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"AN APPEAL FOR SELF-DISCIPLINE"

Remarks of Earl W. Kintner, Chairman,
Federal Trade Commission, Before
Fall Conference, National Association
of Broadcasters, Washington, D. C.,
October 15, 1959.

I greatly appreciate this opportunity to talk to you. The broadcasting industry and the Government regulatory agencies have some hard questions to ponder. And I have here a few answers that I offer for your consideration.

Incidentally, you may be sure that my answers have not been rigged, and I have no advance knowledge of the score I shall make. Also, I am sure that I have jurisdiction over what I'm going to say because it will be offered as a thoughtful commercial rather than as effort at entertainment. Further, it represents my personal views.

You, on the other hand, can draw comfort from the fact that my appearance here involves no intellectual shell game that might draw Congressional suspicion upon you. What I shall say will be strictly on the up and up, and it will, I hope, be important to you.

It is hardly necessary to call to your attention that the press is having a field day concerning disclosures

that certain TV Quiz Shows have been rigged. These stories are of tremendous popular interest because of the intimacy that developed between the Quiz Show contestants and the individual citizen who shared the performers' apparent agonies and triumphs. Indeed, I suspect the disclosures made by the Harris Committee have done much to restore the egos of our citizens who could only have concluded that, by comparison with the Quiz Show stars, they were still in the mental cradle row. And, of course, it makes delightful reading for them to discover that they were not so lame-brained as they had come to fear. The newspapers and magazines have been only too happy to so reassure them.

It is quite likely that most of you have come to the conclusion that here was a disclosure that received press notice all out of proportion to its importance. You also might have comforted yourself with the undeniable fact that most radio and TV shows are untainted by fraud of any kind. They are fine entertainment, you say, and their predominance will overwhelm any bad taste resulting from the Quiz Show disclosures.

It is my opinion that any attempt to shrug off a hoax on the public as not warranting positive action is to whistle in the dark.

A challenge has been thrown at the broadcasting industry that must be met with more than a sophisticated shrug that the destiny of all headlines is the ashcan, and that the public memory is short.

The question then becomes: what can you do?

As I told the Harris Committee on Monday, there is no question that the Federal Trade Commission has jurisdiction over false or misleading claims for products sold in interstate commerce, or, in the case of foods, drugs, cosmetics and devices, it has jurisdiction even if only the advertising crosses State lines. This, of course, applies to advertising on radio and television. I also told the Committee that it is my opinion that the courts might reject any attempt by the Federal Trade Commission to police any portion of a radio or TV program other than direct advertising of a product or service.

I do not mean to imply here that the Commission is indifferent to a hoax upon the public such as apparently has occurred in certain TV Quiz Shows. I have no sympathy for a ^{fraudulent} scheme, whether or not it lies within the authority of the FTC to attack it. And I am sure my fellow Commissioners and the FTC staff feel the same way.

I also am confident that you in the broadcasting industry are opposed to frauds upon the public. Indeed your opposition should be even more intense, for moral indignation must, in your case, be augmented by the realization that only a trustful public brings value to an advertiser's dollar.

Let any abuse of public confidence undermine this trust, and the broadcasting industry is hurt and hurt badly.

To your concern, and to the concern of the regulatory agencies, must be added the concern of the Congress of the United States. Chairman Harris has made it clear that his Committee now has under consideration whether additional laws are needed for the adequate policing of your industry. I was asked on Monday whether the FTC would be ready with assistance in the development of adequate legislation should such be required, and my answer was, "Yes".

I gave my answer with full awareness that a hue and cry will be raised and that restrictive legislation might in some quarters be regarded as flying into the teeth of the First Amendment to the Constitution. Yet, I think, that any such protest would run into the thinking exemplified by Arthur Krock of the New York Times when he protested this week that the First Amendment is being victimized if it is "to spread its glorious mantle over shoddy commercial entertainment, conditionally licensed to make exclusive use of a channel of the air which is the property of the people."

In short, the reputation of the broadcasting industry faces a serious threat. I would add that it is a threat that has been brought on by too much lip service to high principles and not enough diligence in enforcing compliance with them.

In saying this, I am aware that the N.A.B. has ethical codes for both radio and TV, and for their promulgation your organization deserves credit. I also am aware that adherence to the code has resulted in the non-use by stations of much objectionable material. Nevertheless, if a ship has only a few holes in its hull instead of many, this does not invite confidence that it is seaworthy. And from the standpoint of public interest, the holes must be patched. You and I both would prefer

that the patching be done by the owner of the ship instead of the Government, but one way or another they are going to be patched, and they should be!

If self-regulation becomes ineffective, then it becomes mandatory that the Government should provide whatever policing is required by the public interest. If the primary responsibility for policing TV and radio programs lies with the Federal Communications Commission, or whether the jurisdiction of the Federal Trade Commission should be clarified and extended to a broader area than the advertising of products, are matters for Congress to decide.

But it is my hope that this will not be necessary. It is my hope both as Chairman of the Federal Trade Commission and as a believer in our capitalistic, competitive free enterprise system that the broadcasting and the advertising industries can keep radio and TV programs free of deceit and fraud in the best interest of the public and without more laws and more policing.

I was once asked by a newspaperman how large a staff the Federal Trade Commission would need in order to police with complete effectiveness all business practices. I told him the number would be astronomical, and then I added: "And if we got all we needed we would have too many." This is not the paradox it seems. We don't want our country to become a police state. We

want only so much policing as is necessary to protect our people and our competitive free enterprise economy. And this we have managed to achieve since the embattled farmers commenced to fight for it in the year 1776.

True, we have needed law enforcement in the years that have followed, but--cynics to the contrary--most of that law enforcement has come from the basic morality of our people. Certainly, what self-discipline cannot achieve cannot be accomplished by the alternative of mere policing, if our system of Government is to survive. It has been said quite recently that any notion of getting people in the television industry to police themselves would be like making an agreement with a bunch of tigers not to eat a bunch of lambs and then just go off and leave them. While this is a colorful analogy, it makes an assumption with which I cannot fully agree. It assumes that uncontrolled greed would rule one of the most vital of American industries were it not for the presence of regulatory agencies.

The truth is far less dramatic. Just as the broadcasting industry needs Federal policing to halt illegal hucksterism by the irresponsible few, so does proper law enforcement require the continued self-discipline of the great majority of advertisers and stations. Neither alone can do the job. Together they can. And neither must

falter in carrying out its responsibilities. Therefore, I would like to amend the analogy of the tigers and the lambs by saying that the surest way to protect the lambs is for the tigers to keep guard over each other and for the herdsman to start shooting if they don't.

I am well aware that "self-discipline" is an over-used word, that it has been diluted with false piety, and is more noteworthy as a point of departure than as a goal. And when mentioned in connection with law enforcement, is likely to invite little more than a wink and a smile. Those who advocate it are, I suppose, considered naive. But there is this to say about self-discipline: it can keep you out of considerable trouble with the Government. And the Government includes the Federal Trade Commission.

With this thought in mind, I would urge the broadcasting industry, and particularly each individual member of the industry, to police its advertising and programming so well that more laws and more regulations and more policing are not needed.

Though the hour be late, yours may still be the choice. Make it worthy of the heritage that we all cherish.

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