

RESPONSIBILITIES OF BROADCASTING LICENSEES AND STATION PERSONNEL

HEARINGS
BEFORE A
SUBCOMMITTEE OF THE
COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE
HOUSE OF REPRESENTATIVES
EIGHTY-SIXTH CONGRESS
SECOND SESSION
ON
PAYOLA AND OTHER DECEPTIVE PRACTICES
IN THE BROADCASTING FIELD

PART 1

FEBRUARY 8, 9, 10, 15, 16, 17, 18, 19, AND MARCH 4, 1960

Printed for the use of the Committee on Interstate and Foreign Commerce



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RESPONSIBILITIES OF BROADCASTING LICENSEES AND STATION PERSONNEL

MONDAY, FEBRUARY 8, 1960

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON LEGISLATIVE OVERSIGHT
OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The special subcommittee met, pursuant to call, at 10 a.m., in the caucus room, Old House Office Building, Hon. Oren Harris (chairman of the special subcommittee) presiding.

Present: Representatives Harris (presiding), Mack, Rogers of Texas, Moss, Bennett, Springer, Derounian, and Devine.

Also present: Robert W. Lishman, chief counsel; Herman C. Beasley, chief clerk to the special subcommittee; Beverly M. Coleman, principal attorney; Jack Marshall Stark, minority counsel; Oliver Eastland, chief investigator; and James P. Kelly, investigator.

The CHAIRMAN. The committee will come to order.

Today the Special Subcommittee on Legislative Oversight begins hearings and I wish to now announce the schedule.

Pursuant to a commitment of the committee of last November, the hearings today are related primarily to the question of payola, and other matters relating thereto.

At its hearings in November 1959, the subcommittee learned from Max Hess, owner of the Hess Bros. Department Store, of Allentown, Pa., about numerous secret payments made to obtain plugs for that store, or its wares, on radio and television programs. Hess testified that this "is a common practice."

At the close of those hearings, a letter was inserted into the record which alleged that commercial bribery has become a prime factor in determining what music is played in many broadcast programs and what musical records the public is surreptitiously induced to buy.

Since that time, the subcommittee has been flooded with complaints from all parts of the country about this, and related practices, whereby the selection of material sent over the airwaves has been influenced by undisclosed economic inducements. When this happens, we are told, the public interest suffers in many ways. The quality of broadcast programs declines when the choice of program materials is made, not in the public interest, but in the interest of those who are willing to pay to obtain exposure of their records. The public is misled as to the popularity of the records played.

Moreover, these practices constitute unfair competition with honest businessmen who refuse to engage in them. They tend to drive out of business small firms who lack the means to survive this unfair competition.

Under House Resolution 56, 86th Congress, this subcommittee is charged with the responsibility of investigating advertising, fair competition and labeling, and the administration and enforcement by departments and agencies of the Government of provisions of law relating to subjects within the jurisdiction of the Committee on Interstate and Foreign Commerce. Therefore, it has a duty to investigate these complaints to determine whether practices are being followed which are contrary to the public interest, and if so, whether they can be prevented by a diligent enforcement of existing laws or whether additional legislation is necessary.

In the hearings beginning this morning, the inquiry will be directed to four major questions:

1. Payments to licensees and employees thereof to obtain the broadcasting of material for the commercial advantage of the payor, without having any announcement made of such payments.

2. Unfair advantages obtained by manufacturers, distributors and others through the use of licensed facilities for the broadcasting of hidden commercials and presentation of material intended to deceive the viewing and listening public.

3. Misrepresentation to prospective advertisers that they will be served more advantageously and economically through the use of a particular licensed broadcasting station than through the use of other advertising media.

4. The extent to which station licensees are delegating control to others of the type of material broadcast.

The subcommittee has not, and I repeat, has not prejudged any of these matters. The object of these hearings is to learn what the facts are. Since the subcommittee's only purpose is to obtain information necessary for the discharging of its legislative duties, it has not undertaken an exhaustive inquiry, indeed, there has not been sufficient time or personnel, into all the cases of alleged wrongdoing which have come to its attention. Its purpose, rather, is to look into representative situations which will reveal the nature and scope of the problem.

The last 2 or 3 days it has been called to my attention there is great concern in the fact that the subcommittee may be singling out one or two persons or a particular station or a particular situation. I do not know where such rumors or reports started, but they are wholly unfounded, and I sincerely hope that those who are concerned will realize that it is not the subcommittee's objective to single out any particular place, area, group, station, or party involved.

We are after, as I have said, the facts, to determine if we can, a pattern in this particular matter. I want that to be made very clear at the outset.

The hearings scheduled for this week are but the beginning. At a later date the subcommittee will hold hearings concerning these practices in Pennsylvania and many other parts of the country.

The first witness this morning is Mr. Norman Prescott. Mr. Prescott has requested the committee for an executive session. I have a wire under date of February 7, 1960, at 2:07 p.m. which reads in part as follows:

The undersigned, having been summoned to appear before your committee on Monday, February 7, 1960 hereby requests an executive hearing as provided for under the rules of the House.

That comes under rule XI, 26, Rules of the House of Representatives, paragraph (m), and I quote for the record:

If the committee determines that evidence or testimony of an investigative hearing may tend to defame, degrade, or incriminate any person, it shall—

- (1) Receive such evidence or testimony in executive session;
- (2) Afford such person an opportunity voluntarily to appear as a witness; and
- (3) Receive and dispose of requests from such persons to subpoena additional witnesses.

In view of the official request which the committee has received, and in view of the rules of the House, we must go into executive session with the committee for the purpose of determining whether or not such request shall be granted. Therefore, the subcommittee will recess this hearing for the moment and will retire into executive session. I assume that it will probably take an hour, or something like that, for the information of those present who are interested in that. Therefore, we are at recess in this hearing, and the committee will retire to its committee room for an executive session.

(Whereupon, at 10:20 a.m., the committee went into executive session in room 1334, New House Office Building.)

The special subcommittee met, pursuant to call, at 10:25 a.m., in room 1334, Old House Office Building, Hon. Oren Harris (chairman of the special subcommittee) presiding, a quorum being present.

(The testimony taken at this executive session was released by the subcommittee by vote taken February 17, 1960.)

The CHAIRMAN. The committee will come to order.

Are you Mr. Prescott?

Mr. PRESCOTT. Yes, sir; I am.

The CHAIRMAN. Mr. Prescott, I have a wire purported to be one of yours from Palm Beach, Fla., dated February 7, 1960, received 2:07 p.m., requesting an executive hearing under the Rules of the House. Is this your request?

Mr. PRESCOTT. Yes, sir. I sent the wire yesterday.

The CHAIRMAN. Will you be sworn?

Mr. PRESCOTT. Yes, sir.

The CHAIRMAN. Do you solemnly swear that the testimony you will give to this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. PRESCOTT. I do.

The CHAIRMAN. Have a seat, Mr. Prescott.

Mr. PRESCOTT. Thank you.

TESTIMONY OF NORMAN PRESCOTT, NEWTON, MASS.

The CHAIRMAN. Mr. Prescott, what is your home address?

Mr. PRESCOTT. I live in Newton, Mass.

The CHAIRMAN. Where?

Mr. PRESCOTT. Newton, Mass. I, also, spend 3 or 4 days a week in New York. My business takes me there.

The CHAIRMAN. What is your business?

Mr. PRESCOTT. I now work for Embassy Pictures which is, primarily, a motion picture production and releasing company.

The CHAIRMAN. You have an attorney present, is that true?

Mr. PRESCOTT. Yes; I do.

The CHAIRMAN. For the record I think that he had better state his name and address.

Mr. KLARFELD. My name is Myron Klarfeld, attorney at law, 20 Pemberton Square, Boston.

The CHAIRMAN. Are you familiar with the rules of procedure based on the rules of the House?

Mr. KLARFELD. Yes, Mr. Chairman. I have had an opportunity to read the rules prior to coming to this session this morning.

The CHAIRMAN. You, therefore, are aware of the fact that under the rules a witness may be accompanied by counsel for the purpose of advising him of his constitutional rights?

Mr. KLARFELD. Yes, sir.

The CHAIRMAN. Very well. Mr. Prescott, the rules of the House provide that if the committee determines that evidence or testimony will tend to defame, degrade, or incriminate a person it shall:

(1) Receive such evidence or testimony in executive session; (2) afford such a person an opportunity voluntarily to appear as a witness; and (3) receive and dispose of requests from such person to subpoena additional witnesses.

Do you feel that the testimony you give to this subcommittee would come within the provision of the rule just read?

Mr. PRESCOTT. Yes, sir; I do.

The CHAIRMAN. That is the reason that you make the request to be heard in executive session?

Mr. PRESCOTT. Yes, sir.

The CHAIRMAN. I think a copy of the subpoena should be included in the record. And it will so be included at this point in the record, unless there is objection.

(The document referred to follows:)

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE
UNITED STATES OF AMERICA

To _____

You are hereby commanded to summon Norm Prescott, also known as Norman Pransky to be and appear before the Special Subcommittee on Legislative Oversight (vested under authority of House Res. 56 and 136 86th Congress) of the Interstate and Foreign Commerce Committee of the House of Representatives of the United States, of which Committee and Subcommittee Honorable Oren Harris is chairman, in their chamber in the city of Washington, on Monday, February 8, 1960 at the hour of 9:30 a.m., then and there to testify touching matters of inquiry committed to said Committee, and he is not to depart without leave of said Subcommittee.

Herein fail not, and make return of this summons.

Witness my hand and the seal of the House of Representatives of the United States at the city of Washington, this 8th day of January, 1960.

[SEAL]

OREN HARRIS,
Chairman.

Subpena for Norman Prescott before the Committee on the 8th day of February 1960.

Served 3 p.m., January 25, 1960 Rockefeller Center, 1270 6th Avenue, New York City.

By: James P. Kelly.

The CHAIRMAN. Mr. Prescott, is it your position that your testimony might defame, degrade or incriminate someone?

Mr. PRESCOTT. Yes, it is.

The CHAIRMAN. Other than yourself?

Mr. PRESCOTT. Yes, sir.

The CHAIRMAN. Mr. Lishman, I believe that you can proceed.

Mr. KLARFELD. I would like to make a short statement off the record, if I may—a very brief one to yourself and the members of your committee regarding my client, Mr. Prescott, with your permission, sir.

The CHAIRMAN. You say that you would like to make this off the record?

Mr. KLARFELD. I do not think the contents of my statement would affect materially the testimony that my client is going to give and, therefore, I request that, perhaps, if the chairman feels it should be on the record it may be taken, if not it does not particularly make any difference to me, but in my own opinion I do not think it will affect what will transpire here.

The CHAIRMAN. We will put it on the record, and then if we feel it is appropriate to do so, we can take it out.

Mr. KLARFELD. Yes, this is our second trip to Washington, Mr. Chairman. And my client's position in the business world today is of such a delicate nature, with regard to this particular hearing, that I would like to make two requests in his behalf for the chairman and the committee to consider, at the conclusion of the evidence given by my client today.

The first would be, considering what he will testify to, the committee and the chairman would use their sound discretion with relation to his testimony as to other persons.

And my second request in behalf of my client is, if it is at all possible we should like to be excused, if we can be of no further assistance to the committee.

Thank you.

The CHAIRMAN. I think that in view of the request that it should remain on the record.

Proceed, Mr. Lishman.

Mr. LISHMAN. Before beginning an interrogation of the witness, I should like the record to be clear, that as a result of the work of our investigators before they interviewed Mr. Prescott, they discovered a considerable amount of documentary proof revealing that Mr. Prescott was an active participant in many different practices which, apparently, go on in the field of payola. I think the record should show that Mr. Prescott seriously debated, as to whether he would appear here, because he felt originally that he would be accused of putting the finger on someone. As a matter of fact, according to the documentary proof we had already discovered we were able to confront Mr. Prescott at every turn with facts from these documents. So the result is, that this morning I think we are in the position where we can proceed with leading questions of Mr. Prescott and to introduce the documents which support the conclusions that may be drawn from his answers.

Mr. Prescott, prior to July 1959, you were employed, were you not, as a diskjockey on radio station WBZ and television station WBZ-TV?

Mr. PRESCOTT. Yes, I was.

Mr. LISHMAN. Before that you worked at station WNEW—what kind of station was that?

Mr. PRESCOTT. That was an independent station in New York, primarily on news, et cetera, and I worked for them almost a year while I was going to school in New York in 1955.

Mr. LISHMAN. Is it a fact that you also broadcast some tapes on WORL?

Mr. PRESCOTT. Yes, I did—I also—

Mr. LISHMAN. Where is WORL located?

Mr. PRESCOTT. That is a Boston radio station; also, an independent music and news station, where I was employed from 1950 through 1954, and for 3 or 4 months simultaneously while working at WNEW in New York.

Mr. LISHMAN. What were your duties during that period?

Mr. PRESCOTT. My prime duties on the air?

Mr. LISHMAN. Yes.

Mr. PRESCOTT. To play records and perform the duties of what we, you know, consider the duties of a diskjockey.

Mr. LISHMAN. What are those duties?

Mr. PRESCOTT. There are different interpretations of them. A diskjockey, primarily, from my point of view, is the fellow who plays phonograph records, talks about the phonograph records and tries to be generally entertaining to his audience.

Mr. LISHMAN. And from October 1950, to December 1954, you were employed by WORL, is that correct?

Mr. PRESCOTT. Yes.

Mr. LISHMAN. In February 1948, you obtained a position with WHDH in Boston?

Mr. PRESCOTT. Yes, I was with them for roughly 3 years.

Mr. LISHMAN. What were your duties with that station?

Mr. PRESCOTT. At that time I was a staff announcer, and my duties were, generally I did everything, sports, news programs, diskjockey shows, interviews, et cetera, until I finally felt that my capabilities were better directed in the diskjockey field of the business, and from that point I began to specialize in diskjockey work.

Mr. LISHMAN. Did you remain with that station until February 1950?

Mr. PRESCOTT. I was with WHDH until 2 weeks prior to October of 1950, when I joined WORL.

Mr. LISHMAN. Is it a fact that you have been employed almost 12 years as a diskjockey at various radio and TV stations in Boston, and for a short period in New York?

Mr. PRESCOTT. Yes, sir.

Mr. LISHMAN. You left employment with station WBZ in Boston in July 1959, is that correct?

Mr. PRESCOTT. Yes, sir.

Mr. LISHMAN. And did you not leave WBZ and conclude your career as a diskjockey chiefly because you were disgusted with the payola conditions in the industry?

Mr. PRESCOTT. Mr. Lishman, I was not only disgusted with the payola conditions, but I, frankly—and I admit this—that for the 8 or 9 years of my career, I feel that I performed in an idealistic capacity, and I had no guilt feelings about doing anything improper.

The last 2, 2½ years of my career, as I explained it to myself, I apparently became contaminated by the situation and was just so disgusted with myself and with the industry that I wanted to walk away from it, because I think something happens to every man when he realizes somewhere in his life that he is no longer just an immature boy, having a lot of fun, but he now has the responsibilities of a parent, and he does not want to reflect in any way on his family some of the things that he is ashamed of.

I was ashamed of myself; I was ashamed of the industry; and I walked away from it for that reason.

The CHAIRMAN. Pardon the interruption, Counsel.

What industry are you talking about?

Mr. PRESCOTT. The radio industry I am talking about. I have seen what happened to it from the time I broke into it in 1947. And in a general simple way it has become a deplorable situation.

The CHAIRMAN. When you talk about payola, what do you mean by the term "payola"?

Mr. PRESCOTT. Well, payola exists in many different fashions. It is almost big business, so far as I can see, because it is the only way that you can honestly exist today in terms of the manufacturer, publisher, or an artist.

The opportunities without payola are very limited in this business, because it seems that in the last 5 years, which have been the big years of radio, with the diminishing importance of network radio and the sudden rise of independent radio, everything today is based on the phonograph record. It is the backbone of the radio station.

And because of the tremendous output of records, and the fierce competition that exists within the industry, it is a matter of who can play what, when there is a limited amount of play on the air. And so now bribery, payola, has become the prime function of this business to get the record on the air at any cost and to dispose of it, because if you do not, you cannot sell it, you cannot get individual income.

The CHAIRMAN. Do you consider payola a form of bribery, then?

Mr. PRESCOTT. I think it is a form of moral or immoral bribery; yes, sir.

The CHAIRMAN. All right.

You may proceed, Counsel.

Mr. LISIMAN. During approximately the last 4 years of your employment as a diskjockey, you accepted payola from various persons or companies interested in the manufacture, distribution, and sale of phonograph records, did you not?

Mr. PRESCOTT. Yes; I did, Mr. Lishman.

Mr. LISIMAN. When did you first begin to consider taking payments from record manufacturers, distributors, or promoters for the playing of phonograph records on a radio or television station?

Mr. PRESCOTT. I would say during the period of my last 2½ years in radio.

Mr. LISIMAN. When did you decide to begin accepting payola?

Mr. PRESCOTT. Just about that time. I would like to qualify that by simply saying that it was all around me, more so than ever at that time, and it was very difficult for me to say "No" to it.

Mr. LISHMAN. When you say it was all around you, what do you mean by that?

Mr. PRESCOTT. Well, during the course of an average week on the air in my personal case, I think I received a great deal of offers of money or gifts to play particular phonograph records. I had my own personal philosophy about it. I do not want to go into it now, unless you find it is important later on. But it was around me, and I am sure it was around everybody else.

Mr. LISHMAN. From whom did you receive these offers?

Mr. PRESCOTT. Distributors, publishers, personal managers.

Mr. LISHMAN. Of the talent?

Mr. PRESCOTT. Of the talent—record companies. I would say that, generally, from those areas.

The CHAIRMAN. The distributors of what?

Mr. PRESCOTT. Phonograph records.

Mr. LISHMAN. Well, do you wish to add to your testimony concerning the reasons in your opinion why phonograph record manufacturers, distributors, promoters, and salesmen were willing to give payola to diskjockeys, program directors, record librarians, and others in the position of influencing the programing of phonograph records on radio and television stations?

Mr. PRESCOTT. Well, if I can take a typical 4-hour segment on the radio station—assuming that a diskjockey is on the air from 2 to 6, the average amount of records that he can play in any 1 hour is generally speaking roughly 12 to 14 records. That means that over a total period of 4 hours he might be able to play, roughly, 50 or 52 records. When you stop to analyze that you receive close to 200 sides every week, and you can expose only a certain amount of records on a 4-hour show, and one exposure is not significant any more, although it was many years ago, because the so-called radio pie is so subdivided by so many stations that are playing phonograph records that you have to—and I think most diskjockeys will agree—generally play a record for a period of, at least, 4 to 6 weeks today. At one time you could play records for 3 or 4 days, and you suddenly got a tremendous reaction on the distributor level, and it would reflect in the retail sales.

So because you have to stay with the record for a long period of time and keep in mind the exposure of it, it is almost impossible to play the big percentage of the output by the manufacturers. That is why payola is functioning today and will continue to function if something is not done about it, because you have got to get it on the air. That is the basic premise.

And if it costs money to do it, let us spend the money, and now it is becoming a case of where a play would bring in maybe \$20 or \$25 for a couple of weeks period—the competition becoming so fierce that people are spending \$50 and \$100 and \$150, because they know that the remuneration on the record, if it is a sell, can mean an awful lot of money—they could easily recoup what they have invested in getting it played and establish them with the company. And if they establish themselves, at the same time they have valuable property that can go on for a long period.

Mr. LISHMAN. During your long experience as a diskjockey did you become aware of station licensees and management views towards payola?

Mr. PRESCOTT. I would like to answer that question and give my own personal opinion.

I, frankly, feel that up until these hearings were brought to light and the whole payola situation became public that most station managers—and again I qualify this, in my own opinion—were not aware of the fact that payola existed to any great extent. And I do not think they understood its functions, because there is a marked difference between the executive staff and the talent staff of a radio station. And many of them, in my personal relationship—and I do not say this in their defense—I just feel that they never really were interested in the diskjockey and the distributor and the phonograph manufacturer, because they never took the time to become interested in it.

Mr. LISHMAN. Is it a fact that the licensee and management are aware of the payola situation?

Mr. PRESCOTT. They are now. They should have been a long time ago.

The CHAIRMAN. I hope that you do not mind an interruption. Let us try to keep the record clear, if we can, as we go along. You used that in general terms, Mr. Prescott, about the attitude and the possibility of the station licensee's knowledge. Are you trying to indicate that this situation exists among all radio stations?

Mr. PRESCOTT. No; I cannot go so far as to say that, but I can say that it exists—you are talking about what attitude and now, Mr. Chairman—I am sorry.

The CHAIRMAN. The attitude of the management. You said that they should have known a long time ago.

Mr. PRESCOTT. No; I cannot say that for all stations. I say that for some stations. I know that in my experience, occasionally somebody would say, "I hope you fellows are not taking payola" and brush it off like that, and then there were other cases where management would say, "What is this thing payola that I hear about?"

You know, is seemed to be a situation where nobody took it seriously.

The CHAIRMAN. Were those inquiries within the last few months or were they inquiries made from a year or 2 or 3 years ago?

Mr. PRESCOTT. I am going back to the very inception of payola which I think started back in 1947, when the record business really began to flash at that point. I think that was the beginning of the growing years for the record business, that is what I am talking about—I am not talking about the situation as it exists now.

The CHAIRMAN. Did you apply the term "payola" then?

Mr. PRESCOTT. In 1947?

The CHAIRMAN. Yes.

Mr. PRESCOTT. It existed then. That was the beginning of it.

The CHAIRMAN. You may proceed.

Mr. PRESCOTT. Of course, it existed before that in terms of the situation which was different. And, of course, that goes back to the band leader, when it was customary for the song plugger to walk up to a famous player and slip him an envelope with some money in it and

say, "Look, you have got a coast to coast show and you will be heard by millions of people here tonight—why not get my song on?"

I think that is the counterpart of payola, except the form of promoting the song in those days was different, because the independent radio station was not an important factor pre-1945, let us say.

Mr. LISHMAN. Mr. Prescott, do you know whether it is true that station licensees and management personnel engage in certain practices with respect to advertising which might fall within the definition of "payola?"

Mr. PRESCOTT. Yes, I do, Mr. Lishman.

Mr. LISHMAN. Could you describe what those practices are?

Mr. PRESCOTT. I have witnessed competitive situations in selling radio time in my career, situations such as the following: For instance, a motion picture is being released in an area by the distributor through his advertising agency who is being allocated X number of dollars to be spent on radio for the promotion of that movie. If the picture is a musical, and there are two or three songs in it, and phonograph records are available, many a salesman will walk over to the agency and say, "If you buy time on our station we will not only deliver the 1-minute spot but we will, also, back it up with a guaranteed play of one of the songs from the picture. We will, also, spot the song several times throughout the day." And let us say that every plug for the song you mention for the papers you will get that amount of extra exposure and promotion for the dollars spent. I have seen that happen on occasion.

Mr. LISHMAN. Could you name any station where you saw this occur?

Mr. PRESCOTT. I was told while under the employe of WHDH in Boston and WBZ by one of the sales people there in charge, either through a memorandum or verbally, to make sure that I followed each commercial with, at least, one of these songs from a musical picture, or that I make sure that I play the song once a day, every day on the show for a period of time while they were on the air.

Mr. LISHMAN. Is it correct that in that connection station management had a bulletin put on the announcers' bulletin board to that effect?

Mr. PRESCOTT. Yes, they did.

Mr. LISHMAN. Directing you to do that?

Mr. PRESCOTT. Yes.

Mr. LISHMAN. And do you know of the Music Suppliers of New England, Inc.?

Mr. PRESCOTT. Yes, I do.

Mr. LISHMAN. Do you know that Music Suppliers, from your own experience, was one of the principal sources of payola among record distributors in Boston?

Mr. PRESCOTT. Yes, they were.

Mr. LISHMAN. Are you familiar with Dumont Record Distributing Corp. in Boston?

Mr. PRESCOTT. Yes, I am.

Mr. LISHMAN. And is that, also, another principal source of payola among the record distributors in the Boston area?

Mr. PRESCOTT. They were.

MR. LISHMAN. Are you familiar with Records, Inc., in Boston?

MR. PRESCOTT. Yes, I am.

MR. LISHMAN. And is it not also another principal source for the men of payola in the Boston area?

MR. PRESCOTT. It is.

MR. LISHMAN. How would these companies proceed to make their payments of payola?

MR. PRESCOTT. They could do it in several ways. It all depended on the relationship of the distributor with the diskjockey, on both the financial and social level. Some distributors carried a diskjockey on payroll and sent him a check every week for X number of dollars.

There are other times when a distributor would confront a diskjockey and say, "Here is the record, lay on it for at least 2 or 3 weeks, and this is for you." Or from time to time during the course of the year gifts would arrive at the homes of diskjockeys. And that becomes a qualitative way of evaluating whether or not it was for prior services or for future services, but it comes under the same heading.

MR. LISHMAN. Mr. Prescott, to clarify the record, what was the name of the station on which the announcement was made on the diskjockey bulletin board that he should lay on certain records?

MR. PRESCOTT. That was WHDH.

MR. LISHMAN. WHDH?

MR. PRESCOTT. Yes.

MR. LISHMAN. Mr. Chairman, at this point I would like to have Mr. Keelan, who is an accountant on loan to this subcommittee from the General Accounting Office, who has, as the result of an investigation of the books of the three record distributors just mentioned, made a computation showing the amount that these companies have paid to diskjockeys, including Mr. Prescott, and I think it would expedite the hearings if we could have Mr. Keelan sworn and have him read into the record at this point the computations that he has made from these records, subpoenaed by the committee, and then we will proceed to back up that testimony with photostatic copies of canceled checks received by Mr. Prescott.

The CHAIRMAN. Where are the records from?

MR. LISHMAN. These records were subpoenaed from Music Suppliers, Dumont Record Distributing Co., and Records, Inc. Through the use of the subpoenaed records and other subpoenaed material, we were able, in effect—I do not like to use the word—we were able, in effect, to compel Mr. Prescott to testify the way he is doing this morning. It was not until he realized that he was being confronted with documentary proof that he began to feel that the time had come when he would have to speak up.

The CHAIRMAN. Do you have a copy of that report?

MR. LISHMAN. There are copies of these in each member's folder.

The CHAIRMAN. We have it.

Will you be sworn?

Do you solemnly swear that the testimony you are about to give this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

MR. KEELAN. I do.

The CHAIRMAN. You may proceed.

TESTIMONY OF DONALD R. KEELAN

Mr. LISHMAN. Will you state your name for the record?

Mr. KEELAN. Donald Keelan.

Mr. LISHMAN. Mr. Keelan, would you state your occupation, please?

Mr. KEELAN. I am an employee of the U.S. General Accounting Office in Boston.

Mr. LISHMAN. And you were assigned on loan to act as an accounting investigator for this subcommittee, is that correct?

Mr. KEELAN. That is correct.

Mr. LISHMAN. At what time was that assignment given to you?

Mr. KEELAN. That assignment was given to me approximately January 4, this year.

Mr. LISHMAN. In carrying out your duties under that assignment, did you investigate the books and records of Music Suppliers, Inc.?

Mr. KEELAN. Yes, I did.

Mr. LISHMAN. Did you also investigate the books and records of DuMont Records Distributing Corporation?

Mr. KEELAN. I obtained a list from the attorney for the Dumont Corp. which was purported to be a photostatic copy of a signed statement that was given by the Dumont Corp. to the Federal Trade Commission.

Mr. LISHMAN. And did you also investigate the books and records of Music Suppliers, Inc.?

Mr. KEELAN. Yes, sir, I did.

Mr. LISHMAN. And as a result of that investigation, did you make certain computations and calculations?

Mr. KEELAN. Yes, I did.

Mr. LISHMAN. And what was the nature of these computations?

Mr. KEELAN. I examined certain records of Music Suppliers, Inc., from the period January 1, 1957, through November of 1959.

I also examined cash disbursements of Music Suppliers, Inc., of Boston, for the same period of time.

Mr. LISHMAN. And did you make up a schedule showing these computations?

Mr. KEELAN. Yes; I made up a schedule of the amounts of moneys paid from these distributors. And I also included in that schedule, which I believe every member of the committee has, entitled "Boston Record Distributing Companies Schedule of Payments Made" to Mr. Prescott for the 3-year period 1957 to 1959.

And I also included in that schedule certain payments made from Records, Inc., and these amounts were obtained from excerpts of the books of Records, Inc. That was in the possession of the committee.

Mr. LISHMAN. I would like to offer the schedule that has just been described by Mr. Keelan into the record at this point.

The CHAIRMAN. Do you have a copy of the schedule, Mr. Keelan?

Mr. KEELAN. Yes, sir; I do.

The CHAIRMAN. From what you have testified?

Mr. KEELAN. I have the original schedule that I prepared.

The CHAIRMAN. You may submit it for the record. It will be put into the record at this point.

