as follows:

Pensacola, Florida, in Court Room, County Court Building.
Panama City, Florida, in Court Room, County Court House.
Ocala, Florida, in U. S. Court Room, 2nd Floor, U. S. Post Office Building.

WTMC—Ocala Broadcasting Company, Inc., Ocala, Fla.—In the Matter of Revocation of License of Station.
WDLP—Panama City Broadcasting Company, Panama City, Fla.—In the Matter of Revocation of License of Station.

Tuesday, June 3

Broadcast

Consolidated Hearing

To be held in Portsmouth, Ohio, in the Scioto County Probate Court Room

WPAY—Chester A. Thompson (Transferor) and The Brush-Moore Newspapers, Inc. (Transferees), Portsmouth, Ohio.—Transfer on control of corp., **1370 kc.,** 100 watts, unlimited time.
WPAY—Vee Bee Corporation, Portsmouth, Ohio.—Renewal of license, **1370 kc.,** 100 watts, unlimited time.

Friday, June 6

NEW—Butler Broadcasting Corporation, Hamilton, Ohio.—C. P., **1420 kc.,** 250 watts, unlimited time.

FUTURE HEARINGS

During the past week the Commission has announced the following future hearings in broadcast cases. They are subject to change.

June 27

NEW—Parkersburg Sentinel Company, Parkersburg, W. Va.—C. P., **1310 kc.,** 250 watts, unlimited time.
WRDO—WRDO, Incorporated, Augusta, Maine.—Renewal of license, **1400 kc.,** 100 watts, unlimited time.

July 28

KMA—May Broadcasting Company, Shenandoah, Iowa.—Renewal of license, **930 kc.,** 1 KW night, 5 KW day, unlimited.

August 1

To be held in Atlanta, Georgia

WGST—Georgia School of Technology, Atlanta, Ga.—Renewal of license (main and auxiliary), **890 kc.,** 1 KW night, 5 KW LS, unlimited time.

August 4

KFRO—Voice of Longview, Longview, Texas.—Modification of C. P., **1340 kc.,** 5 KW, unlimited, DA-night. Present assignment: **1340 kc.,** 1 KW, unlimited, DA-night.

FEDERAL COMMUNICATIONS COMMISSION ACTION

APPLICATIONS GRANTED

KENO—George Penn Foster, Maxwell Kelch and Calvert Charles Applegate, d/b as Nevada Broadcasting Co. (assignor), Nevada Broadcasting Co., a corporation (assignee). Las Vegas, Nevada.—Granted consent to consignment of license of station KENO from George Penn Foster, Maxwell Kelch and Calvert Charles Applegate, d/b as Nevada Broadcasting Co. to Nevada Broadcasting Company, a corporation; station operates on **1400 kc.,** 250 watts, unlimited time.
W3XE—Philco Radio & Television Corp., Philadelphia, Pa.; W3XP—Philco Radio & Television Corp., Portable (area of Philadelphia, Pa.).—Present license for television station further extended on a temporary basis only, for period June 1 to not later than July 1, 1941, pending determination upon application for renewal (B2-SVB-8) and (B2-SVB-19).
W2XVP—City of New York, Municipal Broadcasting System, New York City.—Present license for high frequency broadcast station further extended on a temporary basis only, for period June 1 to not later than July 1, 1941, pending determination upon application for renewal (B1-SHB-71).
W9XLA—KLZ Broadcasting Co., Denver, Colo.—Present license for high frequency broadcast station further extended on a temporary basis only, for period June 1 to not later than July 1, pending determination upon application for renewal (B5-SHB-48).
W4XA—The National Life & Accident Ins. Co., Inc., Nashville, Tenn.—Present license for high frequency broadcast station further extended on a temporary basis only, for period June 1 to not later than July 1, 1941, pending determination upon application for renewal (B3-SHB-51).
W5XAU—WKY Radiophone Co., Oklahoma City, Okla.—Present license for high frequency broadcast station further extended on a temporary basis only, for period June 1 to not later than July 1, 1941, pending determination upon application for renewal (B3-SHB-21).
WERC—Presque Isle Broadcasting Co., Erie, Pa.—Granted modification of construction permit to change type of transmitter originally specified (B2-MP-1146).

DESIGNATED FOR HEARING

George Grant Brocks, Jr., Scranton, Pa.—Application for construction permit for new broadcast station to operate on **1400 kc.,** 250 watts, unlimited time, exact site and antenna system to be determined with Commission approval; requests facili-

ties of WARM. Joint hearing with application of WARM for renewal of license and application of Anthracite Broadcasting Co., Inc., for new station at Scranton to operate on **1400 kc.,** 250 watts, unlimited, requesting facilities of WARM.

WICA—WICA, Inc., Ashtabula, Ohio.—Application for construction permit to install a new transmitter and directional antenna for night use; increase power from 1 KW to 5 KW day, 1 KW night, and change hours of operation from daytime only to unlimited (B2-P-3081).

WWSW—Walker & Downing Radio Corp., Pittsburgh, Pa.—Application for construction permit to change frequency from **1490** to **970 kc.;** increase power from 250 watts to 1 KW night, 5 KW day; install new transmitter, move transmitter to 1½ miles north of McKees Rocks Boro, Stowe Twp., Pa. (3 miles NW center of Pittsburgh), and install directional antenna for day and night use. To be heard jointly with application of WICA listed above (B2-P-3055).

WAPI—Voice of Alabama, Inc., Birmingham, Ala.—Application for construction permit to change frequency from **1170** to **1070 kc.;** increase power from 5 to 50 KW; move transmitter, install new transmitter, and directional antenna for night use.

APPLICATIONS PLACED IN PENDING FILES

KMMJ—Don Searle, G .A. Searle, Jr., Helen Searle Blanchard and Herbert Hollister (Transferors); Grand Island Independent Publishing Co. (Transferee), Grand Island, Neb.—Placed in pending files pursuant to Order No. 79, application for consent to transfer all the outstanding stock of station KMMJ, Inc., from Don Searle, H. A. Searle, Jr., Helen Searle Blanchard and Herbert Hollister, to the Grand Island Independent Publishing Co. (B4-TC-268).

WTFL—Tom M. Bryan (Assignor), Ralph A. Horton (Assignee), Fort Lauderdale, Fla.—Placed in pending files pursuant to Order No. 79, application for consent to the assignment of license of station WTFL, from the individual licensee, Tom B. Bryan to Ralph A. Horton (B3-AL-305).

WOKO, Inc., Albany, N. Y.—Placed in pending files pursuant to Order No. 79, application for new FM station (B1-PH-80).

Courier-Journal and Louisville Times Co., Louisville, Ky.—Placed in pending files pursuant to Order No. 79, application for new FM station (B2-PH-88).

MISCELLANEOUS

W2XVT—Allen B. DuMont Labs., Inc., Passaic, N. J.—Granted special temporary authority to operate a 100 watt transmitter with special emission for FM on channel No. 1 **(50000-56000 kc.),** in order to conduct tests, for the period May 21 to June 19, providing no interference is caused to other stations.

KRME—Merced Broadcasting Co., Merced, Calif.—Granted special temporary authority to operate the relay transmitter covered by pending application for construction permit (B5-PRY-245) in order to broadcast races on Inland Lake, Yosemite, San Joaquin Valley, for the period May 25 to May 31, only (B5-S-896).

KGU—Marion A. Mulrony & Advertiser Publishing Co., Inc., Honolulu, Hawaii.—Granted special temporary authority to rebroadcast transmissions of U. S. Army planes EY3, HF7 and L35 operating on **6500 kc.** for a period of about one-half hour on the evening of May 20, in connection with territory "Blackout" scheduled to take place throughout Hawaii only (B-S-124).

High Point Broadcasting Co., High Point, N. C.; Ralph L. Lewis, Greensboro, N. C.—The Commission on its own motion consolidated the hearing now set for May 21 on these two applications and continued same until May 28, 1941.

KTRB—KTRB Broadcasting Co., Inc., Modesto, Calif.—Granted special temporary authority to operate from 7 p. m. until conclusion of Modesto Music Festival from Junior College Auditorium on May 23 only (B5-S-825).

WDAE—Tampa Times Co., Tampa, Fla.—Granted special temporary authority to rebroadcast transmission between 5:30 and 5:45 p. m. EST, May 26, of Florida Forest and Park Service, radio station WRQO on **2226 kc.** in special demonstration of forest fire prevention service program only (B3-S-437).

W2XBS—National Broadcasting Co., Inc., New York City.—Granted extension of special temporary authority to operate a specially constructed 1 KW peak power, special emission laboratory model FM visual transmitter alternately with the regular W2XBS transmitter on Channel No. 1 for the purpose of making field observations, for the period May 25 to June 25, 1941.

