

*CAUTION - ADVANCE
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"CAN GOVERNMENT ADMINISTRATORS
AND BUSINESS MEN COOPERATE?"

ADDRESS

of

JEROME N. FRANK
Chairman, Securities and Exchange Commission

at

"AMERICA'S TOWN MEETING OF THE AIR"

Town Hall
New York

9:30 P.M.,
December 7, 1939

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We often say, and correctly, that we have a government of laws and not of men. We don't mean that our government is a piece of automatic, non-human, machinery. We mean that we have a government of laws - made by men in Congress, construed by men on the courts, and administered by men in government agencies. Tonight I'm not talking of the work of the men in Congress, or of the wisdom of the laws they enact, or of the decisions of judges. I'm talking solely of the conduct of the government men who administer existing laws, administer them, always, within the limits set by the legislature and subject to review by the courts.

The question being asked tonight is whether such government men can cooperate with business men.

When I answer that question, I feel like the farmer who was asked whether he believed in baptism. He replied, "Believe in it? Gosh, I've seen it." For I see, every day, -- and often on nights, Sundays and holidays -- in Washington and elsewhere, government officers actively and effectively cooperating with business men.

I would bore you if I were to recite merely a complete list of the diverse agencies of the federal government constantly engaged in such cooperation. To take some samples: Do you imagine that the F.F.C. does not cooperate with business? Or the Civil Aeronautics Authority with aviation? Or Federal Housing with the builders and bankers? And what of the Federal Reserve Board, Federal Deposit Insurance Corporation, the Bureau of Standards, the Maritime Commission, the Post Office, the Forestry Service, the Bureau of Mines, the Radio Commission? Do you imagine that a day goes by or even an hour - when all these and many other agencies are not working for and cooperating with business? But tonight I want to talk chiefly out of my own recent experiences in government.

I wish I could show you a talking motion picture of life at the SEC. If I did, you would see a daily example of untiring efforts to find workable

solutions for difficult problems of business adjustment to existing laws. Why do we make those efforts? Because our laws affect hundreds of business men, with as many differing business problems; and because those laws, being new, have imposed novel standards of conduct which may be a shock to established customs and habits. Plain horse-sense dictates that, in administering such new legislation, a government official must be patient.

What form does that patience take? When Congress directs an agency, like the SEC, to draft rules and regulations, the agency can do one of two things. It can and quite lawfully -- follow what was once considered the normal governmental method: Without consulting any outsiders, it can simply adopt its rules and announce them. Or, instead, it can first call in representatives of those who are to be affected by the rules and say,

"Congress told us that we must promulgate rules on this subject. But we want your ideas on the mechanics. We want our rules to be workable, and we want them to accomplish the objectives of Congress with as little business disturbance as possible."

That might be called the patient or the cooperative method. And that's our method. We've used that method of consultation -- informal and not frock-coated -- with respect to virtually every important rule. And the assistance we have received from business has been of inestimable value.

There are many other examples of cooperation. For instance, I suppose that as much of the time of our legal staff is devoted to giving counsel to business men as to us. Daily, we receive letters from business men and their lawyers, thanking us for that kind of cooperation. I have, in my files, such a letter, received early this very year, from the law firm of which Senator Taft is a partner.

Sitting behind my government desk, I see two markedly different types of business men. They might be called Mr. Will and Mr. Wont. Mr. Will is a realist. He recognizes that, while a law is on the books, he must work under it. So he comes to us and says:

"My sole desire is to adjust my business to the law as quickly as possible, so that I can save time and make money for my stockholders. Here's what I want to do. Can I do it under the law? And, if so, how?"

What happens? He discovers that Congress has set the standards to be complied with, but has often left a considerable latitude as to methods. He sits down with the government experts. They and he, between them, try to find out which of the methods is best suited to his particular problem -- methods, mind you, not of evasion or nullification of the law but of compliance. In those conferences, Mr. Will often convinces the government men of the practicability of a method, within the law, which they had not discovered.

To have a hard-headed, conscientious business man, like Floyd Odlum, thus present the realities of his concrete business problems must broaden the understanding of government administrators. And the successful solutions of those problems is an exciting experience for us and the business men. It is creative: By demonstrating the law's workability, it converts the law from a mere assemblage of lifeless words on a page into a human, living institution.

But what of Mr. Wont? Mr. Wont is a man who, for personal or business reasons, doesn't like the law and wont comply. Now any man has a right -- in speech, print, or in the courtroom -- to oppose or criticize any law, or the administration of any law. That's basic democracy. But, as an administrator of law, and as a believer in law and order, I can see no reason why a business man who defies a law should not be regarded as a law-breaker. Our

government provides an orderly process for the review, repeal or amendment of laws. But it does not authorize the violation of an existing law.

There are some Mr. Wonts who take us into court to challenge the law or our administration of the law. That is their unquestioned right. To hear such grievances is what the courts are for. And we are for the courts.

But there's another kind of Mr. Wont. He might be called Mr. Pretend-I-Will. He has a pleasant smile, a gracious manner, a smooth tongue -- and not the slightest intention of doing anything. His policy is to stall, to talk us into non-enforcement of the law. He is praying that somehow there will be a repeal of the law, before we get around to applying it to him. To transform Mr. Pretend-I-Will from a sham or false Mr. Will into a real Mr. Will is a hope which induces us to spend much time with him. Usually we fail. Then we must take him into court to make him comply with the law. That is essential, for, if Mr. Will and Mr. Pretend-I-Will are competitors, it is unfair to allow Mr. Pretend to get away, indefinitely, with non-compliance. And then, when we finally do try to carry out the express will of Congress, Mr. Pretend takes to name-calling, and charges us with cracking down on his entire industry and undermining business confidence.

There is one paramount reason why government officers in the SEC believe in cooperation between government and business: Congress would never have passed the SEC laws, if it had wanted to do away with the profit system. Instead, it would have tried to use dictatorial confiscation and other drastic methods applied in Russia and Germany. The SEC laws were expressly designed to restore, and maintain good faith between the corporation and investors. Without that good faith, the profit system would crack up and democracy would be imperilled. We, in the SEC, are therefore engaged in the task of fortifying the American profit system in the interest of democracy. We and enlightened

far-seeing business men can have no other objective. Our aim is and must be this: A secure profit system under a secure democracy. And cooperation between government and business can achieve -- and is achieving -- that result, an indispensable result if America is to avert the alternative disasters of chaos or tyranny.

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