(The document referred to follows:)

BOSTON RECORD DISTRIBUTING COMPANIES

Schedule of payments made to Norm Prescott for the 3-year period 1957-59

Date	Check No.	Source	Account	Amount	Company	Total
<i>1957</i>						
June 17	13772	Music Suppliers, Inc.	Advertising	\$200.00		\$200.00
Aug. 30	14027	do	do	150.00		150.00
Sept. 16	14108	do	do	150.00		150.00
27	14149	do	do	150.00		150.00
Dec. 20	14509	do	do	200.00		200.00
30	14561	do	do	100.00		100.00
Total				950.00		950.00
<i>1958</i>						
Jan. 17	14668	Music Suppliers, Inc.	Advertising	50.00		50.00
Mar. 17	14942	do	do	133.24	Universal C.I.T.	133.24
Apr. 17	15008	do	do	133.24	do	133.24
24	15090	do	do	100.00		100.00
May 14	15193	do	do	133.24	Universal C.I.T.	133.24
June 23	15351	do	do	133.24	do	133.24
July 18	15467	do	do	133.24	do	133.24
Aug. 7	15531	do	do	133.24	do	133.24
Sept. 17	15693	do	do	100.00		100.00
17	15696	do	do	133.24	Universal C.I.T.	133.24
Oct. 16	15830	do	do	133.24	do	133.24
Nov. 6	15895	do	do	200.00		200.00
17	15958	do	do	133.24	Universal C.I.T.	133.24
20	15963	do	do	400.00		400.00
Dec. 10	16072	do	do	133.24	Universal C.I.T.	133.24
17	16080	do	do	300.00		300.00
Total				2,482.40		2,482.40
<i>1959</i>						
Jan. 10	16242	Music Suppliers, Inc.	Advertising	133.24	Universal C.I.T.	133.24
Feb. 5	16309	do	do	200.00		200.00
5	16354	do	do	133.24	Universal C.I.T.	133.24
Mar. 19	16495	do	do	133.24	do	133.24
30	16529	do	do	450.00		450.00
Apr. 15	16594	do	do	133.24	Universal C.I.T.	133.24
May 15	16756	do	do	133.24	do	133.24
June 2	16804	do	do	25.00		25.00
15	16805	do	do	375.00		375.00
15	16872	do	do	133.24	Universal C.I.T.	133.24
July 20	16986	do	do	133.24	do	133.24
Total				1,982.68		1,982.68
Aug. 4	15519	Music Suppliers, Inc.	Exchange	100		100.00
<i>1958</i>						
Jan. 9		Dumont Record Dis- tributing Corp.	Unknown	200		200.00
Feb. 12		do	do	200		200.00
21		do	do	105		105.00
Mar. 7		do	do	350		350.00
Apr. 9		do	do	200		200.00
June 18		do	do	300		300.00
July 18		do	do	200		200.00
Aug. 6		do	do	200		200.00
Sept. 26		do	do	335		335.00
Oct. 31		do	do	200		200.00
Dec. 19		do	do	200		200.00
Total				2,490		2,490.00

*Schedule of payments made to Norm Prescott for the 3-year period 1957-59—
Continued*

Date	Check No.	Source	Account	Amount	Company	Total
1959 Jan. 6	-----	Dumont Record Dis- tributing Corp.	Unknown.....	\$200	-----	\$200.00
Mar. 12	-----	do.	do.	400	-----	400.00
May 15	-----	do.	do.	400	-----	400.00
July 6	-----	do.	do.	200	-----	200.00
		Total.....	-----	1,200	-----	1,200.00
1957 Dec. 17	5443	Mutual Distributors, Inc.	Advertising.....	100	-----	100.00
1958 Dec. 21	6380	do.	Selling expense.....	100	-----	100.00
1957 Dec. (?)	2427	Records, Inc.	Unknown.....	100	-----	100.00
1958 Nov. 5	1859	do.	do.	300	-----	300.00
1959 Mar. 28	805	do.	do.	150	-----	150.00

Source: Audit of Music Suppliers and Material Distributors, Inc.; audit checking papers. List of Dumont Record Distributing Corp. payments. Records, Inc., canceled checks.

SUMMARY

Source	Account	1957	1958	1959	Total
Music Suppliers, Inc.	Advertising.....	\$950	\$2,482.40	\$1,982.68	\$5,415.08
Do.	Exchange.....	None	100.00	None	100.00
Dumont Record Distributing Corp.	Unknown.....	None	2,490.00	1,200.00	3,690.00
Mutual Distributors, Inc.	Advertising.....	100	None	None	100.00
Do.	Selling expense.....	None	100.00	None	100.00
Records, Inc.	Unknown.....	100	300.00	150.00	550.00
Total.....	-----	1,150	5,472.40	3,332.68	9,955.08

The CHAIRMAN. Anything further?

Mr. LISIMAN. Yes, sir. He made another investigation showing gifts as distinguished from cash, that were made by these record distributors to Mr. Prescott and others.

Mr. Keelan, according to your examination of the books of Music Suppliers, Inc., for the period June 17, 1957, to December 30, 1957, what was the total those books and records showed as having been paid to Mr. Prescott?

Mr. KEELAN. The total amounts of money paid by Music Suppliers, Inc., to Norman Prescott, from the period June 7, 1957—would you like that for the whole period, through 1959?

Mr. LISIMAN. Just for that period.

Mr. KEELAN. From Music Suppliers, Inc., \$950—that is from June 17, 1957, to December 30, 1957—\$950.

Mr. LISIMAN. And was that payment made from the advertising account of Music Suppliers, Inc.?

Mr. KEELAN. Those payments were made from the advertising account.

Mr. LISHMAN. Now, coming to 1958, January 17 to December 17, 1958, what was the total paid during that period to Mr. Prescott by Music Suppliers, Inc.?

Mr. KEELAN. Music Suppliers, Inc., paid through that period of time in 1958 a total of \$2,582.40, \$2,482.40 of which went through the advertising account, and \$100 went through what they called the exchange account.

Mr. LISHMAN. And coming to the period January 10, 1959, to August 20, 1959, what was the total paid by Music Suppliers, Inc., during that period to Mr. Prescott?

Mr. KEELAN. The total payments made to Mr. Prescott during that period of January 10, 1959, through July 20, 1959, from the advertising account, was \$1,982.68.

Mr. LISHMAN. Was that also charged on the books of that company to its advertising account?

Mr. KEELAN. Yes; it was.

Mr. LISHMAN. Now, turning to Dumont Record Distributing Corp., for the period January 9, 1958, to December 19, 1959, what was the total amount paid to Mr. Prescott during that period by Dumont?

Mr. KEELAN. The total amount of \$2,490 was paid by Dumont.

Mr. LISHMAN. To what account was that total charged?

Mr. KEELAN. The lists of payments supplied by Mr. Dumont did not indicate what accounts those amounts of money were entered in.

Mr. LISHMAN. Coming to 1959, and still with Dumont, during the period January 6, 1959, to August 6, 1959, what was the total amount paid during that period by Dumont to Mr. Prescott?

Mr. KEELAN. In that same schedule, a total of \$1,200.

Mr. LISHMAN. And to what account was that charged?

Mr. KEELAN. That was not indicated on the schedule.

Mr. LISHMAN. Now, in 1957, what did you find had been paid to Mr. Prescott by Mutual Distributors?

Mr. KEELAN. The year 1957, Mutual Distributing paid \$100 to Mr. Prescott, and that was charged to the advertising account.

Mr. LISHMAN. Did you assume that to be a Christmas present?

Mr. PRESCOTT. Yes.

Mr. LISHMAN. In 1958, on January 21, did your investigation reveal that the books of Mutual showed an amount of \$100 paid to Mr. Prescott?

Mr. KEELAN. In the year 1958, \$100 was paid to Mr. Prescott, and was entered in their selling expense.

Mr. LISHMAN. Now, turning to Records, Inc., 1957 in December, did Records, Inc., pay Mr. Prescott, according to its books, \$100?

Mr. KEELAN. During the year 1957, based on canceled checks that the committee had in its possession, Records Inc., paid some time in December, to Mr. Prescott, \$100.

Mr. LISHMAN. And in 1958, according to your investigation, didn't Records, Inc., pay Mr. Prescott \$300?

Mr. KEELAN. I have an amount of \$300, yes, sir.

Mr. LISHMAN. And to what account was that charged?

Mr. KEELAN. That expense was charged to promotion, according to the list of canceled checks.

Mr. LISIMAN. In 1959, did your investigation of the Records, Inc., books disclose that Mr. Prescott had received \$150?

Mr. KEELAN. \$150 was received by Mr. Prescott from Records, Inc., in 1959. That was also charged to promotion.

Mr. LISIMAN. Now, will you read the grand totals of the amounts as shown from your study of the books and records of the distributing companies involved, as shown at the foot of this exhibit just introduced into the record?

Mr. KEELAN. For the 3-year period 1957 through 1959, Music Suppliers, Inc., entered through their advertising account a total of \$5,415.08, plus an additional \$100 that was entered in their exchange account, or a total of \$5,515.08. Dumont Distributing Corp. for the period 1958 and 1959 had entered in their records a total of \$3,690. Mutual Distributors, Inc., 1957, 1958, had in their books a total of \$200, and Records, Inc., had paid Mr. Prescott \$550, or a grand total of \$9,955.08 for the 3-year period, from those four record companies.

Mr. LISIMAN. Now, Mr. Chairman, at this point I would like to ask Mr. Prescott, who has been here during this testimony of the accountant, Mr. Keelan, and ask him if that testimony is in accord with the facts, so far as he can recollect.

Mr. PRESCOTT. They do.

Mr. LISIMAN. Now, Mr. Keelan, in addition to investigating the books of these record distributing companies with respect to payments either by check or by cash to Mr. Prescott, did you also ascertain from the books any other valuable considerations that appears to be given to Mr. Prescott?

Mr. KEELAN. During our examination of the books of Music Suppliers, Inc., it was noted during 1958 and 1959, there were payments made to the Universal CIT Corp. in the amounts of \$133.24, from the period March 17, 1958, through August 20, 1959. These items were noted in the Music Suppliers book as paid for Norman Prescott, and these amounts totaled \$2,265.08. These amounts were entered in the advertising account, and they are included in the amounts that I have given.

We also noted in 1957, in the Music Suppliers Inc.'s books, there were four payments of \$110 to Universal CIT, that is the same corporation.

We could not definitely ascertain to whom these payments—for whom these payments were made, but we believe that they were payments for an automobile for Norman Prescott. This may not be

correct. We could not definitely ascertain this from the people at Music Suppliers, Inc.

Mr. LISHMAN. Now, Mr. Chairman, before introducing in evidence a tabulation of the testimony and breakdown of the testimony just given by Mr. Keelan, I would like to ask Mr. Prescott for what purpose these payments were made on his behalf by Music Suppliers, Inc.

Mr. PRESCOTT. The payments were made with the understanding that because they were an independent distributor, and they represented many, many labels, as many as 25 or 30, that I would at least play a selection of a minimum of 8 to 10 records a day, anything that I wanted to play, or that I felt that I wanted to include on my show, so long as it was represented by their distributorship.

Mr. LISHMAN. Do you agree that the figures just testified to by Mr. Keelan are correct, according to the best of your recollection?

Mr. PRESCOTT. To the best of my recollection, I would say they are correct.

Mr. LISHMAN. And with that authentication, Mr. Chairman, I would like to offer as an exhibit this sheet, prepared by Mr. Keelan, reflecting his study of the books and records of Music Suppliers, Inc., in connection with payments made by that company for the benefit of Mr. Prescott.

Mr. Moss. Mr. Chairman, I would like to ask if, in the last question directed to the witness, you were making it quite clear as to whether or not the payments mentioned by Mr. Keelan, which he assumed to be to Universal CIT on behalf of Mr. Prescott, were in fact made on his behalf. The payments of the Universal CIT, were they payments made on behalf of Mr. Prescott? There seems to be some doubt in Mr. Keelan's testimony.

Mr. LISHMAN. I will have to ask Mr. Prescott the answer to that question.

Mr. PRESCOTT. I can clarify that. They paid a total of \$2,000 in CIT payments. Anything over that would be applicable to somebody else, or something else. But the \$2,000 in CIT payments were paid on my behalf.

Mr. LISHMAN. Mr. Keelan, what is the total of the payments by checks, and these payments for this car?

Mr. KEELAN. The total payments for UCIT for the years 1958 and 1959, that were designated to Mr. Norman Prescott's behalf was \$2,265.08

Mr. LISHMAN. Mr. Chairman, may we have this sheet prepared by the accountant witness, Mr. Keelan, in the record? It has already been described and authenticated.

The CHAIRMAN. Yes. Let it be included in the record.

(The document referred to is as follows:)

BOSTON RECORD DISTRIBUTING COMPANIES

Schedule of payments charged to advertising for automobiles for Norm Prescott

Date	Check No.	Source	Credit company	Amount
<i>1958</i>				
Mar. 17	14942	Music Suppliers, Inc.	Universal C.I.T.	\$133.24
Apr. 17	15008	.....do.....	do.....	133.24
May 14	15193	.....do.....	do.....	133.24
June 23	15351	.....do.....	do.....	133.24
July 18	15467	.....do.....	do.....	133.24
Aug. 7	15531	.....do.....	do.....	133.24
Sept. 17	15696	.....do.....	do.....	133.24
Oct. 16	15830	.....do.....	do.....	133.24
Nov. 17	15958	.....do.....	do.....	133.24
Dec. 10	16072	.....do.....	do.....	133.24
Total, 1958 Universal C.I.T.				1,332.40
<i>1959</i>				
Jan. 10	16242	Music Suppliers, Inc.	Universal C.I.T.	133.24
Feb. 5	16354	.....do.....	do.....	133.24
Mar. 19	16495	.....do.....	do.....	133.24
Apr. 15	16594	.....do.....	do.....	133.24
May 15	16756	.....do.....	do.....	133.24
June 15	16872	.....do.....	do.....	133.24
July 20	16986	.....do.....	do.....	133.24
Total, 1959 Universal C.I.T.				932.68
Total, all Universal C.I.T., 1958-59, Norm Prescott.				2,265.08

PAYMENTS CHARGED TO ADVERTISING FOR AUTOMOBILE ITEMS NOT MARKED
IN CASH BOOK BUT BELIEVED TO BE FOR NORM PRESCOTT

<i>1957</i>				
June 17	13776	Music Suppliers, Inc.	Universal C.I.T.	\$110
July 17	13878	.....do.....	do.....	110
Aug. 10	13971	.....do.....	do.....	110
Sept. 10	14015	.....do.....	do.....	110
Total, 1957 Universal C.I.T.				440

Sources: Audit of Music Suppliers, Inc., and Mutual Distributors, Inc.; audit of work papers; canceled checks of Records, Inc.

Mr. SPRINGER. I would like to get the total amount paid to Mr. Prescott from everybody.

Mr. KEELAN. Sir, the total payments made to Mr. Prescott from everybody is on a summary on page 2 of the schedule that I prepared, and I believe that there is a copy, a Thermo-Fax copy in each member's file. \$9,955.08.

The CHAIRMAN. Does that include the CIT payments?

Mr. KEELAN. That includes the CIT payments, yes, sir.

Mr. MOSS. Mr. Chairman, I have one additional question.

Mr. Prescott, in stating that the payments to Universal for the automobile amounted to \$2,000—

TESTIMONY OF NORMAN PRESCOTT—Resumed

Mr. PRESCOTT. I would like to clarify that, Mr. Moss.

Mr. MOSS. That would be principal payment—payment on principal?

Mr. PRESCOTT. Yes.

Mr. MOSS. So that the total here of \$2,265.08 undoubtedly represents the gross total paid on your behalf?

Mr. PRESCOTT. Yes.

Mr. LISHMAN. I think the record should be clear, Mr. Chairman, that \$2,000 was not the total cost of the car. I would like to ask Mr. Prescott to state for the record how the balance of the cost of the car was paid.

Mr. PRESCOTT. I paid the balance personally, by trading in one of my cars.

Mr. MOSS. Well, did you pay one payment? I notice this is 17 payments listed.

Mr. PRESCOTT. They paid all the payments. I paid the initial downpayment, by trading in the car. And they carried the balance.

Mr. LISHMAN. Mr. Prescott, is it correct that you were well acquainted with Harry Carter, the president of Music Suppliers, Inc.?

Mr. PRESCOTT. Yes.

Mr. LISHMAN. And is it a fact that early in 1958, you were thinking of buying an automobile, and you knew then that Harry Carter had a connection with a Mercury agency in Boston?

Mr. PRESCOTT. Yes, sir.

Mr. LISHMAN. And you asked Mr. Carter if he could use this connection to get you a break or a discount in the buying of the car?

Mr. PRESCOTT. Yes, I did, Mr. Lishman.

Mr. LISHMAN. And what did Mr. Carter say to you at that point?

Mr. PRESCOTT. He said that he would try. And then the following day, when I came in, he said to me, "I will pay \$2,000 of the automobile for you."

Mr. LISHMAN. And it is a fact, isn't it, that he did pay \$2,000 toward the purchase price of the car you bought?

Mr. PRESCOTT. Yes, sir.

Mr. LISHMAN. Now, although Mr. Carter made the downpayment, is it a fact that the car was registered in your name?

Mr. PRESCOTT. Yes, it was.

Mr. LISHMAN. And it is also a fact that subsequent monthly payments on the car were made by Music Suppliers?

Mr. PRESCOTT. Yes, sir.

Mr. LISHMAN. Now, including the payments on the automobile, isn't it true that you received an average of \$40 to \$50 a week in payola from Music Suppliers, Inc., alone?

Mr. PRESCOTT. Yes, I did.

The CHAIRMAN. Over what period of time?

Mr. PRESCOTT. I think it is a total period, Mr. Chairman, of about 1 year—the last 6 months of 1958 and the first 6 months, roughly, of 1959.

Mr. LISHMAN. Did Harry Carter, the president of Music Suppliers, Inc., select the records he desired to have played over the air on WBZ or WBZ-TV and deliver them to you?

Mr. PRESCOTT. Deliver the records that he wanted particularly plugged on the air?

Mr. LISHMAN. Yes, sir.

Mr. PRESCOTT. I don't know, you know, what his relationship may have been with other people, but when I did my show, I think I explained this earlier, and that is the reason that I only had this relationship with three distributors, or two distributors, actually, in Boston, although there are about 11—and that is, I would never allow them to

tell me what records to play. I would only play a certain amount of records for them. But I had to make a choice of material, because I felt that if they, in my particular case, for whatever it is worth, and this was only a personal philosophy—if they could dictate all the records to me, then I would have had no show. But they had enough records to make the selection easy enough so that I could live up to my responsibility to them for the payola that I received.

Mr. LISHMAN. Now, when you got—

The CHAIRMAN. Mr. Bennett would you like to ask a question?

Mr. BENNETT. Did you share this payola you received with others?

Mr. PRESCOTT. No, I did not, Mr. Bennett.

Mr. BENNETT. Did the people you were working for know you were receiving this money?

Mr. PRESCOTT. No, they did not.

Mr. BENNETT. You never informed them about it?

Mr. PRESCOTT. Well, they had never confronted me with it or mentioned it to me.

Mr. BENNETT. Did they have a way of finding out?

Mr. PRESCOTT. Well, I think a little bit earlier when we talked about this thing, I may have made a jumble of my conversation. Let's put it this way. If I were general manager of a radio station, personally, I could prevent payola. There are many general managers who don't know the function of payola. And it was a foreign area to them. I don't say this in their defense. I think it is their responsibility to know that it does exist, and to find out the mechanics of it. But it is a matter of the individual. If a diskjockey graduates into the executive end of radio, I think he will be familiar with the workings of payola. If a man has never had any experience in that picture, then I think that it is pretty difficult for him to really understand it, because he has very little relationship with the people who spend this money.

Mr. LISHMAN. Mr. Prescott, I would like to clarify the record a little bit. What station was it that caused the bulletins to be placed on the announcer's bulletin board?

Mr. PRESCOTT. That was WHDH.

Mr. LISHMAN. And WBZ, too?

Mr. PRESCOTT. Orally.

Mr. LISHMAN. Well, if the management didn't know that payola was involved, how would they know enough to instruct you as to what records to plug?

Mr. PRESCOTT. Well, we are talking about different areas of payola.

That, of course, they were more familiar with than anybody else, because they used that as a sales tool or vehicle of payola which is different, and apart from playing the record for the promotion of the record's sake.

Mr. LISHMAN. But isn't the end result the same?

Mr. PRESCOTT. Exactly.

Mr. LISHMAN. Your testimony is to the effect that the management or licensee of a station did know that some kind of payola was going on in the station?

Mr. PRESCOTT. I agree with you.

Mr. LISHMAN. What was the consideration that the station licensee received for plugging the record, we will say, from a score of a movie that was advertised on the station?

Mr. PRESCOTT. Income to the station by getting a piece of the allocated budget, for the promotion.

Mr. LISHMAN. Wouldn't that in effect take away business from competing advertisers?

Mr. PRESCOTT. Sure, it would.

Mr. LISHMAN. Advertising medium?

Mr. PRESCOTT. Yes, sir.

Mr. LISHMAN. Do you recall the name of any movie where this kind, of what we call management payola, went on?

Mr. PRESCOTT. Yes; I do. One picture was the Frank Sinatra picture, "Hole in the Head."

Mr. LISHMAN. What station was that?

Mr. PRESCOTT. WBZ.

Mr. LISHMAN. And about when was that?

Mr. PRESCOTT. Oh, I am guessing, but it was within the last year, I would say.

Mr. LISHMAN. And what did the management do with respect to instructing the diskjockey to plug a record from that show?

Mr. PRESCOTT. Well, they would verbally tell you to make sure that you get it on at least once a day in your show, either after the commercial, or some time later, but make sure that you play it.

Mr. LISHMAN. What member of the management told you that?

Mr. PRESCOTT. In that particular case, I think it came from the sales department.

Mr. LISHMAN. Do you know who in the sales department?

Mr. PRESCOTT. I believe that the account executive at that time was Mr. Fitzpatrick.

Mr. LISHMAN. Well, now, returning—

Mr. ROGERS. Mr. Chairman, may I ask a thing about this? He hasn't said who told him. He said the chairman of this thing was a certain man. Could we get it stated definitely who told him to do this?

Mr. PRESCOTT. I said it was the account executive, sir, at that time.

Mr. ROGERS. You said the account executive was this man. But you never did say affirmatively he is the one who told you.

Now, is he the one who told you to do it?

Mr. PRESCOTT. Yes, sir.

Mr. LISHMAN. Was this a general management practice?

Mr. PRESCOTT. It has happened on many occasions.

Mr. LISHMAN. So the management knew what was going on in that situation?

Mr. PRESCOTT. They should have.

Mr. LISHMAN. Did Mr. O'Friel ever give you any such instructions?

Mr. PRESCOTT. Well, Mr. O'Friel gave me instructions relative to another situation.

Mr. LISHMAN. Will you describe that situation?

Mr. PRESCOTT. Yes, sir.

As you know, radio stations are constantly going through the battle of the ratings, and so they are very promotional conscious. They want to do something in the local community that will attract attention and boost their ratings. And Mr. O'Friel called a meeting one day of the entire diskjockey staff.

Mr. LISHMAN. Just a minute. Mr. O'Friel—will you please identify who he is?

Mr. PRESCOTT. He is the general manager of radio station WBZ. And it was in the form of a peptalk, to see if we could create some ideas or promotional ideas that would set the station apart from the others. And as a result of that peptalk, I happened to mention to Dumont Record distributors that he ought to do something with the Lester Lanin orchestra. I thought it might be a good idea to offer this orchestra, let's say, as a wedding present to a young couple in June, to have one of the big society orchestras of New York come to Boston and play for the wedding. And he thought it was a good idea. And I told him from that point on he would have to approach management, because I could not do it. We are relegated only to creating ideas, but we cannot implement them on an executive level.

So he apparently went to management and told them that he would make the Lester Lanin orchestra available.

As a result of another staff talk session that we had, the idea was changed from giving it away as a wedding present, to having a block party, which we did have, and it was very successful.

From that point on, it was entirely in the hands of management, and Dumont Record distributors. I know what the end result was, that the station never got paid for the orchestra, because we were instructed to play the records by that orchestra, you know, as a reciprocal kind of thing, to keep the station from having to pay anything for the musicians.

Mr. LISHMAN. Well, now, let's get that clear for the record, Mr. Prescott.

Do we understand that Mr. O'Friel issued instructions to you and other diskjockeys, that in order to take care of the payments which should have been made to the Lanin Orchestra that station WBZ should plug the records which were distributed by Dumont Distributors?

Mr. PRESCOTT. Yes, sir.

Mr. LISHMAN. And is it a fact that among the labels distributed by DuMont was the label Epping?

Mr. PRESCOTT. Yes, sir.

Mr. LISHMAN. And is it a fact that the label Epping contains recordings of the Lanin Orchestra?

Mr. PRESCOTT. Yes, sir.

Mr. LISHMAN. And is it a fact, therefore, that you received instructions to plug Lanin's records in lieu of paying them anything for his appearance at a promotion party on behalf of WBZ?

Mr. PRESCOTT. Yes, sir.

Mr. LISHMAN. When these records were played by your station, pursuant to station management instructions, was any announcement made on the station, at the time, that payments or consideration had been received by the station, in return for the playing of these records?

Mr. PRESCOTT. No, sir.

Mr. LISHMAN. Now, let's go back to Mr. Harry Carter, whom you have testified would select records he desired to have played over WBZ, or WBZ-TV.

Did he supply such records to you?

Mr. PRESCOTT. The records were sent to the station, and I occasionally picked up records personally during the course of the week. I would make the rounds of all the distributors and pick up the new releases.

Mr. LISHMAN. Were these records turned over to the record librarian at station WBZ?

Mr. PRESCOTT. Yes, they were.

Mr. LISHMAN. And were these records inserted in the station's so-called top 50 list?

Mr. PRESCOTT. Some of them were, yes.

Mr. LISHMAN. And what was the purpose of this top 50 list?

Mr. PRESCOTT. Well, that was the existing format of radio. Each station had its own top 40 or to 50 list, and these were the records that management wanted us to play, because they felt that they were the most popular records, and since there were so many releases, let's play only what the public theoretically wants to hear.

Mr. LISHMAN. Well, is it true that the station librarian supposedly compiled this list of popular records from those listed in trade papers, and on the basis of calls to local music stores, to inquire what records were selling the best?

Mr. PRESCOTT. Mr. Lishman, if I can answer that question, I will say that whatever the mathematical computation was for arriving at the top 50, it is the most implausible system in the world, because I don't think anybody can understand it, and it varies with every radio station in the country. There is no system for really compiling the top 50. No matter where you get your information, it is just not right. And it really is not reflective of American taste.

Mr. LISHMAN. So this reduces itself to a question of personal choice, which, in turn, depends upon payola or other considerations?

Mr. PRESCOTT. I would say that payola is one of the biggest influences in establishing the top 50 hits.

Mr. LISHMAN. Now, it is true, isn't it, that Music Suppliers handle a large number of labels, and that gave you a rather wide choice in selecting the top 50?

Mr. PRESCOTT. They were always well represented.

Mr. LISHMAN. Isn't correct that station WBZ advertised over the air that the list of the top 50 records was available at a chain store known as Stop 'N Shop Supermarkets?

Mr. PRESCOTT. Yes, sir.

Mr. LISHMAN. Do you know who paid the cost of printing this list of 50 top records?

Mr. PRESCOTT. The list was paid for by a rack jobber, and was distributed to some 90 Stop 'N Shop Supermarkets, and the radio station did not pay anything for it, but plugged the fact that it could be found at these supermarkets, as a promotion.

Mr. LISHMAN. And who was the rack jobber involved?

Mr. PRESCOTT. I forgot the name of the company. But the fellow in charge of it was a fellow by the name of Abbott Gordon.

Mr. LISHMAN. And isn't it correct that for some time the top 50 list consisted in part of records which Lambert and Gordon sold as rack jobbers in the supermarket?

Mr. PRESCOTT. Yes, they did.

Mr. LISHMAN. Now, what are rack jobbers?

Mr. PRESCOTT. Well, rack jobbing, in a simplified explanation, is the newest addition in selling records, the theory being that the small dealer today does not do enough volume, and so the best thing to do is to try to make the records available in impulse buying stores, such as supermarkets, where women will go in and buy the daily food, and as they are walking out, they will see a rack of songs currently popular and on impulse buy it. It is a better kind of visual display of records in more outlets, and of course it has grown into a pretty sizable business in the last 5 or 6 years. It is a fairly new business.

Mr. LISHMAN. Now, Mr. Prescott, in order to clarify the record, before we pass on to another topic, is it a fact that the payments totaling \$995.08, made to you by the various record distributors already identified, were made for the purpose of playing records on the air?

Mr. PRESCOTT. Yes.

Mr. LISHMAN. Was any of that total paid to you as appreciation for conducting so-called record hops?

Mr. PRESCOTT. None at all, because I never did record hops.

Mr. LISHMAN. Would a distributor pay, in your opinion, substantial sums of money as a token of appreciation for record hops alone, apart from the diskjockey situation?

Mr. PRESCOTT. I do not think that he would pay substantial amounts of money in our area. But I think that he would supply the diskjockey with all the free records and albums for giveaways, and contests, that he would probably want, which would amount to a sizable amount of money over a period of a year.

Mr. LISHMAN. Well, would you consider it to have been standard practice for a record distributor to pay money solely to a diskjockey for appreciation of his record hop activities?

Mr. PRESCOTT. I have had no personal contact with it, but I can assume or believe that it probably does exist. I think every avenue of getting the record played is important to any distributor. And I am sure that he would do anything to get the record played.

Mr. LISHMAN. Well, what is the importance of a record hop as compared with the importance of having the record played over the air?

Mr. PRESCOTT. Well, actually it is a kind of preliminary way of taking a group of records, trying them out, let's say, on a captive audience of 300 or 400 kids, and if three or four or five of those records meet with any kind of response, the diskjockey could go back to the distributor and say, "Look, I think this record has it, and the kids like it. Do you want me to lay on it?" And at that point, they might consummate some kind of a financial arrangement.

Mr. LISHMAN. Now, Mr. Prescott, while you were with WBZ, is it correct that the station conducted a number of contests periodically, and that phonograph records for albums were used as prizes in connection with the contest?

Mr. PRESCOTT. That is true.

Mr. LISHMAN. And wasn't it the practice of the head of the promotion department of WBZ, Mr. Jack Williams, to request you and

other diskjockeys to obtain phonograph records or albums to be used as prizes?

Mr. PRESCOTT. Yes, sir.

Mr. LISHMAN. And isn't it true that Mr. Williams told you and other diskjockeys that WBZ would "lay on" that is, give favorable treatment to records of that distributor by playing the records over the air on numerous occasions?

Mr. PRESCOTT. Yes, sir.

Mr. LISHMAN. Who is Mr. O'Friel?

Mr. PRESCOTT. The general manager of WBZ radio.

Mr. LISHMAN. Now, Mr. O'Friel knew, did he not, that the albums and records given out as prizes were not paid for by WBZ or WBZ-TV?