W2XBS—National Broadcasting Co., Inc., New York City.—Granted extension of special temporary authority to operate television broadcast station W2XBS with special emission in addition to A3 emission on Channel No. 1, in order to conduct experimental tests for the NBC for period May 26 to June 24.

KOY—Salt River Valley Broadcasting Co., Phoenix, Ariz.—Granted authority to determine operating power by direct measurement of antenna input (B5-Z-889).

WTAW—Agricultural & Mech. College of Texas, College Station, Texas.—Granted authority to determine operating power by direct measurement of antenna input (B3-Z-852).

WSBC—Radio Station WSBC, Chicago, Ill.—Granted authority to determine operating power by direct measurement of antenna input (B4-Z-872).

KHBC—Hawaiian Broadcasting System, Ltd., Hilo, T. H.—Granted authority to determine operating power by direct measurement of antenna input (B-Z-901).

KROY—Royal Miller, Sacramento, Calif.—Granted authority to determine operating power by direct measurement of antenna input (B5-Z-900).

WEMP—Milwaukee Broadcasting Co., Milwaukee, Wis.—Granted authority to determine operating power by direct measurement of antenna input (B4-Z-869).

KTSM—Tri-State Broadcasting Co., Inc., El Paso, Texas.—Granted authority to determine operating power by direct measurement of antenna input (B3-Z-883).

KGA—Louis Wasmer, Spokane, Wash.—Granted authority to determine operating power by direct measurement of antenna input (B5-Z-903).

KLBM—Harold M. Finlay, La Grande, Ore.—Granted authority to determine operating power by direct measurement of antenna input (B5-Z-850).

KYA and Aux.—Hearst Radio, Inc., San Francisco, Calif.—Granted authority to determine operating power by direct measurement of antenna input (B5-Z-866) and (B5-Z-870).

KFVS—Hirsch Battery & Radio Co., Cape Girardeau, Mo.—Granted authority to determine operating power by direct measurement of antenna input (B4-Z-877).

KFNF—KFNF, Inc., Shenandoah, Iowa.—Granted authority to determine operating power by direct measurement of antenna input (B4-Z-858).

KVOX—KVOX Broadcasting Co., Moorhead, Minn.—Granted authority to determine operating power by direct measurement of antenna input (B4-Z-792).

WMPC—The Liberty St. Gospel Church of Lapeer, Mich.—Granted authority to determine operating power by direct measurement of antenna input (B2-Z-881).

KFJB—Marshall Electric Co., Marshalltown, Iowa.—Granted authority to determine operating power by direct measurement of antenna input (B4-Z-893).

KFKA—The Mid-Western Radio Corp., Greeley, Colo.—Granted authority to determine operating power by direct measurement of antenna input (B5-Z-854).

WAML—New Laurel Radio Station, Inc., Laurel, Miss.—Granted authority to determine operating power by direct measuremena of antenna input (B3-Z-837).

KMED—Mrs. M. J. Virgin, Medford, Ore.—Granted authority to install automatic frequency control equipment (B3-F-187).

WFTC—Jonas Weiland, Kinston, N. C.—Granted authority to install automatic frequency control equipment (B5-F-187).

KHUB—John F. Scripps, Watsonville, Calif.—Granted authority to determine operating power by direct measurement (B5-Z-836).

WCBD—WCBD, Inc., Chicago, Ill.—Granted authority to determine operating power by direct measurement (B4-Z-871).

WDAN—Northwestern Publishing Co., Danville, Ill.—Granted authority to determine operating power by direct measurement (B4-Z-842).

WHBU—Anderson Broadcasting Corp., Anderson, Ind.—Granted authority to determine operating power by direct measurement (B4-Z-818).

KGHI—Arkansas Broadcasting Co., Little Rock, Ark.—Granted authority to determine operating power by direct measurement (B3-Z-878).

KBTM—Regional Broadcasting Co., Jonesboro, Ark.—Granted authority to determine operating power by direct measurement (B3-Z-856).

KVNU—Cache Valley Broadcasting Co., Logan, Utah.—Granted authority to determine operating power by direct measurement (B5-Z-874).

KENO—Nevada Broadcasting Co., Las Vegas, Nev.—Granted construction permit to move studio and transmitter from The Meadows to El Rancho Vegas, Las Vegas (B5-P-3135).

WEBQ—Harrisburg Broadcasting Co., Harrisburg, Ill.—Granted construction permit to change type of transmitter, make changes in antenna and change location of transmitter to lower floor level same address; **1240 kc.** under NARBA (B4-P-3133).

KELD—Radio Enterprises, Inc., El Dorado, Ark.—Granted construction permit to change tubes in last radio stage from four RCA 209-A to two RCA 805 (B3-F-3123).

KHJ—Don Lee Broadcasting System, Los Angeles, Calif.—Granted modification of construction permit (B5-P-2843, which authorized increase in power, installation of DA for day and night use, changes in equipment, and move of transmitter) for installation of new transmitter, and extension of commencement date to 60 days after grant and completion date to 180 days thereafter (B5-MP-1293).

KGB—Don Lee Broadcasting System, San Diego, Calif.—Granted license to cover construction permit (B5-P-2940) which authorized changes in transmitting equipment and to specify **1360 kc.** under NARBA (B5-L-1398).

WRDO—WRDO, Inc., Augusta, Me.—Granted authority to determine operating power by direct measurement of antenna power on **1400 kc.** under NARBA (B1-Z-758).

KOMA—KOMA, Inc., Oklahoma City, Okla.—Granted authority to determine operating power by direct measurement of antenna power on **1520 kc.** under NARBA (B2-Z-771).

KUSD—University of South Dakota, Vermillion, So. Dak.—Granted special temporary authority to remain silent for the period June 9 to 2:30 p. m., September 15, 1941, in order to observe University summer vacation (B4-S-651).

WCKY—L. B. Wilson, Inc., Cincinnati, Ohio.—Denied special temporary authority to operate daytime with non-directional antenna until sunset at Sacramento, Cal., for a period not to exceed 30 days (B2-S-762).

KFJZ—Tarrant Broadcasting Co., Fort Worth, Tex.—Granted modification of construction permit (B3-P-2497, which authorized new transmitter, installation of directional antenna, increase in power and move of transmitter to ½ mile NW of Birdville, Texas) for extension of completion date to August 15/41 (B3-MP-1292).

GMYR—F. W. Meyer, Denver, Colo.—Granted license to cover construction permit (B5-P-2067, which authorized a new station to operate on **1340 kc.**, 100 watts night, 250 watts-LS, unlimited time) (B5-L-1394). Also granted authority to determine operating power by direct measurement of antenna power (B5-Z-862).

KPRC—Houston Printing Corp., Houston, Tex.—Granted modification of construction permit (B3-P-2791, for authority to install directional antenna and increase power to 5 KW) for changes in directional antenna requesting **950 kc.** under NARBA and extension of completion date to 120 days after grant (B3-MP-1264).

WAPO—W. A. Patterson, Chattanooga, Tenn.—Granted modification of construction permit (B3-P-1939, which authorized installation of new transmitter and directional antenna for night use, change of frequency and increase of power) for change in directional antenna for night use on **1150 kc.** under NARBA, and extension of commencement date to 10 days after grant and completion date to 30 days thereafter (B3-MP-1299).

WDSU—WDSU, Inc., New Orleans, La.—Granted modification of construction permit (B3-P-2923, which authorized move of transmitter, increase in power and installation of directional antenna for day and night use) for extension of completion date to September 1/41 (B3-MP-1288).

High Point Broadcasting Co., High Point, N. C.; Ralph L. Lewis, Greensboro, N. C.—The Commission on its own motion, continued the consolidated hearing now set for May 21 on these two applications, to May 28, 1941.

WHBQ—Broadcasting Station WHBQ, Inc., Memphis, Tenn.—Granted license to cover construction permit (B3-P-3075, for new transmitter and increase in power to 250 watts), **1400 kc.**, unlimited (B3-L-1396). Also granted authority to determine operating power by direct measurement of antenna power (B3-Z-867).

KRIS—Gulf Coast Broadcasting Co., Corpus Christi, Texas.—Granted license to cover construction permit (B3-P-2230) for new transmitter, changes in antenna, increase in power to 1 KW and move; **1360 kc.**, unlimited (B3-L-1390).

WFCI—Pawtucket Broadcasting Co., Pawtucket, R. I.—Granted license to cover construction permit (B1-P-1877) as modified (B1-MP-1223), for new station to operate on **1420 kc.**, 1 KW, directional antenna, unlimited time (B1-L-1403). Also granted authority to determine operating power by direct measurement of antenna input (B1-Z-887).

WLAG—LaGrange Broadcasting Co., LaGrange, Ga.—Granted license to cover construction permit (B3-P-2763) as modified (B3-MP-1183) for new station to operate on **1240 kc.**, 250 watts, unlimited time (B3-L-1402). Also granted authority to determine operating power by direct measurement of antenna input (B3-Z-884).

