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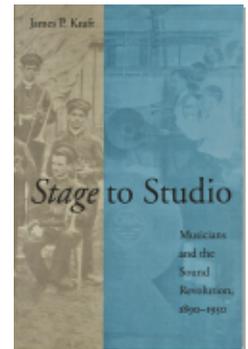
## Stage to Studio

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## Six

### Recording Ban

THE BAN ON RECORDING alarmed the music industry. Without fresh supplies of recordings, record companies, jukebox operations, and music retailers faced disaster. Phonograph manufacturers and radio stations dependent on the consumption of popular music were similarly imperiled. What could be done to get recording musicians back to work? Unlike other striking workers demanding higher wages, better working conditions, and greater control of the workplace, the striking musicians said simply that they would make no more of the instruments of their own displacement. Clearly, solutions that worked in other labor-management conflicts would not work in this one.

The story of the recording ban, which lasted from August 1942 until November 1944, is significant in retrospect because of the insights it offers into the links between work, technology, and industrial relations. It shows how a distinctive group of workers tried to control the distinctive product of their labor and with it the deployment of new technologies that threatened their well-being. It also shows that employers fiercely resisted the initiatives of labor with sophisticated campaigns designed to protect their own prerogatives. This contestation reveals too that struggles between labor and management were not always fought out on factory floors or outside company gates. On the contrary, they also took place in courtrooms and in myriad battles for the hearts and minds of the American people, few of whom knew or cared much about record production.

WHEN JAMES C. PETRILLO, president of the American Federation of Musicians (AFM), set in motion the union's "ultimate weapon" against recorded music, industry leaders pledged an "all-out" campaign against his "gangster acts." On June 15, 1942, six weeks before the ban actually began, *Broadcasting* predicted that radio "will not take this one lying down." Petrillo was out to "wreck" radio, the trade journal insisted, and only a united, aggressive stand against him and his union could save the radio and recording industries. The challenge would be formidable, the journal admitted, but it reminded its readers that radio had recently broken the monopoly of another labor organization, the American Society of Composers, Authors, and Publishers (ASCAP).

The victory over ASCAP had indeed been impressive. Since 1923 ASCAP had collected performance fees from broadcasters that used the music it licensed. In the late 1930s, however, the National Association of Broadcasters (NAB) began resisting those fees. By 1941, with strong support from NBC and CBS, employers had effectively compromised ASCAP's bargaining power through their own expansionary strategies of vertical integration. By building a competitor to ASCAP beholden to themselves—Broadcast Music Incorporated (BMI)—they effectively undercut the association. Through BMI they secured rights to music controlled by small competitors of ASCAP, and then favored that music over recordings licensed by ASCAP.<sup>1</sup> The level of cooperation between the networks in this endeavor was impressive, and it undoubtedly encouraged them to think they could repeat the success with the AFM—that is, to think they could stabilize their relations with the musicians they employed on their own terms and without jeopardizing their competitive position in the marketplace.

There were, however, important differences between the two organizations they challenged. Unlike ASCAP, which faced competition from dozens of small organizations of composers and music publishers, all of which had reason to cooperate with radio, the AFM had no competitors. It had instead a monopoly on musical services guaranteed by closed-shop hiring policies throughout the industry. Musicians thus knew that to violate the recording ban would be to deny themselves employment. Trombonist Bill Hitchcock, who recorded with the Eddy Duchin Band in 1940, remembered that he never considered breaking union ranks. "In those days," he recalled, "we would not have done that. We wouldn't strike-break." Reedman Will Brady, who recorded with the Ozzie Nelson Band in New York shortly before the ban began, agreed: "We wouldn't do any-

thing to jeopardize our standing in the union.” Both men offered another reason for the solidarity: few musicians depended only on their earnings in recording. “Recording wasn’t our whole life,” Hitchcock recalled, “it was only the icing on the cake.” Or, as Brady put it, “I did a lot of recording, but it was never my main source of income.” Unlike other striking workers, then, recording musicians honoring the ban were not risking their bread and butter.<sup>2</sup>

Industry leaders recognized the advantage this gave the union, but they had strengths of their own as well as a calculated strategy. The first step in that strategy became apparent even before Petrillo announced the ban on recording. Anticipating the ban, recorders stockpiled as many new recordings as possible. In the weeks before the ban, instrumentalists found themselves overwhelmed with work, recording with such popular artists as Johnny Mercer, Kay Kyser, and Dinah Shore. Among the last things thus recorded, only hours before the boycott began, was Kyser’s rendition of “Praise the Lord and Pass the Ammunition.”<sup>3</sup> The stockpiling was a clear sign that industry leaders expected and were preparing for a protracted struggle. Indeed, it almost guaranteed that result if musicians maintained their solidarity and determination. The expense of creating such a huge stock of unreleased recordings made it financially impractical to resume record production immediately.

After the ban began, record companies found additional ways to withstand its effects. Some of them made recordings of singers backed by choral groups or nonunion musicians playing harmonicas, ocarinas, and other instruments not covered by AFM rules. Others reissued old favorites. But these and other innovations were peripheral to a larger strategy. To defeat Petrillo and the union, industry leaders would rely chiefly on public relations and union-busting. On behalf of the networks and some six hundred radio stations, the NAB coordinated what became a classic antilabor campaign. CBS attorney Sidney Kaye, who played a leading role in the creation of BMI, served as NAB counsel in the effort. When the boycott began, Kaye and NAB executives had already met in Chicago to map their strategy.<sup>4</sup>

As employer associations often did in labor conflicts, the NAB relied on the press to help discredit union leaders and their purposes and actions. The association paid the New York public relations firm of Baldwin and Mermey \$2 million to “articulate industry’s position” and “activate the public” against the union. Newspapers across the nation were soon lashing out at Petrillo’s character as well as his words and actions. The *Chicago*

*Daily News* referred to him as “the inflated little nonentity who strong-armed himself into dictatorial power.” The *Washington Post*, *Buffalo News*, and other newspapers carried equally caustic remarks, variously labeling the union leader “czar,” “tyrant,” and “dictator of the music realm.” Editorialists often pointed out that Petrillo’s middle name was Caesar, which *Broadcasting* suggested “was unquestionably given him by people who foresaw his future.”<sup>5</sup> Such name-calling no doubt influenced public perceptions of Petrillo, but the editorials in which it appeared diverted attention from the issues the boycott raised. None of the editorials discussed the impact of mechanization on the employment opportunities of musicians or even acknowledged that Petrillo was the democratically elected head of a union with 513 locals, all of which supported the recording ban.

