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Indiana Law Journal

Volume 15 | Issue 5

Article 3

6-1940

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WIRE Broadcasting Station

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Recommended Citation

Pullman, Eugene (1940) "The Social Aspect of Radio," *Indiana Law Journal*: Vol. 15 : Iss. 5 , Article 3.

Available at: <http://www.repository.law.indiana.edu/ilj/vol15/iss5/3>

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THE SOCIAL ASPECT OF RADIO

By EUGENE PULLIAM*

As a radio and newspaper man my relations with the legal profession have almost entirely been on the receiving rather than the sending end. I regard it therefore as something of a flattering compliment as well as an unusual privilege to be invited to address the Indianapolis Bar Association.

So I assure you, that I had nothing whatever to do with this invitation but I will do my best to give you a picture of radio as I see it and discuss with you the increasingly important Social Aspect of Radio.

As a class lawyers are exceptionally well informed on social, political, economic and industrial problems that have arisen in our changing civilization. I think most of you men knew my brother-in-law, the late Frank L. Littleton, general counsel for the Big Four for thirty years. He typified the curious-minded, well informed lawyer and my contacts with lawyers have impressed me with their intellectual curiosity, their desire to understand and analyze new developments in our society. It is only natural that the alert lawyer of today would wish to know more about this freak which in a few short years has become such a powerful influence in the lives of people the world over. Radio offers not only new problems in engineering, ethics, and social responsibility but also new problems of law.

I dare say the rapid growth and development of radio will seem to future historians a more amazing demonstration of human inventiveness than any of the so-called Wonders of the World. Twenty-five years ago the average family had a music box or a contraption called a gramophone. None of us sat quietly at home and heard a Toscanini concert or listened to a play-by-play description of a World Series baseball game. None of us heard the news of the day

* Owner and operator of WIRE Broadcasting Station.

as it happened on the spot as clouds of war gathered over Europe. Bryan orated to thousands when he stumped the states for silver but his eloquence was lost to the additional millions who now hear President Roosevelt. In those days you paid handsomely to hear Sousa's band but the finest music in all the world is now yours to command at the flick of a dial. You heard the King of England abdicate, you heard the trembling voice of Mr. Chamberlain as he told the British Empire that war had been declared, you heard the high shrieks of Hitler's emotional voice harranguing his followers, you heard too the actual whine of explosives in Finland when the Red bombers flew over Helsenki. You hear educational programs, news broadcasts, variety shows, drama and speeches. And for this privilege you pay not a cent. As David Sarnoff so eloquently has said,

"The richest man cannot buy what radio brings him free."

In practically every foreign nation radio is merely an adjunct of government but in the United States it so far is a medium for all the people, free and uncensored and regulated largely by the industry itself. The very physical fact of radio requires some degree of reasonable governmental regulation. Unlike other mediums of mass communication, radio inevitably restricts the number of persons or firms engaged in commercial broadcasting. Theoretically there is no limit to the number of newspapers that may be published, movies produced, or street corners occupied by persons wishing to indulge their right of freedom of speech.

In broadcasting, however, the number of commercial broadcast channels (which correspond roughly to printing plants, movie studios and street corners) is definitely limited by international agreement to those frequencies between 550 and 1500 kilocycles. Since each station requires 10 kilocycles on each side of its own frequency to avoid jostling its neighbors, there are only about 96 channels to go around and since some of these channels are reserved exclusively for Canada and Mexico, less than 90 are available for the United States and on these 90 channels more than 700 stations have been licensed.

The National Association of Broadcasters has been especially interested in seeking the goodwill, confidence and cooperation of the legal profession. One of our major committees is the Committee on Cooperation Between Press, Radio and Bar. The newspapers interpret radio to the public and the legal profession interprets radio to the courts. Probably many of you know that radio has developed a legal field all its own. There has been organized in Washington the Federal Communications Bar Association which has a membership of 183 attorneys whose practice is almost exclusively before the Federal Communications Commission. I will not attempt to discuss Federal Communications Commission procedure and practice. That data is available to you in various reliable sources. You may be interested, though, in a brief comment on the recent decision in the now famous Al Jolson libel case! During the course of a broadcast over an NBC program reference was made to the Summit Hotel at Uniontown, Pennsylvania. Jolson, who was the lead comedian on the program, volunteered the opinion that "And that's a lousy hotel." The hotel company sued and obtained a judgment in the lower court but the higher court reversed the decision on the grounds that the lower court erred in failing to direct a verdict for the defendant, the National Broadcasting Company, since defamation by radio constitutes a new tort to which the rules of absolute liability employed in the field of libel and slander are inapplicable. Briefly the court recognized the separability of radio from other kinds of defamation. It pointed out that whereas a newspaper has absolute control over what is being printed, a broadcasting station operator has no control over what a person may say ad lib on a radio program. The impression is given that if the facts show the defamatory words are uttered by an employee of the broadcasting network or station from a script previously submitted then the broadcasting company will be held absolutely liable but if the defamatory words are uttered by

¹ Summit Hotel Company v. National Broadcasting Company, 87 Pa. Com. Pl. 49.

someone outside the employ of the company and interpolated in departure from the prepared script the impression of absolute liability would seem entirely too severe.