Mr. PRESCOTT. He was very budget conscious, Mr. Lishman, and he knew about it.

Mr. LISHMAN. He knew they were not being paid for.

Mr. PRESCOTT. Yes, sir.

Mr. LISHMAN. He also knew, did he not, that some kind of consideration must be given if the station was to compensate the donors of the record albums?

Mr. PRESCOTT. Yes, sir.

Mr. LISHMAN. And he knew, did he not, that the consideration consisted of plugging the records of the donors over the air?

Mr. PRESCOTT. Yes.

Mr. LISHMAN. Now, do you know Mr. Bill Givens?

Mr. PRESCOTT. Yes, I do. I worked with him, Mr. Lishman, at WBZ.

Mr. LISHMAN. What was his position at WBZ?

Mr. PRESCOTT. He was in charge of the library. I think his official title was musical director.

Mr. LISHMAN. Is it correct that in November 1958 you and Mr. Bill Givens, at that time music director of WBZ, were sent to New York by Mr. O'Friel to solicit free record albums, free records, for the station's record library, from record manufacturers and distributors?

Mr. PRESCOTT. Yes, sir.

Mr. LISHMAN. And did Mr. O'Friel authorize you to promise in return for the gifts of these free records, or albums, that the station would lay on the records manufactured and distributed by the donor companies?

Mr. PRESCOTT. Yes, sir.

Mr. LISHMAN. And you actually went on this trip to New York for that purpose, with Mr. Bill Givens?

Mr. PRESCOTT. Yes, sir. As a diskjockey, I was not required to do that. I was asked to do that. And—

Mr. LISHMAN. Who asked you to do that?

Mr. PRESCOTT. Mr. O'Friel. And for the record, you know, the reasoning is generally, "We are a big station, we can do them a lot of good. Get as many records as you can, and make sure that you tell them that."

Mr. LISHMAN. Well, isn't the fact that you were a very popular diskjockey in New York and had very good contacts, and Mr. O'Friel desired to take advantage of that for the benefit of getting free records for WBZ?

Mr. PRESCOTT. Yes, sir.

Mr. MOSS. I wonder at that point, Mr. Chairman, if I could ask a question. I am just a little puzzled.

When you were sent to New York to get records, what kind of recordings were you trying to get?

Mr. PRESCOTT. Well, Mr. Moss, let me explain this. The record companies have changed their modus operandi somewhat in the last few years, and they do not give away free albums en masse to radio stations, because it is a very costly situation for them, and today albums are manufactured at the greatest productive rate ever. Consequently you have to subscribe to the RCA Victor, Capital, London, and so forth, free album—not free, but monthly album releases. You pay an initial fee of something like \$50 to the record company, and they give you a copy of every release that comes in.

So in view of that, and also the fact that when Mr. O'Friel came to WBZ, our record library had nothing in it to speak of, because the station had never been given any attention—it had been a former network station, and they were never serviced really—and he wanted to build up a library as quickly as possible. And to the best of my recollection, he said, "How many albums do we need?" And I think the figure was somewhere between \$10,000 and \$15,000 worth of albums. He said, "That is an awful lot of money. Why don't you go to New York, and you are a big diskjockey," as Mr. Lishman has brought out—I don't mean to be egotistic—"you know a lot of people, go ahead."

Mr. MOSS. Were you trying to get the albums of better music for the library?

Mr. PRESCOTT. He did not care what it was. He just said fill up the room.

Mr. MOSS. Of the current releases, you get all of the popular records, do you not?

Mr. LISHMAN. These are popular albums, is that correct?

Mr. PRESCOTT. Well, popular albums, show tunes. He did not mix into the selection of the music. He just said, "I want to see it up there."

Mr. MOSS. Did he say get something better than rock and roll?

Mr. PRESCOTT. He didn't say it specifically.

Mr. MOSS. A little better?

Mr. PRESCOTT. He did not specify, sir.

Mr. LISHMAN. Now, Mr. Prescott—

Mr. PRESCOTT. Rock and roll is not prevalent album material. It is primarily single records.

Mr. LISHMAN. Now, Mr. Prescott, isn't it true that you spoke to Mr. Sid Goldberg at the Decca Record Co., and that WBZ received 250 free record albums from that company?

Mr. PRESCOTT. Yes, sir, and I think we broke an all-time precedent.

Mr. LISHMAN. Why is that?

Mr. PRESCOTT. Because they ain't very free with merchandise.

Mr. LISHMAN. What would be the value of this, of those 250 record albums, according to the market value?

Mr. PRESCOTT. 250—you can multiply that by roughly \$4 an album, \$3.98, which is the retail selling price.

Mr. LISHMAN. And isn't it true that you and Mr. Givens were promised 200 to 300 albums by Mitch Miller of the Columbia Record Co., a subsidiary of the Columbia Broadcasting System?

Mr. PRESCOTT. Yes, sir.

Mr. LISHMAN. And did you get those records?

Mr. PRESCOTT. Yes; we did.

Mr. LISHMAN. And didn't you and Mr. Givens also talk to a Bob Shad at Mercury Records Corp.?

Mr. PRESCOTT. Yes; we did, and he got authorization from Mercury Records in Chicago to let us go down to the local Mercury distributor and take whatever we wanted.

Mr. LISHMAN. Is it a fact that as a result of that you managed to procure between 100 and 200 free albums for WBZ through Mercury's Boston distributor?

Mr. PRESCOTT. Yes, sir.

Mr. LISHMAN. Now, on your mission to get these free albums, did you call on Mr. Samuel Clark of Am-Par Record Corp.?

Mr. PRESCOTT. Yes; I did.

Mr. LISHMAN. And what did Mr. Clark agree to do in connection with this donation project?

Mr. PRESCOTT. Carte blanche.

Mr. LISHMAN. And did Am-Par Record Corp. actually supply some free record albums to WBZ?

Mr. PRESCOTT. Well, we picked them up through Music Suppliers, and I guess they made them good.

Mr. LISHMAN. About how many of such albums did you pick up?

Mr. PRESCOTT. I am not qualified to answer that one, Mr. Lishman. I think Mr. Givens will, because he did the actual picking up of the albums.

Mr. LISHMAN. And Mr. Samuel Clark, referred to as president of Am-Par Record Corp., at one time had been associated with Music Suppliers, Inc.?

Mr. PRESCOTT. Yes, sir.

Mr. LISHMAN. In what capacity had he been with Music Suppliers?

Mr. PRESCOTT. He was a coowner, with Harry Carter.

Mr. LISHMAN. And while he was coowner of Music Suppliers, Inc., isn't it a fact that he had been one of the persons who had distributed payola to you?

Mr. PRESCOTT. Yes, sir.

Mr. LISHMAN. Do you recall that about 2 years ago Cecil Steen, of Records, Inc., had a show on WBZ known as "Record Shop Hop"?

Mr. PRESCOTT. Yes, sir; I remember the show.

Mr. LISHMAN. And who is Mr. Steen?

Mr. PRESCOTT. He is the owner of a distributorship in Boston, called Records, Inc.

Mr. LISHMAN. And is it correct that on this show he picked the top 10 records of the week?

Mr. PRESCOTT. Yes, sir.

Mr. LISHMAN. And isn't it correct that at least four or five of the records he picked were on labels that were distributed through his company, Records, Inc.?

Mr. PRESCOTT. Yes, sir.

Mr. LISHMAN. Do you recall that Bob Clayton personally managed Cindy Lord and Bob Dini?

Mr. PRESCOTT. I remember; yes.

Mr. LISHMAN. And who was Bob Clayton?

Mr. PRESCOTT. He is a Boston diskjockey.

Mr. LISHMAN. What station?

Mr. PRESCOTT. WHDH.

Mr. LISHMAN. And do you know that Clayton made deals with record companies to have records made by his artists, which he could then put on the air?

Mr. PRESCOTT. Well, he obviously made the deal, because he got the records.

Mr. LISHMAN. Are you familiar with the fact that at one time there was a record company in California, the Crystallite Record Co., which issued 1 million shares of stock, which it distributed free of charge, to diskjockeys who would accept it?

Mr. PRESCOTT. Yes.

Mr. LISHMAN. Did you ever get any of this stock?

Mr. PRESCOTT. They sent it to me. I sent it back to them. I think it has since gone up to 10 million shares.

Mr. LISHMAN. And this was done, was it not, on the theory that the diskjockeys would favor the records of that company, because they would share in the company's profits?

Mr. PRESCOTT. Yes, sir.

Mr. LISHMAN. Did you not recently receive a letter from this company, suggesting that diskjockeys should get rid of the stock or throw it away, so that the company could not be accused of payola?

Mr. PRESCOTT. Yes.

Mr. LISHMAN. Do you still have that letter?

Mr. PRESCOTT. No; unfortunately I threw it away.

Mr. LISHMAN. Can you repeat the substance of that letter?

Mr. PRESCOTT. It said something of the fact that in view of the recent investigations into payola, it may be embarrassing to any stockholder in this company as well as to us to be a participant in the corporation, and we suggest that you forget that you own stock, and we will forget we issued stock, and see you later.

The CHAIRMAN. When was that?

Mr. PRESCOTT. The Crystallite idea, Mr. Chairman, was formed about 4 years ago. It personally was very laughable and ludicrous to me, because to be 1 of 10 million stockholders in a company just was an obviously funny premise. But it functioned, I guess, for about 4 years. They had a hit record somewhere along the line. I think it was called "Pink Shoelaces," which your children may remember. I do not know what they have had since, and I do not know too much about their activities, because they are a California company. But they were quite brazen, anyway.

The CHAIRMAN. When was the letter you refer to sent?

Mr. PRESCOTT. This was a recent letter I got a few weeks ago. It was a form letter. I was not a stockholder in the company, but they assumed everybody they talked to jumped at the idea, so they treated everybody as stockholders.

The CHAIRMAN. Was the letter sent out since January or prior to it?

Mr. PRESCOTT. It was sent out since the investigation began.

The CHAIRMAN. Can you pinpoint it a little more than that?

Mr. PRESCOTT. I would say it was prior to January—somewhere in the November-December area of 1959.

The CHAIRMAN. After these particular hearings developed last October and November?

Mr. PRESCOTT. Yes. I know it was after the Van Doren case became a part of the public eye.

Mr. LISHMAN. Now, is it correct that between 1950 and 1954 some of the record companies set up a network of diskjockeys in key areas, and paid them from the profits from certain records which they plugged?

Mr. PRESCOTT. Yes. I was approached on that, but I turned it down.

Mr. LISHMAN. Can you identify the record companies involved and give us further details about this proposal?

Mr. PRESCOTT. Well, it goes back many years. I am not trying to evade the question.

I think it was done, primarily in many cases, with publishers of music, who would set up a key diskjockey in each major area, and let us say cover a territory of 15 top markets in the country, and promise them a percentage of the profits of the records, or try to set up a separate publishing firm, and they would, if any moneys were accrued in the firm, they would share in the profits. But when you say specifically—and I mean this quite openly—I do not remember specifically. I remember that I was approached and I did not like the idea, and I turned it down.

Mr. LISHMAN. You do not remember the names of the record companies?

Mr. PRESCOTT. I really do not; no. I do know, that it was in effect because I would get calls from diskjockeys from other areas who either assumed I was a part of this network and wanted me to help the total picture, and they would ask me at that time to lay on a particular record.

Mr. LISHMAN. Were some of those calls from Chicago?

Mr. PRESCOTT. Diskjockeys?

Mr. LISHMAN. Yes, or companies.

Mr. PRESCOTT. It is hard to remember, Mr. Lishman, honestly.

Mr. LISHMAN. Well, has it been a practice of some diskjockeys to claim to be the writers of certain songs on records which they anticipated would prove to be popular?

Mr. PRESCOTT. Well, that is common practice. There is an old saying in the music business, "If you find a song, put your name on it, and take advantage of it," because you know the value of a song is the fact that if you write a song that is a hit song, and it becomes a standard, as you probably know there is a residual income that can come in for many, many years. And many diskjockeys can put their names on songs, because they wanted to take advantage of the record royalties and the residual value.

Mr. LISHMAN. In other words, this was done so they could share in the royalties from the mechanical reproduction.

Mr. PRESCOTT. Mechanical reproduction, sheet music sales, and performance value. I would like to add, p.s., I never did it, honestly.

Mr. LISHMAN. Now, when you were employed at WORL in Boston, isn't it true that the programs of that station were never listed in the Boston Herald Traveler?

Mr. PRESCOTT. Yes, sir; that is quite true.

Mr. LISHMAN. Do you know of any reason why that was not done?

Mr. PRESCOTT. Well, the situation that existed in 1950 was a strange one in Boston, because we only had one independent music station at that time of any consequence, and that was WHDH. When WORL went—

Mr. LISHMAN. Who owned WHDH?

Mr. PRESCOTT. Herald Traveler. When WORL went on the air, from the onset we were their only competition. And quite a fight ensued for almost a year and a half, trying to get our station call letters listed in the Herald Traveler. They just would not pay attention to us. They used to give us the excuse, "We are out of space," or that there was no room for us. But whatever the reason was, they never listed us. And this was, you know, a bad blow for a new station that had to get that kind of listing, so that people would be made aware of our existence. I don't think even today that they list the station.

Mr. LISHMAN. Now, do you remember that in connection with the show on WHDH, the diskjockey, Bob Clayton, at one time had an arrangement with Boston record distributors to give WHDH the exclusive right to play certain records for a 2-week period?

Mr. PRESCOTT. Indeed I do, Mr. Lishman.

Mr. LISHMAN. And as a result of this exclusive arrangement, did not the distributors keep such records from other stations and from retail outlets until the end of the 2-week period?

Mr. PRESCOTT. Yes, sir. As a matter of fact, I would like to add—because at that time we were in competition with the station, and they did everything that they possibly could to keep us from getting off the ground—that they would blatantly, on the air, mention the fact that this record was exclusive, that no other Boston station would have it or could have it, for 2 weeks, and that was because of the recognition of the popularity of WHDH.

Mr. LISHMAN. Were not the distributors told by Mr. Clayton, and WHDH, that if they did not give WHDH the exclusive performance rights on these specific records, WHDH would penalize them by refusing to play any of their other records?

Mr. PRESCOTT. Definitely.

Mr. LISHMAN. And was it a fact that there were announcements over the air by WHDH in connection with such records to the effect that this record is being played exclusively on WHDH—no other Boston station will be playing it in the next 2 weeks?

Mr. PRESCOTT. Yes.

Mr. LISHMAN. And you have heard such an announcement?

Mr. PRESCOTT. Yes, sir. I lived with it for almost 3 years.

Mr. LISHMAN. Didn't you and the other diskjockeys in that area protest this practice to the distributors?

Mr. PRESCOTT. Not only that, but we called a meeting of the distributors one day and we thought, by virtue of the fact that there were 16 or 17 of us present, that we could try to break down this exclusive barrier, which was injurious to us because you could not get started

so long as they got the exclusive records by the well-known stars on a priority or exclusive basis. And the distributors were very nice. They smiled, they listened. But the practice continued for another 2 years.

Mr. LISHMAN. Now, wasn't RCA Victor the worst offender in this exclusive practice setup?

Mr. PRESCOTT. Yes, they were.

Mr. LISHMAN. Did the distributors deny they had any arrangement for this exclusive proposition to you?

Mr. PRESCOTT. Some of them did, and some of them also cried to the effect that "We need this station, we need this diskjockey, and if we don't give it to him, we will be penalized, and we cannot afford that."

Mr. LISHMAN. Do you recall a time when you obtained a copy of Johnny Ray's first album and announced you were going to play it on your station? And at that time had not Bob Clayton obtained this record from Columbia Records to play as an exclusive?

Mr. PRESCOTT. Yes, sir. That was one of those freak situations where he had an exclusive album, and unknown to everybody it was also available in the stores at that time. So I went down to the store and I bought a copy, and I started to announce on the air that we were going to play it at the same time. That is when the pressure began. WHDH apparently called Columbia Records and told them—however they told them—that they did not want us to play it. And then a delegation from Columbia Records came up to WORL and begged us not to play the album. I said, "Why?" You have an album. You want the thing promoted. Why should you ask us not to play an album and reserve the exclusive right for one station?" Of course, I did it tongue in cheek, because we had been living with the situation for quite awhile. And they finally got us to agree that we would allow Clayton to go on the air for one-half hour and play all the music, and we would not begin the first selection until that half hour had gone by.

I do not know if you are interested, but we were selling the album on the air at that time. WHDH had a tie-in with Promotion Music Co., which is a record store in Boston, and we were tied in with the Cray Music Co. And with all their strength and power, this was actually the breaking point. He sold 9 albums and we sold 243. From that point on we started to command a little more respect from the distributors and the exclusive thing slowly began to fall apart at the seams.

Mr. LISHMAN. How did you get around this situation during the first half hour?

Mr. PRESCOTT. Well, that was what we call creative programing. I decided that I would talk for 30 minutes and tell the Johnny Ray life story. And believe me, he could not have lived all the things that I talked about.

Mr. LISHMAN. Did you interview Johnny Ray by longdistance telephone over the air?

Mr. PRESCOTT. Yes, I did. I got him backstage at one of the theaters in Washington and I had him do one line introduction to the songs I subsequently played.

Mr. LISHMAN. Isn't it true after that incident that the practice of exclusives on WHDH ended?

Mr. PRESCOTT. Slowly. Not entirely—but we began to win the confidence of the distributors. But the situation for the first 3 years, anyway, was, if I might use the phrase, the worst form of unfair competition that I had ever witnessed in radio.

Mr. LISHMAN. Didn't Bob Clayton also have an exclusive arrangement regarding talent, whereby he prohibited the appearance of artists on his show who had previously appeared on a rival station in Boston?

Mr. PRESCOTT. Yes, sir. A lot of stars would come up to me and say, "Look, please understand. I want to be your friend. But if I go on your show first, or within 6 hours after I appear on his show, I am going to get into a lot of trouble." As a result of that, most of the stars for the first 3 years of WORL's newborn existing life ignored the station. We could not get any interviews, we could not get any stars, and we could not get any help, because they all favored WDHD. They were afraid of the threats.

Mr. LISHMAN. Mr. Prescott, do you recall that Arnie Rosen, record librarian at WBZ, put the record "Growing Love" on the top 50 list for Harry Weiss, a record promotion man, with Music Suppliers, Inc.?

Mr. PRESCOTT. Yes, sir, I remember the record being listed on the top 50. And I often wondered why, because I did not feel it was a hit at that time. In fact, we had conversations about it.

Mr. LISHMAN. And did you have a disagreement with Mr. Weiss over the record?

Mr. PRESCOTT. Well, I had a disagreement with him and the librarian because, as I say, it was a hit record to me, or according to my standards, and I did not even like the record, and I did not want to play the record. But being on the top 50, of course I was forced to.

Mr. LISHMAN. Did Mr. Weiss ever pay you any money to play that record?

Mr. PRESCOTT. Well, the strange situation was, and it refers back to what I said, I was receiving payola from Music Suppliers, but the right that I had reserved for myself to select what I wanted to play was obvious in this particular situation. This was one of the records that I did not want to play, because I did not like it, and I did not feel it was a good record.

Mr. LISHMAN. Well, you were aware that Music Suppliers, Inc., had an interest in this record, and for that reason they were having it plugged and "hyped" on lists around Boston?

Mr. PRESCOTT. Yes, sir.

Mr. LISHMAN. Now, what does "hyped" mean in the trade?

Mr. PRESCOTT. Well, there are many ways to hype a record. It seems that there is always a new reason or a new way born to hype a record, depending upon the prevailing situations. When the top 40 lists came into popularity, somebody got the idea that we ought to poll the record stores. We would take 20 key record stores and ask them what their best selling records were, and by this you could compute what the top 40 songs were. But of course distributors and record companies find a way so they would walk into a record store and say to a man, "Well, here are 10 free records, and all you have to buy is 2. But make sure you get it on the list."

So when a radio station would call a record store, because of the fact that they got 10 free records, and would realize a bigger profit, they would say this is one of their best-selling records. The record may not have even been played on the air yet. But it was one of their best-selling records. So this is the way you could hype a record through a retail outfit, because the radio stations were now using retail outfits to form their survey.

Mr. LISHMAN. And would hyping lead to freebies sometimes?

Mr. PRESCOTT. I think freebies are a necessary part of hyping.

Mr. LISHMAN. Well, would you describe what are meant by freebies?

Mr. PRESCOTT. What we just talked about—giving free records to induce the listing or the featuring or the playing in any area of a particular song.

Mr. LISHMAN. Now, Music Suppliers pushed this record "Growing Love" at the record stores they serviced.

Mr. PRESCOTT. Yes, sir. As a matter of fact, I would like to add one more point. The record business changed, too, in another great extent, and that is that because of the competition again in getting records purchased by stores, many distributors would put in a hundred records and guarantee them at no risk to the retailer. If he did not sell them, he could return them for a credit.

Mr. LISHMAN. Mr. Chairman, I have no further questions.

I would like to thank the witness for his testimony today. I know, in my first discussions with him, that he was very reluctant to be in a situation where someone might accuse him of having fingered anyone. And I certainly think his testimony this morning has added a great deal of valuable information to our record.

Mr. PRESCOTT. I just want to say something, if I may, and I hope it does not sound the way it might sound, Mr. Chairman, with your permission.

As I told you, I have been in radio for 12 years. I was contaminated by the industry. I have no excuses for it. I guess I feel a little better about it in the fact that for the first 8 or 9 years of my career I was not in any way connected with this kind of situation. I did succumb toward the latter part of my career, and I voluntarily got out. But that is only a personal thing.

But one of the reasons that I enjoyed coming to the committee is because I honestly believe, in my heart, that the purpose that the committee stands for is a wholesome one, and a necessary one. I could talk for hours—I won't—about the general situations that I have seen in radio in the last 3 or 4 years that in my humble opinion are deplorable; not only the payola, because that is only part of it—in the areas of public service, the tremendous neglect that exists among radio stations. The fact that they have very little or no respect for the audiences who listen to them. They take advantage of them by treating them as some kind of stupid individuals. Their responsibilities to them are so neglected that it made me sick to my stomach.

That is one of the reasons I left the industry, and I don't intend ever to go back to it.

I hope that in the future, and I hope that as a result of all these hearings, that legislation of some sort is created so that radio sta-

tions will have to function within a tighter bound of responsibility, so that they will, for the first time, I think, in many, many years give the public the important things that they are entitled to.

It is a powerful force as a medium, and what it is doing is just wrong.

The reason I wanted to say that is because I know now that I am away from radio, in the last 9 months, and in meeting a world that I never really saw—I only spoke to—but I was never in real contact with them—even though they are not aware of it, because the public is always apathetic of these things, that they have to be led through radio, and I hope that they will be, and I am sure that they will be.

The CHAIRMAN. Mr. Prescott, it seems to me that what you have said about the radio industry is certainly most appropriate. But your testimony has not indicated to me that the sole responsibility is with the broadcasting industry, which you seem to criticize rather severely.

I think insofar as these instances you have explained, they justify the criticism.

But you did say, as I understood, in answer to a question from Mr. Bennett, that these decisions primarily, with reference to the records, music, were made by you as the diskjockey.

Mr. PRESCOTT. Not what I played, Mr. Chairman. That was dictated to me.

The CHAIRMAN. That part of it was dictated to you?

Mr. PRESCOTT. Yes. Radio in the last 4 years has become—

The CHAIRMAN. I thought you said a moment ago that you would take in a lot of records, but you reserved the right to determine which ones you played.

Mr. PRESCOTT. Yes, I did, sir. What I mean is that the records that I played were dictated by a formula of the top 50, and I was allowed to play maybe four songs an hour of my own choice.

The CHAIRMAN. Well, that is the other thing that I was going to mention, which it seems gets beyond the broadcast industry's control under the present procedure, and that is the music companies. It seems to me that they were the primary factor in the methods of promoting these records.

Mr. PRESCOTT. There is no question about it that we are all terribly guilty in one way or another.

The CHAIRMAN. It seems to me that is a part of the industry which gets back to the talent, managers, and so forth, and their keen desire to develop a top record.

Mr. PRESCOTT. That is right. The amazing thing is—I don't know whether you had noticed it or not—but it has been reflected in the last few weeks—things that should have been done a long time ago. But many radio stations suddenly, as you probably know, have abandoned the top 40 format, because of the investigations, and they have gone the other way. A lot of new stations are cropping up that are playing a different grade of music, a better grade of music, which is a wonderful thing. But it should have happened a long time ago.

The CHAIRMAN. Now, you have been in the business these years, and I think you are an experienced man, and you can answer some of these questions. But I will say that I join Mr. Lishman, our counsel,

for commending you in your willingness to talk very freely about this entire situation from your experience. It certainly has given me an insight into how this thing actually operates.

You having been in the business a good long while, isn't there some kind of a weekly sheet that comes out that is called some kind of a rating on records, and so forth, that diskjockeys adhere to pretty carefully?

Mr. PRESCOTT. Cash Box, Billboard, Variety—things like that, there are several of them.

The CHAIRMAN. Which is the one that so many of them use as their guide to determine what records are most popular, say, for a particular week?

Mr. PRESCOTT. The two prominent guides are the Cash Box magazine and Billboard magazine.

The CHAIRMAN. Well, are they followed mostly by diskjockeys, or do they follow—you mentioned a moment ago the suggestions that come from the stores.

Mr. PRESCOTT. Oh, sure. I have no personal faith in either one of those two surveys. I think stations adhere to them on an executive level because it is easier, it is printed for them, and they can say, "Here it is; our work is done for us, and it is as good as anything that exists."

But I do not place any credence in either one.

The CHAIRMAN. Do you think those ratings are rigged, in order to get—

Mr. PRESCOTT. Do I think that they are?

The CHAIRMAN. Yes.

Mr. PRESCOTT. Oh, sure. I do not believe that they are reflective of what exists in the country.

The CHAIRMAN. I think you have a lot of people who agree with you.

Mr. PRESCOTT. That, too, is another bad thing—to have to take a whole broadcasting industry of over 3,000 stations and for lack of ambition or what have you, simply say, "There it is. It is printed for us. Let's use it," without really knowing how good or bad it is.

When a whole industry depends on something like that, I think it is a tragedy.

The CHAIRMAN. You said a moment ago that if you were a station manager, you would know how to prevent payola.

Mr. PRESCOTT. Yes, sir.

The CHAIRMAN. How would you do it?

Mr. PRESCOTT. Well, there are many ways of doing it. No. 1, I would set up a kind of—first of all, you would have to determine the format of the station obviously in terms of what you want to play. But assuming it is a popular music station, I would set up a kind of control and take away the selection of the music, No. 1, from the diskjockeys so that they would have no personal contact in any way with any distributors or publishers or record companies. You would have to do that.

Now, then you would say, "Well, whoever is in charge would have a personal contact with them." I think that would depend largely upon who you select to do it, or whether it is one or two or three people, and who the people are. But I think it can be controlled on

that level, if the music is taken away from the diskjockey's selection, because that is where it will probably exist in its biggest form.

There are other ways of controlling it, and that is by buying records instead of being served, if a station is so inclined. The mere fact that they will buy their records instead of accepting free records will in no way obligate them.

Another way is to keep distributors, promotion men, away from the radio stations so that they are not allowed to visit the stations at all during business hours.

Then, of course, the most important thing, and I think this is probably the toughest problem, is that radio itself is responsible for exposing whatever it exposes, and if it does not expose what is obviously rank or bad music, then these companies cannot continue to function. And let us face it.

Mr. Harris, you can go into the record business tomorrow, sir, for \$150, with a chance of making \$100,000. It is as simple as that. All you need are four musicians at a cost of \$200—

The CHAIRMAN. Is that a proposition?

Mr. PRESCOTT. No. All you need is the musicians, a singer for \$100—there is a total outlay of maybe \$250. And \$1,500, if you want to go a little bit further, for payola, and you are in the ring.

But anybody can go into the record business. They record songs in cellars, in telephone booths, it doesn't make any difference—wherever there is a tape machine and a plug.

As long as you can do these things, and stations—and I do not understand why they are willing to expose these things, or they allow it to be exposed—they just keep the level of music, the basic level of music down.

The thing that bothers me is you begin to wonder what is going to happen to the kids of today when they grow up—they are going to have a heck of a musical education and heritage to pass on to their children.

The CHAIRMAN. Did you attend the diskjockey convention in Florida?

Mr. PRESCOTT. No. When I got through at 6 o'clock, I resigned as a diskjockey and went home. I never did record hops or never socialized with the stars or went to night clubs to a great extent, unless I took my wife out to dinner or something. But I tried to live two separate lives. I often wonder why.

Mr. BENNETT. Would you play records of the companies that were paying you that you would not otherwise have played?

Mr. PRESCOTT. Well, Mr. Bennett, I do not want to sound as though I am a lily-white boy who did not do anything wrong. I had my own set of ideals. I would not play records personally, although I know it exists, just for money—"Here is a record, you must play it." Why or how, you know, I became associated with two distributors in this town—it is just one of those things. Maybe it was too tempting. But I always reserved the right to play what I wanted to play. I would never allow anybody personally to dictate to me that I must play a particular record. But I think I was a little different than most people. I am certainly the exception in that area. But that does not change the situation at all. I mean, it does not make me any nicer.

Mr. BENNETT. Well, you don't feel you did anything wrong?

Mr. PRESCOTT. Oh, yes; I have.

Mr. BENNETT. You did not play any records that you would not otherwise have played had you not been paid.

Mr. PRESCOTT. Well, as I have often said, and it sounds strange, I probably would have played the records anyway. But it is just that in my particular case, it was very tempting at that time. I had to get away from it for that reason. And I did. I walked away at a time when I felt I could have gone on for many more years. But I just did not like myself.

Mr. BENNETT. It is hard for me to believe they would pay for playing something that you would play anyway.

Mr. PRESCOTT. They were guaranteed a certain amount of exposure on their labels. They do not care what became a hit, as long as it was their record that you played, and not somebody else's.

Mr. BENNETT. What you were getting paid for, then, actually was to play a certain percentage of their records.