Editorials attacking Petrillo mirrored the mutual interests of employers and the press. Dependent upon revenue from advertisers, the daily press had over the years generally sided with employers in labor disputes. A special problem Petrillo faced was that newspaper interests owned about a quarter of the nation’s radio stations, about two hundred of them, and thus had a stake in discrediting the AFM. Petrillo himself placed the number of stations owned by newspapers at nearly three hundred, all of them, he believed, “on the side of the employer and against the federation whether we are right or wrong.”<sup>6</sup> Even in exaggerating this situation, Petrillo recognized that the public perception of radio as an entertainment medium obscured the fact that it was also an industrial enterprise with its own economic imperatives, among them the desire to control its workforce.

In responding to the striking musicians, employers effectively exploited longstanding tensions between labor activism and patriotism in a time of war. Throughout the labor boycott, employers accused Petrillo and the boycotters of disloyalty, and the accusation influenced public perceptions of both. The boycott did indeed defy the spirit of commitments representatives of labor and management had made to work cooperatively for the duration of the war. Shortly after Pearl Harbor, leaders of the American Federation of Labor (AFL) and the Congress of Industrial Organization (CIO) had made general pledges not to strike in return for no-lockout clauses in labor contracts and increased government protection of trade union activity. This agreement made labor leaders who supported wartime strikes vulnerable to the kind of criticism Petrillo was now receiving. The NAB argued that Petrillo and his union were not only violating the no-strike agreement but also denying the public a product essential to the war effort. “Music plays a vital part in war morale,” the association argued; Petrillo’s actions were thus “unpatriotic” as well as “arbitrary and illegal.”

Some employers went further than that, likening Petrillo to an enemy leader. Stanley E. Hubbard, general manager of KTSP in St. Paul, called Petrillo a “fuhrer” with a “public be damned attitude.” “Petrilloism,” Hubbard said, is “as cruel and brutal as Hitlerism.”<sup>7</sup>

Employers also tried to undercut Petrillo by characterizing the recording ban as Luddism, a furiously futile effort to wreck the technology of musical progress by what amounted to machine-smashing. One editorial in the employer-controlled press compared “Little Jimmy” with “the short-sighted men who battled the introduction of the spinning jenny” and added that the recording ban was “merely another chapter in the prolonged battle . . . against technological progress.” Such statements made opposition to technological innovation appear backward and irrational, even as they linked the advance of technology to the rise of corporate profits. In response to such charges, Petrillo insisted that he opposed not technological innovation but the ways employers used technology to benefit themselves at the expense of their workers.<sup>8</sup>

While maligning Petrillo in the press, the NAB lobbied state and federal lawmakers for legislation against the AFM and the ban. The association’s influence at the state level had been apparent in the late 1930s, when North Carolina, South Carolina, Florida, and other states passed bills allowing radio stations to broadcast records with labels that prohibited that use.<sup>9</sup> At the national level, NAB lobbyists endorsed the view of Thurman Arnold and the Justice Department’s Antitrust Division that the AFM could not, any more than unions in the building trades or transport, force employers to hire “more employees than needed.” In fact, broadcasters worked closely with Arnold to undermine the ban. Only a week into the ban, representatives of the broadcasting and recording industries met with Arnold to discuss ways to curb Petrillo’s “onslaughts” through litigation as well as legislation. Employers’ hopes rose in the summer of 1942, when Arnold filed a complaint in federal court in Chicago that the AFM, in violation of the Sherman Act, had “unlawfully combined and conspired to restrain interstate trade and commerce in phonograph records, electrical transcriptions, and radio broadcasting.” Asking for an injunction to end the ban, Arnold told the court that the ban threatened to destroy entire industries, including record and phonograph manufacturing and retailing, the jukebox industry, and many radio stations.<sup>10</sup>

AS THE JUSTICE DEPARTMENT prepared to argue in court against “unneeded” labor, a long-simmering dispute between the AFM and the National Music Camp at Interlochen, Michigan, compounded the union’s

problems. For twelve years this popular summer camp for children had concluded with a musical festival, the highlight of which was always a concert by the camp's amateur instrumentalists. The concert concerned the union because NBC transmitted it to its affiliates. The children, who participated in a national competition to attend the camp, practiced all summer for the chance to be heard on radio.

In accordance with standard union policy, the sponsor of the broadcast, Majestic Radios, originally paid a standby fee to the AFM local in Interlochen for permission to use nonunion musicians within its jurisdiction. That arrangement, however, lapsed in 1931. When Petrillo became president of the AFM, he demanded its reinstatement. Insisting that the National Camp, its sponsors, and NBC were commercial enterprises, he also demanded that they use union musicians whenever they promoted their services or products. When NBC informed Petrillo that it had already made arrangements to broadcast the children's concert in 1941, Petrillo uncharacteristically accepted the *fait accompli* and withdrew the demand for standby wages in view of an understanding that the network would rectify the situation in 1942. Because that understanding was not honored, shortly before the 1942 concert was scheduled to air Petrillo informed NBC that it must cancel the concert or face the loss of scheduled musical programs. In doing so he not only disappointed 160 boys and girls and, no doubt, their families and friends as well; he also left himself vulnerable to new kinds of criticism.<sup>11</sup>

At the behest of Senator Arthur H. Vandenberg of Michigan, the Federal Communications Commission (FCC) asked Petrillo to justify his action. Petrillo replied that he had acted on behalf of the union for the protection of its members. The rule he enforced at Interlochen, he explained, was a standard one that applied to all commercial employment of musicians. "You must remember," he wrote of working musicians, "that this already is an overburdened profession. In some of our locals unemployment reaches 60 percent; in some 75 percent; and in other locals as high as 90 percent." The children at Interlochen were thus unlikely to become professional musicians, Petrillo continued. "After having studied for many years, they will find themselves in a starving profession."<sup>12</sup>

This response was a tactical mistake that Petrillo's critics were quick to exploit. At once editorialists added charges of cruelty to children to those of disloyalty in wartime and dictatorial power over musicians. These charges seemed to gain credence when the children at Interlochen signed a petition protesting what Petrillo had done. Political cartoonists had a field

day. Reg Manning of the *Phoenix Arizona Republic* drew Petrillo dressed as Caesar calling children “scabs” and banning them from radio. He also showed “Caesar” bellowing decrees at radio audiences and musicians, and even at Uncle Sam. Interlochen hardly reflected the nature of the problems confronting musicians or the issues involved in the ban on recording. But in the hands of Petrillo’s critics and opponents, it became a symbol that trivialized the struggle against canned music.<sup>13</sup>