The far-sighted, and I believe liberal, decision of the higher court is of tremendous importance to the radio industry. The application of this doctrine will be most conducive to the realization of a high degree of radio integrity and make possible broadcasts of immense public interest without over-restriction on broadcast stations.

By the way, if any of you lawyers are especially interested in a detailed account of the Jolson case or in practice and procedure before the Federal Communications Commission you will find excellent notes in the January issue of the Michigan Law Review which has been called to my attention by my good friend, Harvey Trimble.²

The real laws of radio are the natural phenomena—as inexplicable as they are unchangeable. A radio wave travels 186,000 miles a second. It travels seven times around the world in one second. It passes through a vacuum or through otherwise impenetrable solids. It travels farther at night than during the day. These and other scientific facts, some not yet accurately observed, and most not yet understood, combine to create the miracle of radio. There is no appeal from the judgment that grows out of these phenomena. Man must create his own feeble laws to accommodate them. Thus is an era when law adjusts itself to social change we find a new law adjusting itself to scientific necessity.

Radio, by the very physical laws governing its existence is the one medium that cannot be made to conform to our democratic belief that each of us should be guaranteed equal freedom of opportunity. We went through one unhappy period without control of the airwaves. A Federal Court invalidated existing regulations in 1926. Immediately old stations increased their power and new stations climbed aboard whatever frequencies they fancied. For six months, and you perhaps recall it, America's radios tuned into a

² 38 Michigan Law Review 339.

squealing bedlam. Then the Congress created the Federal Communications Commission and it began functioning in late 1927 as the traffic cop of the airways.³ It is not and I hope never will be a blue-nosed censor or a political dictator. Today it is just plain traffic cop but like most other traffic cops it belongs to the political party in power.

There also has developed within the radio industry self-imposed regulation. Late last fall there was promulgated the new Code of the National Association of Broadcasters of which WIRE and about 450 other radio stations throughout the United States are members.

How a simple document called a code, a mere agreement as to what is just and proper in certain phases of station operation, could have the importance attributed to it, is just another example of the remarkable series of achievements which have made radio the wonder of the age.

But before we get into such things as Controversial Public Issues, the Handling of News on the radio, and Religious Broadcasts, let's consider some of the important ways *radio differs* from *other* forms of communication.

You *hear* radio. It is human and, at the same time, warm, persuasive, cajoling, commanding . . . always intimate. Radio is invited into your home at the click of the dial. It can be excluded from your home with the same dispatch.

The spoken word of radio simultaneously makes its impact on millions of people . . . men, women, and children; young and old; citizens and aliens; Jews and Gentiles; Protestants and Catholics; whites and blacks; Republicans and Democrats; country people and city people; the educated and uneducated. But no matter how different one from the other, they all hear what's on the air at the same time. By its speed, radio annihilates distance and cuts across time to amuse, to entertain, to educate.

Radio is limited as to the quantity of program material which can be broadcast during any one day. Even radio cannot change the fact that there are sixty minutes to every

³ 48 Stat. L. 1064, 10 F. C. A., Title 47, § 151; Title 47, U. S. C. A., § 151.

hour, twenty-four hours in every day. It is unlike the newspaper, which can add pages at will on days when more news and advertising comes into the plant.

Now these qualities or characteristics of radio . . . its audibility, its speed of transmission, truly "melting pot" character of audience, and program quantity limitations confer upon this newer form of communication a unique *social* responsibility whose presence has become more pronounced with the tremendous increase of radio listeners. This is *not* to say that its economic phase is less important, for that is not the case. The entire system of American broadcasting, its freedom from dictation, its ability to serve the American public, is, as for newspapers, absolutely dependent upon the sale of sufficient radio time to pay for all the non-sponsored services of radio stations. Radio stations as a whole receive no revenue for more than half the time they are on the air. With this picture of present-day radio before us, let's talk about the Code.