KALE—KALE, Inc., Portland, Ore.—Granted license to cover construction permit (B5-P-2729, for installation of directional antenna for night use and increase in power to 5 KW) (B5-L-1339). Also granted authority to determine operating power by direct measurement of antenna power (B5-Z-739).

W47PH—Penna. Broadcasting Co., Philadelphia, Pa.—Granted modification of construction permit (B2-PH-69, covering new FM station) for change in type of transmitter and to make changes in antenna system (B2-MPH-21).

W6XAO—Don Lee Broadcasting System, Hollywood, Cal.—Granted license to cover construction permit (B5-PVB-38 as modified), for new television broadcast station upon an experimental basis only; **50000-56000 kc.**; visual power 1 KW; 150 watts aural power (B5-LVB-26).

WBOS—Westinghouse Radio Stations, Inc., Hull, Mass.—Granted license to cover construction permit (B1-PIB-23 as modified) to move international broadcast station, increase power to 50 KW, and makes changes in equipment (B1-LIB-15).

KWLC—Luther College, Decorah, Iowa.—Granted special temporary authority to operate from 3:30 to 4:30 p. m. and from 5:30 to 6:30 p. m. CST, May 24, in order to broadcast baseball game with Upper Iowa University; from 3:30 to 4:30 and 5:30 to 6:30 p. m., CST, May 30, in order to broadcast baseball game with Upper Iowa University; from 3:30 to 4:30 p. m. and from 5:30 to 6:30 p. m., CST, June 2, in order to broadcast baseball game with Univ. of Wisc. only (B4-S-520).

KFDY—So. Dak. State College Brookings, S. Dak.—Granted special temporary authority to operate from 2 to 4:30 p. m., CST, May 24, in order to broadcast State Collegiate track meet; from 7:30 to 10:30 p. m., CST, June 9, in order to broadcast State College graduation exercises only (B4-S-645).

WTBO—Associated Broadcasting Corp., Cumberland, Md.—Granted special temporary authority to operate from 9:15 p. m., EST, to conclusion of President's Address on May 27, in order to broadcast said address only (B1-S-748).

KFRO—Voice of Longview, Longview, Tex.—Granted motion for continuance of 60 days of hearing now set for June 4, 1941, on application for modification of construction permit to change power from 1 to 5 KW.

The Metropolis Co., Ocala, Fla.; Bay County Publishers, Inc., Panama City, Fla.—Granted motions to accept amendments to applications for licenses for new stations so as to change answers to Question 15(a) re pending applications.

WGST—Georgia School of Technology, Atlanta, Ga.—Grented motion for continuance of 60 days of hearing on application for renewal of license, now set for June 7, 1941.

KMA—May Broadcasting Co., Shenendoah, Iowa.—Granted motion for continuance of 60 days of hearing on application for renewal of license, now set for May 27, 1941.

WRDO—WRDO, Inc., Augusta, Me.—Granted motion for postponement of hearing on application for renewal of license, for 30 days.

Ralph L. Lewis, Greensboro, N. C.—Dismissed motion and supplemental motion for continuance of hearing on application for construction permit for new station; on Commission's own motion continued indefinitely consolidated hearing on Lewis application and application of R. B. Terry, D. A. Rawley, C. M. Waynick and H. A. Cecil, d/b as High Point Broadcasting Co., High Point, N. C., for new station; referred to Commission the petition of

Lewis to sever his application from the High Point Broadcasting Co. application.

KTBC—State Capitol Broadcasting Assn., Inc., Austin, Tex.—Granted special temporary authority to operate from 8:30 to 9 a. m. and from 10 a. m. to local sunset, CST, on May 25, June 1, 8, 15 and 22, 1941, in order to broadcast a program originating in the Governor's mansion, provided WTAW remains silent.

WTAW—Agricultural & Mechanical College of Texas, College Station, Tex.—Granted special temporary authority to operate from 9 to 10 a. m., CST, on May 25, June 1, 8, 15 and 22, 1941, in order to cooperate with KTBC in a special broadcast, provided KTBC remains silent.

WHKC—United Broadcasting Co., Columbus, Ohio.—Granted special temporary authority to remain on the air from regular sign-off time (10 p. m., EST) to conclusion of Joe Louis-Bill Conn fight on June 18, 1941; to conclusion of Fritzie Zivic-Al Davis fight June 25, 1941, in event these bouts should run later than 10 p. m.

WBML—Middle Georgia Broadcasting Co., Macon, Ga.—Granted special temporary authority to rebroadcast a portion of the U. S. Army plane-to-plane communication in connection with the arrival of 160 U. S. Army training planes, 80 of which will be stationed at U. S. Army Flying School No. 1, between May 28 and June 5, 1941, only.

WSOC—Radio Station WSOC, Inc., Charlotte, N. C.—Granted license to cover construction permit as modified to install new transmitter, new antenna, move studio and transmitter, increase power specifying **1240 kc.** (B3-L-1399). Granted authority to determine operating power by direct measurement of antenna input.

WEAU—Central Broadcasting Co., Eau Claire, Wisc.—Granted special temporary authority to operate additional time May 27, 1941, in order to broadcast President Roosevelt's address only.

WOWO—Westinghouse Radio Stations, Inc., Fort Wayne, Ind.—Denied request for special temporary authority to operate on an unlimited time basis for a period of one month.

WWVA—West Virginia Broadcasting Corp., Wheeling, W. Va.—Denied request for special temporary authority to operate on an unlimited time basis for a period of one month.

W47A—Capitol Broadcasting Co., Inc., Schenectady, N. Y.—Granted special temporary authority to install at New Scotland, N. Y., and operate through a temporary antenna mounted on a 65-foot telephone pole, for a period not to exceed 90 days, pending installation of antenna described in construction permit.

WBAA—Purdue University, West Lafayette, Ind.—Granted special temporary authority to operate from 4 to 6 p. m., CST, on June 8, 1941, in order to broadcast complete Commencement Service of Purdue University only.

WBRB—Monmouth Broadcasting Co., Red Bank, N. J.—Granted extension of special temporary authority to remain silent for the period ending in no event later than June 10, 1941, pending completion of adjustments made necessary by fire.

WGEO—General Electric Co., Schenectady, N. Y.—Granted special temporary authority to operate with the last intermediate power amplifier as the last radio stage; last radio stage consists of 6 General Electric GL858 tubes, maximum rated carrier power 50 KW for a period ending not later than September 1, 1941.

KEX—Oregonian Publishing Co., Portland, Ore.—Petition for reconsideration and grant of application for renewal of license for station KEX, granted, hearing heretofore scheduled, cancelled, and renewal of license granted on regular basis.

KGA—Louis Wasner, Spokane, Wash.—Petition for reconsideration and grant of application for renewal of license for KGA, granted, cancelled hearing heretofore scheduled, and renewal of license granted on regular basis.

WGN—WGN, Inc., Chicago, Ill.—Granted petitions of WGN to intervene and to enlarge issues in the hearing on the applications of WTCN, Minneapolis, and WHB, Kansas City, Mo., for construction permits to change frequency to **710 kc.**

Park Cities Broadcasting Corp., Dallas, Texas.—Granted motion for leave to intervene in the hearing on the application of WHB to change frequency to **710 kc.**, and dismissed motion for continuance of hearing.

APPLICATIONS FILED AT FCC

550 Kilocycles

WSVA—Shenandoah Valley Broadcasting Corp., Harrisonburg, Va.—Authority to determine operating power by direct method.

560 Kilocycles

WIND—Johnson-Kennedy Radio Corp., Gary, Ind.—Authority to determine operating power by direct method.

WIND—Johnson-Kennedy Radio Corp., Gary, Ind.—License to cover construction permit (B4-P-1990) as modified to increase power from 1 KW night, 5 KW day, to 5 KW day and night; changes in directional antenna system, and new transmitter.

WGAN—Portland Broadcasting System, Inc., Portland, Maine—License to use formerly licensed WE 352-E-1 main transmitter as an auxiliary using 500 watts.

580 Kilocycles

NEW—Martha M. Russell, d/b as Russell Plantation, Russelltown, Tex.—Construction permit for a new broadcast station to be operated on **580 kc.**, 1 KW, unlimited hours. Class III-B. Amended to specify transmitter site as site to be determined.

590 Kilocycles

WKZO—WKZO, Inc., Kalamazoo, Mich.—Authority to determine operating power by direct method.

WKZO—WKZO, Inc., Kalamazoo, Mich.—License to cover construction permit (B2-P-3060) to install a new directional antenna for night use.