The Interlochen incident heightened congressional interest in the AFM and the ban on recording. On August 27 Senator D. Worth Clark, a Democrat from Idaho, introduced a resolution calling for an investigation of the union’s “acts, practices, methods, and omissions to act,” which Clark characterized as threatening “the national welfare, the public morale,” and “the public good.” The resolution went to the Interstate Commerce Committee, which recommended approval, and when the House approved it, the Commerce Committee named Clark to oversee the investigation. The resulting “Petrillo Probe Subcommittee” promptly summoned representatives of the Justice Department, the FCC, and the Office of War Information (OWI) to testify on the nature and effects of the ban on recording. Their testimony reflected the mounting pressure on Petrillo and the union.<sup>14</sup>

Speaking for the Justice Department, Thurman Arnold told the committee that Petrillo had trespassed legal boundaries. The Interlochen incident, he said, was “a step beyond the closed shop,” was in fact an “attack on individual freedom in America.” The recording ban, he continued, threatened restaurants, hotels, jukebox operations, and other small businesses simply because they utilized “new inventions for the rendition of music.” The issue the ban raised, Arnold told the committee, was whether trade unions could force employers to hire “unneeded labor.”<sup>15</sup>

Elmer Davis, head of the OWI and a former news analyst for CBS, seconded Arnold’s testimony. Davis insisted that the ban on recording threatened small radio stations across the nation and thereby jeopardized the government’s “propaganda broadcast structure.” He also suggested that the ban impeded the war effort by lowering military as well as public morale. Field commanders in combat zones, he reported, had complained to him about the shortage of recorded music and the effects of the shortage on their troops.<sup>16</sup>

James L. Fly, chairman of the FCC, was more sympathetic to Petrillo and the union, and to Petrillo’s handling of the Interlochen incident. The National Music Camp, he noted, used the children’s concert as a form of



Waving his finger like a baton, Petrillo testifies in early 1943 before a Senate subcommittee investigating the AFM's ban on record making. That July, before the War Labor Board, Petrillo questioned federal authority to force musicians back to work and thus into "involuntary servitude." (*AP/Wide World Photos*)

advertising and thus should pay for on-air musicians. In any case, he added, the Interlochen incident was only one of thirty-one instances in which the union had kept amateurs off the airwaves. A recent survey of employment in radio, Fly continued, indicated that recordings did in fact harm musicians, even though the networks themselves relied almost exclusively on live music. The problem was the affiliated stations, which now numbered nearly five hundred and which broadcast as much recorded as live music. Adding to the problem, the three hundred or so unaffiliated stations nationwide relied on recordings for more than 80 percent of the music they played. The FCC chairman pointed out that radio employed only 2,171 full-time musicians, fewer than three for every station in the country. It employed 1,171 part-time musicians, plus 685 "hillbilly" enter-

tainers who also worked on a part-time basis. Fly concluded that broadcasters were paying a small price for musicians, especially in view of their heavy reliance on musical programming and their rising profits. Petrillo could not have said it better.<sup>17</sup>

The Clark committee called no one from the AFM to testify, but it allowed Joseph Padway, the union counsel, to speak on the union's behalf. Padway told the committee that Petrillo was not a dictator but an elected leader "simply carrying out the orders of the AFM." "Wouldn't you say that Mr. Petrillo dominates the union?" Clark asked. "Exactly the contrary," Padway replied. "The AFM is a very democratic organization. I don't think it is less democratic than Congress." Padway scoffed at charges that the recording ban threatened military or civilian morale. The union had agreed to produce recordings for troops abroad, he noted, and was cooperating with the government's Victory Disk Project. In fact, he added, its members recorded "V-disks" free of charge for distribution outside the United States. There was no one and no group more loyal to America or more committed to the war effort, Padway insisted, than Petrillo and the AFM.<sup>18</sup>

It is easy to believe that Clark and the committee had their minds made up before the hearings began. Clark had earlier called Petrillo a "gangster," and the committee report reflected that characterization. The ban and the Interlochen incident were serious attacks on public well-being during wartime, Clark wrote, recommending a congressional investigation of the AFM. The Senate accepted the recommendation and set aside \$5,000 for a larger probe to lay the basis for whatever legislation might be appropriate to curb the union and its president.

This action signaled a changing mood in Congress. By the early 1940s the attitudes of federal officials toward organized labor had begun to shift from the liberal, pro-union stance of the early New Deal to the conservative, antiunion posture that emerged after the war. Many in Congress had never supported the labor reforms of the New Deal and now saw opportunities to reverse them. Public reaction against the recording ban and the Interlochen incident provided the occasion for this shift rather than its cause. The standby rules enforced by the AFM, like similar rules in the railroad and trucking industries, had already drawn the attention of an increasingly conservative Congress. At a time when the government had drafted millions of men and labor shortages threatened war production schedules, many lawmakers considered "featherbedding" an offense against the general welfare. In this atmosphere the ban on recording became the

focal point of a public debate on the whole “make-work” issue, and *Broadcasting* predicted that Congress would pass legislation to “fit the circumstances” of this indefensible situation. Labor leaders, the journal noted, were “plainly worried.”<sup>19</sup>

ON OCTOBER 12, 1942, the trial of the antitrust suit brought by the Justice Department against the AFM opened in Chicago. There, before Judge John P. Barnes, Thurman Arnold challenged the legality of union contracts that required employers “to maintain obsolete or inefficient methods.” Could unions, Arnold asked the court, force employers to “refuse to introduce new mechanical improvements in order to compel the hiring of unnecessary labor”? Arnold thought not, obviously implying a parallel between Petrillo and Ned Ludd, an earlier enemy of “progress.”<sup>20</sup>

In taking this position Arnold was measuring progress in terms of economic efficiency, while Petrillo and the union were measuring it in terms of job opportunities. Arnold told the court that there was little unemployment among musicians. His own study of the radio industry, he said, indicated that most men counted as unemployed musicians in small cities with affiliated and unaffiliated radio stations had moved elsewhere or taken jobs outside of music, and were thus unavailable for musical employment. Those who remained in those cities, he added, were mostly amateurs unqualified for radio work.<sup>21</sup>