Mr. PRESCOTT. Yes.

Mr. BENNETT. But you claim you only played, of that percentage, the ones that you would have played anyway, whether you got paid or not.

Mr. PRESCOTT. Probably—yes. That is why I, unlike a lot of other diskjockeys, never had relationships with any other distributors in Boston, except the 2½ that we talked about, in a market of 11 distributors. If I was contaminated in my own opinion to the point where I would take anything to play anything, I probably would have had relationships with all of them.

Mr. BENNETT. I wanted to ask you a question about this exclusive playing; that is, by your competitors in Boston. I haven't looked into that at all. I don't know whether it is against the law, or whether it comes under the Federal Trade regulations or not.

But this practice of manufacturers giving an exclusive to some one dealer is a very common one in other areas.

Mr. PRESCOTT. Talking about clothing, things like that?

Mr. BENNETT. Clothing, automobiles, cameras, almost anything you can think of—a manufacturer will select one dealer in an area and give him a franchise.

Mr. PRESCOTT. You see, records are not franchised, that is the difference. Records are theoretically available to everybody.

Mr. BENNETT. I mean, do record manufacturers have one outlet, say—

Mr. PRESCOTT. Franchise distributors; yes.

Mr. BENNETT. Is that a common thing?

Mr. PRESCOTT. Oh, sure.

Mr. BENNETT. Well, what is the difference between that and giving it to—

Mr. PRESCOTT. Well, the distributor would then go to only one radio station and prevent the others from having it. You see, we are talking about the exposure of the record on an exclusive basis, not the selling of it.

Mr. BENNETT. Well, we get down to a pretty fine point. That is, between exposure—

Mr. PRESCOTT. If there are 11 stations in a market, that distributor theoretically, as he does today, services all the radio stations, and he wants—the backbone of his business is exposure. He has to get it played on as many stations as he possibly can. But this situation was the reverse. They kept it away from other stations because they wanted to put all their eggs in one basket.

Mr. BENNETT. They were causing you a good deal of harm.

Mr. PRESCOTT. Terrible.

Mr. BENNETT. Was the station owner aware of this practice?

Mr. PRESCOTT. Oh, sure, the whole city was aware of it. But there was nothing we could do. We could not combine as a unit of seven or eight stations and say we are not going to play your record, because then we would have violated the law.

Mr. BENNETT. Did you ever complain to anybody about it?

Mr. PRESCOTT. In my case, I was probably too young to appreciate it, but I should have. I would do that now.

Mr. BENNETT. Did the station owner complain?

Mr. PRESCOTT. I don't think so.

Mr. BENNETT. Did he complain to the FCC?

Mr. PRESCOTT. I really do not know. I assume he did not, because nothing was ever done to eliminate that situation.

Mr. BENNETT. Did you take it up with your attorney to get a legal opinion?

Mr. PRESCOTT. Probably not. But the tragedy of it is you get a 3-year jump on all the other stations in the market, as a result of a little insignificant thing like that, and you can maintain the ratings you develop in those 3 years and reflect them for many more years in the future. And that is one of the bad results of that thing, because it kept a lot of stations down and kept revenue off the air.

Mr. BENNETT. Now, I assume there are many stations around the country that have engaged in this practice.

Mr. PRESCOTT. Yes, sir.

Mr. BENNETT. I just assume that. By your indictment of the practice, which I concur in, you did not mean to indict the whole 3,000 stations, did you?

Mr. PRESCOTT. Oh no. I take a situation that exists in Boston.

Mr. BENNETT. You are indicating those guilty of practices you are talking about here.

Mr. PRESCOTT. Yes.

Mr. BENNETT. What about WNEW in New York?

Mr. PRESCOTT. WNEW in New York? I worked for them for a year. I think it is perhaps one of the best-run stations in the entire country. It is a fine station.

Mr. BENNETT. Did they do the same thing on payola?

Mr. PRESCOTT. Well, if you want a personal and objective opinion, I do not think they are guilty of payola in total. They are a pretty good station. You see, they rely on a very fine point that is hard to put into words. But they rely on a kind of creativity and being different for their popularity. I do not know how many of you are familiar with the station, but records really are not important on a show that they have in the morning—the "Clavin and Finn Show"—you are listening primarily for the personalities. There are other

people on the station that reflect wonderful taste in music, because most of them play a lot of the things you do not hear on most stations.

They are not a station out to sell records, where many stations predicate their image on selling the record because selling it makes you popular, and it gets the teenagers. They have always had a philosophy, "We do not care if the teenagers listen to us—but we are not going after them specifically."

Mr. BENNETT. Well, do you think without payola that a lot of this so-called junk music, rock and roll stuff, which appeals to the teenagers would not be played, or do you think that kind of thing would be played anyway, regardless of the payola?

Mr. PRESCOTT. Never get on the air.

Mr. BENNETT. Do you think payola is responsible for it?

Mr. PRESCOTT. Yes; it keeps it on the air, because it fills pockets.

The CHAIRMAN. Mr. Mack, do you have any questions?

Mr. MACK. Mr. Prescott, you mentioned that payola started in 1947, I believe.

Mr. PRESCOTT. I feel that 1947, Mr. Mack, was the beginning of the tremendous growth of the record business as a business. You see, prior to that I don't think there were any more than 15 million or 18 million record players in the United States, over a long period of time, since the first record was made. But beginning with 1947 and through 1955 I think that number almost tripled. And then of course RCA Victor introduced the 45—I don't know whether you remember the battle of the speeds, but they spent a tremendous amount of money to force the 45-revolutions-per-minute speed. And when the 45 was finally adopted by the record-buying public, it killed the life of the 78, and those machines sold like hotcakes. So 1947 was the beginning of the growth of the record business. Even albums did not really come into a big productivity until about 1952.

Mr. MACK. Well, then, would you say that 1947 was the beginning of payola as such, as the definition of the word?

Mr. PRESCOTT. It began at that point, yes. But you see, in those days the biggest payola was the exclusive record, believe it or not, because diskjockeys were just beginning to become popular around that time. And it was more important for a jockey at that time to get an exclusive record and be able to shout, "I have got it," where nobody else had it on the one or two other stations, than money. But then as the diskjockey grew into a business, he realized his power. At that time he did not know what his image was, because he was just starting in a relatively new business. So he went into the areas of personnel management, publishing, putting his name on songs, and whatever it is. It has been a natural evolution in a more or less new business.

Mr. MACK. What did you mean by the exclusive record?

Mr. PRESCOTT. What we talked about earlier—where he would get the record and his competitors would not have it. This was the greatest kind of payola.

Mr. MACK. That is what I wanted to find out. That is a result of payola.

Mr. PRESCOTT. That was the prevalent payola at that time. Then it developed into money, and more money for more people. But the

diskjockey life, and of course the independence radio, as you know, is relatively just a short thing.

Mr. MACK. Then you worked as a diskjockey from this time, 1947 to 1957, participating in this business.

Mr. PRESCOTT. That is right. I have nothing to hide.

Mr. MACK. Is that correct?

Mr. PRESCOTT. Yes, sir.

Mr. MACK. Well, in this 10-year period you must have had many opportunities to join the club.

Mr. PRESCOTT. All the time.

Mr. MACK. And that dates back to 1947.

Mr. PRESCOTT. Oh sure.

Mr. MACK. I have no other questions.

Mr. DEROUNIAN. No questions.

The CHAIRMAN. Mr. Moss.

Mr. Moss. Yes, sir.

You indicated that a librarian at WBZ had placed a record on the top 50. I think you indicated that if a record appeared on this list of 40 or 50 tunes, whatever it might be, that you were obligated to play it, even though you might not otherwise have played it.

Mr. PRESCOTT. Yes.

Mr. Moss. Was this a list of your own station?

Mr. PRESCOTT. It was made up by the librarian, to represent the programing of the station.

Mr. Moss. By the station librarian. It was an individually compiled list.

Mr. PRESCOTT. Yes.

Mr. Moss. Do you suspect the librarians took some payola?

Mr. PRESCOTT. Unquestionably.

Mr. Moss. So the payola did finally force you to put records on the air you would not otherwise have played.

Mr. PRESCOTT. Sure, that is the top 40. You see, Mr. Moss, payola is a wonderful way of finding the avenue where it is accepted. And if you take it from the diskjockey and you put it in the hands of a librarian, it just seems to find itself in that area. I guess the only thing you can say is that if you can just reach one point somewhere where you know that the people are honorable, and that they would not accept it, and put them in charge of the thing, I guess maybe that is the only way you can do it.

Management, unfortunately, for too many years never really took an active interest in what was played on the air.

Mr. Moss. Well—

Mr. PRESCOTT. I mean that was terribly neglected, I think.

Mr. Moss. Are you convinced that management was unaware of payola?

Mr. PRESCOTT. Well, when you say unaware—you know, I cannot talk about an entire industry. I can talk about isolated situations.

Mr. Moss. I only expect you to speak of that management with which you are familiar.

Mr. PRESCOTT. When I worked at WORL, I think my boss at that time, who is a pretty wonderful guy, was very naive and just did not believe that any such a thing could exist. I think at WBZ they certainly knew that there was payola.

Mr. Moss. They took it?

Mr. PRESCOTT. You are talking about management now?

Mr. Moss. Yes.

Mr. PRESCOTT. Well, they practiced it in their own way.

Mr. Moss. How many albums did they get?

Mr. PRESCOTT. Well, close to \$10,000 or more of music.

Mr. Moss. Were you authorized in soliciting these albums to permit yourself to favor their music on the air?

Mr. PRESCOTT. Personally, no.

Mr. Moss. Or was Mr. Givens authorized to make such representations?

Mr. PRESCOTT. To make the representation to a company—oh sure.

Mr. Moss. Then the management of your station there was engaged in soliciting payola.

Mr. PRESCOTT. If you did not promise them something, Mr. Moss, there was no reason for them to give it to you.

Mr. Moss. I recognize that we have repeatedly heard how naive management is. But somehow I could not believe that to be true also in the record business.

Mr. PRESCOTT. At WBZ I think they knew what payola was. I think they practiced it in their own way. I think they were aware of it. I think in their case it was delinquency. They just did not do anything to try to in any way stop it. As I say, in the case of WORL we just happened to have a very nice guy who did not believe it existed.

Mr. Moss. The librarian is the music director, and the one who has general supervision over what the diskjockeys are going to play.

Mr. PRESCOTT. For the most part in today's radio, he has a much stronger role than he ever has had.

Mr. Moss. Of course, the important difference today is that radio uses its own news and features very little network time. It is all locally programed, and the cheapest way of programing is to record.

Mr. PRESCOTT. Definitely. The last 4 years, with the crumbling of the networks—-independent radio has become almost most of your stations throughout the country.

Mr. Moss. Now, I just want to go back to some earlier questioning, merely to clear up the record, because it seems to me we have a point that is a little confused. You mentioned that Mr. Carter, of Music Suppliers, made a downpayment on this automobile, and Music Suppliers then paid the monthly payments?

Mr. PRESCOTT. No; I remember that. And I didn't say anything. I made the downpayment with my automobile; traded it in.

Mr. Moss. That constituted the downpayment?

Mr. PRESCOTT. They carried \$2,000 worth of the payments.

Mr. Moss. I just wanted that clear, because it was confused on the record.

That is all I have, Mr. Chairman.

The CHAIRMAN. Mr. Devine.

Mr. DEVINE. Yes.

Mr. Prescott, the word itself, payola, is that a word that was coined by diskjockeys for this practice? I am frank to say I never heard of the word before our hearings last year.

Mr. PRESCOTT. Yes; I think it was coined by the industry, the record people, diskjockeys.

Mr. DEVINE. About 1947?

Mr. PRESCOTT. A little later than that. But it goes back, I would say, a good 10 or 12 years.

Mr. DEVINE. You seem to have a vocabulary that is perhaps confined to the diskjockey industry—this “laying on,” the hype, the free-bees—all those words, are they just lingo of the diskjockeys?

Mr. PRESCOTT. Yes. Those are slangular expressions that are typical of the industry. They save a lot of time and explanation.

Mr. DEVINE. Take an independent station at 8 o'clock at night says, “Here is a new record that is 31 on the list.” And they play it. And then at 8 o'clock the following morning they play the same record and say it is 17 on the list.

Mr. PRESCOTT. He probably forgot his list that day and was trying to remember.

Mr. DEVINE. There is no accuracy?

Mr. PRESCOTT. I will show you something else that is unbelievable—two things. If you play a record that is number 50, and you will play a record that is No. 1, the only difference is in the mathematical number that you give it on a piece of paper. But in terms of the air, it is exactly the same thing. Number 50 is getting the same exposure as No. 1. It makes no difference what the position is when it is being played, except either orally or on paper, because it is getting a play for a play.

Mr. DEVINE. It is misleading the public as to which is the most popular.

Mr. PRESCOTT. But this is the most interesting thing, and I have seen this happen, and a good mathematician would probably pull his hair out. A radio station will call a record store and say, “What are your top 40 best selling records this week?” And he will give them a list.

Now, the radio station will get on the air and play those 40 songs and say these are the reflected sale of a record store. Now, a distributor will come in and say, “I would like you to buy this record.” He says, “How can I buy it? It is not on the top 40.” So he can't buy it. So the distributor will say, “Well, I'll tell you what I will do. Here are three free records for every one that you buy.” Next week it is on the top 40. Another record has to be taken off. A record that may be actually selling and more popular than all of them may no longer be on that top 40. And yet a song that has not even been exposed on the air yet is in the top 40. How do you justify it?

Mr. DEVINE. Generally a thought-control operation; isn't it? That is all.

The CHAIRMAN. A payola operation.

Well, Mr. Prescott, again I want to compliment you for your very frank and forthright testimony here today. Even though you were at first, understandably so, reluctant to provide information or talk about it to the investigators, or our staff, after you got into it and found out what the situation was, you have been very helpful, explaining for the record just how this business operates from the standpoint of an experienced man.

I know we have asked you a good many questions, and you have been very free with your answers. I mean by that you have not hesitated to give very frank answers to us.

May I ask you if there is anything else, any other information you care to give the committee, anything we have overlooked that might be helpful to us?

Mr. PRESCOTT. You are talking primarily in the area we talk about, records and so on?

The CHAIRMAN. Yes. Or any other particular station or company or operation we have not discussed this morning?

Mr. PRESCOTT. No; I think, frankly, we have covered most of the important things.

The CHAIRMAN. Do you know from your own knowledge that this same situation is going on in other places, in Boston, where you work?

Mr. PRESCOTT. Oh, sure.

The CHAIRMAN. What are some of the areas you know of, that are rather outstanding in this type of operation?

Mr. PRESCOTT. Well, I think that the situation exists in many Boston stations. I think you are probably aware of it, through your investigating committee.

The CHAIRMAN. I mean outside of Boston, in other areas.

Mr. PRESCOTT. Other areas? Well, it is primarily what you hear, you know. Things happen in Cleveland that I think bear out the fact that have existed in Cleveland. There was an upheaval in Detroit. I think almost anywhere you go, you are going to find it.

The CHAIRMAN. From your association with the record companies in New York, one would not suppose it was limited just to your visits with Mr. Givens.

Mr. PRESCOTT. No; I think other stations could probably accomplish that. But I think frankly that would be predicated on the strength and popularity of the individual station. In other words, I know many diskjockeys who never receive records from record companies, because they do not consider the station as valuable enough to even spend 50 cents a record on them, as a free service. So I think that the power of the station and also its accomplishments has a lot to do with getting what you want. The bigger the station, the more you can get, is what it amounts to.

Mr. DEVINE. Mr. Prescott, I had occasion to talk to a diskjockey who is not necessarily friendly with this committee or the work we are doing, and he indicated to me that an experienced diskjockey, such as you are, could listen to any diskjockey program for a period of 10 minutes and tell whether they were receiving payola or not.

Mr. PRESCOTT. He's got a point, sir.

Mr. DEVINE. Is there anything you could tell this committee that would be a tipoff at least to the investigators on the type of thing to look for?

Mr. PRESCOTT. Well, the type of thing to look for—

Mr. DEVINE. In the pitch of the diskjockey on the air?

Mr. PRESCOTT. You mean in terms of what?

Mr. DEVINE. Well, just listening to a diskjockey perform for 10 minutes or half an hour, the pitch he uses, the type of thing, whether he mentions a label, things like that.

Mr. PRESCOTT. Well, I can tell you that mentioning a label is very insignificant. It has nothing to do in relationship to the popularity of the sale of a record, because people just do not buy that way. I

can say this. Sometimes a diskjockey will play a record six times in 4 hours. He is not doing that for nothing.

Mr. DEVINE. That's what I mean. Are there other key things like that, that would reveal it to you?

Mr. PRESCOTT. Sure, there are little tricks you become aware of. He might say: "Here is Frank Sinatra to sing. Here is a lovely song by Dinah Shore. But right now I have a record that is going to gas you, the biggest record in the world," and just talk about it and eulogize it for 10 minutes. Beware of that record.

The CHAIRMAN. Thank you very much.

Mr. PRESCOTT. Thank you.

Mr. BENNETT. Just one final question. Did you attend the Diskjockey Convention in Miami?

Mr. PRESCOTT. Mr. Bennett, I did not attend the Diskjockey Convention. I have heard a lot of stories about it. It must have been quite a time. I think that the article in Time magazine was probably the greatest caption I have ever seen, which was taken from a Miami paper when it said that the convention was nothing but "booze, broads, and bribes." And I think that summed up the whole meaning of the convention in Miami. As a matter of fact, if you ever get into hotel investigations, find out why the Americana won the account and not the Fontainebleu or the Eden Roc, because there must have been some "hanky-panky" there, too.

The CHAIRMAN. Well, again, thank you very much, Mr. Prescott. Do you have anything else, Mr. Lishman?

Mr. LISHMAN. No, sir.

The CHAIRMAN. I think that if you have something you wanted to say—

Mr. KLARFELD. Very, very briefly, Mr. Chairman. I just wanted to say that my client's reluctance, which appeared at the outset, was due primarily not because he had anything to hide, or not that he was going to try to pull the wool over anyone's eyes, but he does have a very important position in a field which is somewhat allied to this record business. He did feel that without a certain feeling of security to some degree, to come to Washington and tell what he knew voluntarily, would seriously impair his right to even a livelihood. And I want to let the committee know that this was the underlying factor about his original reluctance—because I think that you are all quite aware today of his willingness to cooperate. We have been here twice.

Along that line, sir, I would respectfully like to request that what he has said be handled with the discretion that you gentlemen possess insofar as greater interrogations of other witnesses are concerned—try to protect my client to the best of your ability, so that it will not interfere with the purposes of the committee.

I should also like to call to your attention—I am referring to paragraph O of the rules here—which state that no evidence or testimony taken in this session, in substance, may be released in a public session without the consent of the committee. This is the consent of the committee that I am asking for. And also if it is possible, sir, we would like to be excused, if the committee has no further use for us.

The CHAIRMAN. I can appreciate, of course, the reasons for your statement. The committee will make the determination as to whether or no: this testimony will be made public, and if so, when. It is very likely that a great deal of this will come out in public hearings. Consequently, if that develops there would be little point in not making available this testimony, as a matter of fact, in connection with the investigation. But at the present time I do not personally think it should be made public.

And the other point—well, of course, naturally the committee staff, having made these investigations, and having a great deal of this information, will undoubtedly ask questions of other witnesses on some of the same things we have been talking about today. That, of course, cannot be avoided.

I do not think we will need you any further. Consequently, you may be excused. Should the committee later find it necessary to talk with you further, we will let you know and give you ample time. But so far as I can see at this time, we will not need you further. You may be excused if you like.

Mr. PRESCOTT. Thank you very much, sir.

The CHAIRMAN. Again, with the thanks of the committee.

The committee will adjourn until 2 o'clock and we meet in the caucus room again.

(Whereupon, at 12:45 p.m., the committee stood in recess until 2 p.m. of the same day.)

AFTERNOON SESSION

(The subcommittee reconvened in the caucus room, Old House Office Building, Washington, D.C.)

The CHAIRMAN. The committee will come to order.

Permit the Chair to make this statement at this time. There seems to be a great deal of concern and so much urgency for a witness list, that is, the witness list of today. I do not know why it is so important that everybody has got to have the witness list well in advance of the time when the witnesses are going to be called.

The Chair and the committee, of course, like to cooperate, but we cannot tell every time, which witness is going to be called next. And it is impossible to tell how many witnesses are going to be reached in a given period of time.

So I ask that everyone bear with us: It will be our purpose to develop what we can, the facts in these matters. And we are going to use such witnesses as will be helpful to us in bringing out the facts, and the truth.

I hope that will be sufficient for everyone to understand the reason behind this. We cannot be giving out names, or be sure that they will be heard this day or even be heard at all later.

Mr. Paul G. O'Friel.

Just a minute, gentlemen, this committee is in session. Gentlemen, you have been around here long enough to know what the rules are, and if you want the Chair to cooperate with you, I hope that you will do the same thing. I have tried to cooperate in the past on these things. Therefore, I do not intend to permit this going on when a witness is presented here.

I hope that I can have your cooperation in the future, because, after all, there is a responsibility in the operation of this committee as provided for in the rules.

Mr. O'Friel, do you object to having pictures taken in connection with your appearance here?

Mr. O'FRIEL. Not before I testify, no.

The CHAIRMAN. For 30 seconds you gentlemen can continue and we will recess the committee for that purpose.

(A brief recess was taken.)

The CHAIRMAN. Will you rise and be sworn?

Do you solemnly swear the testimony you are about to give to this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. O'FRIEL. I do.

The CHAIRMAN. Have a seat.

I hope that we may have the attention of everyone here. I did call attention to the fact that you are here as guests of the committee. Consequently, we hope we will have order, just as much as possible.

TESTIMONY OF PAUL G. O'FRIEL, WEST NEWTON, MASS.

The CHAIRMAN. State your name, please.

Mr. O'FRIEL. Paul G. O'Friel.

The CHAIRMAN. Mr. O'Friel, where do you live; what is your address?

Mr. O'FRIEL. I reside at 29 Vincent Street, West Newton, Mass.

The CHAIRMAN. What is your business or profession?

Mr. O'FRIEL. I am general manager of WBZ Radio in Boston, Mass.

The CHAIRMAN. Mr. Lishman, you may proceed.

Mr. LISHMAN. Mr. O'Friel, how long have you been general manager of WBZ and WBZ-TV?

Mr. O'FRIEL. I have been general manager of WBZ Radio since July of 1958. I am not general manager of WBZ-TV.

Mr. LISHMAN. In November and December of 1959, did you in your capacity as general manager, cause an investigation to be made to determine whether diskjockeys, program directors, music librarians, or other personnel of WBZ had been engaging in so-called payola practices?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. And would you state for the record what you believe payola practices to be?

Mr. O'FRIEL. I believe payola practices to be the payment or gifts from third parties to individuals to influence their selection of programming material.

Mr. LISHMAN. That is people who receive and accept money or other things of value for playing records over the air; is that correct?

Mr. O'FRIEL. Yes, sir. As I said, to influence their selection of programming material. And this would include records.

Mr. LISHMAN. Without making announcements of the fact that they had received payments for such?

Mr. O'FRIEL. Yes. This was receiving gifts from third party interests to influence them in their selection of programming.

Mr. LISHMAN. As the result of that investigation, did you determine whether anyone connected with WBZ had accepted moneys or other valuable considerations for playing certain records on the air?

Mr. O'FRIEL. The results of our investigation were negative.

Mr. LISHMAN. Did you find, as the result of that investigation, that some personnel connected with WBZ had received either money or gifts from record distributors?

Mr. O'FRIEL. Yes; we did.

Mr. LISHMAN. And what did your investigation show to be the purpose of such money or other gifts?

Mr. O'FRIEL. In one case, it was a business gift—a regular business amenity.

In the second one it was a case where they received money for advice in the selection of records for record hops.

Mr. LISHMAN. What is a record hop?

Mr. O'FRIEL. A record hop is an outside activity by a diskjockey, usually it is put on by some charitable organization to raise funds, and they ask the diskjockey there, to spin records.

Mr. LISHMAN. But they do not go out over the air?

Mr. O'FRIEL. No; this is entirely separate and distinct from the air appearances.

Mr. LISHMAN. Well, as the result of that investigation was it ascertained that two diskjockeys employed by WBZ; namely, Mr. David Maynard and Mr. Alan Dary had accepted money and other gifts from record distributors?

Mr. O'FRIEL. We did ascertain that these two gentlemen, Mr. Maynard and Mr. Dary, did receive gifts from record distributors.

Mr. LISHMAN. As a result of your investigation what action was taken by WBZ with respect to Mr. Maynard?

Mr. O'FRIEL. In Mr. Maynard's case, for a period of 5 weeks, we suspended him from the air, during which time we reviewed the facts of the case thoroughly and then * * * period.

Mr. LISHMAN. What if any action did WBZ take with respect to Alan Dary?

Mr. O'FRIEL. In completion of my last answer to the last question, and in answer to this, too, both of these individuals were put on a probationary status and strict control put over their activities.

Mr. LISHMAN. What is the present situation—that of Mr. Maynard, with respect to WBZ?

Mr. O'FRIEL. He is on a probationary status.

Mr. LISHMAN. And does that same thing hold true for Mr. Alan Dary?

Mr. O'FRIEL. Yes.

Mrs. LISHMAN. Did Mr. Maynard admit to you or other representatives of WBZ that he had received money or other things of value from record manufacturers, distributors, promoters, or retailers?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. Did he admit receiving anything of a valuable nature from Music Suppliers, Inc.?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. Did he admit receiving money or other things of value from Donald Dumont of Dumont Records Distributors?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. Did you or other representatives of WBZ obtain an affidavit from Mr. Maynard with respect to money or other things of value which he received from Music Suppliers, Inc., or DuMont Records Distributors?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. Is it correct that Mr. Maynard admitted receiving checks totaling \$400 in 1958 and totaling \$1,175 during 1959?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. Did he indicate from whom these checks had been received?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. Did he, also, state that Music Suppliers made payments on his behalf for a 1957 Mercury station wagon, and subsequently, on a 1959 Buick, amounting to about \$1,300 a year for a 2-year period?

Mr. O'FRIEL. I believe that is correct, yes, sir—I am not sure of the amounts.

Mr. LISHMAN. Did Mr. Maynard, either in the affidavit or otherwise, admit receiving any other checks, money, or things of value?

Mr. O'FRIEL. I do not recall. As I say, I do not think so.

Mr. LISHMAN. What was the approximate date of the first discussion, of this matter, with Mr. Maynard?

Mr. O'FRIEL. It was the middle of November—the early part of November, I would say. Somewhere probably—if you have a calendar, I could refresh my memory.

Mr. LISHMAN. If I should mention November 24, would that refresh your recollection?

Mr. O'FRIEL. Yes, I think it possibly, was maybe, a week before that.

Mr. LISHMAN. Did you make any notes of the meeting you had with Mr. Maynard about this subject matter?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. Do you happen to have those notes with you?

Mr. O'FRIEL. No, I do not.

Mr. LISHMAN. On that occasion, what did Mr. Maynard tell you with reference to the receipt of money or other valuable consideration in connection with his duties as a diskjockey for WBZ?

Mr. O'FRIEL. He stated that at no time did he receive money, or gifts of value, in connection with his duties as a diskjockey.

Mr. LISHMAN. What explanation did he give you for the receipt of the money he admitted receiving and the payments on the two automobiles?

Mr. O'FRIEL. May I have that statement—may I look at a statement here?

Mr. LISHMAN. Yes, you may look at anything you wish.

Mr. O'FRIEL. I am sorry—I do not have a copy here. I thought I did.

Mr. LISHMAN. Do you have it?

Mr. O'FRIEL. I do. Mr. Maynard stated that the checks were not given to him to play records on the radio, but only as an expression of appreciation for playing them at the numerous record hops which he conducted during the course of the year. It is true that these

record hops were as to the popularity and the potential of these records, and to obtain immediate public reaction for the same.

Mr. LISHMAN. And at the first meeting you had with Mr. Maynard—what is the date of that affidavit?

Mr. O'FRIEL. November 30.

Mr. LISHMAN. And that is repetitious of what he told you, at your first meeting with him, on this matter?

Mr. O'FRIEL. Yes, he consistently maintained this position.

Mr. LISHMAN. Why would Westinghouse suspend Mr. Maynard if the money and other valuables he had received were not in connection with his services as a diskjockey?

Mr. O'FRIEL. At first glance, we were suspicious of this, and decided that we had to get further facts and information.

Mr. LISHMAN. What steps did you take to ascertain the facts?

Mr. O'FRIEL. We had numerous interviews with Mr. Maynard. And we had interviews with the record distributors themselves. And I caused a review to be made of the music over a period of time—the music he had played on the air.

Mr. LISHMAN. After your first conversation with Mr. Maynard, did you discuss the situation with anyone connected with Westinghouse Broadcasting Co.?

Mr. O'FRIEL. Yes, I did.

Mr. LISHMAN. With whom did you have such discussion?

Mr. O'FRIEL. With the area vice president, Mr. Swartley, with Mr. Woodward, and Mr. Tooke.

Mr. LISHMAN. And did you give these gentlemen a report concerning your conversation with Mr. Maynard?

Mr. O'FRIEL. Yes, I did.

Mr. LISHMAN. Was that report in writing?

Mr. O'FRIEL. Yes.

Mr. LISHMAN. Do you have copy of your report?

Mr. O'FRIEL. Yes.

Mr. LISHMAN. Mr. O'Friel, I will hand you a copy of a document, a three-page document, dated December 7, 1959. It appears to be a report from you to Mr. Swartley, and I will ask you if you can identify it as being a correct Thermo-Fax copy of that report?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. Mr. Chairman, I would like to have this in the record at this point, this report dated December 7, 1959, of Mr. O'Friel to Mr. Swartley.

The CHAIRMAN. Has it been identified?

Mr. LISHMAN. Yes.

The CHAIRMAN. It may be included in the record at this point. (The document dated December 7, 1959, follows:)

[Confidential]

WBZ, BOSTON,
December 7, 1959.