The news plank in the broadcasters' Code states that all news shall be presented factually, without bias or editorial opinion. Radio stations under the Code are without editorial opinion; because the job of the news broadcaster in a democracy ends with the presentation of the news as it happens. Once in possession of the facts, American people are capable of making up their own minds.

The NAB code specifies that news broadcasts shall not be selected for the purpose of furthering or hindering either side of any controversial public issue, nor shall it be colored by the opinions or desires of the commentator, the station or any advertiser. There are no "sacred cows" in radio news broadcasting, except, of course, limits of propriety and decency.

The NAB code is your guarantee against suppression of the news by radio. In fact the honesty of the radio in broadcasting all the news has liberalized the attitude of many newspapers. There are grave dangers in suppressing the news under any circumstances. Knowledge of events by the people is essential to the functioning of democracy.

Closely allied to the handling of news, is another matter which has heretofore challenged many thinking people. It is the handling of controversial public issues. The Code says: "Time for the discussion of public controversial issues may NOT be sold." On the other hand, discussion of controversial public issues is *not prohibited*. For such discussion, time on the radio will be provided without charge—FREE! Broadcasters shall use their best efforts to allot such time free of charge, with fairness to all elements in a given controversy." Now here is the reasoning by which radio broadcasters deprived themselves of income in order that they might pursue the soundest principle of public policy!

It was decided not to sell time for the discussion of controversial public issues for the following reasons, all inter-related, and which must be considered together: (1) The number of radio channels for broadcasting purposes are limited; (2) as pointed out before, there is a fixed ceiling of twenty-four hours of broadcasting per day—another limitation on listening which cannot be overcome, as in the newspaper field, by adding pages; (3) in the absence of any regulation or policy to the contrary, it is conceivable that individuals or groups, with the financial means to do so, could buy all the available time necessary to monopolize and control the discussion of public issues over the radio, and this would prohibit the opposition from presenting its case to listeners. Such a situation as this would pervert the function of American radio as a forum of democracy and would irreparably shatter the confidence of the public in radio and the American system of broadcasting.

You cannot buy the news columns in the American newspapers; but, if your cause is worthy, space in the editorial columns is given freely. So, in radio, spokesmen or groups in the field of public controversial issues have the right to request and receive time on the air from individual stations or networks in accordance with the provisions of the Code. THE HANDLING OF PUBLIC CONTROVERSIAL ISSUES BY RADIO STATIONS IS A MATTER OF PRINCIPLE AND NOT ONE OF PERSONALITIES.

The single exception in the controversial public issues plank of the broadcaster's Code is the permitted sale of time for political broadcasts. "This exception is made because at certain times the contending parties want to use and are entitled to use more time than broadcasters could possibly afford to give away."

The Code does not bar sponsorship of the popular "forum" type of program. Such programs are so arranged that all degrees and shades of opinion are presented and the public can be depended upon to draw its own conclusions.

Religious broadcasts are made the subject of another important plank in the Code of the National Association of Broadcasters. One of the reasons our forefathers come to this country was to escape religious persecution to the end that they might worship as their conscience dictated. In America all creeds, all races, live contentedly, side by side. And as all creeds and all races simultaneously hear the voice of the religious speaker, no matter what creed he may represent, it follows the Code should state with simplicity and finality that radio may not be used to convey attacks upon another's race or religion. Rather, it should be the purpose of the religious broadcast to promote the spiritual harmony and understanding of mankind, and to administer broadly to the varied religious needs of the community.

The Code also is seriously mindful of radio's responsibility in the field of education and in the matter of children's programs but with which subjects, I take it, we are not particularly concerned tonight.

This code of the nation's broadcasting stations has been a matter of evolution. It has followed precisely the same path as the evolution of radio itself from a medium solely of entertainment to one of vast social, educational and economic significance. Under its provisions, the broadcasters are trying to guarantee to the 130 millions of Americans a broadcasting set-up which will remain free and thoroughly democratic. That is the greatest job the broadcasters have—to keep radio free and democratic.

And so in conclusion, I want to discuss the *social aspect* of radio. I wonder how many of you have ever thought of the social importance of commercial radio to this nation of ours. I wonder how many of you fully appreciate the social and political significance of radio in a democracy—of the use of a free radio in a world which has now been committed to the use of radio as a political weapon and a political vehicle. How many of us, whether we are in the newspaper business or in a profession, have taken time to consider what a free press and a free radio mean to us here in America. Personally I am convinced that the safety and preservation of the American system of democratic government depends on the safeguarding of the three great liberties guaranteed to us in the Constitution of the United States—freedom of thought, freedom of speech, freedom of press. Unless all these liberties are preserved, America as a democracy is doomed, and of course freedom of speech, freedom of thought and freedom of press must *now include a free radio*. It will take just a moment to call your attention to the Constitutional provision which guarantees the right of free thought, free speech and free press.