A variety of witnesses buttressed Arnold’s testimony. Neville Miller, president of the NAB, testified that the AFM was “engaged in a campaign to compel the paying of tribute by broadcasting stations . . . whether the stations can employ or utilize the services of union musicians or not.” More than half the stations employing musicians on a weekly basis, Miller said, were paying more of them than they needed. He also urged that the recording ban be lifted for the sake of consumers. “Before the phonograph record,” Miller explained, “only persons who could pay to go to the large concert halls in the large cities could hear the great symphony orchestras, and only the persons who could afford to go to fashionable restaurants and hotels could hear the best dance orchestras.” If the recording ban succeeded, those days would return. The musicians’ union, he added, “cannot expect the American public to stop listening to the artists whom they have learned to enjoy and [instead] listen to the small aggregations of part-time non-professional musicians who are available for employment in the small communities.”<sup>22</sup>

Edward C. Coontz, who owned station KVOO in Tulsa, Oklahoma,

personalized these ideas. In an effort to highlight local programming, Coontz had recently tried to hire local musicians but had been unable to find talented individuals or groups to fill the schedule he had planned. "We have tried combination after combination of musicians," he told the court, "but have, as yet, not found one that is satisfactory enough for general use. Last Spring," he continued, "we attempted to get an orchestra from the union for one of our best local accounts." He auditioned musicians "even down to the point where their four top men were seated and asked to play a simple hymn written in four parts. They couldn't get together on it, so the idea was abandoned." Harry Le Poidevin, owner of station WTAR in Racine, Wisconsin, offered another perspective, that of the owners of even smaller stations in even smaller cities. The musicians' union in Racine, Le Poidevin testified, "cannot offer the same high grade of music" provided by recordings and network programs. "Local advertisers do not desire to sponsor musical programs unless they are of exceptional quality," he continued, and "local bands and local individual musicians, with rare exceptions, cannot compete with the top-notch musicians of the country."<sup>23</sup>

Jukebox operators offered similar testimony. Al Dolins, to illustrate, told the court how the recording ban threatened his business. Dolins had machines in diners, restaurants, taverns, and army camps throughout Massachusetts and Rhode Island, which he serviced once a week, collecting coins and updating record selections. Few of the locations he serviced, he testified, had ever employed musicians. "In my opinion," he said, "these locations do not warrant musicians and would probably never have them if the automatic phonographs were removed." But "if the current supply of records were stopped," he added emphatically, "I would not be able to continue my business." Dolins estimated his investment in his business at \$100,000 and noted that he and his ten employees would be out of work if his business failed.<sup>24</sup>

A. L. Pressley of Pickens, Mississippi, gave the court the perspective of proprietors who rented jukeboxes from entrepreneurs like Dolins. Pressley owned and operated the Grapes Camp Tavern on Highway 51 north of Pickens. The tavern consisted of a lunchroom with counter service and an adjoining dining room with tables and booths and a dance floor. Each room had its own jukebox. Because of the small scale of his operation, Pressley told the court, he could not afford to hire live musicians, and his business would be seriously harmed if the recording ban continued. "I have in the past tried to throw special dancing parties and used an orches-

tra therefor," he said. "However, I found this to be impractical and soon had to discontinue the practice. Even though I made a small cover charge, the expenses far outweighed my receipts." Pressley was therefore "dependent on the phonograph to serve as an inducement to bring those people to my place who are out for a good time and some recreation."<sup>25</sup>

Testimony in the antitrust suit showed clearly the implications of the recording ban for business and consumers. It showed, for example, that big and small business alike opposed the boycott. That in itself was important. The recent expansion of big business into different sectors of the leisure industry threatened small firms everywhere and had sometimes produced open conflict. Large and small firms, however, put aside their differences to oppose the recording ban because both stood to lose if the ban succeeded. "Without these mechanical records," a radio station owner explained, "the quality of our programs [would] deteriorate" and music consumers would suffer.<sup>26</sup> As the president of the NAB told the court self-servingly, music lovers had become accustomed to hearing the best musical performances in the comfort of their own homes for what amounted to nominal costs. The recording ban threatened that custom, too.

Not all of the testimony was adverse to the interests and concerns of the AFM. Some of it also showed clearly that new recording, transmitting, and amplifying technologies had not benefited musicians as a group. Arnold was right on this point: thousands of musicians had moved from small towns to media centers, and most of those who remained found it necessary to find other jobs. That was among the most important consequences of the sound revolution that had transformed the business—and the work—of musical entertainment. The centralization of job opportunities had forced thousands of musicians to relocate in order to live by their musical skills, and those who remained at home found their skills devalued as well as their prospects for work diminished. The testimony of the broadcasters from Tulsa and Racine repeated what was common knowledge: the high quality of performances on network radio and first-class records made locally produced music sound unsophisticated, if not amateurish. The preference for recorded music and network programs was therefore understandable, whatever its implications for working musicians outside media centers. Big-city bands featured exceptionally talented musicians, and their members played in acoustically superior settings. The most popular band-leaders and singers typically fronted these bands, which had the time and money they needed to rehearse for as long as necessary. Few local musicians could compete with such groups.

The AFM's chief counsel, Joseph Padway, expected to testify in the Chicago case. Toward that end he secured a statement from the AFL denouncing the stance of Arnold and the Justice Department as "pernicious" and "heartless" toward American workers. But Padway had no chance to testify. At the conclusion of the government's case Judge Barnes dismissed the suit on the grounds that his court lacked jurisdiction over it. This was a labor dispute, he explained, to be resolved according to provisions of the Wagner Act. In making his ruling Barnes also made his own sentiments clear. "This is a controversy between masters and servants," he said, "a question [of] whether the servants must make music as the masters direct." In his closing comments Barnes disputed Arnold's argument that no unemployment existed among musicians. He estimated that half of the former musicians who now had other jobs had those jobs because they "were not able to make a reasonable living in their chosen field."<sup>27</sup>

Barnes's dismissal of the suit caught AFM leaders by surprise, perhaps because federal judges generally supported employers over trade unions. Petrillo was jubilant, and understandably so. Barnes had unequivocally sustained the union's right to continue the recording ban. "The ban still stands," Petrillo told the press. Barnes's ruling showed "that the abuse of a high labor official cannot triumph over justice and labor." Padway seconded Petrillo's view. The court made it "crystal clear," he said, that musicians were "in the right" in the recording-ban dispute, while Arnold, "the champion of big business," had learned that he could not force the working musician "to erect the gallows on which he is to be hanged." Arnold, however, appealed the ruling.<sup>28</sup>