610 Kilocycles

WIOD—Isle of Dreams Broadcasting Corp., Miami, Fla.—Construction permit to move formerly licensed RCA 1-DB main transmitter to be used as an auxiliary transmitter with power of 1 KW.

620 Kilocycles

WTMJ—The Journal Company (The Milwaukee Journal), Milwaukee, Wisconsin.—Authority to determine operating power by direct method.

WTMJ—The Journal Company (The Milwaukee Journal), Milwaukee, Wisconsin.—License to cover construction permit (B4-P-2696) as modified to install directional antenna for night use and increase power.

760 Kilocycles

WJR—WJR, The Goodwill Station, Detroit, Mich.—Authority to determine operating power by direct method.

770 Kilocycles

WCAL—St. Olaf College, Northfield, Minn.—Authority to determine operating power by direct method.

780 Kilocycles

KFAB—KFAB Broadcasting Co., Lincoln, Nebr.—Construction permit to install new transmitter and directional antenna for night use, change frequency from **770** to **1080 kc.**, power from 10 to 50 KW, hours from Simul. D, share WBBM night to unlimited time and move transmitter. Amended to request **1110 kc.** under NARBA and make changes in directional antenna.

WBBM—Columbia Broadcasting System, Inc., Chicago, Ill.—Authority to determine operating power by direct method.

790 Kilocycles

WEAN—The Yankee Network, Inc., Providence, R. I.—Authority to determine operating power by direct method.

850 Kilocycles

WEEU—Berks Broadcasting Co., Reading, Pa.—Authority to install new automatic frequency control equipment.

910 Kilocycles

WFDF—Flint Broadcasting Co., Flint, Mich.—Modification of construction permit (B2-P-2451) as modified, for installation of new transmitter and directional antenna for day and night use, increase power, change frequency, and move transmitter, requesting extension of completion date from 6-14-41 to 8-14-41.

950 Kilocycles

WORL—Broadcasting Service Organization, Inc., Boston, Mass.—License for reinstatement of auxiliary license (B1-L-1271).

980 Kilocycles

NEW—Southwestern Michigan Broadcasting Corp., Kalamazoo, Mich.—Construction permit for a new broadcast station to be operated on **980 kc.**, 1 KW, unlimited hours, employing directional antenna at night. (Facilities WHAL, construction permit of WHAL to be surrendered if and when this application is granted.)

1000 Kilocycles

WINS—Hearst Radio, Inc., New York, N. Y.—Modification of construction permit (B1-P-3026) for approval of directional antenna system and approval of present licensed site. Amended to make changes in proposed directional antenna system, approval of studio and transmitter sites.

WINS—Hearst Radio, Inc., New York, N. Y.—Authority to determine operating power by direct method.

1040 Kilocycles

W9XC—Central Broadcasting Co., near Mitchellville, Iowa.—Modification of construction permit (B4-PEX-34) for increase power and new equipment, to change frequency from **1000 kc.** to **1040 kc.**, make changes in antenna and extend completion date from 10-11-41 to 150 days after date of grant.

1090 Kilocycles

WJAG—The Norfolk Daily News, Norfolk, Nebr.—Authority to determine operating power by direct method.

1110 Kilocycles

WBT—Columbia Broadcasting System, Inc., Charlotte, N. C.—Construction permit to install directional antenna for night use. Amended to request **1110 kc.** under NARBA and changes in directional antenna.

1150 Kilocycles

WTAW—Agricultural and Mechanical College of Texas, College Station, Texas.—License to cover construction permit (B3-MP-1006) as modified, for new transmitter, increase in power and change frequency under NARBA.

WDEL—WDEL, Inc., Wilmington, Del.—Authority to determine operating power by direct method.

1240 Kilocycles

NEW—R. O. Hardin, tr. as Nashville Broadcasting Co., Nashville, Tenn.—Construction permit for a new broadcast station to be operated on **1240 kc.**, 250 watts, unlimited hours, Class IV. (Facilities of WSIX if and when vacated.)

WRAL—Capitol Broadcasting Co., Inc., Raleigh, N. C.—Construction permit to install new transmitter, install directional antenna for night use, change frequency from **1240 kc.** to **620 kc.**, increase power from 250 watts to 1 KW night, 5 KW day, and move transmitter.

WRAL—Capitol Broadcasting Co., Inc., Raleigh, N. C.—Authority to determine operating power by direct method.

WEBQ—Harrisburg Broadcasting Co., Harrisburg, Ill.—Authority to determine operating power by direct method.

KGY—KGY, Inc., Olympia, Wash.—Authority to determine operating power by direct method.

1300 Kilocycles

KGLO—Mason City Globe-Gazette Co., Mason City, Iowa.—License to cover construction permit (B4-P-2329) as modified to install new transmitter, directional antenna for night use, increase power, change frequency; approval of transmitter site, changes in directional antenna on **1300 kc.** under NARBA.

KGLO—Mason City Globe-Gazette Co., Mason City, Iowa.—Authority to determine operating power by direct method.

1330 Kilocycles

WLOL—Independent Merchants Broadcasting Co., Minneapolis, Minn.—Construction permit to change frequency from **1330 kc.** to **630 kc.**, power from 1 KW to 1 KW night, 5 KW day, install new transmitter, make changes in directional antenna for day and night use and move transmitter. Amended to give transmitter site.

WHBL—Press Publishing Co., Sheboygan, Wisc.—Authority to determine operating power by direct method.

1340 Kilocycles

KXRO—KXRO, Inc., Aberdeen, Wash.—Authority to determine operating power by direct method.

KGEZ—Donald C. Treloar, Kalispell, Mont.—Authority to determine operating power by direct method.

KMYR—F. W. Meyer, Denver Colo.—Modification of license to increase power from 100 watts night, 250 watts to 250 watts day and night.

WTEL—Foulkrod Radio Engineering Co., Philadelphia, Pa.—Authority to determine operating power by direct method.

WBRE—Louis G. Baltimore, Wilkes-Barre, Pa.—Authority to determine operating power by direct method.

WCLS—WCLS, Inc., Joliet, Ill.—Authority to determine operating power by direct method.

1350 Kilocycles

KGHF—Curtis P. Ritchie, Pueblo, Colo.—Authority to determine operating power by direct method.

1360 Kilocycles

NEW—McKeesport Radio Co., McKeesport, Pa.—Construction permit for a new broadcast station to be operated on **1360 kc.**, Class IV, 250 watts and daytime hours.

1380 Kilocycles

WTSP—Pinellas Broadcasting Co., St. Petersburg, Fla.—License to cover construction permit (B3-P-2933) as modified, to install new transmitter, make changes in antenna, change frequency and increase in power.

1400 Kilocycles

NEW—Frank T. Nied and Perry Stevens, d/b as Nied and Stevens, Warren, Ohio.—Construction permit for a new broadcast station to be operated on **1400 kc.**, class IV, 250 watts and unlimited hours. Amended to specify transmitter site.

NEW—South Jersey Broadcasting Corp., Vineland, N. J.—Construction permit for a new broadcast station to be operated on **1500 kc.**, 250 watts, unlimited hours. Class IV, facilities of WDAS. Amended to request **1400 kc.**, Class IV, facilities of WDAS when WDAS goes to **1260 kc.**

WGIL—Galesburg Broadcasting Co., Galesburg, Ill.—Authority to determine operating power by direct method.

WFOR—Forrest Broadcasting Co., Inc., Hattiesburg, Miss.—Authority to determine operating power by direct method.

NEW—William J. Bray, James L. Ewing, T. B. Lanford and John C. McCormack, d/b as The Capitol Broadcasting Co., Port Allen, La.—Construction permit for a new broadcast station to be operated on **1400 kc.**, 250 watts, unlimited hours.

NEW—Henry Norman Saurage, Baton Rouge, La.—Construction permit for a new broadcast station to be operated on **1400 kc.**, 250 watts, unlimited hours.

WJZM—Wm. D. Hudson and Violet Hutton Hudson, Clarksville, Tenn.—Modification of construction permit (B3-P-2983) for a new station, requesting approval of antenna, transmitter, and transmitter and studio sites.

WEST—Associated Broadcasters, Inc., Easton, Pa.—Authority to determine operating power by direct method.

WBTH—Williamson Broadcasting Corp., Williamson, W. Va.—Authority to determine operating power by direct method.

NEW—Air-Waves, Inc., Baton Rouge, La.—Construction permit for a new broadcast station to be operated on **1400 kc.,** 250 watts, unlimited hours.

1410 Kilocycles

WALA—W. O. Pape, tr. as Pape Broadcasting Co., Mobile, Ala.—Modification of construction permit (B3-MP-932) as modified, for increase in power, installation of new equipment and directional antenna for night use, and move transmitter, requesting extension of completion date from 6-29-41 to 9-29-41.