Mr. C. C. WOODARD, JR.,
Vice President,
WBC, Inc., New York, N.Y.:

On Wednesday, December 2, Bill Swartley and I met with Harry Carter, president, and Gordon Dynersstein, vice president in charge of sales, Music Suppliers, Inc., 263-265 Huntington Avenue, Boston, Mass. We met in the WBZ radio suite, room 778, in the Somerset Hotel from 2:35 p.m. to 3:50 p.m.

Carter and Dyrnerstein confirmed that they had given a car to Dave Maynard, and that they had made the payments on his Buick convertible. They also said that during 1959 they had given him checks of \$100 and \$75, totaling \$175. They stated that these checks and car payments were made on the basis of appreciation for Dave testing new records at record hops. They stated that they handled many different labels, among which were: MGM, Ember, ABC, Paramount, etc. They stated that they received over 100 records each week, and it is difficult for them to decide which side might prove more popular and should be pushed and promoted to the various radio stations to play. They stated that by giving these records to Maynard to play at record hops he is able to determine firsthand from those who attend the hop which side might prove to be worth while. They stated that they felt this played a very valuable part in their business arrangement. They stated that even the recording companies felt that record hops were important, and from time to time sent recording stars to appear at record hops. They were unable to specifically advise the names and dates of any recording stars who appeared at Maynard's hops, and made a halfhearted promise that they would try to work up such a list, if possible.

We asked them whether or not they would be able to show from their records whether or not any sales were made in record stores as a result of record hops by Maynard; for example, if Maynard gave a record hop in Framingham would there be any noticeable increase in a particular record sale the next day in the stores in the Framingham area. Carter and Dyrnerstein stated that it would be extremely difficult to verify this by virtue of their records. They further stated that Maynard conducted more record hops than any three other disk-jockeys in this area, and his advice was extremely helpful to them.

Also, on Wednesday, December 2, from 4:05 to 5:10 p.m., we talked with Don Dumont, who owns Dumont Record Distributing Co., 1280 Tremont Street. Dumont stated that he had been in business approximately 2 years for himself, and that prior to that, for about 6 years, he had been associated with Cecil Steen at Records, Inc., 790 Commonwealth Ave. Dumont advised that he had made payments of approximately \$1,000 to Dave Maynard; and that they were all by check, in the amounts of \$250, \$400, and \$100, running from July through October 1959. He stated that prior to this time he had never been able to show his appreciation for Maynard's help.

Dumont stated that he was successful on two records over this period of time, namely, "Mr. Blue" and "Mack The Knife." Dumont stated that he usually supplied records to Maynard to take on record hops and relied on Maynard's judgment to tell him whether or not a record was worthwhile pushing and promoting, and, more particularly, which side was the side to push. He gave as an example one instance where everyone thought that one side should be pushed, and then Maynard, as a result of a record hop, told him the kids reacted to the side on which was recorded "40 Miles of Bad Road."

Dumont stated further that on no occasion did Maynard request any remuneration, and, in all cases these checks were volunteered by Dumont to show his appreciation to Maynard; he said these gifts of appreciation were not paid to Maynard to influence his selection of music to be played on the air.

Dumont likewise stated that record hops were important, and pointed to the evidence that recording stars were sent out to appear at record hops. He did not have a list of record hops where recording stars appeared for Maynard. However, he estimated that this has happened on approximately 6 times. He promised to review his records to see whether or not he could give us further verification.

Dumont also stated that it would be rather difficult to show a relationship between the appearance of Maynard at a record hop in a given city, such as Framingham, and the sale of records resulting therefrom. He stated the only way it would be possible would be if Maynard played a record which the kids liked and the dealer ordered it before it was available for general distribution. Dumont further stated that he believed Maynard would be unique inasmuch as he would probably be the only diskjockey to receive gifts of appreciation for a record that he did at record hops.

In summary, I feel that of these interviews, neither of them were too conclusive or helpful in either disproving or proving the story which Maynard had given us. They both stated that they were prepared to testify that the checks which they had made out to Maynard, and which appeared on their books as sales promotion expenses, were paid to Maynard in appreciation for his testing records at record hops.

Mr. LISHMAN. Did you make another report in writing to Mr. Woodward and Mr. Swartley?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. I hand you a seven-page document dated January 4, 1960, which appears to be a memorandum from you to Mr. Woodward and Mr. Swartley of Westinghouse concerning David Maynard, and ask if you can identify this as a correct Thermo-Fax copy of such report?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. I would like to have this report of January 4, 1960, from Mr. O'Friel to Mr. Woodward and Mr. Swartley, introduced into the record at this point.

The CHAIRMAN. It may be received.

(The document dated January 4, 1960, follows:)

[Confidential]

WBZ GENERAL MANAGER,
January 4, 1960.

Mr. ROLLAND V. TOOKE,
Executive Vice President,
WBC, Inc., New York, N.Y.:

On December 1, 1959, David Maynard was suspended from his on-the-air assignments on WBZ and WBZ-TV pending further investigation on our part of the claims he made concerning payments and other consideration accepted by him from record distributing companies while a radio personality on WBZ.

I think that it is appropriate at this time that we review this case.

In Maynard's original statement which he submitted in writing to me and W. C. Swartley, he stated that he had received checks and small gifts from record distributors but these were not given to him to play records on any radio or television programs, but only as an expression of appreciation for playing them at the numerous record hops which he conducts during the course of the year. He further stated that these many record hops gave him an opportunity to test the popularity and hit potential of records and to obtain immediate public reaction, knowledge which he later shared with the record distributors.

Subsequent to giving us the written statement, Maynard has reiterated its content on several occasions, specifically in a meeting with me at 10:15 a.m. to 11:30 a.m. Tuesday, December 8, 1959; a meeting with John Steen and John J. McCarty of the Federal Trade Commission at 3 p.m. December 9, 1959; a meeting with his attorney, Ed Smith, Bill Swartley, and the writer at 9:30 a.m. December 15, 1959. On this latter occasion, Maynard's denial was unprompted, unplanned, and vigorous in his denial of any wrongdoing. Maynard again took this same stand in another meeting with me in my office at 12:25 p.m. to 1:05 p.m. December 21, 1959.

On December 19, 1959, after our having requested a sworn statement, stressing that the sworn statement should be complete, accurate, and the whole truth, Maynard delivered to us a sworn statement to the same effect that he had given us in writing on November 30, 1959. Copies of both of these statements have been furnished to Chuck Woodward.

In both of these statements Maynard admitted the receipt of checks totaling \$400 in 1958, and a total of \$1,175 in checks during 1959. In both of his statements Maynard stated that all moneys received by him from all sources were duly reported by him to the Internal Revenue Bureau and all taxes were paid in full. The other consideration received by him in addition to the above-mentioned checks were the payments on a Mercury station wagon, and beginning November 1958 on a 1959 Buick, which amounted to about \$1,300 a year for 2 years.

After the receipt of Maynard's original written statement, W. C. Swartley and the writer on December 2, 1959, met with Harry Carter, president and Gordon Dyrnerstein, vice president in charge of sales of Music Suppliers, Inc., of 263-265 Huntington Avenue, Boston, Mass. At this meeting Carter and Dyrnerstein confirmed that they had made payments on the 1959 Buick convertible, and that they had made payment to him during 1959 of two checks, one of \$100, and one \$75,

totaling \$175. They stated that these checks and car payments were made on the basis of appreciation for Maynard testing new records at record hops. They stated that this helped them to decide which side of a record should be pushed and promoted, and they felt that this was a very valuable and worthwhile part in their business arrangement. They also stated that record hops were important in their business, so much so that recording stars often appeared if possible.

On December 2, 1959, W. C. Swartley and the writer also met with Don Dumont who owns Dumont Record Distributing Co. of 1280 Tremont Street. At this meeting, Dumont stated that he had made payments to Maynard in 1959 of approximately \$1,000 between July through October 1959 in the amounts of \$400, \$100, and two checks of \$250 each. Dumont stated that on no occasion did Maynard request any remuneration, and in all cases these checks were volunteered by Dumont to show his appreciation to Maynard, and that these gifts of appreciation were not paid to influence his selection of music to be played on the air but were given to him because of Maynard's help in testing records at record hops.

Maynard has stated in our various interviews that he has taken money and gifts from only two sources, namely, Music Suppliers of New England and Dumont Record Distributing Co. He stated that he has refused it from all other sources, and took it only from these two because they are his friends and neighbors.

During the course of our interview at 2:30 p.m. Monday, December 14, 1959, with Oliver Eastland and James Kelly, investigators from the House Subcommittee on Legislative Oversight, they asked us questions concerning how Maynard financed his home at 32 Locke Lane, Lexington whether or not we knew if Maynard received clothes from Louie's (men's haberdasher) and charged them to Music Suppliers; and whether he had an RCA color set in his home; and whether or not he owned any interest in a recording publishing and distributing company. While they did not allege anything specific in this regard, they did plant the seeds of suspicion. They would not furnish us any definite facts, and, in fact, on our direct request they advised they could not give us any information either to prove or disprove our suspicions of Maynard.

In questioning Maynard concerning the points raised by the House investigators, he denied that he received any help on the financing of his home, and claimed to have a conventional mortgage. He further denied that he has any clothes from Louie's. He does not have an RCA color TV set in his home nor has he ever received one.

One of the investigators hinted that possibly Maynard had received a loan of \$1,000 from a record distributor and had repaid it. I checked this with Maynard and he denied this.

A newspaper reporter furnished us a rumor that Maynard had purchased a delicatessen, and implied that it was with help from a record distributor. Maynard did recently purchase the Countryside Delicatessen in Lexington. He was very frank in furnishing me details of the transaction which appear to me to be an ordinary personal business venture and definitely not connected with a record company or a record distributor in any way, shape, or form.

In regard to a trip Maynard took to Pinehurst, N.C., with Gordon Dyrnerstein of Music Suppliers in November 1959, Maynard advised me that he withdrew \$1,500 from the bank to cover his own expenses on this trip.

In discussing all allegations and rumors with Maynard he has denied each and every one of them. He has been frank and cooperative in our efforts to find out the true story.

On December 19, 1959, after asking Maynard to furnish same, we received a sworn statement from Maynard's accountant, Mr. Albert F. Orlandino of the Bedford Accounting Service. In this statement Orlandino stated that he has been the accountant for Dave Maynard for about 6 years, and that he has prepared his Federal and State tax returns. He stated that in April 1958 when he filed Maynard's Federal tax returns he requested a ruling from the Boston office of the Internal Revenue Service as to the proper method of declaring Maynard's outside income. He further stated that at an audit and conference with an internal revenue agent in the Boston office that Maynard stated that he had received moneys from major record companies for promoting their records at the numerous record hops at which he appeared during the year. As a result of such conferences Orlandino, on advice of the internal revenue agent, prepared a separate schedule C which was attached to Maynard's tax return, and that it

contained a statement "Principal Business Activity: Record Hops—Sales Promotion for Major Record Companies."

A photostatic copy of such schedule C which was filed in April 1959 for the tax year 1958 has been furnished to C. C. Woodard, together with the sworn statement of Albert F. Orlandino.

In the course of our investigation we asked Maynard to furnish us with a list of record hops during the years 1958 and 1959. A copy of these are enclosed, and I think a review of them will indicate that he is extremely active in this endeavor. I might add that it is with our blessing and encouragement, that we ask him, as well as all our personalities to participate in outside appearances, including record hops, as we feel this outside exposure not only helps to get our diskjockeys better known among their own audiences, but also helps to build their audiences and gives them a better feel of the trend of popular music on a firsthand basis. Maynard does more record hops than any diskjockey in town.

As was indicated during our conversations with record distributors, recording stars find record hops to be very valuable and appear at them often without charge in order to promote themselves and their records. There is attached hereto, also, a list of artists who have appeared at Maynard's hops during the last 2 years.

Mel Bailey has reviewed the daily music sheets which Maynard has made up during June to December 1959. He has found, as a result of this survey, nothing that would indicate in any way that Maynard may be plugging or playing any record or records in particular, or for any special reasons or purposes which would be at variance with our policies.

During the entire course of our inquiries and investigation of this matter, since Maynard first volunteered the details of this on November 24, 1959, Maynard has been cooperative and anxious to obtain for us all information possible. During this period of time he has stuck to the same story without deviation, and has constantly maintained that it was the truth and the full extent of his involvement. He has consistently stated that he has never played a tune because of having received money or gratuity.

Since his suspension Maynard has lost at least \$600 because he has not been on the air to receive fees, and has not appeared on his regular television show.

Since Maynard has been off the air we have replaced him with other on-the-air personalities which has meant that these individuals are appearing on their own shows, as well as Maynard's. This means that some of our diskjockeys are working a 7-day week and an extended schedule, even through the holiday season. This has now created a severe operational problem which I feel will affect our overall sound and hurt our entire on-the-air sound if action is not taken immediately to resolve this Maynard matter, either one way or the other.

In addition to the loss of money and the loss of exposure during the past 5 weeks, Maynard has also suffered severe personal shock and emotional experiences because of his suspension. His wife, who is expecting their fourth child and has had a history of miscarriages and even lost a child in infancy, has not been in very good health. His children have been sick, and his mother-in-law, who suffers from asthma, was confined to the hospital and on the danger list for several days.

I am sure that Maynard realizes that he has exercised bad judgment, and in light of the current situation wishes he had not taken this money and gifts of appreciation. He is also very much aware of WBC policy in regard to this.

There is no doubt in my mind that Maynard has learned his lesson and will not repeat the situation. I am also sure that he will conform to any policies, directives, or conditions that we might enact or set down for him to follow should he be allowed to return to the air.

From all the facts that we have been able to gather to date we have not been able to disprove his story that he received these moneys and gifts for his services at record hops. There is nothing to indicate that the receipt of these things influenced his musical selections and his programming on our stations. In fact, we believe that our controls would effectively block any such intentions on his part. While the facts, as originally brought to our attention, gave us full reason to move as we did, on closer examination and investigation it does appear that Maynard's participation in these arrangements with these two record distributors were geared to his unique activity in the field of record hops. Nevertheless, any such arrangement obviously shows very poor judgment because of the tendency that it possibly might have on an individual's objectivity and perspective in his employment with us, and the conclusions, adverse to us

as well as Maynard, that may be reached by others who do not have these facts.

I believe that based upon what we now know this is a unique situation. It is definitely distinguishable from pay-for-play which was the basis of our earlier suspicion that now appears to be unfounded after our investigation and review over the period of the past 5 weeks, during which we have tracked down every possible lead, rumor, and innuendo.

Maynard continues to be a valuable piece of talent. We never have had any quarrel with his on-the-air performance, and he is a cooperative, popular personality. I would like to see this suspension lifted and return him to the air immediately, but on a probationary status for an indefinite period of time. This would be on the conditions that:

(1) Maynard agree that henceforth he will take no moneys, consultation fees, or substantial gifts from any record companies, distributors, suppliers, or any other third-party interests.

(2) Maynard cooperate fully with the current investigations by governmental agencies.

(3) Strict control of his music selections and on-the-air appearances be established during his period of probation.

(4) Maynard assume all payments for his 1959 Buick convertible as of December 1, 1959.

I recommend that Maynard's suspension be lifted, and that he be returned to the air immediately on a probationary basis under the aforementioned conditions, and in this recommendation W. C. Swartley concurs.

After you have had a chance to review this memorandum, if there are any further questions I would be happy to answer them, but as I have said earlier I do feel that it is urgent that we try to resolve Maynard's status immediately in order to relieve the undue hardship on our other on-the-air personalities as soon as possible.

Please let me hear from you at the earliest possible time.

PAUL G. O'FRIEL.

Mr. LISHMAN. Now, following the first discussion you had with Mr. Maynard on this subject, did you have later discussions with him about it?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. And did you discuss this matter in the presence of Mr. Maynard's attorney, Mr. Edward Smith?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. Were you and other officials of WBZ, at that time, aware of the fact that Mr. Smith was also an attorney for Music Suppliers, Inc.?

Mr. O'FRIEL. No, sir.

Mr. LISHMAN. When did you first learn that Mr. Smith was attorney not only for Mr. Maynard but also Music Suppliers, Inc.?

Mr. O'FRIEL. On December 14, 1959.

Mr. LISHMAN. December 14, 1959?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. How was that brought to your attention at that time?

Mr. O'FRIEL. It was brought to my attention by Mr. Kelly and Mr. Eastland.

Mr. LISHMAN. And Mr. Kelly and Mr. Eastland are members of the subcommittee staff?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. Were you also aware at any time that Mr. Smith was also an officer of DuMont?

Mr. O'FRIEL. No, sir.

Mr. LISHMAN. Do you know whether he is an officer of Dumont Record Distributors?

Mr. O'FRIEL. I cannot verify that.

Mr. LISHMAN. Well, it is correct, is it not, that Music Suppliers and DuMont Distributors were the principal sources of payment of money or other valuable considerations to Mr. Maynard?

Mr. O'FRIEL. Yes, sir. He stated he took it only from those two.

Mr. LISHMAN. What was Mr. Maynard's explanation to you and the other WBZ representatives in your presence with reference to the money and other things given by Music Suppliers, Inc., Dumont Records Distributors, and any other similar sources?

Mr. O'FRIEL. On all occasions, as I said before, he said this was an expression of appreciation for playing these numerous record hops which he conducted during the course of the year.

Mr. LISHMAN. Did Mr. Maynard ever tell you that he had received moneys from Records, Inc., or other record distributors?

Mr. O'FRIEL. No, sir.

Mr. LISHMAN. Did Mr. Maynard ever admit to you, or other representatives of WBZ, in your presence, that he had received money or other valuable considerations from outside sources for the purpose of inducing him to play certain phonograph records or phonograph records manufactured, distributed, or sold by certain companies?

Mr. O'FRIEL. Would you repeat the question, sir?

Mr. LISHMAN. Did Mr. Maynard ever admit to you, or other representatives of WBZ, that he had received money or other valuable considerations from outside sources for the purpose of inducing him to play phonograph records or the phonograph records manufactured, distributed, or sold by such companies?

Mr. O'FRIEL. No, sir.

Mr. LISHMAN. Did he at all times insist that the money and other things of value were received by him solely as expressions of appreciation for his having played records at record hops?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. Did Mr. Maynard ever admit to you or other WBZ representatives, in your presence, that he had received any money or any other considerations of value, in advance, either for the playing of records over the air or for the playing of records at record hops?

Mr. O'FRIEL. No, sir.

Mr. LISHMAN. Did you have a meeting with Mr. Maynard on December 8, 1959, with reference to this matter?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. What occurred at that meeting?

Mr. O'FRIEL. This is a meeting at which John F. McCarthy of the Federal Trade Commission—I am sorry—this was a private meeting between Maynard and myself in which, generally, he reemphasized, not in detail, the original statement, but told us, you know, what he had told us originally, that he had received these only for his appearances at the record hops, and never to do anything that he did on the air.

Mr. LISHMAN. Was there, also, a meeting attended by Mr. Maynard, Mr. John Steen, attorney for Westinghouse Broadcasting, and a representative of the Federal Trade Commission on December 9, 1959?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. And what happened at that meeting?

Mr. O'FRIEL. I was not present at this meeting, as I recall.

Mr. LISHMAN. Did you meet with Mr. Maynard, attorney Smith, and Mr. William Swartley, vice president of Westinghouse Broadcasting at Boston at about 9:30 a.m., December 15, 1959?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. At that meeting did Mr. Maynard furnish an explanation of the money and other things he had received?

Mr. O'FRIEL. Once again, he denied vigorously any such thing whatsoever.

Mr. LISHMAN. Is it a fact that Mr. Maynard had agreed to furnish an affidavit to station WBZ regarding this matter on December 14, 1959?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. Do you remember that on December 14, Mr. Maynard telephoned you and said that he would be in on the following day with his attorney?

Mr. O'FRIEL. I do not recall.

Mr. LISHMAN. There is not any question but that Mr. Maynard attended a meeting at 9:30 a.m., on December 15, 1959?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. Do you recall receiving a telephone call at WBZ at about 4:30 p.m. on December 15, 1959, from Mr. Kelly, an investigator on the staff of this subcommittee?

Mr. O'FRIEL. Yes, sir, the 15th?

Mr. LISHMAN. Yes, sir.

Mr. O'FRIEL. Yes.

Mr. LISHMAN. Do you recall at that time you informed Mr. Kelly that neither Mr. Maynard nor his lawyer had contacted you or WBZ in spite of the fact that he was supposed to turn in to you the affidavit on that day?

Mr. O'FRIEL. I do not recall the conversation.

Mr. LISHMAN. Do you recall that on December 17, 1959, you received a telephone call from Mr. Oliver Eastland, investigator for this subcommittee, and you told him that you had not heard from either Mr. Maynard or his lawyer, Mr. Smith?

Mr. O'FRIEL. Yes, sir, I do.

Mr. LISHMAN. Is it not a fact that you had been in conference with both Mr. Maynard and Mr. Smith during the morning of December 15, 1959?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. Then the statements you made on the telephone to Mr. Kelly and Mr. Eastland were not exactly correct, were they?

Mr. O'FRIEL. I do not recall the conversation with Mr. Kelly. As I recall the conversation with Mr. Eastland, it was whether or not we had received the sworn statement.

Mr. LISHMAN. Did you report to Mr. Tooke, executive vice president, Westinghouse, on January 4, 1960, that in discussing the allegations and rumors with Maynard he had been cooperative in efforts to find out the true story?

Mr. O'FRIEL. Is that in the memorandum—will you repeat the question again?

Mr. LISHMAN. We will find the wording in the memorandum.

Mr. O'FRIEL. I think it is page 5.

Mr. LISHMAN. I will quote from your memorandum on page 5:

During the course of our inquiry and investigation of this matter, since Maynard first volunteered the details of this on November 24, 1959, Maynard has been cooperative and anxious to obtain for us all information possible.

Is that correct?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. Do you still believe that he was cooperative?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. And did you have a meeting in the WBZ radio station in the Somerset Hotel in Boston between 2:35 p.m. and 3:50 p.m. on December 2, 1959, with Harry Carter, president, and Gordon Dinerstein, vice president of Music Suppliers, Inc.?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. How was that meeting arranged?

Mr. O'FRIEL. The meeting was arranged at our request in our effort to find out further information concerning the payments, the exact status.

Mr. LISHMAN. Did anyone attend that meeting besides Mr. Carter, Mr. Dinerstein and yourself?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. Who else?

Mr. O'FRIEL. Mr. Swartley.

Mr. LISHMAN. At that time did Mr. Carter and Mr. Dinerstein confirm that they had given a car to Mr. Maynard?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. Did they also confirm that they had made the payments on a 1959 Buick convertible?

Mr. O'FRIEL. Yes, sir. I think this was all part of the arrangement.

Mr. LISHMAN. And later, did you report to Mr. Woodward that Carter and Dinerstein confirmed that they had given an automobile to Mr. Maynard?

Mr. O'FRIEL. Yes, sir; but I think that is all part of the same sentence.

Mr. LISHMAN. Did Mr. Carter and Mr. Dinerstein also say that during 1959 they had given Mr. Maynard checks of \$100 and \$75 totaling \$175.

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. What reasons did Mr. Carter and Mr. Dinerstein give for donating this money, and for having made these car payments on behalf of Mr. Maynard?

Mr. O'FRIEL. They stated that these checks and car payments were made on the basis of appreciation for Dave Maynard pushing new records at record hops.

Mr. LISHMAN. Did they inform you as to the identity of recording stars who appeared at Maynard's record hops?

Mr. O'FRIEL. No, sir.

Mr. LISHMAN. Did you ask them?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. Did they ever supply that information?

Mr. O'FRIEL. No, sir.

Mr. LISHMAN. Did Mr. Carter and Mr. Dinerstein tell you in substance that Mr. Maynard conducted more record hops than any other three diskjockeys in the Boston area?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. Did you attend a meeting from approximately 4 o'clock to 5, a little after 5 p.m., on December 2, 1959, in the WBZ suite in the Somerset Hotel with Donald Du Mont, the owner of Du Mont Record Distributing Co.?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. How was that arranged?

Mr. O'FRIEL. That was arranged the same way as the other meeting.

Mr. LISHMAN. How was that?

Mr. O'FRIEL. Through David Maynard.

Mr. LISHMAN. Was it not a little unusual for a man under suspension to be called upon to arrange a meeting on behalf of you and the people who are alleged to have made payments of money to him?

Mr. O'FRIEL. At this point we put the burden of proof on him.

Mr. LISHMAN. Did Mr. Du Mont admit having made payments to Mr. Maynard?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. When was Mr. Maynard first employed by your station as a diskjockey?

Mr. O'FRIEL. Roughly, November 1958.

Mr. LISHMAN. Did Mr. Du Mont tell you on December 2, 1959 that he had been in business himself for approximately 2 years, and prior to that, for about 6 years, had been associated with Cecil Steen at Records, Inc., in Boston?

Mr. O'FRIEL. Yes.

Mr. LISHMAN. How much money did Mr. Du Mont admit having paid to Mr. Maynard?

Mr. O'FRIEL. Approximately, \$1,000.

Mr. LISHMAN. During what period was such payment made?

Mr. O'FRIEL. July through October 1959.

Mr. LISHMAN. Were these payments made by checks in amounts ranging from \$100 to \$250 or \$400?

Mr. O'FRIEL. That is what I recall.

Mr. LISHMAN. Did Mr. Du Mont deny having made any payments of money or having given any other consideration to Mr. Maynard before July 1959?

Mr. O'FRIEL. I am not clear on this point.

Mr. LISHMAN. Are you aware of the fact that Mr. Du Mont had gotten in touch with Mr. Carter and Mr. Dinerstein immediately before this meeting with you?

Mr. O'FRIEL. No, sir.

Mr. LISHMAN. Did you get the same corroboration of Mr. Maynard's story from Mr. Du Mont that you received from Mr. Carter and Mr. Dinerstein?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. Did Mr. Du Mont tell you that Mr. Smith was an officer in his corporation?

Mr. O'FRIEL. No, sir.

Mr. LISHMAN. With reference to Mr. Alan Dary, did you make any investigation regarding the possibility that he accepted money

or other things from outside sources in connection with his duties as a diskjockey?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. To your knowledge, was Mr. Dary interviewed by Mr. Steen, the Westinghouse attorney, and a representative of the Federal Trade Commission on September 9, 1959?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. Has Mr. Dary admitted receiving money from Music Suppliers, Inc.?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. How much money has he admitted receiving from that company?

Mr. O'FRIEL. I believe it is a \$100 Christmas gift.

Mr. LISHMAN. On how many occasions?

Mr. O'FRIEL. Just one, I think.

Mr. LISHMAN. What kind of an investigation did you make concerning whether or not Mr. Dary had received more than this \$100 payment?

Mr. O'FRIEL. We took a signed statement from Mr. Dary.

Mr. LISHMAN. And did you do anything to ascertain whether his signed statement was correct or incorrect?

Mr. O'FRIEL. No, sir.

Mr. LISHMAN. And you believe that that is the only moneys that Mr. Dary received from Music Suppliers, Inc., a record distributor?

Mr. O'FRIEL. That is all he told us about.

Mr. LISHMAN. Did he tell you about receiving money from any other record distributors in Boston?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. And what were those companies?

Mr. O'FRIEL. One other company he received money from, Records, Inc.

Mr. LISHMAN. Did he tell you that he received money from Mutual Distributors, Inc.?

Mr. O'FRIEL. No, sir; I do not recall that he did.

Mr. LISHMAN. Did he tell you about receiving cases of whisky from any record distributors?

Mr. O'FRIEL. No, sir.

Mr. LISHMAN. Did he tell you about any other gifts from any record distributor?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. Did he tell you about gifts he had received from persons who advertised over WBZ?

Mr. O'FRIEL. No, sir.

Mr. LISHMAN. Well, in effect, then, your investigation of the situation consisted of asking Mr. Dary how much money someone had paid him and he told you \$100. So far as you were concerned, that ended the matter; is that correct?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. When you were in your conference with Mr. Carter and Mr. Dinerstein and later with Mr. Dumont, did you ask them how much money they had paid Mr. Dary?

Mr. O'FRIEL. Not specifically that; no, sir.

Mr. LISHMAN. What did you ask them?

Mr. O'FRIEL. We asked about any other WBZ diskjockeys.

Mr. LISHMAN. Is he not a diskjockey?

Mr. O'FRIEL. Yes, sir. We asked rather specifically, and asked the question, "Any other WBZ diskjockeys," and we got no information or an affirmative reply.

Mr. LISHMAN. Well, did not Mr. Dary admit to you and Mr. Steen, the Westinghouse attorney, that he had received a hi-fi set?

Mr. O'FRIEL. Yes.

Mr. LISHMAN. From Twentieth Century Fox?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. Is the reason for your placing Mr. Dary on probation the fact that he had received a \$100 Christmas present from one source and a hi-fi set from another?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. Has Mr. Dary admitted receiving money from, or things of value for, plugging records on the radio?

Mr. O'FRIEL. No, sir.

Mr. LISHMAN. Do you recall WBZ's block party, called the "Lester Lanin Block Party"?

Mr. O'FRIEL. Yes.

Mr. LISHMAN. That was held, was it not, September 26, in the evening, in 1958?

Mr. O'FRIEL. I believe that is correct.

Mr. LISHMAN. At Brockton, Mass?

Mr. O'FRIEL. Yes.

Mr. LISHMAN. Was the party given as a charity party?

Mr. O'FRIEL. Yes.

Mr. LISHMAN. Was it advertised as such?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. Where did you advertise it as a charity party?

Mr. O'FRIEL. I believe on our station in cooperation with the Old Colony Mental Health for Youth kickoff, for their drive in Brockton.

Mr. LISHMAN. Did you advertise that on the air?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. Did you advertise it that way in newspapers in Boston?

Mr. O'FRIEL. I do not believe we had any Boston newspaper ads. I could be refreshed on that.