The verbal sparring that characterized the public discourse between Petrillo and his critics showed the degree to which labor conflict no less than other forms of social disputation is bound up in language. Through the conscious and unconscious manipulation of verbal symbols, musicians and their employers alike struggled to affix social meaning to the sound revolution and to their differing responses to that revolution. They fought, that is, for control of the meaning of the communicative symbols through which the public perceived their struggle. In the language of the post-structuralists, they vied for the power to assign signifieds and even referents to the signifiers they bandied about. In doing so neither side willfully distorted the past or the present, but both explained their struggle in the same way that today's readers will "read" it: according to their respective circumstances, interests, values, and understandings of what constituted social reality and the social good. For these reasons employers found Thurman

Arnold's antimonopoly rhetoric especially resonant, while the union found Judge Barnes's words equally appealing.<sup>29</sup>

THE CHICAGO VICTORY came while Petrillo was preoccupied by a dispute with radio stations affiliated with the networks. Although some 250 of those stations employed staff orchestras, many did so grudgingly and challenged local unions at every turn over the continuing requirement that they do so. Between late 1942 and the summer of 1943 Petrillo intervened in disputes across the country that resulted from this situation. Whenever union locals appealed to him in such disputes, Petrillo responded by threatening to pull instrumentalists from network programs.

He made good on his threats whenever he felt it necessary to do so. In January 1943 he banned remote broadcasts on CBS and NBC's Blue Network because of a dispute in Pittsburgh. Local 60 and H. J. Brenner's stations there had again locked horns, this time over Brenner's effort to shorten the staff orchestra's employment season. Angry at the resulting ban on remote broadcasting, Mark Woods, vice president of NBC, complained that the action not only "penalized" the network for "conditions beyond its control" but also punished all network affiliates simply "because one Blue affiliate has differences with the musicians' organization." But it was that effect that made Petrillo's tactic work; and in accord with that tactic, Petrillo rescinded the Pittsburgh ban on January 26, when orchestras at Brenner's stations "were employed in conformity with previous contracts." This and similar actions elsewhere showed that Petrillo was unwilling to give up any union foothold in radio. Indeed, the repeated confrontations hardened his resolve to maintain the recording ban, for it was broadcasters like Brenner who wanted to substitute recordings for the services of local musicians.<sup>30</sup>

While Petrillo worked to save jobs in radio, lawmakers investigated him and his tactics for possible violations of antitrust and other laws. Accepting the previously noted recommendation of Senator Worth Clark of Idaho, the Senate formed a special committee to conduct the investigation. The committee made the well-known Washington attorney Herbert M. Bingham its chief counsel, and one of Bingham's first acts was to summon Petrillo, who thereby gained the dubious distinction of being the first American to have to defend his actions as a labor leader before Congress.<sup>31</sup>

For two days Bingham and the senators grilled Petrillo about the recording ban. What precisely did he and the union want and expect the ban to accomplish? A candid answer—more jobs for musicians in radio

and elsewhere—was impossible, for that would make the ban a secondary boycott. In a series of evasive but revealing responses to this and related questions, Petrillo stated in effect that what musicians wanted was more work. Musicians would go back to recording immediately, he said, if the industry gave them a “fair share” of the profits of their work. The solution to the problem represented by the ban must therefore come from broadcasters and recorders, not musicians. Yet Petrillo had solutions of his own. The ban could be rescinded, he implied, if recorders withheld their recordings from stations employing fewer than the requisite numbers of musicians (which would seem to be clear evidence that the ban was in fact a secondary boycott). Or failing that, Congress might enact legislation giving the union property rights in recordings. Royalties from the sale of records could then be used to create jobs for musicians.<sup>32</sup>

In calling Petrillo to testify, lawmakers gave the fiery labor leader a public forum, which he used with consummate skill. Like his counterpart at the NAB, Petrillo played on the sentimentalities and the anxieties of Americans as voters and musical consumers. He especially exploited public concerns about monopoly and the inordinate power of big business. He argued that the campaign against him and his union evidenced the dangers as well as the consequences of concentrated ownership in industry. What should be investigated, he said, was not him and his union but the music industry, over which “a few giant corporations” exercised “tremendous control” to maximize their profits “at the expense of the live musicians.” Petrillo could also wrap himself and his union in the American flag. He reminded senators that the AFM and its members had bought thousands of dollars worth of war bonds and that twenty-five thousand of its members were in the armed forces. Refuting charges that the recording ban was unpatriotic, Petrillo noted that musicians had made hundreds of victory disks for distribution to the armed forces and had done so without charge, and that he and they had agreed to end the recording ban if President Roosevelt found that it was undercutting troop morale. In short, Petrillo seized an opportunity to reinterpret the recording ban in a way quite different from the one then circulating in the press, and different as well from the one radio had previously presented to the public.<sup>33</sup>

Petrillo’s testimony was effective enough to confound his critics. The union leader responded to questions with evident candor and self-effacement as well as wit; perhaps he even changed the minds of some senators. In any case the committee, upon the advice of chief counsel Bingham, recommended no legislation against the union or the recording

ban. Even Petrillo's adversaries acknowledged the effectiveness of his performance before the committee. *Broadcasting* conceded that Petrillo "made a far better witness than was anticipated. We understand," one of its editorialists wrote, "why the AFM elected him president."<sup>34</sup> But Petrillo had also made a significant concession at the hearings. Probably out of perceived necessity, he had agreed to come up with a plan to end the ban. To skirt the problem of the secondary boycott, his plan could make no specific demand on radio. He evidently decided therefore to sacrifice one goal (more jobs in radio) for another (financial concessions from the recording industry). In doing so he and his advisers may have concluded that employers could survive the ban much longer than the union had assumed. After all, the ban was six months old, and the industry showed no signs of conceding anything.

YET THE INDUSTRY did show signs of discord. As record supplies thinned, small businesses without the resources and diversity of industry leaders had begun to talk of compromise. The tension generated by this emerging division was evident as early as October 1942, when Samuel R. Rosenbaum, head of station WFIL in Philadelphia and former head of the Independent Radio Network Affiliates (IRNA), criticized the industry-backed press campaign against Petrillo as a "masterpiece of ineptitude." Rosenbaum believed that broadcasters were poorly served by "labor-baiting and labor-leader smearing" pronouncements that were "a relic of a past generation. With the entire press of the United States at our disposal, and with powerful branches of Government lending themselves amiably to the effort," Rosenbaum told industry leaders, "all we have been able to think of is to attack the integrity and personal characteristics of one labor leader."<sup>35</sup>

Rosenbaum was not the only one expressing such sentiments. Differences within the industry over responses to the recording ban were the subject of a *New York Times* story in late 1942. According to the story, some network affiliates were "out of sympathy" with the stance taken by the NAB toward the ban. Management at those stations, the *Times* reported, thought the solution to the ban would come not through legal challenges or public relations campaigns but through direct negotiations with Petrillo. At least one broadcaster found "merit" in the union argument that "stations using music all day ought to pay something to musicians." Such opinions undoubtedly worried industry leaders, who like musicians recognized the importance of solidarity. They also recognized that manufacturers who came to terms with the AFM concerning the ban would reap im-

mediate competitive advantages. These signs of disunity worried industry leaders no less than they encouraged Petrillo and the musicians.