1420 Kilocycles

NEW—Anthracite Broadcasting Co., Inc., Scranton, Pa.—Construction permit for a new broadcast station to be operated on **1400 kc.,** 250 watts, unlimited hours. Class IV. Facilities of WARM.

1440 Kilocycles

KMED—Mrs. W. J. Virgin, Medford, Ore.—Authority to determine operating power by direct method.

1450 Kilocycles

KFIZ—The Reporter Printing Co., Fond du Lac, Wisc.—Authority to determine operating power by direct method.

WNAB—Harold Thomas, Bridgeport, Conn.—Modification of construction permit (B1-P-2410) as modified, for a new broadcast station, requesting change in type of transmitter, approval of studio site and extension of completion date from 6-30-41 to 90 days after grant.

WRLC—R. G. LeTourneau, Toccoa, Ga.—Authority to determine operating power by direct method.

WRLC—R. G. LeTourneau, Toccoa, Ga.—License to cover construction permit (B3-P-2767) as modified, for a new station.

WAZL—Hazleton Broadcasting Service, Inc., Hazleton, Pa.—Authority to determine operating power by direct method.

WILM—Delaware Broadcasting Co., Wilmington, Del.—Authority to determine operating power by direct method.

NEW—Forward Wheeling Radio Corp., Wheeling, W. Va.—Construction permit for a new broadcast station to be operated on **1450 kc.,** 100 watts and unlimited hours. Class IV.

WWDC—Capital Broadcasting Co., Washington, D. C.—License to cover construction permit (B1-P-2679) as modified, for a new station.

WWDC—Capital Broadcasting Co., Washington, D. C.—Authority to determine operating power by direct method.

WWDC—Capital Broadcasting Co, Washington, D. C.—License to cover construction permit (B1-P-2679) as modified for a new station (Amplifier).

WWDC—Capital Broadcasting Co., Washington, D. C.—Authority to determine operating power by direct method (Amplifier).

KBPS—Benson Polytechnic School, R. T. Stephens, Agt., Portland, Ore.—Construction permit to install new antenna and increase power from 100 to 250 watts. Amended: to request unlimited time.

WMVA—Wm. C. Barnes and Jonas Weiland, d/b as Martinsville Broadcasting Co., Martinsville, Va.—Voluntary assignment of license to Martinsville Broadcasting Co., Inc.

WSVA—Shenandoah Valley Broadcasting Corp., Harrisonburg, Va.—License to cover construction permit (B2-P-2578) as modified to install new transmitter, new antenna and increase in power.

KGIW—E. L. Allen, Alamosa, Colo.—Authority to determine operating power by direct method.

WEED—William Avera Wynne, Rocky Mount, N. C.—Authority to determine operating power by direct method.

1490 Kilocycles

NEW—Luther E. Gibson, Vallejo, Calif.—Construction permit for a new station to be operated on **1490 kc.,** 250 watts, unlimited time. Class IV. Amended: re antenna changes.

WGAL—WGAL, Inc., Lancaster, Pa.—Authority to determine operating power by direct method.

WKBZ—Ashbacker Radio Corp., Muskegon, Mich.—Authority to determine operating power by direct method.

FM APPLICATIONS

NEW—James F. Hopkins, Inc., Detroit, Mich.—Construction permit for a new high frequency broadcast station to be operated on **46500 kc.;** coverage, 2130 square miles; population, 2,196,632. Amended: To change coverage to 6,790 square miles; population to 2,697,132, move transmitter and make changes in antenna system.

NEW—Ashland Broadcasting Co., Ashland, Ky.—Construction permit for a new high frequency broadcast station to be operated on **46100 kc.;** coverage, 5,119.5 square miles; population, 421,990. Amended: To change coverage to 4,160 square miles, population to 398,692 and make changes in antenna system.

NEW—The Journal Company (The Milwaukee Journal), Milwaukee, Wisc.—Construction permit for a new studio transmitter link broadcast station to be operated on **331000 kc.,** power 50 watts, emission: special for frequency modulation (to be used in conjunction with FM station W55M).

NEW—Debs Memorial Radio Fund, Inc., New York, N. Y.—Construction permit for a new high frequency broadcast station to be operated on **48700 kc.;** coverage, 8,600 square miles; population, 12,300,000.

TELEVISION APPLICATION

W9XAK—Kansas State College of Agriculture and Applied Science, Manhattan, Kansas.—Modification of construction permit (B4-PVB-25) for a new television broadcast station, for extension of completion date from 7-15-41 to 10-15-41.

MISCELLANEOUS APPLICATIONS

WCRC—Columbia Broadcasting System, Inc., Brentwood, N. Y.—Modification of construction permit (B1-PIB-26) as modified, which authorized a new international broadcast station, requesting the additional frequencies of **6120, 6170, 21570 kc.,** and sharing time on all frequencies with WCBX and share on **6060, 9650, 11830, 15270** and **21520 kc.** with WCAB.

W2XB—General Electric Co., New Scotland, N. Y.—Modification of license to change frequency from **60000-86000** to channel No. 3, **66000-72000 kc.**

NEW—Rome Broadcasting Corp., Portable-Mobile.—Construction permit for a new relay broadcast station to be operated on **30820, 33740, 35820, 37980 kc.,** 15 watts, A3 emission.

WCBX—Columbia Broadcasting System, Inc., near Wayne, N. J.—Modification of construction permit (B1-PIB-27) for move of transmitter and increase in power, requesting additional frequencies **6060, 21520 kc.,** and sharing time on all frequencies with WCRC and share on **6060, 9650, 11830, 15270** and **21520 kc.** with WCAB.

NEW—James Broadcasting Co., Inc., Portable-Mobile.—Construction permit for a new relay broadcast station to be operated on **30820, 33740, 35820, 37980 kc.,** 25 watts, A3 emission.

FEDERAL TRADE COMMISSION ACTION

COMPLAINTS

Federal Trade Commission has alleged unfair competition against the following firms. The respondents will be given an opportunity to show cause why cease and desist orders should not be issued against them.

Callaway Mills—Charging price discrimination in violation of the Robinson-Patman Act, a complaint has been issued against Callaway Mills, Lagrange, Ga., which manufactures tufted bedspreads, bath mats, rugs and allied products and sells them for use and for resale.

The complaint alleges that the respondent has discriminated in price between different purchasers of its products of like grade and quality by selling to certain purchasers at lower prices than the

prices at which it sells products of the same grade and quality to other of its purchasers, and by allowing certain purchasers adjustments, rebates or discounts not given other purchasers.

According to the complaint, the respondent grants a five per cent rebate to any retail customer or "individual recognized department store" customer on its purchases if such purchases exceed $500 a year, the rebate being denied others of this class of customers whether or not their purchases of the respondent's products exceed $500 a year. Mail order houses, according to the complaint, are allowed a discount of five per cent and a rebate of five per cent without regard to quantity qualifications.

The complaint alleges that one customer classified by the respondent as a special wholesale distributor is allowed a 10 per cent discount while other jobber customers are allowed a five per cent discount. The complaint further alleges that such jobbers are granted additional rebates based on annual volume ranging from two per cent on net volume if the volume totals $10,000, to 5 per cent on net volume if the volume totals $25,000 or more. (4506)

Kemico—A complaint has been issued alleging that F. W. Johnson, trading under the name Kemico, Park Ridge, Ill., has made misleading representations in the sale of 15 formulas for various medicinal and cosmetic preparations and in advertising the therapeutic values of the preparations compounded from the formulas.

According to the complaint, the respondent advertised, among other things, that: "Greaseless Massage Cream" is a cure or remedy for skin imperfections; "Hair Lay Cream" promotes hair growth and relieves itching scalp; "Dandruff Remedy" is a cure or remedy for that condition, and "Teeth Whitener Formula A," "Teeth Whitener Formula B," "Pine Oil Nasal Spray," "Menthol," "Camphor Nasal Spray," and "Nose Inhalant" are effective for the purposes advertised and are safe for use.

The complaint alleges that the preparations so advertised do not accomplish the results claimed; that "Dandruff Remedy" is of no therapeutic value in treating dandruff in excess of affording temporary relief from the itching symptom associated with dandruff and assisting in the temporary removal of dandruff scales, and that "Teeth Whitener Formula A," "Pine Oil Nasal Spray," "Menthol," "Camphor Nasal Spray," and "Nose Inhalant" are not entirely safe for use. (4505)

Reed Drug Company, Inc.—A complaint alleging misrepresentation in the sale of a medicinal preparation has been issued against Reed Drug Co., Inc., 103 East Main St., West Frankfort, Ill.

The complaint charges the respondent with disseminating advertisements in which it represents directly and by implication that the preparation designated as "Mrs. Bee's Femo Capsules", "Femo-Caps", and "Bee Caps", constitutes a safe, competent and effective treatment for delayed menstruation.