Mr. LISHMAN. I show you a copy of a page from a magazine called Sponsor, a New York publication, and this was taken from the file of WBZ, and this is a photostatic copy, and I ask you if this is a correct representation of what appears to be an ad sponsored by WBZ?

Mr. O'FRIEL. Yes, this is correct. It was taken from Sponsor, and this is not an ad—this is a story that Sponsor wrote after the facts.

Mr. LISHMAN. Did you give the information to the person who put this article in the magazine?

Mr. O'FRIEL. I, personally, did not give the information; no.

Mr. LISHMAN. Are you aware that someone in WBZ gave such information to the writer of that story?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. Is it correct where it says that for this \$1,200 worth of advertising on WBZ you would get this turnout of 35,000 people at a block party?

Mr. O'FRIEL. I do not see any mention of that in here. I can read, I am sure.

Mr. LISIMAN. Let me help you. I will read what it says here. It purports to be on this page in Sponsor, the magazine. There is a picture of numerous people, and across the top in large-sized type it says, "Radio's \$1,200 Draw." And underneath the picture it says:

This is what 52 announcements (with \$1,200 at commercial rates) did for a charity party at Brockton, Mass., sponsored by Station WBZ, Boston; the crowds numbered over 35,000.

Was that information furnished to this paper by WBZ?

Mr. O'FRIEL. Sir, I am not sure what information was furnished by us to this specific publication.

Mr. LISIMAN. Well, was this sheet taken from the files of WBZ?

Mr. O'FRIEL. Yes, sir.

Mr. LISIMAN. Is it a fact that this block party was advertised extensively in the Boston Globe newspaper, some time in advance of the giving of the block party?

Mr. O'FRIEL. I cannot recall.

Mr. LISIMAN. You cannot recall?

Mr. O'FRIEL. No, sir.

Mr. LISIMAN. I have, Mr. O'Friel, before me a photostatic copy of page 36 of the Boston Daily Globe, for Wednesday, September 24, 1958, and ask you to look in the lower left-hand three columns, and see if that is not an ad that was placed in the paper by WBZ.

Mr. O'FRIEL. Yes, sir; I recall the ad.

Mr. LISIMAN. Well, now do you recall that you ran a series of these ads, with pictures in the Boston Daily Globe during this period?

Mr. O'FRIEL. Yes, sir.

Mr. LISIMAN. How much did Westinghouse pay to the Boston Globe for these ads of this Brockton block party?

Mr. O'FRIEL. I am not sure exactly. I don't have that figure with me.

Mr. LISIMAN. Was it a considerable amount?

Mr. O'FRIEL. This I wouldn't know.

Mr. LISIMAN. More than \$1,200?

Mr. O'FRIEL. I wouldn't be able to answer that.

Mr. LISIMAN. Was it approximately \$2,300?

Mr. O'FRIEL. I wouldn't know.

Mr. LISIMAN. And isn't it a fact that Westinghouse could pay off the \$2,300 advertising commercial charge in the Boston Globe and did so by giving it advertising time on WBZ?

Mr. O'FRIEL. Yes, sir.

Mr. LISIMAN. At their usual rates?

Mr. O'FRIEL. Yes, sir.

The CHAIRMAN. Could you state the size of the ad?

Mr. LISIMAN. Mr. O'Friel, I would like you to look at this—

The CHAIRMAN. Do you know the approximate size of these ads?

Mr. O'FRIEL. No, sir; I would not know. It appears to me to be—

The CHAIRMAN. Take it over there so you can see it.

Mr. O'FRIEL. This appears to me to be a three-column ad. I don't know the measurements of it.

The CHAIRMAN. Approximately what is it?

Mr. O'FRIEL. I would say 6 inches, perhaps.

The CHAIRMAN. Three columns by 6 inches?

Mr. O'FRIEL. Yes, sir.

The CHAIRMAN. And you pay the regular commercial rate, I assume.

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. And isn't it a fact that that same ad appeared on four different pages on the 24th of September in the Globe?

Mr. O'FRIEL. I would not know, sir.

Mr. LISHMAN. On page 6 of the September 24, 1958, issue of the Globe, I will ask you to identify the ad that appears in the middle of the page at the bottom, and ask you if that is not with regard to the same subject matter.

Mr. O'FRIEL. Yes, sir. It is not the same ad.

Mr. LISHMAN. No.

Mr. O'FRIEL. This is a two-column ad, probably 2 inches.

Mr. LISHMAN. Now, I will show you three photostatic copies of pages from the Boston Globe of September 24, pages 28, 25, and 30, respectively, and ask you if, on these pages, there does not also appear ads with respect to the WBZ block party?

Mr. O'FRIEL. Yes, sir. Two of the ads are similar, and the third is different.

Mr. LISHMAN. Now, I show you another photostatic copy of page 13 of the Boston Daily Globe, September 24, 1958, and ask you if the ad on behalf of the WBZ good neighbor block party does not also appear thereon?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. I also show you a photostatic copy of page 10 of the Boston Daily Globe, for Thursday, September 25, and ask you if that does not contain an ad about the WBZ block party at Brockton.

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. I show you a photostatic copy of page 7 of the Boston Globe, for September 25, 1958, which also contains a WBZ ad about the block party, and ask you if that is correct?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. The Boston Daily Globe, Friday, September 26, I will show you three photostatic copies—respectively, page 6, page 16, page 23, and 10. I ask you if on these pages there does not appear to be an ad by WBZ pertaining to the block party?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. Now, Mr. O'Friel, do you know what the circulation of the Globe was at the time these ads about the WBZ Brockton block party appeared?

Mr. O'FRIEL. No, sir.

Mr. LISHMAN. Well, would you dispute it if I said it was approximately 350,000 in September 1958?

Mr. O'FRIEL. I would have to rely on your statement on that. I wouldn't know of firsthand knowledge.

Mr. LISHMAN. Well, don't you think that the ads that appeared in the Boston Globe about this block party contributed substantially to getting the 35,000 people to attend it, which is claimed here in the magazine Sponsor?

Mr. O'FRIEL. I would like to think not, sir.

Mr. LISHMAN. Well, it must have had some effect.

Mr. O'FRIEL. I think it supplemented our main efforts, sir.

Mr. LISHMAN. And you still insist that Westinghouse had nothing to do about putting this blurb in Sponsor that for payment of \$1,200 worth of radio advertising time you can get a crowd out of 35,000?

Mr. O'FRIEL. Sir, I wish I could control what the sponsor wrote.

Mr. LISHMAN. Have you ever disputed this?

Mr. O'FRIEL. I personally have not, no.

Mr. LISHMAN. Well, where do they get this information?

Mr. O'FRIEL. I think some information was supplied by the station. But I have no control over what information is furnished to them, how they use it.

Mr. LISHMAN. Well, wouldn't prospective advertisers believe that by paying only \$1,200 for advertising time on WBZ they could achieve this tremendous result? When they read this story?

Mr. O'FRIEL. I would be unable to conjecture on that, sir.

Mr. LISHMAN. And this story, by the way, makes no reference whatsoever to any expenditures of money for all these ads that appeared in the Boston Globe, does it?

Mr. O'FRIEL. I wouldn't know, sir.

Mr. LISHMAN. I will ask you to look at it.

Mr. O'FRIEL. No, this does not make any specific mention to our ad campaign in the Boston Globe.

Mr. LISHMAN. Well, over the period of these ads, was WBZ billed by the Boston Globe for advertisements of the block party in the amount of approximately \$2,300?

Mr. O'FRIEL. I wouldn't be able to testify to that, sir.

Mr. LISHMAN. Did the Lester Lanin Band appear and furnish music for the block party?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. Who made arrangements for the appearance of this band?

Mr. O'FRIEL. I don't understand the question.

Mr. LISHMAN. How were the services of the Lanin Band obtained for this block party?

Mr. O'FRIEL. This was a joint promotion block party with us and the Lester Lanin Band. The arrangements were made through Don Dumont.

Mr. LISHMAN. Of Dumont Distributors?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. By whom was the band to be paid?

Mr. O'FRIEL. I don't know, sir.

Mr. LISHMAN. How much was the band to be paid?

Mr. O'FRIEL. I don't know, sir.

Mr. LISHMAN. Do you know whether the band has been paid for its services?

Mr. O'FRIEL. No, I do not, sir.

Mr. LISHMAN. Does WBZ employ salesmen to solicit advertising to be carried on the programs of WBZ?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. Have these salesmen solicited advertising from motion picture companies or agencies representing such companies?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. In order to sell such advertising, have your salesmen agreed to play records of the stars in the motion pictures to be advertised immediately after the paid commercial has been broadcast?

Mr. O'FRIEL. Not to my knowledge, sir. That is contrary to our policy.

Mr. LISHMAN. Is it a fact that on the announcement bulletin board diskjockeys at that station were instructed to do this?

Mr. O'FRIEL. Would you repeat the question, sir?

Mr. LISHMAN. Read the question.

(The reporter read from his notes as requested.)

Mr. O'FRIEL. Not to my knowledge, sir.

Mr. LISHMAN. Were they ever orally instructed by you or anyone else to do this?

Mr. O'FRIEL. Not to my knowledge.

Mr. LISHMAN. Well, you would know if you did it.

Mr. O'FRIEL. I don't recall ever doing it.

Mr. LISHMAN. Do you recall at one time, when the library of WBZ had little if any stock of records in it?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. Do you recall instructing personnel of WBZ to go out and solicit the obtaining of free record albums from record distributors?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. To whom did you give these instructions?

Mr. O'FRIEL. Mr. William Givens.

Mr. LISHMAN. And who else?

Mr. O'FRIEL. Mr. Givens was the management personnel, and I would give it directly to him, I think.

Mr. LISHMAN. Did you give the same instructions to Mr. Prescott?

Mr. O'FRIEL. I believe the instructions were given to Mr. Givens.

Mr. LISHMAN. Did you ask Mr. Prescott to go to New York City in an attempt to get free record donations from record distributors?

Mr. O'FRIEL. I know that he went, and went with our approval; yes, sir.

Mr. LISHMAN. And did they succeed in obtaining between \$10,000 and \$15,000 worth of free record albums from numerous record distributing companies on representations that by making this donation their records would be plugged on that station?

Mr. O'FRIEL. I can't answer that, sir. I don't know.

Mr. LISHMAN. Well, is it a fact that as a result of the trip under your direction as station manager, of these gentlemen to New York, that they did succeed in obtaining for the station free record albums with the market value in excess of \$10,000?

Mr. O'FRIEL. Sir, they obtained record albums and records. I could not testify to the price or value.

Mr. LISHMAN. Could you testify that they obtained 200 \$4 retail value, record albums from Decca?

Mr. O'FRIEL. No, sir; I couldn't.

Mr. LISHMAN. Mercury?

Mr. O'FRIEL. No, sir; I couldn't. I can't be specific.

Mr. LISHMAN. Do you have any records in your office showing the results of the record soliciting trip of Mr. Prescott and Mr. Givens?

Mr. O'FRIEL. I wouldn't know offhand, without searching our files.

Mr. LISHMAN. But it is a fact they succeeded in bringing back a substantial amount of free donated albums; is that right?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. But you don't know exactly the value of that collection?

Mr. O'FRIEL. No, sir.

Mr. LISHMAN. Now, what did you expect Mr. Givens and Mr. Prescott to tell the would-be donors on this soliciting trip for donations to your record library?

Mr. O'FRIEL. Sir, I did not instruct them in any way, shape, or form. It has been a longstanding practice in our industry that we receive record and record albums for use on the air.

The CHAIRMAN. Mr. Lishman, one point which you just made is not clear to me.

Mr. O'Friel, did you say you did instruct Mr. Prescott and Mr. Givens to go down to New York to obtain these free albums?

Mr. O'FRIEL. Yes, sir.

The CHAIRMAN. You, yourself, instructed them to do that?

Mr. O'FRIEL. Yes, through me; yes, sir. I instructed Mr. Givens. Whether or not I instructed Mr. Prescott, I don't know. I approved his going on the trip.

The CHAIRMAN. In other words, as manager, you did instruct your personnel to go get the free albums?

Mr. O'FRIEL. Yes, sir.

Mr. LISHMAN. Well, isn't it a fact that after receiving free albums from numerous record companies, that records bearing the labels of the distributors who had made these gifts to the station were played over the air on many occasions?

Mr. O'FRIEL. Yes, sir. As I said before, it has been the practice in the broadcasting industry for many years, for record companies and record distributors to give free copies of records.

Mr. LISHMAN. Was any announcement made at the time the record labels of these donors were being plugged on the air that they had been paid for by donations of free record albums?

Mr. O'FRIEL. Not to my knowledge, sir.

Mr. LISHMAN. Wouldn't you consider this to be another form of payola?

Mr. O'FRIEL. No, sir.

Mr. LISHMAN. I have no further questions.

The CHAIRMAN. Mr. Mack, any questions?

Mr. MACK. I have no questions at this time.

The CHAIRMAN. Mr. Derounian?

Mr. DEROUNIAN. No questions.

The CHAIRMAN. Mr. Rogers?

Mr. ROGERS. I have just one or two questions, Mr. Chairman.

Mr. O'Friel, how did you find out, originally, about the payola, when you said you found out about it, and you put these fellows on probation?

Mr. O'FRIEL. Sir, we started our own investigation several weeks before this.

Mr. ROGERS. When was that now?

Mr. O'FRIEL. I would say the early part of November, of 1959.

Mr. ROGERS. That was after the revelations of the TV quiz hearings?

Mr. O'FRIEL. It was about the same time.

Mr. ROGERS. You hadn't done anything before that?

Mr. O'FRIEL. Well, specific investigation of this nature; no, sir.

Mr. ROGERS. And you say you started your own investigation to find out?

Mr. O'FRIEL. Yes, sir.

Mr. ROGERS. And did you find out from that investigation?

Mr. O'FRIEL. Yes, sir. The two incidents that were brought up earlier in my testimony. And we voluntarily made this available to the committee.

Mr. ROGERS. Now, you say you put these men on probation. How many do you have on probation at the present time?

Mr. O'FRIEL. Two.

Mr. ROGERS. Now, what is probation?

Mr. O'FRIEL. This is a period of time during which we continue to review their activities, and control even tighter than before, if this is possible, the music they play on the air, and their activities.

Mr. ROGERS. Well, do you mean by probation that if they do this again you are going to discharge them?

Mr. O'FRIEL. We would look at the facts at that time, as they are developed.

Mr. ROGERS. Do they understand that? Do they understand they are to be discharged if you catch them doing this again?

Mr. O'FRIEL. I think they are well aware of our company policy, both before and after this.

Mr. ROGERS. You think what?

Mr. O'FRIEL. I think they are well aware of our policy, both before and after this.

Mr. ROGERS. What is your policy now?

Mr. O'FRIEL. Our company policy, in the event of payola, if all the facts pin down to this, is that there will be dismissal.

Mr. ROGERS. But they never have been taken off the payroll? They have been on the payroll at all times receiving the same amount of money, have they not?

Mr. O'FRIEL. It is kind of difficult to answer that. Substantially, yes. They have been on the payroll. The same amount of money, this varies, because—

Mr. ROGERS. Well, let's say this. They haven't had their earnings reduced measurably on account of this.

Mr. O'FRIEL. In one case, I think the earnings were somewhat reduced. And this is by virtue of not being in a position to earn fees.

Mr. ROGERS. You mean because they were not getting any more payola, their income dropped?

Mr. O'FRIEL. No, sir. Only their payments for services rendered on the air.

Mr. ROGERS. By the company?

Mr. O'FRIEL. By our company.

Mr. ROGERS. And was that, in a way, a punishment for what they had done?

Mr. O'FRIEL. Very definitely, sir.

Mr. ROGERS. Now, Mr. O'Friel, have you been approached by any of these payola artists?

Mr. O'FRIEL. Definitely not, sir.

Mr. ROGERS. You never have been?

Mr. O'FRIEL. No, sir.

Mr. ROGERS. As manager of the station, you have never had it discussed with you?

Mr. O'FRIEL. That is correct, sir.

Mr. ROGERS. Have you ever received any gifts from them?

Mr. O'FRIEL. Not to my knowledge, sir.

Mr. ROGERS. Well, what do you mean not to your knowledge? I noticed you answered some questions that way a minute ago. You mean that it could have happened, but it wouldn't be to your knowledge now?

Mr. O'FRIEL. I don't recall any, sir.

Mr. ROGERS. If you had gotten any, you think you would have recalled it?

Mr. O'FRIEL. I don't recall any, sir.

Mr. ROGERS. Mr. O'Friel, just one other thing.

You spoke at length a minute ago of telling Mr. Givens to go down to New York and get these albums.

Now, was there any discussion by your company as to this particular action? I mean by people above you, your superiors—did you discuss it with them, as to whether or not to send those boys down there to get those records?

Mr. O'FRIEL. No, sir.

Mr. ROGERS. You did not?

Mr. O'FRIEL. No, sir.

Mr. ROGERS. That was your own decision?

Mr. O'FRIEL. Yes, sir.

Mr. ROGERS. Now, have you ever had any arrangements, which you made, with any organization or group or artists, or anyone else, where you would sort of trade goods for goods—that if they would put on a free exhibition or an exhibition or performance that wouldn't cost you anything, that your station would plug records or plug songs?

Mr. O'FRIEL. Never for plugging specific songs or records.

Mr. ROGERS. Well, now, you say never for plugging specific songs or records. What about songs and records in general?

Mr. O'FRIEL. No, sir.

Mr. ROGERS. You mean then, your answer is, that you never did have any kind of arrangement of that kind at all?

Mr. O'FRIEL. To the best of my knowledge not, sir.

Mr. ROGERS. And your testimony is, that if anyone says that did happen, it didn't happen at all? It is not to your knowledge or recollection—it just didn't happen, because you didn't do it?

Mr. O'FRIEL. I wish you would repeat the question.

Mr. ROGERS. I say regardless of what anyone else says about that, if anyone accused you of doing that, your testimony is that those things did not happen, that you did not receive any payola, you did not receive any gifts, and you did not receive any exchange of goods for goods by plugging any records, or songs, because someone else rendered a service to you without charge?

Mr. O'FRIEL. To the best of my knowledge not, sir.

Mr. ROGERS. Thank you very much, Mr. Chairman.

Mr. DEVINE. Mr. O'Friel, I don't want to treat this too lightly, the trip to New York. This was not initiated by the record companies, was it?

Mr. O'FRIEL. No, sir.

Mr. DEVINE. Was this your idea?

Mr. O'FRIEL. It was the station's idea, sir.

Mr. DEVINE. And you gave the instructions to the music director and the diskjockey to go to New York?

Mr. O'FRIEL. Yes, I participated in the instructions.

Mr. DEVINE. Isn't it a fact that your instructions were to this effect—make whatever representations that are necessary in order to obtain free records for our music library?

Mr. O'FRIEL. No, sir, not to my knowledge.

Mr. DEVINE. Isn't it a fact that the music library at WBZ at that time was miserably sparse?

Mr. O'FRIEL. I think that puts it well, sir.

Mr. DEVINE. And as a result of this little trip you promoted, you received about 200 albums from each of about five music distributors?

Mr. O'FRIEL. As I said earlier, I couldn't testify exactly to that.

Mr. DEVINE. What happens to all these records after they are in the library? Do you keep those forever?

Mr. O'FRIEL. Some are kept forever, and those that are not used for programing purposes, are disposed of.

Mr. DEVINE. Are they ever disposed of by sale?

Mr. O'FRIEL. No, sir, not to my knowledge.

Mr. DEVINE. Is it a policy of your station not to sell records?

Mr. O'FRIEL. Yes, sir.

Mr. DEVINE. Whether they were bought by you or given to you?

Mr. O'FRIEL. Yes, sir.

Mr. DEVINE. And just in order that the record may be clear, you say you do not consider this as a payola practice—that is, for a record distributor to give your station \$10,000 worth of records?

Mr. O'FRIEL. That is correct, sir.

Mr. DEVINE. One other thing—getting back to the affidavits that you took from Mr. Maynard and Mr. Dary, I believe you indicated that you just went into two fields in your investigation, is that correct?

Mr. O'FRIEL. I don't understand the question, sir.

Mr. DEVINE. Well, when you put these two men on probation, do you consider that you conducted a complete, comprehensive, thorough investigation of these two men and their activities?

Mr. O'FRIEL. As thorough as I could, with the tools available.

Mr. DEVINE. You do personally have an investigative background, do you not?

Mr. O'FRIEL. Yes, sir.

Mr. DEVINE. That is all, Mr. Chairman.

Mr. MACK. I would like to ask about this same matter.

What led you to believe these men would be successful when they went to New York to get the records?

Mr. O'FRIEL. As I said earlier, sir, it has been the practice in the broadcasting industry for many years for companies and record distributors to give free copies of records to radio stations for use in their programing.

Mr. MACK. So you had that information before you sent them to New York?

Mr. O'FRIEL. Yes, sir.

Mr. MACK. And this information was to the effect that other studios or licensees had received substantial quantities of records from these concerns, is that correct?

Mr. O'FRIEL. I don't know specifically. I can't state for other licensees. I just know it has been the general practice in the radio and broadcasting industry, to receive free records.

Mr. MACK. No, where did you get this information? Was there some particular manager of another station someplace that gave you the information, or did you just hear it rumored in the trade?

Mr. O'FRIEL. I couldn't pinpoint it to any specific person, no, sir. I think it is just general knowledge of the broadcasting business.

Mr. MACK. Just a standard procedure for any broadcaster who needed records to go to any of the distribution companies, to get unlimited amounts, is that correct?

Mr. O'FRIEL. It has generally been the practice in the industry as far as I know, sir.

Mr. MACK. Was it necessary for them to go to New York to get records, or could they get them someplace other than New York?

Mr. O'FRIEL. I think they could get some in Boston, and some in New York.

Mr. MACK. Well, is it not a fact that when you went to the Boston record concerns, they turned you down?

Mr. O'FRIEL. I wouldn't know that of firsthand knowledge, sir.

Mr. MACK. In other words, you didn't try to secure the records in Boston before you went to New York?

Mr. O'FRIEL. I would not be familiar with this. I couldn't answer this.

Mr. MACK. Well, I thought this was your idea.

Mr. O'FRIEL. Well, it was the station's idea. I gave my approval.

Mr. MACK. Are you general manager of the station?

Mr. O'FRIEL. Yes, sir.

Mr. MACK. Well, then, don't you assume—this is not your idea, then? Am I correct in that?

Mr. O'FRIEL. Well, I participated in arriving at the conclusion, yes, sir.

Mr. MACK. Could you tell me whose idea this was? You mentioned the station. But I wanted to know who the specific individuals are who put the idea into your head.

Mr. O'FRIEL. Well, I don't think I could pinpoint it to the individuals as such. I think Mr. Givens, as well as myself, participated in arriving at this decision.

Mr. MACK. When you referred to the station in the testimony today, then, you would say that was referring to Mr. Givens and yourself, is that correct?

Mr. O'FRIEL. In what connection, sir?

Mr. MACK. Well, I heard you a few minutes ago say it was the station's idea.

Well, as I understand it, you testified that this was the station's idea, that these men go down to New York.

Mr. O'FRIEL. Yes, sir.

Mr. MACK. And when you refer to the station, you are actually referring to yourself, aren't you?

Mr. O'FRIEL. Yes, sir.

Mr. MACK. And then when you sent Mr. Givens to New York you had to have some kind of instructions for him, is that correct?

Mr. O'FRIEL. Well, not necessarily so. He is a very qualified man in this particular area.

Mr. MACK. He understood what you wanted to accomplish by the trip?

Mr. O'FRIEL. Yes, sir, he was newly reappointed musical director.

Mr. MACK. Did he understand, then, that these certain records would be played on your radio station when he returned?

Mr. O'FRIEL. Yes, sir. They may or may not have been. I don't think there is any guarantee in this regard.

Mr. MACK. Well, then, that would be the only reason for your station receiving the records free, because they would be played on the station when they returned, is that correct?

Mr. O'FRIEL. Well, not necessarily so. We don't play all records that we receive. Only those that make suitable programing.

Mr. MACK. Well, can you think of any excuse, then, for receiving the records free?

Mr. O'FRIEL. Pardon me, sir?

Mr. MACK. Can you think of any other excuse for receiving \$15,000 worth of records free?

Mr. O'FRIEL. I can't verify the amount, sir, other than we have received records for quite a long time in the broadcasting industry.

Mr. MACK. This seems to me to be a form of payola. There is no question in my mind. But I understood you indicated it was not a form of payola, is that correct?

Mr. O'FRIEL. That is correct, sir.

Mr. MACK. And under those circumstances, you felt they just gave the records to you out of the goodness of their heart?

Mr. O'FRIEL. In accordance with long-standing practice in the broadcasting industry.

Mr. MACK. This has nothing to do with the long-standing practice. In this particular transaction, do you think they gave them to you just out of the goodness of their heart?

Mr. O'FRIEL. No, sir.

Mr. MACK. Mr. Chairman, I have no further questions.

The CHAIRMAN. Any further questions of this witness?

Mr. O'FRIEL, thank you very much for your appearance here.

Mr. O'FRIEL. Am I excused?

The CHAIRMAN. You are excused.

Mr. O'FRIEL. Thank you, sir.

The CHAIRMAN. Could I ask you one other question before you leave?

Mr. O'FRIEL. Yes, sir.

The CHAIRMAN. Have there been any other people, that you know of, who have been engaging in the practices of payola from your station?

Mr. O'FRIEL. No, sir.

The CHAIRMAN. You have mentioned how many here today—two?

Mr. O'FRIEL. Yes, sir.

The CHAIRMAN. Only two?

Mr. O'FRIEL. Yes, sir. This is 2 out of approximately 17 or 18 on-the-air personnel.

The CHAIRMAN. Pardon?

Mr. O'FRIEL. This is 2 out of approximately 17 or 18 on-the-air personnel.

The CHAIRMAN. Is that diskjockeys you mean—17 or 18 so-called diskjockeys?

Mr. O'FRIEL. No, on-the-air personnel. People who appear on the air on a regular basis.

The CHAIRMAN. How many diskjockeys do you have?

Mr. O'FRIEL. Six.

The CHAIRMAN. How many have you had in the last 4 years?

Mr. O'FRIEL. I wouldn't be able to answer that without checking our records.

The CHAIRMAN. Would it be several?

Mr. O'FRIEL. Yes; some have gone and come.

The CHAIRMAN. Have you had a pretty rapid turnover?

Mr. O'FRIEL. No, sir; I don't think it could be considered a rapid turnover, no.

The CHAIRMAN. Could you supply for the record the number of people who have worked for you as diskjockeys, say in the last 4 years?

Mr. O'FRIEL. Yes, sir; we will be happy to forward it to the committee.

The CHAIRMAN. And name those who are still with you, and those who have been employed by you, but no longer with you.

Mr. O'FRIEL. Yes, sir. We would be happy to comply.

(The information referred to follows:)

WBZ RADIO, WESTINGHOUSE BROADCASTING Co., INC.,
Boston, Mass., February 10, 1960.

The HONORABLE OREN HARRIS,
Chairman, House of Representatives, Special Subcommittee on Legislative Oversight, Committee on Interstate and Foreign Commerce, House Office Building, Washington, D.C.

DEAR CONGRESSMAN HARRIS: In accordance with your request during my testimony on February 8, 1960, I herewith attach a list of the individuals who have worked at WBZ radio as diskjockeys during the past 4 years. Those who are no longer with us are indicated by their termination dates.

Very truly yours,

PAUL G. O'FRIEL.

WBZ—Boston

Present diskjockeys:	<i>Hired</i>
Frederick J. Bernard-----	October 26, 1959
Allan H. Dary-----	March 15, 1956
Carlyle deSuze-----	March 29, 1942
James B. Holt-----	May 18, 1959
David H. Maynard-----	November 24, 1958
John M. Murphy-----	July 20, 1959
Former diskjockeys:	
Henry Elliott (summer relief)-----	June 21, 1959-September 5, 1959
Edwin J. Kane-----	March 2, 1952-October 31, 1959
Sherman Brown (summer relief)-----	June 3, 1958-October 4, 1958
Vernon T. Williams-----	April 18, 1949-September 5, 1959
Robert A. Rissling-----	April 28, 1946-October 11, 1957
Leonard Zola-----	January 21, 1959-April 25, 1959
Norman Prescott-----	August 29, 1955-July 18, 1959
John F. Bassett-----	June 3, 1956-January 3, 1959
William Marlowe-----	March 11, 1957-December 26, 1958
Keith Sattler (Jack Loring)-----	April 30, 1956-September 20, 1958
Philip Christie-----	May 19, 1958-August 25, 1958

The CHAIRMAN. Thank you very much.

Mr. O'FRIEL. Am I excused?

The CHAIRMAN. Yes, you may be excused. Thank you for your appearances here today.

The CHAIRMAN. Mr. Dave Maynard.

Are you Mr. Maynard?

Mr. MAYNARD. Yes, sir.

The CHAIRMAN. Mr. Dave Maynard?

Mr. MAYNARD. That is right.

The CHAIRMAN. First, do you mind having your picture taken?

Mr. MAYNARD. No.

The CHAIRMAN. You have no objection?

Mr. MAYNARD. No.

The CHAIRMAN. The committee will be in recess for 30 seconds for that purpose.

(Brief recess.)

The CHAIRMAN. Mr. Maynard, will you be sworn, please?

Do you solemnly swear that the testimony you give to this committee to be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MAYNARD. I do.

TESTIMONY OF DAVID H. MAYNARD

The CHAIRMAN. You may have a seat.

State your name for the record.

Mr. MAYNARD. David Maynard.

The CHAIRMAN. Your residence or address?

Mr. MAYNARD. I live at 26 Lock Lane, in Lexington, Mass.

The CHAIRMAN. What is your business or profession?

Mr. MAYNARD. I am a radio announcer for radio stations WBZ and WBZ-TV in Boston.

The CHAIRMAN. Is that your present position?

Mr. MAYNARD. Yes, it is.

The CHAIRMAN. Mr. Lishman, you may proceed.

Mr. LISHMAN. Mr. Maynard, when did you first become associated with WBZ?