The NAB held fast. Sidney Kaye, counsel for the association during the crisis, denounced Rosenbaum as someone who “does his thinking in an ivory tower.” Asked about the possibility of settling the ban, Kaye responded, “We don’t want to settle it, when we didn’t start it. Instead of giving up, we are going to fight it out.” To control the damage caused by Rosenbaum’s comments, executives of NBC, CBS, and Mutual wrote NAB president Neville Miller affirming their support of the stand against the union. “We feel,” wrote Paul M. Kesten of CBS, “that the activities of NAB are proper . . . and we have no desire to do anything other than to support your position.” Frank E. Mullen, Kesten’s counterpart at NBC, added, “We have confidence that your association is handling the matter in the interests of the industry and of the public.”<sup>36</sup>

The rift among employers widened after the Senate hearings ended. The ubiquitous Rosenbaum, now a symbol of compromise, continued to criticize the NAB, telling the press that musicians “are entitled to fair protection against free exploitation by commercial users of records made for home use.” Rosenbaum endorsed the union proposal that broadcasters, recorders, and jukebox operators pay a fixed fee to the union as compensation for recording musicians. He also proposed that the jukebox industry pay 4 percent of its net profits to the AFM, thus giving the union \$6 million a year “for the employment and encouragement of live musicians.” Rosenbaum thought that under this plan affiliated stations, which then spent up to 5.5 percent of their profits on musicians, might lower that expenditure to 2 percent, or even 1 percent.<sup>37</sup>

Petrillo seized the opportunity Rosenbaum’s proposal opened. Acknowledging his pledge to present a proposal to end the ban, Petrillo wrote the recording companies embracing the fixed-fee principle. Specifically, he proposed that recording companies pay the union a “royalty,” the amount of which was negotiable, that the union would use to create jobs for musicians. The proposal was a turning point in the dispute. The union had offered a specific plan for ending the ban, one that appeared to be legal and that some employers accepted. But it was not unlike the proposal motion-picture producers had not so long ago rejected.

Representatives from RCA-Victor, NBC, CBS, Muzak, Decca, and half a dozen other companies met in New York in late February to discuss Petrillo’s proposal. At the conclusion of the meeting the NAB issued a statement denouncing the proposal as one that embraced a “startling new

kind of social philosophy,” one that industry leaders found “dangerous and destructive.” The plan was also “socialistic,” an effort to generate a “private relief fund” for a group of workers most of whom were no longer unemployed. Industry leaders thus flatly rejected Petrillo’s proposal. The union responded to the rejection—and to the criticism of the proposal—in kind. On March 17 the executive board wrote industry leaders that their summary rejection of Petrillo’s proposal violated the letter as well as the spirit of the collective bargaining process by “fail[ing] to consider proposals in good faith.” The board then vigorously defended the union’s social philosophy. “Those who benefit from the displacement of human labor,” its letter read, “should share the burden of the cost to the displaced workers.”<sup>38</sup>

The ideological positions of the two sides seemed irreconcilable. On the one hand, employers welcomed the social benefits as well as the profits from advances in musical technology while denying that the use of recordings in broadcasting was detrimental to musicians. On the other hand, the union insisted that the radio and recording industries were reaping wind-fall profits by utilizing musical labor and technology in ways that displaced musicians. The union insisted that employers share the social cost of this result, while employers refused to acknowledge that the consequences of technological change had social implications. These opposing assessments underscored the fact that labor and management had different measures of progress. Management saw the fixed-fee proposal in terms of economic cost: if implemented, it would increase production costs and reduce profits. Musicians, on the other hand, saw it as one way of dealing equitably with technological changes that were already having devastating consequences for a large segment of the working class.

The differing outlooks did not preclude continued bargaining. The NAB proposed a new round of negotiations, which began on April 15, 1943. The mood at the meetings was surprisingly cordial; but of course mood alone does not settle labor disputes. Manufacturers of popular recordings and long-playing transcriptions still rejected the fixed-fee plan, so Petrillo made a counterproposal of something he had always wanted. The union, he proposed, would end the recording ban if the recording companies would agree to withhold their records from radio stations the union deemed unfair to labor. This would give the union the power to force affiliates to employ minimum-size orchestras by threatening to deprive them of new recordings. The NAB promptly labeled this as a call not only for an illegal secondary boycott but for “business suicide” as well, since it would give the union a “stranglehold over independent stations.”<sup>39</sup>

The adamancy of this response belied the dynamics of a now rapidly changing situation. Industry leaders could no longer count on small companies to follow their lead, as the reaction to Rosenbaum's proposal made clear. The government too appeared unable or unwilling to curb Petrillo, especially after the Supreme Court affirmed the union's right to continue the recording ban by sustaining Judge Barnes's ruling in the Chicago anti-trust suit.<sup>40</sup>

Still, industry leaders refused to compromise. In a last-ditch effort to end the ban without concessions, the NAB took its case to the War Labor Board (WLB), which could intervene in any industrial conflict that jeopardized the war effort. The move was an act of desperation. The WLB was a product of the three-way agreement reached by government, management, and labor early in the war to ban strikes and lockouts that adversely affected the war effort. Its decisions were advisory only and their effectiveness entirely dependent on voluntary cooperation.<sup>41</sup>

AS THE WLB STUDIED the NAB appeal, events made the appeal itself moot. On September 30, 1943, the Decca Recording Company and its subsidiary transcription division, World Broadcasting, signed a four-year agreement with the AFM accepting the fixed-fee principle. Because Decca produced nearly a quarter of all records sold in the nation, its action forced other recording companies to make similar agreements. Within three weeks four large transcription companies had done so—Langworth Feature Programs, Standard Radio, C. P. MacGregor, and Associated Music Publishers—and by January 1944 some fifty additional companies had followed suit. That number doubled in the next few months.