According to the complaint, the product sold by the respondent is not a competent or effective treatment for delayed menstruation and is not safe for use in that it contains certain drugs in quantities sufficient to cause serious and irreparable injury to health, if used under the conditions prescribed in the advertisements or under customary or usual conditions.

The complaint further charges that the advertisements disseminated by the respondent constitute false advertisements in that they fail to reveal that use of the preparation under such conditions may result in gastro-intestinal disturbances or other serious injury. (4507)

CEASE AND DESIST ORDERS

Commission has issued the following cease and desist orders:

Allied Specialties, Inc., 621 Nobel St., Indianapolis, and Ralph J. Bicry and Anne Springer, its officers, have been ordered to cease and desist from misrepresentations in the sale of "Ko-Pak-Ta" warming devices employed for displaying peanuts, and of nuts for use in the devices.

Commission findings are that:

Salesmen for the respondents advertise in local newspapers, a typical advertisement reading: "$2,600 cash will purchase controlling interest in business. Worth $500 monthly to right man. Party selected must be between 25 and 55 years of age, and furnish references. Gentile. Unusual circumstances have made this opening available. Address Box No. ———."

Persons responding to advertisements receive special appointments with the respondents' representatives and are usually told that large profits will result from operating the nut display warmer. However, the respondents' representations are exaggerated and untrue and none of the purchasers have earned as much as $500 monthly. Instead, it has been the experience of some purchasers that the method of vending as proposed by the respondents is impractical and will not induce a sufficient amount of sales to cover operating costs.

The Commission order directs the respondents to cease misrepresenting the possible earnings or profits of those who purchase or operate the nut display warmers and to cease representing, directly or by inference, that the respondents guarantee any specified amount as earnings or profits to purchasers or operators.

The respondents also are ordered to cease representing, directly or by inference, that they assign exclusive territorial rights in any certain trade area, when such territory is not so allotted; that they obtain locations for nut display warmers when locations for all the warmers sold by the respondents are not so obtained, and that the respondents resell or permit the return of warmers for refund of investment in case a purchaser is dissatisfied, unless such devices are so disposed of and the investment is returned.

The Commission dismissed the complaint in this proceeding as to William G. White, former vice president of Allied Specialties, Inc., who had not participated in the respondents' acts and practices, as found. (3360)

Capital Drug Company—Max Caplan, trading as Capital Drug Co., 18 East Campbell Ave., Roanoke, Va., has been ordered to cease and desist from misrepresentations in the sale of "Mrs. Bee Femo Caps," a medicinal preparation.

The Commission order directs the respondent to cease disseminating advertisements which represent, directly or through inference, that this preparation constitutes an effective treatment for delayed menstruation; that the preparation does not cause the user any discomfort, and that it is safe or harmless; or which advertisements fail to reveal that use of the respondent's product may cause gastro-intestinal disturbances and other serious consequences. (4343)

Colonial Drug Co., Tulsa, Okla., and M. A. Younkman, president of Colonial Drug Co. and trading as Colonial Sales Co., have been ordered to cease and desist from misrepresentations in the sale of "Natural Mineral Extract," a medicinal preparation.

Commission findings are that the respondents disseminated advertisements in various States representing, directly or by implication, that the external application of their product constitutes a cure or remedy for various skin conditions and other ailments, and that its internal use will purify the blood and be a competent treatment for indigestion and stomach, intestinal and other disorders when in fact its use does not accomplish the results claimed and its therapeutic value is limited to that of a mild laxative or mild diuretic.

The Commission order directs the respondents to cease disseminating advertisements which represent that "Natural Mineral Extract" constitutes a cure or remedy for, or posses therapeutic value in, the treatment of eczema, acne, athlete's foot, rheumatism, and some 25 other ailments; that it possesses germicidal, antiseptic, or astringent properties; that it has therapeutic value as a tonic or a blood purifier or in the treatment of women's ailments, and that it constitutes a competent or effective treatment for ill-nourished, backward or defective children. (4260)

Compressed Air Institute—A complaint charging Compressed Air Institute, 90 West St., New York, and others, with certain acts and practices in the sale and distribution of compressed air machinery and pneumatic tools, has been dismissed. The other respondents in the case were C. Clifford Rohrbach, secretary and manager of the institute, and Independent Pneumatic Tool Co., 600 West Jackson Boulevard, Chicago; Gardner-Denver Co., South Front St., Quincy, Ill.; Ingersoll-Rand Co., 11 Broadway, New York; Worthington Pump and Machinery Corporation, Harrison, N. J.; The Cleveland Pneumatic Tool Co., 3734 East 78th St., Cleveland; The Cleveland Rock Drill Co., 3734 East 78th St., Cleveland; Sullivan Machinery Co., Michigan City, Ind., and Chicago Pneumatic Tool Co., 6 East 44th St., New York, members of the institute. (3958)

Gordon-Gordon, Ltd., and its selling agent, Princess Pat, Ltd., 2709 South Wells St., Chicago, has been ordered to cease and desist from making misleading representations in the sale of cosmetics.

Commission findings are that the respondents, in radio broadcasts and printed matter, made various representations purporting to be descriptive of the quality and effectiveness of their cosmetics and the harmful effects of certain ingredients used in face powders by their competitors.

Findings are further that the respondents represented, among other things, that the use of face powders containing orris root causes the pores of the skin to clog, irritates the skin and causes skin roughness, when in fact the evidence shows there is no indication that orris root will clog the pores; that face powder containing orris root does not generally cause irritation or skin roughness; that some persons are allergic to orris root and their use of face powder containing it would tend to cause skin irritation and roughness (tests showing that from 10 per cent to 24 per cent of the persons tested might be so affected), and that at the time of hearing in the Commission proceeding, only about 10 per cent of face powder manufacturers used orris root as an ingredient.

The Commission order directs the respondents to cease making the representations found to have been made concerning the effect of orris root in face powder unless such representations are limited to cases in which the user is allergic to orris root.

The respondents also are directed to cease representing that "Princess Pat Powder" is non-allergic to all persons, and that its application will smooth the skin, make the skin soft or pliant, or prevent coarse pores and blackheads; that use of their preparation designated "Muscle Oil" and "Princess Pat Irradiated Muscle Oil," will prevent crow's feet, wrinkles or sagging facial muscles or will penetrate beneath the skin surface and beneficially affect underlying facial muscles; that "Skin Cleanser" will penetrate beneath the surface or prevent coarse pores, pimples, blackheads or rough skin texture, and that the preparation "Skin Food Cream" or "Anti-Wrinkle Cream" will nourish or feed the skin, or that it is a tonic for the underlying nerves or will smooth out or prevent lines or wrinkles.

The order also prohibits the respondents from using any designation for their product formerly known as "Skin Food Cream" and as "Anti-Wrinkle Cream" which includes the word "Food." (3793)

Hearst Magazines, Inc., of which Good Housekeeping Magazine is a wholly owned subsidiary, has been ordered to cease and desist from misrepresentations in its periodicals, magazines and other publications, in connection with the use of seals, emblems and other insignia, purporting either to guarantee the quality of various advertised products or to indicate the nature and extent of respondent's testing of such products.

The respondent maintains departments known as Good Housekeeping Bureau and Good Housekeeping Institute for testing various products. In connection with the activities of these departments, the respondent issues seals of approval, usually elliptical in form, containing the words "Tested and approved," a cut of a star followed by a serial number with the name "Good Housekeeping Institute" or "Good Housekeeping Bureau." When the respondent issues a certificate certifying that the product has been tested and approved, it authorizes the use of seals of approval on the applicant's merchandise and the reproduction of such seals in various advertising and in circulars as may be desired.

The Commission finds that the respondent has represented that all products, services or commercial offerings advertised in Good Housekeeping are guaranteed by the respondent. The representations with reference to guaranty of certain products advertised in Good Housekeeping Magazine, the Commission finds, have the tendency to mislead readers of the magazine and to cause them to believe that the guaranty of the respondent is an unlimited guaranty. In addition to this, the respondent authorizes advertisers in the magazine to publicize such guaranty in other publications, on labels attached to their products, and on containers of products by use of an emblem or shield reading "Guaranteed by Good Housekeeping as advertised therein" or "Guaranteed as advertised in Good Housekeeping." Such advertisers, when advertising in newspapers and publications not owned or controlled by the respondent, and on labels and in circulars and other advertising material, use the above-described emblem or shield.

Based upon the testimony of various witnesses with reference to the extent to which their products were investigated by the respondent and the volume of business conducted in said products, the Commission finds that while tests were made before seals of approval were issued by either of the above-mentioned departments of Good Housekeeping Magazine, such tests were generally not sufficient to assure the fulfillment of the claims made for such products.