Mr. MAYNARD. I started working 1 day a week for WBZ-TV in, I believe, the month of April 1958. That was a 1-day-a-week show, on Saturdays. I started full time on June 2, 1958.

Mr. LISHMAN. Was that on both radio and TV?

Mr. MAYNARD. No, it was not.

Mr. LISHMAN. When did you start as a diskjockey with WBZ radio?

Mr. MAYNARD. In November of 1958. The exact date I don't know.

Mr. LISHMAN. And were you suspended by Westinghouse Broadcasting Co. on or about December 1, 1959?

Mr. MAYNARD. Approximately, yes.

Mr. LISHMAN. What were the reasons for this suspension?

Mr. MAYNARD. I made a statement to WBZ that I had received gifts.

Mr. LISHMAN. I show you a copy of an affidavit, and ask you if you can identify this.

Mr. MAYNARD. Yes. Yes.

Mr. LISHMAN. This paper that I have just handed you is dated November 30, 1959, and it is a letter from you, addressed to Westinghouse Broadcasting Co., and notarized December 19, 1959, before Edward F. Smith, notary public, is that correct?

Mr. MAYNARD. Did you say December 19 it was notarized?

Mr. LISHMAN. Yes.

Mr. MAYNARD. Yes, that is right.

Mr. LISHMAN. Mr. Chairman, I would like to have this notarized letter already identified by the witness be introduced into the record at this point.

Mr. MACK. Without objection, the letter will be included at this point.

(The document referred to is as follows:)

NOVEMBER 30, 1959.

WESTINGHOUSE BROADCASTING Co., Inc.,
Allston, Mass.

GENTLEMEN: I, Dave Maynard, voluntarily make the following statement to Paul O'Friel and W. C. Swartley, of Westinghouse Broadcasting Corp.:

I have received checks and small gifts but never cash from record distributors. As this practice has existed in the record industry for many, many years without any complaint or suggestion of impropriety, I never felt it wrong to accept the same. These checks were not given to me to play records on the radio or on my television program, but only as an expression of appreciation for playing them at the numerous record hops which I conduct during the course of the year. Through these many record hops I was able to test the popularity and hit potential of records and to obtain immediate public reaction to the same.

In June 1958 when I started with Westinghouse Broadcasting Corp. on a regular basis I owned a 1957 Mercury station wagon toward which I had traded my 1955 Mercury station wagon, the balance being assumed and paid for by a record distributor. These payments amounted to about \$600 for 1958. In November 1958, this car was traded for a 1959 Buick on which the record distributor assumed the payments of about \$1,300 a year for 2 years. All moneys received by me from all sources have been duly reported by me to the Internal Revenue Bureau and all taxes were paid in full. In 1958 I received a total of \$400 in checks. During 1959 I received a total of approximately \$1,175 in checks.

DAVID H. MAYNARD.

BOSTON, MASS.

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

On this 19th day of December 1959 there personally appeared before me David H. Maynard, to me known, and made oath that he has read the foregoing statement by him subscribed and that statements therein contained are true.

EDWARD F. SMITH,
Notary Public, Commonwealth of Massachusetts.

My commission expires May 10, 1963.

Mr. LISHMAN. Now, is Edward F. Smith, the notary public who took your verification on December 19, your attorney?

Mr. MAYNARD. Yes, he is.

Mr. LISHMAN. And do you know that he is also attorney for Music Suppliers, Inc.?

Mr. MAYNARD. I did know that, yes.

Mr. LISHMAN. Did you know that he is also an officer of Dumont Record Distributors?

Mr. MAYNARD. No, I did not.

Mr. LISHMAN. Now, following your suspension, have you since been reinstated?

Mr. MAYNARD. Yes.

Mr. LISHMAN. On what basis have you been reinstated?

Mr. MAYNARD. On the basis that my testimony—my statement, rather, was investigated to an extent that I was reinstated on the air. Reinstated and put back on the air.

Mr. LISHMAN. As a diskjockey on WBZ or WBZ-TV, have you ever accepted money or anything of value to play records on your radio or television programs?

Mr. MAYNARD. No, I have not.

Mr. LISHMAN. Did you ever receive or accept money, or anything else of value, to promote record hops on any of your programs?

Mr. MAYNARD. To promote record hops, no.

Mr. LISHMAN. Did you ever receive, or accept money, or anything else of value, as gifts in appreciation of your having promoted record hops?

Mr. MAYNARD. I have never promoted record hops. I don't quite understand the question.

Mr. LISHMAN. Well, did you ever receive or accept money or anything else of value as gifts in appreciation for your consultation services in connection with record hops?

Mr. MAYNARD. Yes. If you mean did I promote records at record hops, yes.

Mr. LISHMAN. Whose records did you promote?

Mr. MAYNARD. Well, I promoted everybody's records. I played everybody's records.

Mr. LISHMAN. How many record distributing companies made gift payments in appreciation of your record hop services?

Mr. MAYNARD. As far as I can recall, three.

Mr. LISHMAN. Will you please name the three?

Mr. MAYNARD. Music Suppliers of New England, Dumont Record Distributors, Records, Inc.

Mr. LISHMAN. When were these payments for your services at record hops made? Were they made before the record hop or after the record hop?

Mr. MAYNARD. They were not made at any specific time.

Mr. LISHMAN. By that, you mean that sometimes you might get a check from one of these record distributing companies in advance of the record hop?

Mr. MAYNARD. No, I never received money in advance.

Mr. LISHMAN. Did you say never? You never received money in advance?

Is that your answer?

Mr. MAYNARD. I received no money in advance, sir.

Mr. LISHMAN. Well, did you receive anything of value in advance?

Mr. MAYNARD. No, not to my knowledge, not in advance.

Mr. LISHMAN. Do you still own the 1959 Buick which you purchased and on which you traded a 1957 Mercury?

Mr. MAYNARD. Yes.

Mr. LISHMAN. By whom are the payments made?

Mr. MAYNARD. Myself.

Mr. LISHMAN. Since what date?

Mr. MAYNARD. As of December 1959.

Mr. LISHMAN. Prior to that time, who made the payments?

Mr. MAYNARD. Music Suppliers of New England.

Mr. LISHMAN. Under what arrangements did you have with Music Suppliers to make these payments?

Mr. MAYNARD. I don't understand the question, sir.

Mr. LISHMAN. Well, you said that you were not paid, in appreciation, gifts in advance of the record hops, yet you have testified, that prior to December 1959, payments on your car had been made by Music Suppliers. And I just wanted to know what arrangements you had with Music Suppliers in return for their agreeing to make payments on your car.

Mr. MAYNARD. The car was given to me as a gift. I had no knowledge of how they were making payments.

Mr. LISHMAN. Well, why are you making payments on the car now, if it was an outright gift?

Mr. MAYNARD. I found out afterwards that they were making payments on the car. And in light of the investigation, I decided that I had been guilty of rather bad judgment, so I requested they give the book back to me, the payment book, which they did.

Mr. LISHMAN. Now, when you acquired the 1957 Mercury, did you trade it in on a 1955 Mercury automobile, as part payment?

Mr. MAYNARD. I think that is just the other way around. I traded a 1955 on a 1957.

Mr. LISHMAN. Where did you get the 1955 Mercury?

Mr. MAYNARD. I had purchased that myself.

Mr. LISHMAN. Mr. Maynard—Mr. Chairman, I think at this point I would like to have Mr. Keelan, who is an accountant loaned to the subcommittee from the General Accounting Office, read into the record computations he has made from the books and records of Music Suppliers, Inc., which relate to payments by that company to Mr. Maynard, including the finance charges on one or more automobiles on his behalf. And I think that with the testimony of Mr. Keelan—we will have a clearer picture of this situation.

Mr. MACK. That would be agreeable.

Is Mr. Keelan here?

Mr. KEELAN. Yes, sir.

Mr. MACK. Would the witness step aside momentarily, and let Mr. Keelan appear as a witness?

TESTIMONY OF DONALD R. KEELAN

Mr. MACK. Mr. Keelan, you may have a seat. Are you the same Mr. Keelan who was sworn in and gave testimony before this committee this morning?

Mr. KEELAN. Yes, sir, I am.

Mr. MACK. Counsel, you may proceed.

Mr. LISHMAN. Mr. Keelan, I think for the public record you should state the nature of the duties you are performing for the subcommittee.

Mr. KEELAN. My name is Don Keelan. I am an employee of the U.S. General Accounting Office, Boston, Mass. From approximately January 4 to date, I have been helping the committee in this investigation.

Mr. LISHMAN. And in helping the committee—you are an accountant, are you not?

Mr. KEELAN. That is true.

Mr. LISHMAN. And in helping the committee, you have been assigned the job of reviewing the books and records of Music Suppliers, Inc., Dumont Distributors Records, Inc., and other record distributors in Boston?

Mr. KEELAN. That is correct, sir.

Mr. LISHMAN. And have you had occasion— In the performance of your duties, have you had occasion to examine the books and records of Music Suppliers, Inc., so far as they pertain to payments made to Mr. David Maynard?

Mr. KEELAN. Yes, sir; I have.

Mr. LISHMAN. As a result of such studies, have you prepared a two-page schedule, showing such payments made to Mr. Maynard by Music Suppliers, Inc., and by Dumont Records, Mutual Distributors, and by Records, Inc.?

Mr. KEELAN. Yes, sir; I have.

Mr. LISHMAN. What period did your study of the books and records of these companies cover?

Mr. KEELAN. The review that was made of the books and records of these companies was from January 1, 1957, through November 30, 1959.

Mr. LISHMAN. Now, Mr. Keelan, will you turn to the bottom of page 2 of this schedule, and read into the record the summary of the totals which the books and records of these various record distributors show as having been paid to Mr. Maynard during the period 1957 to 1959?

Mr. KEELAN. The summary on the bottom of page 2 of the exhibit, which was prepared by me, shows that \$6,817.16 was paid to Mr. Maynard from the Music Suppliers, Inc., Dumont Record Distributors, Mutual Distributing, Inc., and Records, Inc.

Mr. LISHMAN. Now, included in that amount, is there anything concerning payments on automobiles?

Mr. KEELAN. Included in that amount of \$6,817.16, amounts paid in 1957 to the Universal CIT Corp.; 1958 Universal CIT Corp.; 1958, December, General Motors Acceptance Corp.; 1959, General Motors Acceptance Corp.; and also in 1957, seven payments paid to the Newton-Waltham Bank.

Mr. LISHMAN. On an automobile?

Mr. KEELAN. Yes, sir.

Mr. LISHMAN. Now, what is the total shown as having been paid by Music Suppliers, Inc., to obtain an automobile for Mr. Maynard?

Mr. KEELAN. The total payments paid by Music Suppliers, Inc., for an automobile for David Maynard was \$3,217.17, plus an additional \$887.74, for an automobile that was being financed by the Newton-Waltham Bank, and after my review we were told that this was for David Maynard.

Mr. LISHMAN. Who told you this?

Mr. KEELAN. Mr. Gordon Dinerstein, vice president of Music Suppliers, Inc.

Mr. LISHMAN. And all the figures that are contained in these computations accurately reflect the books and records of the companies named?

Mr. KEELAN. They do.

Mr. LISHMAN. Mr. Chairman, in order to complete the record, I would like to have introduced at this time a two-page schedule which the witness has just identified, entitled, "Schedule of Payments Made to Dave Maynard for the 3-Year Period 1957 to 1959, by Record Distributing Companies."

Mr. MACK. Without objection, it will be included in the record. (The document referred to is as follows:)

BOSTON RECORD DISTRIBUTING COMPANIES

Schedule of payments made to Dave Maynard for the 3-year period 1957-59

Date	Check No.	Source	Account	Amount	Company	Total
1957						
Mar. 25	13446	Music Suppliers, Inc....	Advertising.....	\$50.00	-----	\$50.00
Apr. 8	13482	do.....	do.....	250.00	-----	250.00
June 6	13707	do.....	do.....	75.00	-----	75.00
July 19	13494	do.....	do.....	150.00	-----	150.00
Sept. 17	14112	do.....	do.....	125.50	Universal C.I.T	125.50
Oct. 17	14236	do.....	do.....	125.50	do.....	125.50
Nov. 21	14366	do.....	do.....	125.50	do.....	125.50
Dec. 19	14492	do.....	do.....	125.50	do.....	125.50
19	14501	do.....	do.....	150.00	-----	150.00
27	14556	do.....	do.....	50.00	-----	50.00
Total.....				1,227.00	-----	1,227.00
1958						
Jan. 21	11677	Music Suppliers, Inc....	Advertising.....	50.00	-----	50.00
21	14679	do.....	do.....	125.50	Universal C.I.T	125.50
Feb. 20	14797	do.....	do.....	125.50	do.....	125.50
Mar. 17	14943	do.....	do.....	125.50	do.....	125.50
Apr. 7	15000	do.....	do.....	125.50	do.....	125.50
May 18	15191	do.....	do.....	125.50	do.....	125.50
June 23	15332	do.....	do.....	125.50	do.....	125.50
July 18	15464	do.....	do.....	125.50	do.....	125.50
Aug. 10	15532	do.....	do.....	125.50	do.....	125.50
Sept. 17	15697	do.....	do.....	125.50	do.....	125.50
Oct. 16	15972	do.....	do.....	125.50	do.....	125.50
Dec. 17	16081	do.....	do.....	100.00	-----	100.00
22	16133	do.....	do.....	121.68	General Motors Acceptance Corp.	121.68
Total.....				1,526.68	-----	1,526.68
1959						
Jan. 10	16243	Music Suppliers, Inc....	Advertising.....	121.68	General Motors Acceptance Corp.	121.68
Feb. 19	16360	do.....	do.....	121.68	do.....	121.68
Mar. 20	16515	do.....	do.....	121.68	do.....	121.68
Apr. 17	16603	do.....	do.....	121.68	do.....	121.68
May 21	16766	do.....	do.....	121.68	do.....	121.68
June 25	16863	do.....	do.....	121.68	do.....	121.68
July 20	16930	do.....	do.....	121.68	do.....	121.68
Sept. 10	17154	do.....	do.....	243.36	do.....	243.36
Oct. 14	17303	do.....	do.....	121.68	do.....	121.68
Nov. 20	17458	do.....	do.....	121.68	do.....	121.68
Total.....				1,338.48	-----	1,338.48
1957						
Aug. 7	(1)	Dumont Record Dis- tributing Corp.	Unknown.....	250.00	-----	250.00
24	(1)	do.....	do.....	300.00	-----	300.00
Sept. 4	(1)	do.....	do.....	300.00	-----	300.00
Oct. 15	(1)	do.....	do.....	400.00	-----	400.00
Total.....				1,250.00	-----	1,250.00

¹ Not given.

Schedule of payments made to Dave Maynard for the 3-year period 1957-59—
Continued

Date	Check No.	Source	Account	Amount	Company	Total
1957 Dec. 18	5455	Mutual Distributors, Inc.	Advertising.....	\$50.00	-----	\$50.00
Mar. 22	547	Records, Inc.....	Unknown.....	200.00	-----	200.00
Dec. 18	2425	do.....	do.....	100.00	-----	100.00
		Total.....	-----	300.00	-----	300.00
1958 Jan. 28	2584	Records, Inc.....	Unknown.....	50.00	-----	50.00
Mar. 17	1014	do.....	do.....	200.00	-----	200.00
Apr. 14	1098	do.....	do.....	100.00	-----	100.00
18	1124	do.....	do.....	100.00	-----	100.00
25	1135	do.....	do.....	100.00	-----	100.00
May 2	1132	do.....	do.....	100.00	-----	100.00
9	1170	do.....	do.....	100.00	-----	100.00
16	1188	do.....	do.....	100.00	-----	100.00
23	1289	do.....	do.....	100.00	-----	100.00
		Total.....	-----	950.00	-----	950.00
1959 July 15	16979	Music Suppliers, Inc...	Promotion.....	75.00	-----	75.00
Aug. 3	17024	do.....	do.....	100.00	-----	100.00
		Total.....	-----	175.00	-----	175.00

SUMMARY

Source	Account	1957	1958	1959	Total
Music Suppliers, Inc.....	Advertising.....	\$1,227	\$1,526.68	\$1,338.48	\$4,092.16
Do.....	Promotion.....	None	None	175.00	175.00
Dumont Record Distributing Corp.	Unknown.....	1,250.00	None	None	1,250.00
Mutual Distributors, Inc.....	Advertising.....	50	None	None	50.00
Records, Inc.....	Unknown.....	300	950.00	None	1,250.00
Total.....	-----	1,577	2,476.68	2,763.48	6,817.16

Source: Audit of Music Suppliers, Inc., and Mutual Distributors, Inc., audit work papers; Dumont, list of payments; Records, Inc., canceled checks.

Mr. LISHMAN. I should also like to have included in the record at this time a separate one-page document, entitled "Boston Record Distributing Company, Schedule of Payments Charged to Advertising for Automobiles for Dave Maynard."

Mr. MACK. Without objection, it will be included in the record.

(The document referred to is as follows:)

BOSTON RECORD DISTRIBUTING COMPANIES

Schedule of payments charged to advertising for automobile for Dave Maynard

Date	Check No.	Source	Credit company	Amount
<i>1957</i>				
Sept. 17	14112	Music Suppliers, Inc.....	Universal C.I.T. Corp.....	\$125.50
Oct. 17	14236	.....do.....	.....do.....	125.50
Nov. 21	14306	.....do.....	.....do.....	125.50
Dec. 19	14492	.....do.....	.....do.....	125.50
<i>1958</i>				
Jan. 21	14679	.....do.....	.....do.....	125.50
Feb. 20	14797	.....do.....	.....do.....	125.50
Mar. 17	14943	.....do.....	.....do.....	125.50
Apr. 7	15009	.....do.....	.....do.....	125.50
May 18	15194	.....do.....	.....do.....	125.50
June 23	15352	.....do.....	.....do.....	125.50
July 18	15468	.....do.....	.....do.....	125.50
Aug. 10	15532	.....do.....	.....do.....	125.50
Sept. 17	15697	.....do.....	.....do.....	125.50
Oct. 16	15892	.....do.....	.....do.....	125.50
		Total, Universal C.I.T. Corp.....		1,757.00
Dec. 22	16133	Music Suppliers, Inc.....	General Motors Acceptance Corp.	121.68
<i>1959</i>				
Jan. 10	16243	.....do.....	.....do.....	121.68
Feb. 19	16360	.....do.....	.....do.....	121.68
Mar. 20	16515	.....do.....	.....do.....	121.68
Apr. 17	16603	.....do.....	.....do.....	121.68
May 21	16766	.....do.....	.....do.....	121.68
June 25	16893	.....do.....	.....do.....	121.68
July 20	16980	.....do.....	.....do.....	121.68
Sept. 10	17154	.....do.....	.....do.....	243.36
Oct. 14	17303	.....do.....	.....do.....	121.68
Nov. 20	17458	.....do.....	.....do.....	121.68
		Total, General Motors Acceptance Corp.....		1,460.16
<i>1957</i>		Total, all payments.....	General Motors Acceptance Corp.....	3,217.16

PAYMENTS CHARGED TO ADVERTISING FOR AUTOMOBILE FOR DAVE MAYNARD; INFORMATION SUPPLIED BY GORDON DINERSTEIN

<i>1957</i>				
Jan. 16	13155	Music Suppliers, Inc.....	Newton-Waltham Bank.....	\$126.82
Feb. 18	13292	.....do.....	.....do.....	126.82
Mar. 18	13409	.....do.....	.....do.....	126.82
Apr. 17	13520	.....do.....	.....do.....	126.82
May 2	13661	.....do.....	.....do.....	126.82
June 17	13775	.....do.....	.....do.....	126.82
July 17	13877	.....do.....	.....do.....	126.82
		Total, Newton-Waltham Bank.....		887.74

Mr. LISHMAN. That is all the questions I have for Mr. Keelan.
 The CHAIRMAN. Mr. Keelan, you may step aside.
 Mr. Maynard, take the witness stand again.

TESTIMONY OF DAVID MAYNARD—Resumed

Mr. LISHMAN. Now, Mr. Maynard, you have just heard the testimony of Mr. Keelan, taken from the books and records of Music Suppliers, Inc., Dumont Record Distributors, Records, Inc. The records purport to show, from their books, the total payments during the years 1957 to 1959, by these record distributing companies, to you, of \$6,817.16. Does that correctly reflect the amount of payments that you have received from these companies?

Mr. MAYNARD. Yes, sir; it is a matter of record.

Mr. LISHMAN. Well, now, I would like to call your attention to the notarized letter, which is already in the record, over your signature—and have you read the last paragraph in it.

Mr. MAYNARD (reading) :

In June 1958, when I started with Westinghouse Broadcasting Corp. on a regular basis, I owned a 1957 Mercury station wagon toward which I had traded my 1955 Mercury station wagon, the balance being assumed and paid for by a record distributor. These payments amounted to about \$600 for 1958. In November 1958, this car was traded for a 1959 Buick on which the record distributor assumed the payments of about \$1,300 a year for 2 years. All moneys received by me, from all sources, have been duly reported, by me, to the Internal Revenue Bureau and all taxes were paid in full. In 1958 I received a total of \$400 in checks. During 1959 I received a total of approximately \$1,175 in checks.

Mr. LISHMAN. Well, now, Mr. Maynard, I call your attention, according to the figures that have just been introduced into the record, in the year 1958, there was a total of \$1,250, paid on your behalf, to the Universal CIT Corp., for an automobile, by Music Suppliers, Inc.

Mr. MAYNARD. Yes, sir.

Mr. LISHMAN. And I notice that your affidavit states that the amount of such payments was \$600.

Mr. MAYNARD. The statement here, I believe, is made to Westinghouse, sir. They were interested in any gifts that I had received while in their employ. And that, to the best of my knowledge, as I recall, was the amount of gifts I received in their employ—since I entered their employ.

Mr. LISHMAN. Well, is it a fact, then, that part of the \$1,200 payments that were made on your behalf by Music Suppliers, Inc., was made prior to the time that you went with Westinghouse?

Mr. MAYNARD. As far as I can recall, I believe so, sir; yes, sir.

Mr. LISHMAN. Now, Mr. Maynard, you have testified that Music Suppliers, Inc., did not pay you in advance.

Mr. MAYNARD. Yes, sir.

Mr. LISHMAN. For its appreciation of your services at record hops. Would your same testimony hold true of Dumont Distributors?

Mr. MAYNARD. Yes, sir.

Mr. LISHMAN. Did Dumont ever pay you in advance?

Mr. MAYNARD. No, sir.

Mr. LISHMAN. Well, Mr. Maynard, I would like to show you a photostatic copy of a check dated October 15, 1959, of Dumont Record Distributing Corp., to your order, in the amount of \$400. I ask

you if you can identify this check as having been paid to you, and endorsed by you?

Mr. MAYNARD. That is my signature; yes, sir. I endorsed that check.

Mr. LISHMAN. What was that check for?

Mr. MAYNARD. It was in appreciation for any help I was able to give Mr. Dumont, in selecting records, and in trying to test the potential at record hops.

Mr. LISHMAN. Well, was that in appreciation of services you had already performed?

Mr. MAYNARD. Yes, sir; it was.

Mr. LISHMAN. Well, I call your attention to the fact that on the stub of the checkbook of Dumont there is a notation, and I will show it to you, and this is a photostatic copy—"Dave Maynard, Sales Promotion. October and November." And the check is dated October 15. And I ask you if that will refresh your recollection as to whether you had not, in fact, been paid in advance for some of these services.

Mr. MAYNARD. Yes; I see it says October–November, sir.

Mr. LISHMAN. Does that refresh your recollection that—

Mr. MAYNARD. No; I have never seen that check stub before.

Mr. LISHMAN. Well, isn't it a fact, Mr. Maynard, that you were paid this money, principally, because you were able to air the records of the record distributing companies as a diskjockey over WBZ?

Mr. MAYNARD. No, it is not, sir.

Mr. LISHMAN. Had you performed any record hops for this company in November?

Mr. MAYNARD. I don't perform record hops for any company.

Mr. LISHMAN. Well, had you assisted them in any November record hops when you received this check in October?

Mr. MAYNARD. Would you rephrase that?

Mr. LISHMAN. All right. Had you, in October, when you received this check of \$400, performed any November services for the Dumont Record Distributing Co.?

Mr. MAYNARD. No; I did not.

Mr. LISHMAN. Well, why did they give it to you in advance?

Mr. MAYNARD. To my knowledge, the money was not given to me in advance, sir.

Mr. LISHMAN. Well, the record of the company seems to indicate otherwise.

Did you ever have any conversations with Mr. Harry Carter of Music Suppliers, Inc., or with Don Dumont, of Dumont Record Distributing Co., in which it was agreed that you and Mr. Carter and Mr. Dumont, would tell the officials of station WBZ the same story, that you had received money from Music Suppliers, and Dumont Distributing, only for appearing on record hops, and not for playing records distributed by either or both of these two companies?

Mr. MAYNARD. I am sorry. You will have to rephrase that, sir. It is such a long sentence.

Mr. LISHMAN. I will start in and break it down.

Did you ever have any conversations with Harry Carter of Music Suppliers of New England, Inc., in which it was agreed that you and Mr. Carter would tell the same story to the officials of WBZ, that you

had received money from Music Suppliers only in appreciation for having appeared at record hops?

Mr. MAYNARD. Not that I recall; no, sir.

Mr. LISHMAN. Did you ever have any conversation with Don Dumont, of Dumont Record Distributing Corp., in which you agreed with Mr. Dumont that you and he would tell the officials of WBZ that you had received money from Dumont only for appearing at record hops?

Mr. MAYNARD. Not that I recall, no, sir.

Mr. LISHMAN. Were you instructed by officials at WBZ to go and talk with Mr. Harry Carter, of Music Suppliers, Inc.?

Mr. MAYNARD. No, I was not instructed, no.

Mr. LISHMAN. Was it suggested that you do that?

Mr. MAYNARD. Not that I recall, sir, no.

Mr. LISHMAN. Did you arrange a meeting with Mr. Carter of Music Suppliers, Inc., pursuant to a suggestion from someone in Westinghouse?

Mr. MAYNARD. I don't think it was pursuant to a suggestion, as I recall, sir, no.

Mr. LISHMAN. Did you hear Mr. O'Friel's testimony?

Mr. MAYNARD. I heard most of it, sir.

Mr. LISHMAN. Did you hear him say that you had arranged for this meeting?

Mr. MAYNARD. Yes. I arranged it. I have never stated that I didn't arrange the meeting. Yes, I arranged it.

Mr. LISHMAN. Well, who suggested you should have this meeting?

Mr. MAYNARD. That is what I can't recall.

Mr. LISHMAN. Who suggested that you should have the meeting with Don Dumont?

Mr. MAYNARD. I can't recall, sir.

Mr. LISHMAN. Well, it is a fact that you received money and other things of value from both of these companies.

Mr. MAYNARD. I received checks, yes, sir.

Mr. LISHMAN. And payments on automobiles?

Mr. MAYNARD. Yes, sir.

Mr. LISHMAN. Did you ever receive any money or anything of value from Mr. Harry Weiss, a record promotion man with Music Suppliers?

Mr. MAYNARD. Not as I recall, no, sir.

Mr. LISHMAN. Isn't it a fact that Mr. Weiss delivered to you, in December 1958, an envelop containing a check for \$100 made out to you for cash by Music Suppliers, Inc.?

Mr. MAYNARD. Well, I don't recall that. He might have. I don't recall it.

Mr. LISHMAN. I show you a photostatic copy of a check dated December 17, 1958, of Music Suppliers, Inc., to your order, in the amount of \$100, and signed by Harry Carter.

Mr. MAYNARD. Yes, sir.

Mr. LISHMAN. For what purpose did you receive that \$100.

Mr. MAYNARD. I haven't the slightest idea, but I would imagine it was a Christmas gift, noting that it is dated December 17.

Mr. LISHMAN. Did Mr. Harry Weiss ever bring records to you while you were a diskjockey at WBZ, and request you to buy them?

Mr. MAYNARD. He has brought records to the station, yes, sir.

Mr. LISHMAN. And they have been played?

Mr. MAYNARD. Some of them.

Mr. LISHMAN. Are you acquainted with Mr. Cecil Steen, president of Records, Inc., a record distributor in Boston?

Mr. MAYNARD. Yes, I am.

Mr. LISHMAN. Have you ever received any money or other things of value from Mr. Steen, or Records, Inc.?

Mr. MAYNARD. I believe so, sir, yes, sir.

Mr. LISHMAN. Could you state about how much you have received from him?

Mr. MAYNARD. No, I haven't the slightest idea.

Mr. LISHMAN. Why should you receive these checks from Mr. Steen, or from Records, Inc.?

Mr. MAYNARD. What checks, sir?

Mr. LISHMAN. Any. We have some here. But I will ask you in general, first.

Mr. MAYNARD. I don't know.

Mr. LISHMAN. Well, isn't Records, Inc., in the business of distributing records?

Mr. MAYNARD. Yes, they are.

Mr. LISHMAN. Did you receive any of these checks for the purpose of inducing you to play records distributed by them over the air?

Mr. MAYNARD. No, sir. Some of the checks might have been paychecks.

Mr. LISHMAN. Paychecks? Did you at one time work for Records, Inc.?

Mr. MAYNARD. I at one time did a television show, which was sponsored by Records, Inc., for which I received a sum of—I don't know exactly what it was. That is when I was working 1 day a week.

Mr. LISHMAN. Well, I will ask you some specific questions about a few of these checks, to find out for what purpose they were paid.

Mr. MAYNARD. Yes, sir.

Mr. LISHMAN. Now, I will show you a check of Records, Inc., to your order, on December 18, 1957, in the amount of \$100, and I ask you if you can remember for what purposes this check was made to you?

Mr. MAYNARD. I have no recollection, but, once again, I would have to imagine that it was a Christmas gift.

Mr. LISHMAN. When did your employment by Mr. Steen terminate?

Mr. MAYNARD. It terminated in—as I recall—June of 1958.