The very first Article of the First Amendment to the Constitution says:

“Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”

What did Thomas Jefferson have in mind when he wrote that Amendment and insisted on its adoption as the very first Amendment to the Constitution? He knew that so long as there are wrongs to be redressed, so long as the strong—both the intelligent strong and the ignorant strong—shall oppress the weak, so long as injustice sits in power anywhere in the land, the voice of free citizens will be needed to plead for the right of their fellow men. Without freedom of thought, freedom of speech, and the unrestrained right to speak out the truth as one sees it, there

can be no advancement to the high civilization which we cherish for America, and had Jefferson been living today, he would have insisted on putting into the Constitution a provision for freedom of the air.

And so it is our job as newspaper and radio men to keep open the channels of free discussion on all questions pertaining to the public welfare. It is not idle chatter to warn that the freedom of the press and the freedom of the air is in great danger today. The trend of world events is directly toward some form of Fascism, and only by the maintenance of free speech, a free press, and a free radio will the United States escape it.

There is no semblance of either free speech or free press in Germany or Italy or Russia today. Citizens there are sent to prison for even listening to or reading opinions that run counter to the administration theme. In England, where free speech and free press have been maintained at all costs through every crisis, representative government prevails. The difference between the individual rights and privileges of citizens in England and in the dictator-infested countries is due almost entirely to the fact that free speech and free press have been maintained in England and abolished in the other countries. Never in the history of the world has a dictator been able to survive against the pressure of free speech and a free press, and so the maintenance of freedom of thought and expression is more important than the solution of any of our present economic ills, for without free speech and a free press and a free radio we shall become creatures of the state, our individual rights will be abolished, our civil liberties destroyed, and our very lives lived to the lockstep order of a militant-minded minority. Always a *minority*.

What do we mean by a free press and a free radio in a democracy? Are these just empty phrases? What, fundamentally, is the newspaper, the magazine, and radio? All three basically are avenues for the communication of thoughts and ideas. And what is their place in a democracy? Perhaps we had better first define democracy.

A democracy is the expressed will of the people. Abe Lincoln said it better than that. "Government of the people, by the people, for the people." If that means anything, it means that the will of the people must have full and free opportunity to make itself known and heard. It means a free press as long as we have a free America. Now that radio has come along, it means a free radio as well. Let Government get a strangle hold on radio, and the life's breath of our American democracy will be choked off. Herein lies the social importance of commercial radio in this country. The best defense against domination or coercion from any source that would prevent the function of a free radio lies in a sound economic foundation, for financial security leads to *independence* and freedom of action, whether it be corporate or personal. Because of the solid economic foundation of American radio, we are free to bring you the voice of the President and the voice of his opponents over the same radio facilities. We are free to present the voice of a Rabbi, a priest or a minister. We are free to give voice to the many voices that make up our American democracy. This is the profound social importance of commercial radio in this country.

The press and the radio have mutual problems, mutual interests, mutual objectives. There is room for both of them; they must supplement each other. As a matter of fact, it is obvious that the freedom of the press depends upon freedom of the air. A free radio will maintain a free press, but let Government take control of radio in this country, and within five years you will have censorship of the American press. That is absolutely inevitable. Therefore, the right of free expression which has been safeguarded to us in the Constitution can only be maintained if we have both a free press and a free radio.

Voltaire, the great flame of liberty, found nothing in common with the teachings of the visionary Rousseau. Voltaire believed that

"By speech and pen we can make men more enlightened and better." Rousseau demanded action. He sought the

abolishment of all law to make way for his proposed reign of equality. Voltaire knew that the ultimate result of Rousseau's philosophy would be a return to brute life and savagery. Yet, when the Government threatened to arrest Rousseau and burn his books, Voltaire invited Rousseau to his home for safety and wrote:

"I do not agree with a word you say, but I will defend to the death your right to say it."

That, my friends, is the torch of free citizenship. "I do not agree with a word you say, but I will defend to the death your right to say it"—in the press, on the air, anywhere. If we continue to maintain a free press and a free radio in this country, the United States will escape dictatorship and other political wreckage. It will prosper and go forward in the orderly evolution of human progress, for where there is freedom there is always progress. Reason doesn't fail men.

I have talked too long. I appreciate your fine courtesy and patient attention. We are moving into our new studios in the Claypool Hotel in about a month and I want each of you to accept this as a personal invitation to come up there "and see me some time."