The Commission also finds that the use and authorization by the respondent of many different forms of seals, shields, emblems and insignia, and the association therewith of the testing facilities and operation of its various departments in various magazine articles and in booklets, circulars and other advertising material, are confusing to the average reader and have the tendency and capacity to mislead and deceive purchasers and readers of the respondent's magazine into believing that all products bearing a seal, shield, emblem or insignia of Good Housekeeping Magazine have been thoroughly and adequately tested and approved and are guaranteed by the respondent when, in fact, such products are not guaranteed by the respondent and some have not been adequately tested by it.

The Commission finds that the respondent also, by means of articles in its magazine and by other statements and representations, represents, directly and by inference, that all representations of, and claims made for, products, services, or other commercial offerings appearing in advertisements in its periodicals are true. Such representations are usually made in connection with discussion of the testing facilities of Good Housekeeping Magazine and the effect or purport of the guaranty by it of all advertising appearing in its issues.

Based upon testimony concerning advertisements issued on various products, the Commission finds that many of the advertisements appearing in Good Housekeeping Magazine contained false, deceptive and misleading statements and representations with reference to the therapeutic value of medicinal preparations, the properties and effectiveness of cosmetic preparations, the fiber content and qualities of fabrics and wearing apparel, the properties and purity of food products; the results to be obtained from the use of various articles of merchandise, and the efficiency and reliability of services and other commercial offerings.

The Commission orders that Heart Magazines, Inc., its officers, directors or representatives, in connection with the offering for sale and distribution of its periodicals, magazines or other publications, and the issuance or authorization of various seals of approval, emblems, shields or other insignia, cease and desist from:

1. Representing, directly or indirectly, that all representations of, and claims made for, products, services or other commercial offerings described in advertisements appearing in any of its periodicals, magazines or other publications are true when any representation or claim contained in such advertisements is not in fact true;

2. Using, or authorizing, or allowing others to use, seals, emblems, shields or other insignia, which represent in any manner that any food, drug, cosmetic, or therapeutic device, has been tested, or tested and approved, by, or at the instance of, the respondent, or any organization owned or controlled by it, or otherwise representing, or authorizing or allowing others to represent in any manner, that any such product has been tested, or tested and approved, by, or at the instance of, the respondent or any organization owned or controlled by it, unless and until the product concerning which such representation is made has, in fact, been adequately and thoroughly tested in such a manner as to insure, at the time such product is sold to the consuming public, the quality, nature and properties of such product in relation to the intended usage thereof and the fulfillment of the claims made therefor in connection with the use of such insignia or representation;

3. Using, or authorizing, or allowing others to use, seals, emblems, shields or other insignia which represent in any manner that any mechanical device or article of household equipment, other than those included in paragraph 2, has been tested, or tested and approved by, or at the instance of, the respondent, or any organization owned or controlled by it, or otherwise representing, or authorizing or allowing others to represent, that such product has been tested and approved, unless and until the product concerning which such representation is made has, in fact, been adequately and thoroughly tested in such manner as reasonably to assure, at the time such product is sold to the consuming public, the quality, nature and properties of such product in relation to the intended usage thereof and the fulfillment of the material claims made in connection with the use of such insignia or representation;

4. Authorizing, using or allowing the use of seals, emblems, shields or other insignia which represent, directly or by implication, that an inquiry or investigation has been made by, or at the instance of, the respondent, or any organization owned or controlled by it, of a service or other commercial offering (not including any product) in connection with which such seal, emblem, shield or

other insignia is used, unless and until the respondent has, in fact, made a sufficiently adequate and thorough investigation or inquiry as to assure the fulfillment of the claims made for such service or commercial offering in connection with the use of such insignia or representation;

5. Representing, directly or by implication, that any product, service or other commercial offering advertised in its magazines, periodicals or other publications, or for which respondent has authorized the use of any seal, emblem, shield or other insignia, is guaranteed by respondent, unless such guaranty is without limitation, or, if limited, unless all limitations upon such guaranty are clearly, conspicuously and explicitly stated in immediate conjunction with all such representations of guaranty;

6. Authorizing, or allowing others to represent, directly or by implication, that any product, service or other commercial offering advertised in its magazines, periodicals or other publications, or for which respondent has authorized the use of any seal, emblem, shield or other insignia, is guaranteed by respondent, unless such guaranty is without limitation, or, if limited, unless all limitations on such guaranty are clearly, conspicuously and explicitly stated in immediate conjunction with all such representations in the guaranty.

The provisions of the order do not prohibit the use of the word "recommended" on any seal, emblem, shield or other insignia when the product on which the insignia is used has been adequately and thoroughly tested by the respondent in such a manner as reasonably to assure the quality, nature and properties of such product in relation to the intended usage and when the form of the insignia is readily distinguishable by the consuming public from any seal, emblem, shield or any other insignia bearing any guaranty. (3872)

Witol, Inc., Witol Beauty Laboratories, Inc., and William Witol, president of Witol, Inc., all of 1700 Broadway, New York, has been ordered to cease and desist from misrepresentations in the sale of cosmetic preparations.

The order directs the respondents to cease disseminating advertisements which represent that their preparations "Witol's New Liquid Skin Peel" or "Take-Off" will remove the outer layer of the skin and give the user a new, fresh surface skin; that these preparations are effective in treating pimples, blackheads, whiteheads, freckles, or superficial blemishes, or will cause large pores and fine lines to diminish, or that the respondents' preparations are sold by means of a special or limited offer when in fact the distribution method is the usual means employed by the respondents in the customary course of business and there is no limitation of the sale of such products.

The Commission dismissed its complaint in this proceeding as to the former respondents Ann Felix, who was vice-president of the two corporations, and Hattie Blankfeld, formerly secretary of Witol Beauty Laboratories, Inc. (3934)

STIPULATIONS

Following stipulations have been entered by the Commission:

Benson & Dall, Inc., an advertising agency, of 327 South LaSalle St., Chicago, has entered into a stipulation to cease certain representations in the dissemination of advertisements concerning "Stuart's Laxative Compound Tablets" on behalf of F. A. Stuart Co., Marshall, Mich.

The respondent agency agrees that it will cease disseminating advertisements of the Stuart preparation which represent, directly or by implication, that the product will in no case have deleterious effects or is safe to use in all cases, or which advertisements fail to reveal (1) that use of the preparation should be discontinued where a skin rash appears; (2) that it should not be used when abdominal pains or other appendicitis symptoms are present, and (3) that its frequent or continued use may result in dependence on laxatives.

The stipulation provides, however, that such advertisement need contain only a statement that the preparation should be used as directed on the label if and when the label contains the proper warnings. (02791)

Ruth Clark's Products—Ruth Clark, trading as Ruth Clark's Products, 430 South Broadway, Los Angeles, have entered into a stipulation to cease certain representations in the sale of food, drug and cosmetic products.

The respondent agrees to cease representing, directly or by implication, through use of the abbreviation "Vit" or the word "Vitamin," in connection with the letter "A" in the brand name of her products, "Vit-A-Pac," "Vitamin 'A' Beauty Cream," and "Vit-A-Hair and Scalp Oil," that the Vitamin A content has any beneficial influence or effect on the skin, hair or scalp, and to desist from representing, through use of the word "manufacturer" in connection with the advertising of her products, that she manufactures or compounds all of the products which she sells.

The respondent further stipulates she will cease advertising that her food product, "Re-Chemicalizing Bouillon," is of value or effect in the relief, treatment or correction of arthritis, neuritis, colds, nervousness or skin troubles, or as a reducing aid of itself or when combined with "Blendavita Tea"; or that "Re-Chemicalizing Bouillon" has value in treating or correcting anemia or an underweight condition in excess of such benefits as may accrue from its food elements.

Under her stipulation, the respondent also agrees to cease representing, by use of the word "Re-Chemicalizing" in the brand name or by any other means, that "Re-Chemicalizing Bouillon" will rechemicalize the system.

In the sale of "Blendavita Tea," the respondent agrees to cease advertising that it has any value in the treatment of kidney, bladder, and skin ailments; that it is an aid to digestion or in the relief of insomnia, or acts as an alkalizing agent; that it is of value of itself or when combined with the product "Re-Chemicalizing Bouillon" as a reducing aid; that, when combined with "Re-Chemicalizing Bouillon," it is of value in the treatment of arthritis or neuritis, or that when so combined it is of value in the relief of an underweight condition in excess of such benefits as may accrue from the food elements contained in the combined products.