All of the companies, including Decca, agreed to pay the newly created AFM Record and Transcription Fund a royalty of between a quarter of a cent and 2 cents for each record they sold, depending on the size and price of the record. The AFM would in turn distribute the fund to its locals according to a formula based on the size of membership. The locals would use the money to finance concerts that were free to the public but for which the musicians received pay at union scale. At last, musicians would have a source of income to replace, at least partially, what they had lost from the advent of talking movies, radio broadcasts of recorded music, the demise of vaudeville, and the unexpected popularity of jukebox music. From Tacoma to Tallahassee, union locals could look forward to several thousand dollars a year from the Record and Transcription Fund.<sup>42</sup>

The settlement by Decca and other small companies was probably in-

evitable once it became clear that union solidarity was firm. In labor disputes as in other things, employers cooperate as long as cooperation serves their individual purposes. When some of them see advantage in coming to terms with a union, their common front often breaks down. The recollections of Milton Gabler, who worked in Decca's Artists and Repertoire Department from 1941 to 1971, testify to this general pattern. Gabler recalled that Decca president Jack Kapp "wanted to do business and make money, [and in 1943] saw a chance to get the jump on RCA and Columbia." He also recalled that the two larger corporations, unlike Decca, were concerned about the implications of the fixed-fee plan for labor costs in radio. "RCA and Columbia were afraid if they gave in to Petrillo too much they would have trouble with the next contract negotiations for their orchestras."<sup>43</sup>

In brief, Decca and other companies that signed the fixed-fee agreements came to see that their interests were not the same as those of such industry giants as RCA-Victor and the recording divisions of NBC and CBS. Small companies lacked the diversified resources the much larger ones had, and they realized that signing the fixed-fee contracts would significantly improve their competitive positions. In fact, when Petrillo lifted the ban, Decca became the nation's largest record manufacturer. Popular singers and bandleaders under contract with other companies soon switched to Decca, which further strengthened its competitive position. Decca's signing of the renowned violinist Jascha Heifetz, for example, produced a windfall of publicity and profits. One of the reigning masters of the violin, Heifetz had previously worked for RCA-Victor.

This course of events showed again that American business is not a monolithic entity. There were in fact differences of interests and perspectives capable of splitting businesses in the music industry into competing groups under given circumstances. Yet the division that emerged represented pragmatic, ad hoc interests rather than differences over the desirability of strong and effective labor unions. The owners of small and large businesses in the music industry remained committed to the values and objectives that had united them in resisting the recording ban at the outset. If they differed two years later over how and when to settle with the union, the difference was due to the differential impact of a continuing ban on their individual positions within the industry. There was no difference among them over such fundamental things as the proper organization of society or the cause and consequence of the inequalities inherent in capitalist economies.

The partial resumption of record production was a major victory for the AFM. The action of Decca and the other early signers of the agreement with the union increased the pressure on industry leaders, who watched their competitors capitalize on what amounted to a new system of industrial relations in music. The new agreements notably benefited the union and strengthened the position of its leaders not only within the union but vis-à-vis their counterparts in industry. Musicians who lost income during the recording ban returned to work with much clearer perceptions of the value of collective action and solidarity in the face of adversity. The new contracts satisfied union locals that had long demanded aggressive action in behalf of musicians. The Record and Transcription Fund rejuvenated hundreds of locals whose ability to act in behalf of their members had eroded markedly during the preceding decade.

Yet the union's victory was far from complete. The new fixed-fee contracts said nothing about the use of recordings by commercial enterprises deemed unfair to labor. Nor did industry leaders relax their opposition to fixed fees. On the contrary, all of them continued to use stockpiled records, clinging to the hope that the federal government would rescue them from union diktat. Specifically, they hoped the War Labor Board would contest the fixed-fee contracts on the grounds that they represented wage adjustments, and thus violated wartime wage stabilization criteria. Some even hoped the board would ask President Roosevelt to use his emergency powers to rescind the recording ban in order to boost wartime morale.

The WLB considered the NAB challenge to the ban in early 1944. In March the hopes of broadcasters rose when a WLB panel recommended that the board overturn both the recording ban and the fixed-fee contracts. But on June 15 the board itself rejected that recommendation. The Decca contract, the board ruled, did not require government approval "since the payments to be made . . . are not wage adjustments within the meaning of the wage stabilization program." The board then ordered the union to lift the recording ban, while directing the recording companies to "compromise" with the union and "reach an agreement regarding the amounts and the schedule of escrow payments to be made." Companies that failed to follow this directive would have the amounts and schedules set by the board.<sup>44</sup>

The agreements thus mandated did not materialize. Petrillo had always insisted that the WLB had no jurisdiction in the dispute, and in negotiating with industry leaders he steadfastly rejected terms that differed from those accepted by Decca and the other early signers of the accord. He ar-

gued in fact that the contracts with those companies obligated him to insist on the terms of those contracts. Petrillo also ignored the order to lift the recording ban. To do that, he said, would allow the unsigned companies to stockpile recordings and hold out indefinitely against the union. The companies were equally unyielding, and the ban against them dragged on through the summer of 1944.<sup>45</sup>

The hopes of industry leaders probably rose in the fall of that year, when the WLB and the Economic Stabilization Board sent the “canned music controversy” to the White House for resolution. In early October, Roosevelt asked Petrillo to lift the recording ban “in the interest of orderly government.” Petrillo’s failure to comply with the WLB directive against the ban, Roosevelt argued, would “encourage other instances of non-compliance” and reverberate to the detriment of the national interest. “What you regard as your loss,” Roosevelt intoned, “will certainly be your country’s gain.” Petrillo demurred. In a tactfully worded response, he told the president that he was obligated to honor the fixed-fee contracts he had signed, which contracts made it “illegal” for him to give “recalcitrant companies different [and more favorable] terms.” Roosevelt thereupon promised to “look into the law” concerning the ban, but he did not order Petrillo and the musicians to end it. This additional victory for the union left the holdouts no choice but to come to terms with Petrillo.<sup>46</sup>

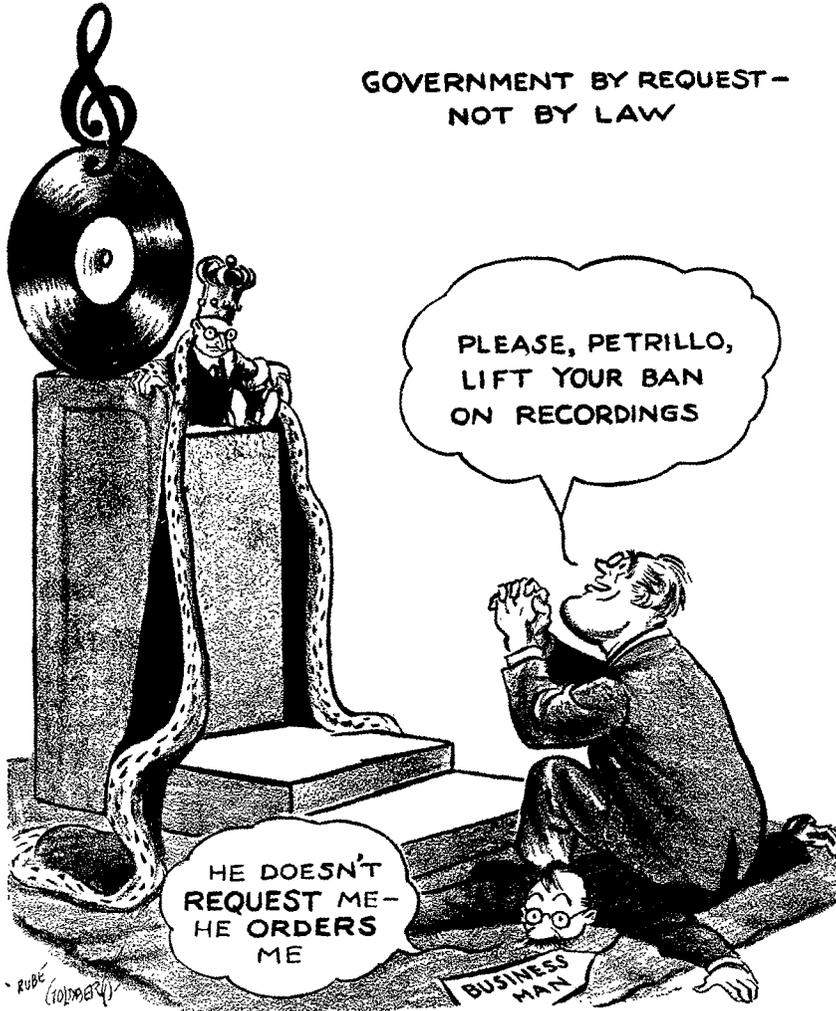
Other factors encouraged them to make that choice. Since 1942 record manufacturers had had difficulty procuring shellac, a heat-resistant material, imported from India, that was necessary for the manufacture of phonograph records. Shellac protected the surface of finished records and muted surface noise when they were played; it also constituted about 20 percent of the material in the records themselves. Wartime restrictions limited the availability of shellac, raised the cost of record manufacturing, and thus discouraged record production. In 1944, however, the War Production Board began lifting restrictions on the importation of shellac, thereby permitting manufacturers to increase the volume of record production without raising retail prices. This meant, among other things, that Decca and other companies with fixed-fee contracts could increase their share of the record market.<sup>47</sup>

Perhaps this was the straw that broke the camel’s back. On November 9, 1944, the industry leaders capitulated. “I received a telephone call from an official of one of the companies,” Petrillo later recalled, “asking me to come to New York in order that they might sign contracts with the Federation.” Two days later, representatives of RCA-Victor, NBC, and CBS

PLEASE!

By Rube Goldberg.

GOVERNMENT BY REQUEST -  
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President Franklin D. Roosevelt's failure to order an end to the recording ban (he asked Petrillo to send musicians back to work; Petrillo kindly refused) produced this biting Rube Goldberg cartoon for the *New York Sun* of October 6, 1944.

signed four-year contracts obligating them to make contributions to the Record and Transcription Fund on the same terms as Decca and other companies that had already signed contracts with the union. Like those early signers, the corporate giants pledged to pay into the fund specific sums for each record they produced, depending on the size and price of the record.<sup>48</sup>

Indulging his customary penchant for hyperbole, Petrillo called the settlement “the greatest victory for a labor organization in the history of the labor movement.” There was at least some basis for the claim. Not just the musicians’ union but trade unionism had taken a step forward with the settlement. No union had ever before forced employers to contribute to a fund designed to provide jobs and income for workers displaced by technology. In signing the fixed-fee contracts, recording companies had acquiesced in, even if they did not positively agree with, the principle that technological change imposed social costs that employers had a responsibility to share. The social implications of the contracts became clearer after the war, when workers in the automotive, railway, coal-mining, printing, and other industries negotiated similar arrangements to cushion the impact on workers displaced by technological change. Employer-supervised retirement plans, unemployment benefits, and workmen’s compensation plans are examples of the “welfare privatization” that surfaced in these industrial arrangements and reflected the social principle embodied in the Record and Transcription Fund. In each of these schemes employers who benefited from technological advances in industrial production obliged themselves to help displaced employees.<sup>49</sup>

Employers did not willingly accept this obligation. Those in the recording industry in fact mounted an expensive public relations campaign to discredit the effort to make them do so. That campaign embittered Petrillo and left him defiant. “Instead of showing friendliness,” he said of industry leaders on the day he signed the agreements with them, “they have displayed bitterness, unfairness, injustice, trickery and reactionism which would do justice to the slave owners of pre-Civil War days. . . . They substituted for the ordinary, usual and fair processes of collective bargaining a campaign of mud-slinging, dirt-throwing and false propaganda.” Their actions in the campaign had been “vile, indecent, malicious, and filthy,” and Petrillo warned that if they violated the obligations they now agreed to, he and his union would “not hesitate to break off relations and leave them to die by their own nefarious schemes.”<sup>50</sup>

This rhetoric obscured the fact that the outcome of the recording ban

was less than the complete success Petrillo claimed it to be. Petrillo had hoped to restrict the commercial use of recordings and in doing so create thousands of new jobs for musicians. He had especially wanted to create jobs in radio, or at least secure the jobs musicians already had in that industry. To that end he had tried to force recorders to withhold records from stations without staff orchestras. But he had to abandon that effort because it constituted what the law called a secondary boycott—an illegality. In addition, by 1943 Petrillo's own advisers were conceding that recordings of national artists were superior to live performances of local talent and were thus rightly preferred by radio audiences. Petrillo himself acknowledged that the state of recording technology was such that it made "a second class band sound like a first class one." The substance behind that admission might be the real reason Petrillo and his advisers decided to settle for partial victory in the war against recordings.<sup>51</sup>