The respondent also stipulates she will desist from representing that "Oils of Youth" will keep the body internally clean, and that "Vitamin 'A' Concentrate" would be valuable to persons suffering from frequent colds, sinus trouble or skin infections, unless the claims reveal that this product would be of value only in cases of Vitamin A deficiency. (02792)

Clyde Collins, Inc., Memphis, Tenn., stipulated that in disseminating advertisements of flavorings designated "Vanilla Extract," "Lemon Extract," "Strawberry Extract," "Pineapple Extract," and "Banana Extract," it will cease using the words "Lemon," "Strawberry," "Pineapple," or "Banana" in combination with the word "Extract" unless the products are composed of genuine ingredients, as distinguished from synthetic chemical substitutes, and such ingredients are suspended in ethyl alcohol. The respondent further agrees to desist from employing the term "Vanilla Extract" to describe a flavoring product, unless it is prepared with a vehicle of ethyl alcohol and contains a flavoring content at least 50 per cent of which consists of true vanilla made from the vanilla bean. (02796)

H. Fendrich, Incorporated, 101 Oakley St., Evansville, Ind., entered into a stipulation in which it agrees to cease certain representations in the sale of cigars. The respondent agrees to desist from representing that its "La Fendrich" cigars contain an "imported Havana-rich long filler," or from making any other representation referring to the origin of the filler tobacco of these cigars, unless the country of origin of each of the filler tobaccos used is set forth in the order of their respective predominance by weight and with equal emphasis. The respondent also agrees to cease advertising that the price of this cigar was formerly 10 cents and is now only 5 cents, or any other representation indicating a price reduction unless the price of the particular cigar referred to has recently been the price stated and the reduction has only recently become effective, or unless the date of the price reduction is stated conspicuously in conjunction with the former price. (02794)

Forster Neckwear Co., Inc., 12 West 27th St., New York, entered into a stipulation to cease certain representations in the sale of men's neckwear.

The respondent corporation agrees to cease using the words "Silk" or "Imported Silk" or any other word or coined words connoting silk in or on advertising trade literature, labels, invoices, or otherwise, to describe fabrics or merchandise not composed of silk.

The stipulation provides that (1) if the products are composed partly of silk and partly of some other fiber material, the word "Silk," or similar words, if used to refer to the silk content, shall be accompanied by other words in equally conspicuous type indicating clearly that the products are not made wholly of silk; and (2) if the fiber other than silk constitutes the major content of the product, the name of the predominating material shall precede the word "Silk," as for example, "Cotton and Silk."

The respondent also agrees to cease advertising, branding, labeling, invoicing or selling neckwear or other products as "Imported Fabrics" which are composed in whole or in part of rayon without clearly disclosing the rayon content by use of the word "Rayon"; and, when materials other than rayon are also present, without disclosing in type equally as conspicuous as the word "Rayon," each constituent fiber in the order of its predominance by weight. (3111)

General Beauty Products Company—Trading as General Beauty Products Co., and having their headquarters at 2110 West Madison St., Chicago, Hec Barth, Samuel Barth and Mrs. Hec Barth, co-partners, stipulated to cease certain representations in connection with the mail order sale of beauty supplies and equipment.

In their stipulation, the respondents agree to cease employing the words "Crystal-Sheen," alone or in connection with the particular label and design of the container of their hair-rinse product, or in any other way implying that the product is the widely and favorably known "Sparkle-Sheen" hair rinse, a competitive product, and to cease using any word as part of the trade name for, or any representation relating to, the product "Dandruff Eradicator," so as to imply that the product, when locally applied to the scalp, will eradicate, remove or destroy dandruff or promote hair growth or feed or nourish dry scalps.

The respondents also stipulate they will cease using as a brand name for their emulsion the word "Lanoleen," or any other phonetic spelling of the word "Lanolin," alone or in connection with other words so as to imply that their product is a Lanolin product or that its Lanolin content is substantial and contributes any value.

In their stipulation the respondents, in connection with the illustration of any product, agree to cease employing the legend "Weight 4 oz." or any other weight indication the effect of which tends to convey the impression that such indication refers to the weight of the contents of the product when in fact it actually refers to the mailing weight. (3112)

General Electric Co., Bridgeport, Conn., entered into a stipulation to cease certain representations in the sale of electrical heating pads.

According to the stipulation, the respondent advertised heating pads by means of the descriptions "Three Heats," "Three Heat Switch" or "Low, Medium or High Heat" so as to imply that operation of the switches results in maintaining three distinct temperatures, when in fact they merely regulate the time required to heat the pads to a single maximum temperature.

The stipulation further recites that the respondent described covers for its heating pads as "Eiderdown" when they were composed not of eiderdown but wholly or partly of rayon, a fact not disclosed in advertising matter.

Under its stipulation, the respondent agrees to cease representing its heating pads in a manner implying that they are capable of maintaining three different degrees of heat and to cease the representations made concerning the composition of the covers, unless properly qualified to show the rayon and other content. (3110)

General Vitamins Company—R. V. Annen, trading as General Vitamins Co., 565 West Washington, Blvd., Chicago, has entered into a stipulation to cease certain representations in the sale of "Vev," a medicinal preparation.

The respondent agrees to cease advertising that "Vev" is a vitamin laxative, or, by any other terminology, that it contains vitamins in an amount sufficient to accomplish any therapeutic or dietetic effect.

The respondent also agrees to cease representing, by use of the words "end" and "eliminate" or similar words that the preparation is a remedy for or will cure constipation or has any value in treating this condition in excess of affording temporary relief from its symptoms. The respondent further stipulates that he will cease advertising the product as having value for any symptom or condition in excess of affording temporary relief or benefit for such symptoms or conditions as are due to constipation.

The respondent stipulates that he will cease disseminating advertisements which fail to reveal (1) that his product should not be used when abdominal pain or other appendicitis symptoms are present, and (2) that its frequent or continued use may result in dependence on laxatives. The stipulation provides, however, that such advertisements need contain only a statement cautioning that the preparation should be used as directed on the label, if and when the label contains the proper warnings. (02795)

Jeri Yarn Mills—Herman Rosenberg, trading as Jeri Yarn Mills, 345 Grand St., New York, has entered into a stipulation to cease and desist from certain representations in the sale of yarn.

The respondent agrees to cease employing the word "Mills" as a part of his trade name and to desist from using this word or similar words to imply that he manufactures the products sold by him or owns and operates a factory or mill in which they are made.

Under his stipulation the respondent further agrees to cease advertising, branding, labeling or selling yarn or other products composed in whole or in part of rayon without clearly disclosing the rayon content and, when the products contain both rayon and other materials, each constituent fiber or material in the order of its predominance by weight.

The respondent also stipulates he will desist from employing the words "Worsted," "Tweed" or other words connoting wool to designate a product not composed of wool; or the word "Cashmere" to describe a product not composed of the hair or fleece of the Cashmere goat. The stipulation provides that in the case of a product composed in part of either wool or cashmere, the words "Worsted," "Tweed" or other wool connoting words or the word "Cashmere," if properly used to describe the wool or cashmere content, respectively, shall be accompanied by other words in equally conspicuous type accurately describing each constituent fiber or material of which the product is composed, in the order of its predominance by weight. (3109)

Petpak Products Co., 3264 North 33rd St., Milwaukee, has entered into a stipulation to cease certain representations in the sale of bird foods. The respondent agrees to desist from advertising that the use of its "Petpak Mating Food" or any of its products will insure fertile eggs or strong, healthy fledglings, or that its products reduce bird mortality or produce stronger or healthier birds. The respondent also stipulates that it will cease representing that "Petpak Special Baby Bird Food" contains no filler, or that the potency of the vitamins in its products is preserved. (02793)

Knapp-Monarch Co., St. Louis, and Dominion Electrical Manufacturing, Inc., Mansfield, Ohio, entered into stipulations to cease certain representations in the sale of electrical heating pads.

The respondents agree that in the sale of electrical heating pads not equipped with adequate thermostatic or other heat controls calibrated for three different degrees of heat, they will cease making representations which imply that the pads are capable of maintaining, or that operation of the switches used in connection with the pads results in maintaining, three distinct temperatures.

According to the stipulations, the operation of the switches merely regulates the time required to heat the pads to a single maximum temperature for which the heat control units are calibrated. (3114-3115)

Vogue Silks—Irving Roth and Arthur Bassin, co-partners trading as Vogue Silks, 724 Fifth Ave., New York, have entered into a stipulation to cease and desist from certain representations in the sale of textile fabrics.

The respondents agree to cease employing the words "Pure Dye" or any other words connoting silk to describe a product not composed of silk. The stipulation provides that if a product is composed partly of silk and partly of other fibers or materials, the words "Pure Dye" or other silk connoting words, if properly used to describe the silk content, shall be immediately accompanied by other words in equally conspicuous type to accurately designate each constituent fiber or material in the order of its predominance by weight.

Under their stipulation, the respondents further agree to cease advertising, branding, labeling, invoicing or selling products composed wholly or partly of rayon without clearly disclosing (1) the rayon content by use of the word "Rayon" and (2) each constituent fiber of products composed of both rayon and other materials in the order of each fiber's predominance by weight, and in immediate connection with the word "Rayon." (3113)