Mr. LISHMAN. And when did your employment begin with Mr. Steen?

Mr. MAYNARD. I don't know, sir. I don't know exactly when it did start.

Mr. LISHMAN. Was it for a number of weeks, or a month, or a year?

Mr. MAYNARD. Well, preparatory to doing the TV show, I worked for him, and I don't know how long. No, no, not a year—no.

Mr. LISHMAN. Well, I show you another check, photostatic copy of a check, which bears your endorsement on the back, in the amount of \$200, of Records, Inc., signed by Cecil Steen, and ask you for what purpose this \$200 payment was made to you.

Mr. MAYNARD. This date is not very legible, sir—is it 1957?

Mr. LISHMAN. It looks like 1957 to me. The endorsement is stamped with a 1957 date on it.

Mr. MAYNARD. I cannot really say. I do not know what it was for. I imagine it was in appreciation of any exposure I had given his records at the record hops, but I do not know.

Mr. LISHMAN. Did you receive a check for \$300 from DuMont Record Distributing Co. on August 24, 1959?

Mr. MAYNARD. I believe so, sir, yes.

Mr. LISHMAN. Was that check given to you for playing records produced by Gone Recording Co., or for exposing Gone records?

Mr. MAYNARD. Not to my knowledge, sir, no.

Mr. LISHMAN. Well, why was that payment made to you?

Mr. MAYNARD. For helping him select records and playing them—trying to test the potential of them at record hops, which I did quite a few.

Mr. LISHMAN. Do you know the principal owners of Gone Records?

Mr. MAYNARD. No, sir, I do not. I do not know the owners, no.

Mr. LISHMAN. Well, shortly before you were paid that check, didn't you have a conversation with a George Goldner in Boston?

Mr. MAYNARD. I cannot recall. I met George Goldner. I had spoken to him.

Mr. LISHMAN. Isn't he one of the principals in Gone Recording Co.?

Mr. MAYNARD. He is with Gone Recording. I had no knowledge he was an owner of it, no, sir.

Mr. LISHMAN. Did you receive any help in the financing of your home from any persons or companies, manufacturing, distributing, promoting, or selling phonograph records?

Mr. MAYNARD. No, sir.

Mr. LISHMAN. Have you ever purchased any clothing or other items and charged them to Music Suppliers, Inc.?

Mr. MAYNARD. No, sir. As I recall, I have not.

Mr. LISHMAN. Do you now own, or have you in the past owned, any interest in any company or enterprise, manufacturing, distributing, promoting or selling phonograph records?

Mr. MAYNARD. Some time ago, yes. I started what I hoped was to be a record company, and we made one record, and lost about \$700, and that was the extent of my venture into the record business.

Mr. LISHMAN. What was the name of that company?

Mr. MAYNARD. RMS, I believe it was—RMS, yes.

Mr. LISHMAN. I have no further questions.

The CHAIRMAN. Mr. Mack.

Mr. MACK. Mr. Maynard, I understood you to say one of the automobiles was a gift, is that correct?

Mr. MAYNARD. Yes, sir.

Mr. MACK. A 1959 model?

Mr. MAYNARD. Yes, sir.

Mr. MACK. 1959. Well, what made you think it was a gift? Did someone pick out the car for you, or did they ask you to pick it out?

Mr. MAYNARD. No, I picked out the car, sir.

Mr. MACK. And then you told him how much you wanted him to pay on it?

Mr. MAYNARD. No. I merely—

Mr. MACK. I was interested in seeing how you worked out these arrangements for receiving funds or something of value in this case.

Mr. MAYNARD. No. I picked out the car, sir.

Mr. MACK. You picked out the car.

Mr. MAYNARD. Yes.

Mr. MACK. And then they were to pay—someone was to pay a certain amount of money? You traded in a used car, and someone else was to pay a certain amount of money?

Mr. MAYNARD. Yes, sir.

Mr. MACK. And that was approximately how much?

Mr. MAYNARD. I do not recall the exact amount. I do not think I could come close—\$300 to \$400. No, about—I think it is in the statement—but it is somewhere in the vicinity of \$2,000, I believe.

Mr. MACK. Was it \$1,300 a year for 2 years?

Mr. MAYNARD. I believe that was it.

Mr. MACK. \$2,600.

Mr. MAYNARD. Yes. The \$2,600, though, was not paid by them.

Mr. MACK. Did someone agree to pay the \$2,600?

Mr. MAYNARD. I do not know whether the amount was stated, sir.

Mr. MACK. Well, in other words, you thought someone was giving you a gift, but you did not know how much of a gift they were giving you; is that correct?

Mr. MAYNARD. Yes, sir.

Mr. MACK. But you did negotiate the transaction, the sale?

Mr. MAYNARD. Yes; I did.

Mr. MACK. And then a salesman told you how much you owed, and you went back to tell someone else how much that was; is that correct?

Mr. MAYNARD. I did not go back to tell them. I said "Yes"—I traded the car in.

Mr. MACK. That is what I am getting at. I am trying to find out how the automobile agency were sure they would get paid the \$2,600.

Mr. MAYNARD. I am sorry. I do not think I follow you, sir.

Mr. MACK. Well, what I am trying to determine is how this \$2,600 was to be paid, and how the firm which sold you the car knew that it would be paid?

Mr. MAYNARD. How did they know it would be paid?

Mr. MACK. Yes.

Mr. MAYNARD. Well, they wanted to give me a car, so I traded my own car in for another.

Mr. MACK. Then you thought it was an even trade. You did not know that there was some money being paid by some of your friends?

Mr. MAYNARD. No; I knew there was to be a balance; yes.

Mr. MACK. Well, I certainly do not understand the transaction very well, and I do not think that you have thrown much light on it during my questioning.

Mr. MAYNARD. I have tried to, sir. Perhaps I just do not follow you.

Mr. MACK. Well, was the \$2,600 an unpaid balance?

Mr. MAYNARD. Approximately, yes.

Mr. MACK. Well, do you do business normally in approximate terms? If he said it would be \$3,600, would that still suit you all right?

Mr. MAYNARD. I believe so, yes.

Mr. MACK. It did not make any difference to you?

Mr. MAYNARD. No; the car was a gift.

Mr. MACK. But the whole car was not a gift, was it?

Mr. MAYNARD. No.

Mr. MACK. Just some portion of it.

Mr. MAYNARD. That is right.

Mr. MACK. And you did not know how much the other portion would be?

Mr. MAYNARD. I knew approximately. That is why I made it in the statement approximately \$2,600.

Mr. MACK. Now, did you agree to pay so much money difference? Did you agree with the salesman to pay so much money difference between your car and a new car?

Mr. MAYNARD. Yes; I did.

Mr. MACK. You did not pay the difference however, did you?

Mr. MAYNARD. No.

Mr. MACK. So you must have gone to someone else and asked him to pay that balance.

Mr. MAYNARD. No; I did not ask him at all, sir.

Mr. MACK. He was very happy to pay it?

Mr. MAYNARD. I do not know how happy he was to pay it.

Mr. MACK. He was willing to pay it. He agreed to pay it.

Mr. MAYNARD. Yes, sir.

Mr. MACK. But as it developed, he did not pay it; is that correct?

Mr. MAYNARD. He paid some of it, yes.

Mr. MACK. Why didn't he pay the balance of it?

Mr. MAYNARD. Because I requested that he return the booklet to me in December of 1959.

Mr. MACK. Why did you request that?

Mr. MAYNARD. Well, in view of the—as I said before, in view of the current proceedings, I made the decision along with my wife that I had exercised very poor judgment. So I decided to take the booklet back.

Mr. MACK. In other words, you did not think under the circumstances, then, that you would be able to fulfill your end of the agreement?

Mr. MAYNARD. There was no agreement made, sir, on my part—none whatsoever.

Mr. MACK. I see. You decided finally to give a portion of the gift back; is that correct?

Mr. MAYNARD. Well, the entire gift had not been made. I just decided to start to make the payments myself, which I have been doing.

Mr. MACK. But you did not repay any of those payments already paid?

Mr. MAYNARD. No, sir.

Mr. MACK. Why do you feel it is now wrong to continue accepting them, and yet you do not pay back the balance that you have already received? Is that because you have already complied with any obligation you might have had for that portion of it?

Mr. MAYNARD. No, sir.

Mr. MACK. Well, I do not quite understand that, either.

Mr. MAYNARD. Well, if I had the money, I would pay them back.

Mr. MACK. I see. In other words, you would like to pay the whole thing back?

Mr. MAYNARD. Well, if it is decided that due to poor judgment I should, I would try to pay it back.

Mr. MACK. Well, now, as a matter of fact, when you bought the car it was necessary to sign a sales contract for the balance of the payments; was it not?

Mr. MAYNARD. Yes, sir; I imagine so.

Mr. MACK. And you entered into that yourself, did you not?

Mr. MAYNARD. Yes.

Mr. MACK. You signed your signature.

Mr. MAYNARD. Yes, sir.

Mr. MACK. And therefore you knew exactly how much money was involved.

Mr. MAYNARD. At the time, yes, I knew exactly how much money it was.

Mr. MACK. Well, now, as a matter of fact they also paid some insurance charges, carrying charges, and other matters, other expenses. So they actually would have paid much more than just \$2,600.

Mr. MAYNARD. How much more, I do not know, sir.

Mr. MACK. Substantially more.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Devine.

Mr. DEVINE. I do not have any questions, Mr. Chairman.

I think the record should show that Mr. Maynard is somewhat of a reluctant witness. And I do not think—I hope that no member of the subcommittee commends him for his frankness here, because I think he has been considerably less than frank to the subcommittee.

The CHAIRMAN. Mr. Moss.

Mr. MOSS. Mr. Maynard, I have been looking at this rundown of payments made on your behalf by Music Suppliers, Inc., to Universal CIT Corp., General Motors Acceptance Corp., and is it the Newton-Waltham Bank?

Mr. MAYNARD. I believe so, yes, sir.

Mr. MOSS. Now, in each of these instances, this company did pay monthly on contracts which you had executed for the purchase of automobiles, is that correct?

Mr. MAYNARD. Yes, sir.

Mr. MOSS. I notice that in 1957, in January, Music Suppliers paid \$126.82. They paid successive payments then to the Newton-Waltham Bank in January, February, March, April, May, June, and July. These are all in equal amounts.

Then, apparently you needed another automobile, and commencing in September of the same year, payments of \$125.50 for each month were made to Universal CIT Corp. And they continued from September of 1957 through October of 1958.

Then again—there was a payment made in December of 1958 and they continued until amortization of the contract, and then immediately you required another automobile. And this company, out of its regularly scheduled gratitude, proceeded to buy another one for you. And the payments on that were \$121.68 a month. And they continued from the 22d day of December 1958 to the 20th day of November 1959.

Now, wasn't it a fact that you had an agreement with Music Suppliers, Inc., to pay you approximately \$125, give or take a few cents each and every month for playing their records?

Mr. MAYNARD. No, sir, it was not.

Mr. Moss. This was gratitude in advance?

Mr. MAYNARD. It was not in advance, sir. And there is one slight discrepancy there, a discrepancy—

Mr. Moss. I certainly want you to correct me if I am in error?

Mr. MAYNARD. I am begging the pardon of one of the members of the committee. I have not tried to be reluctant here—

Mr. Moss. I am not the one. Do not address yourself to me. I am talking to you now. You answer my questions.

Mr. MAYNARD. You said that amortization was reached in 1958 on one of my cars, and I decided I needed another one. As it happens, the car that I had up to then, which was a 1957 Mercury station wagon, was such a horrible car, I had spent—

Mr. Moss. Well, that is a matter between you and Mercury. You did get another car, didn't you?

Mr. MAYNARD. Yes, sir. But I am just trying to point out—

Mr. Moss. And each and every month, from January of 1957 until November of 1959, these good people, out of an abundance of gratitude, were paying for an automobile for you.

Mr. MAYNARD. Yes.

Mr. Moss. At approximately \$125 a month.

Mr. MAYNARD. Yes, sir.

Mr. Moss. And this was in no way a part of a clear understanding of a payment for services?

Mr. MAYNARD. No, sir.

Mr. Moss. Are you aware of how they handled this on their books?

Mr. MAYNARD. No, sir, I am not.

Mr. Moss. They handled it as an advertising item. This was advertising. How did they know how many record hops you were going to have? How did you know?

Mr. MAYNARD. Well, I schedule them somewhat in advance.

Mr. Moss. Two years? Eighteen months? Twelve months?

Mr. MAYNARD. No, sir.

Mr. Moss. Six months?

Mr. MAYNARD. No, sir.

Mr. Moss. Four months?

Mr. MAYNARD. Two or three.

Mr. Moss. And yet these people, riding along, because they were so fond of you, were willing to commit themselves for 18 or 12 months?

Mr. MAYNARD. Yes, sir.

Mr. Moss. To underwrite a contract for you—

Mr. MAYNARD. Yes, sir.

Mr. Moss. As a gift. Why would a company place a contract of this type with a finance company, where they paid maximum interest charges, rather than perhaps handling it through their own normal commercial banking arrangements, where the cost would be considerably less?

Mr. MAYNARD. I do not know, sir.

Mr. Moss. Unless it was to hold you to your agreement with them.

Mr. MAYNARD. I do not know, sir.

Mr. Moss. You had no agreement with them?

Mr. MAYNARD. No, sir.

Mr. Moss. You became a permanent employee—a full-time employee of WBZ in June of 1958?

Mr. MAYNARD. Yes, sir.

Mr. Moss. And up until that time, you worked part time?

Mr. MAYNARD. Excuse me, sir.

Mr. Moss. Well—

In June 1958 when I started with Westinghouse Broadcasting Corp. on a regular basis—

what was the basis prior to June 1958?

Mr. MAYNARD. I worked 1 day a week.

Mr. Moss. As a diskjockey?

Mr. MAYNARD. Yes, sir, I did a TV show.

Mr. Moss. Did anyone ever pay you, from gratitude or otherwise, prior to your going to work for the radio station as a diskjockey for conducting a platter hop or exhibiting your knowledge of what might be public desire with regard to a piece of music? That is, prior to going to work for the station—did anyone ever pay you to conduct a record hop or did they ever give you any money for having conducted one, out of gratitude for your presentation of their records?

Mr. MAYNARD. Do you mean before I started into radio?

Mr. Moss. Yes.

Mr. MAYNARD. No, sir, that is the only job I have ever had since I graduated from college.

Mr. Moss. When did you start in radio with this station?

Mr. MAYNARD. With WBZ? November of 1958.

Mr. Moss. Your affidavit says June of 1958.

Mr. MAYNARD. Well, I started radio there. I started with TV in June of 1958.

Mr. Moss. When did you first go to work for a radio station?

Mr. MAYNARD. January 20, 1952.

Mr. Moss. While you were going to school?

Mr. MAYNARD. No, sir, I had graduated in 1951, in the winter of 1951, at Boston University.

Mr. Moss. When was the earliest date you learned these people who distribute records or sell records were unusually generous and grateful persons?

Mr. MAYNARD. I could not correctly place the date, sir. I don't know. I have been in radio 8 years now, and I do not exactly know.

Mr. Moss. Was it any time prior to your becoming a diskjockey?

Mr. MAYNARD. No, sir. I never knew the people prior to that.

Mr. Moss. That is all I have, Mr. Chairman.

The CHAIRMAN. Mr. Maynard, did it ever occur to you that there was some reason why these companies, or this company, was paying you money and making these payments, giving you a car and so forth?

Mr. MAYNARD. Yes, sir.

The CHAIRMAN. A reason for their doing this did occur to you?

Mr. MAYNARD. Yes, sir.

The CHAIRMAN. But the reason did not occur to you when they started making the payments.

Mr. MAYNARD. Oh yes, sir. You mean from the very first gift that anyone gave me?

The CHAIRMAN. Well, as an example, you mentioned these payments of \$1,300 a year for 2 years. Was there any particular reason in your mind why this was being done?

Mr. MAYNARD. Yes, sir.

The CHAIRMAN. Why?

Mr. MAYNARD. Because I, as I stated in my statement—I conduct a great many record hops, which bring me in front of some of the best critics of records, popular records, and I am able to test the potential of them firsthand. And whenever I had a chance, and saw that a record I thought did have possibility from any reaction I got to it, I would report it to anybody who I thought would be interested.

The CHAIRMAN. And you would play it on your program?

Mr. MAYNARD. Not necessarily, no.

The CHAIRMAN. Not necessarily. But you would play it sometimes?

Mr. MAYNARD. Sometimes.

The CHAIRMAN. And in that way you would promote that record, would you not?

Mr. MAYNARD. Occasionally, yes, sir.

The CHAIRMAN. It never occurred to you that the reason that these payments were being made was for some purpose such as this?

Mr. MAYNARD. It occurred to me, sir. But it was never stated that way, because there was never any definite statement on my part, nor on theirs, that I play records on the air.

The CHAIRMAN. Well, you state in your affidavit to Mr. O'Friel that you never felt it wrong to accept this.

Mr. MAYNARD. That is right, sir.

The CHAIRMAN. But after so many payments had been made on the automobile, you thought enough about it to change things around and start making payments yourself.

Mr. MAYNARD. Yes, sir.

The CHAIRMAN. Why did you do that?

Mr. MAYNARD. Well, a lot of criticism has come to bear on the music industry. And as I said beforehand, I had exercised extremely bad judgment.

The CHAIRMAN. Did you attend the great diskjockey convention in Florida?

Mr. MAYNARD. No, sir, I did not.

The CHAIRMAN. Anything further?

Mr. LISIMAN. No, sir.

The CHAIRMAN. Mr. Maynard, you have testified only, in my opinion, as to what you have to testify to here. Obviously, some of these things could have been cleared up, it appears to me, if you had been

willing to speak very frankly and tell what appears to us from the record are the actual facts.

You may be excused.

Mr. MAYNARD. Thank you, sir.

The CHAIRMAN. Mr. Alan Dary.

Do you solemnly swear the testimony you give to this committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. DARY. I do.

TESTIMONY OF ALAN DARY

The CHAIRMAN. State your name.

Mr. DARY. Alan Dary.

The CHAIRMAN. What is your address?

Mr. DARY. 14 Country Club Road, Melrose, Mass.

The CHAIRMAN. What is your profession or business?

Mr. DARY. Announcer.

The CHAIRMAN. Radio and TV?

Mr. DARY. I do some TV, yes, sir.

The CHAIRMAN. Mr. Lishman, you may proceed.

Mr. LISHMAN. Mr. Dary, what is your position at WBZ?

Mr. DARY. A personality on the air, sir, a diskjockey.

Mr. LISHMAN. Did you ever receive money or any valuable considerations from Music Suppliers, Inc., for the purpose of inducing you to play, over the air, records which were distributed by those companies?

Mr. DARY. No, sir, I have not.

Mr. LISHMAN. Have you ever received any payments from Music Suppliers, Inc.?

Mr. DARY. Yes, I have.

Mr. LISHMAN. In what amount?

Mr. DARY. To the best of my knowledge, it is \$100, and it usually happens each Christmas time, as a Christmas gift.

Mr. DARY. Yes, sir.

Mr. LISHMAN. Did it happen last Christmas?

Mr. DARY. Yes, it did, sir.

Mr. LISHMAN. Have you received material of value, other than money, from other sponsors?

Mr. DARY. Sponsors?

Mr. LISHMAN. Well, we will say advertisers on the station, WBZ.

Mr. DARY. I have some carpeting in my master bedroom which was a gift. But in a way, I earned that. I spent a good deal of time with the people at night, helping them plan programs on their advertising campaign.

Mr. LISHMAN. I will show you the bill for that carpeting, and ask you to tell us the circumstances under which you received this material.

Mr. DARY. That is the paid bill which was sent to me as paid.

Mr. LISHMAN. And the amount of that bill is \$650, purporting to be a bill for carpeting?

Mr. DARY. Yes, sir.

Mr. LISHMAN. And that carpeting was installed in your residence, is that right?

Mr. DARY. My last residence, yes, sir.

Mr. LISHMAN. And could you explain why this gift of carpeting was made to you by this Emerson Rug Co. for which you do commercials on the air?

Mr. DARY. Why they gave it to me? I believe that Mr. John Riley, who is the president of the Emerson Rug Co., was truly grateful of the extra time that I spent with him, and I had purchased a good deal of carpeting from him anyhow. And he was grateful for the job I was doing on the air for him.

Mr. LISHMAN. Well, would it be correct to say that in money, you have received over a period of 3 years, approximately \$400 or \$500 from the record distributors in Boston?

Mr. DARY. Yes, sir; and I think in each case it is a Christmas gift.

Mr. LISHMAN. Have you received other gifts from record distributors?

Mr. DARY. No, sir. I did receive a hi-fi from a record company, but not a distributor.

Mr. LISHMAN. Did you ever receive gifts of alcoholic beverages from any record distributors?

Mr. DARY. Yes, sir; a couple of Christmas times I did.

Mr. LISHMAN. According to the records of Dumont Record Distributing Co., they made such a gift—billed in February 1958. And another instance, it does appear to be for Christmas.

Mr. DARY. The one in February, when they gave it to me, it was not a case of liquor it was less than a case—he said it was a belated Christmas gift. He had only been in business a short time.

Mr. LISHMAN. I am only stating the way we find it reflected on the books of Dumont.

Mr. DARY. Yes; that is why it is in February.

Mr. LISHMAN. And none of these payments or gifts were made to induce you, as a diskjockey, to air the records of any record distributor, is that correct?

Mr. DARY. That is correct, sir. May I elaborate for just a moment?

Mr. LISHMAN. Yes, sir.

Mr. DARY. I do a show from 10 until 2, in the morning through the afternoon. I do my level best to play the type of music that an adult audience would enjoy. Consequently, I do not get into the raucous kind of sound that I had always associated payola with. I just wanted to go on record as saying that.

Mr. LISHMAN. I have no further questions, Mr. Chairman.

Mr. DEVINE. No questions.

Mr. MACK. Mr. Moss.

Mr. Moss. You indicated that your show was one where you play the type of music, which I believe, you characterized as not the raucous type, which you usually associate with the term "payola." Am I correct in gathering from that statement that you had a general awareness of the practice of payola?

Mr. DARY. Well, I have heard the word.

Mr. Moss. Well, now, I think up to this point you have been rather direct and candid. Had you gone further and heard more than the word? Hadn't you a fairly good idea of the practice? Did you have any knowledge of it at all, any rumors you heard floating around?

Mr. DARY. No, sir; that I must say no to. You mean specific people and amounts?

Mr. Moss. No. I am not asking you did X take it or did Y take it. But did you have a generally well-defined knowledge of the practice?

Mr. DARY. I cannot say honestly I did.

Mr. Moss. Were you shocked to learn of it here as it has been discussed in detail in the press?

Mr. DARY. I certainly was.

Mr. Moss. You were?

Mr. DARY. That is the truth.

Mr. Moss. Those are all the questions I have.

The CHAIRMAN. How long have you been a diskjockey?

Mr. DARY. A pretty long time, sir, about 12 years.

The CHAIRMAN. Did you attend the Miami convention?

Mr. DARY. No, sir.

The CHAIRMAN. Where did the 2,700 come from that went down there? I can't find anybody that went.

Mr. DARY. I wasn't there.

The CHAIRMAN. Do you have anything further, Mr. Lishman?

Mr. LISHMAN. No, sir.

The CHAIRMAN. You may be excused.

Mr. DARY. Thank you, sir.

The CHAIRMAN. Mr. William C. Swartley. Did you have a statement to make to the committee, Mr. Swartley?

Mr. SWARTLEY. No, sir.

The CHAIRMAN. Well, the committee does not feel that they would have any need to question you in view of the previous testimony received this morning and this afternoon, so you may be excused.

Mr. SWARTLEY. Thank you.

The CHAIRMAN. Is Mr. Lanin in the room? Will you be here in the morning, Mr. Lanin? Mr. Lanin will be the first witness in the morning, followed by Mr. Givens, Mr. Wesley Hopkins, and Mr. Charles Young.

The committee will meet in the morning at 10 o'clock in the Ways and Means Committee hearing room on the first floor of the New House Office Building.

The committee will recess until 10 o'clock tomorrow morning.

(Whereupon, at 5:10 p.m., the subcommittee recessed, to reconvene at 10 a.m., Tuesday, February 9, 1960.)

RESPONSIBILITIES OF BROADCASTING LICENSEES AND STATION PERSONNEL

TUESDAY, FEBRUARY 9, 1960

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON LEGISLATIVE OVERSIGHT
OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The special subcommittee met, pursuant to recess, at 10 a.m., in the Ways and Means Committee room, New House Office Building, Hon. Oren Harris (chairman of the special subcommittee) presiding.

Present: Representatives Harris (presiding), Mack, Rogers of Texas, Moss, Springer, and Devine.

Also present: Robert W. Lishman, chief counsel; Herman C. Beasley, chief clerk to the special subcommittee; Beverly M. Coleman, principal attorney; Jack Marshall Stark, minority counsel; Oliver Eastland, chief investigator; and James P. Kelly, investigator.

The CHAIRMAN. The committee will come to order.

The first witness this morning will be Mr. Lester Lanin.

Will you stand, please, and be sworn?

Do you solemnly swear that the testimony you are about to give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. LANIN. I do.

The CHAIRMAN. Have a seat.

TESTIMONY OF LESTER LANIN

The CHAIRMAN. State your name for the record.

Mr. LANIN. Lester Lanin.

The CHAIRMAN. What is your residence address?

Mr. LANIN. 42 West 58th Street, New York City.

The CHAIRMAN. What is your profession?

Mr. LANIN. Orchestra leader, and I send out many groups throughout the country. I do not know what definition that would be.

The CHAIRMAN. Mr. Lishman, you may proceed.

Mr. LISHMAN. Mr. Lanin, do you have about 20 or 25 orchestras that play under your name?

Mr. LANIN. Yes.

Mr. LISHMAN. Are all of these orchestras rehearsed in New York City?

Mr. LANIN. Yes, sir.

Mr. LISHMAN. So that when they play at affairs they have memorized their music and can play numbers on request without reading the music?

Mr. LANIN. That is right.

Mr. LISHMAN. Is that one of the distinguishing characteristics of your orchestral management?

Mr. LANIN. I would suppose so. We try and keep everything the same, as you would tomato soup—if you buy it on Park Avenue or on 11th Avenue, it is the same kind of tomato soup. We try to make our music the same.

Mr. LISHMAN. Do you record for Epic Records?

Mr. LANIN. That is right.

Mr. LISHMAN. Epic Records is a division of—

Mr. LANIN. Of Columbia.

Mr. LISHMAN. Do you recall that your orchestra played at a good neighbor block party in Brockton, Mass., on September 26, 1958, in accordance with a program which had been arranged by Dumont Distributors?

Mr. LANIN. Yes. The arrangements were with him, but, originally—may I elaborate?

Mr. LISHMAN. I would like to have you narrate the arrangements that were made for the appearance of your orchestra at that block party.

Mr. LANIN. I received a telephone call from Mr. Schicks.

Mr. LISHMAN. Who?

Mr. LANIN. Mr. Schicks of Epic Records. And he said, "Lester, would you like to play something for charity in New England?" He said, "The radio station up in New England has a contest for whoever writes a letter of approximately 25 words, and if they won, why, their desire would be to have this block party and they should win the orchestra—the best and most strongest letter would win the band there."

I said, "That sounds all right to me."

Notwithstanding it being charity, our own practice is to play the minimum for charity—we have to be paid the union scale, of course. The practice is not the usual prices we receive. He mentioned two or three or four dates, and we finally agreed. And then he said, "We will pick any date convenient for you," and—

Mr. LISHMAN. Just a minute, Mr. Lanin. Did you tell Mr. Schicks that the charge for the appearance of your orchestra would be \$2,000?

Mr. LANIN. Originally, I said \$2,500. And I said that \$2,000 is the minimum which we receive on any date. If we play a ballroom we receive a percentage in addition to that of 60-40, 45-55, or 50-50.

Mr. LISHMAN. In connection with the recordings you make for Epic, are you paid a royalty or a flat fee?

Mr. LANIN. A royalty.

Mr. LISHMAN. And what is that royalty?

Mr. LANIN. Five percent.

Mr. LISHMAN. Five percent on the records sold?

Mr. LANIN. Yes, that is right.

Mr. LISHMAN. Will you continue now?

Mr. LANIN. Then I was in touch, or he was in touch with me—Don Dumont was—about arranging a date that would be convenient for my orchestra to play. And we finally decided on a date that I would be there. It was supposed to be a block party where everyone would be. His strongest letter—that is, that the people wrote, who wrote the strongest letter, they would win the orchestra. That was the

Menally Retarded Organization of Brockton, Mass. And that is the only thing I know, is that we would go there.

I did not know exactly what we would do, except that I know there was supposed to be no dancing, and it is a small station—maybe about an hour and a half away where this was being held—we met some place near Brockton, and Donald Dumont took us there, drove us to this block party. And I asked the chief of police and the chief of the fire department about it, and they said that there were over 35,000 people there. I do not know. That is about all I know.

Mr. LISHMAN. Did you tell Don Dumont that your charge for this affair would be \$2,500?

Mr. LANIN. I told him many places we play for not much more than that. At private parties the people in the past 20 years have paid it. We have standard prices. We do not overcharge or undercharge anyone. We have standard prices. But for charity throughout the country—we play from coast to coast—we keep it to a minimum.

Mr. LISHMAN. Do you know that the mentally retarded organization there received approximately \$400 of this relatively stupendous affair?

Mr. LANIN. I do not know anything about that at all, except what I was told.

Mr. LISHMAN. We keep hearing the word "charity" in here. I would like to find out just how much this particular charity received.

Was it not, in effect, a business promotion stunt for the station involved, according to the advertising that appeared in the Boston newspapers?

Mr. LANIN. Well, to be perfectly frank with you—

Mr. LISHMAN. Were you familiar with the ads that appeared in the Boston newspapers?

Mr. LANIN. Not at all—not at all. I knew nothing about the business end. I am an orchestra leader. I will be perfectly frank, when they told me about this affair and said, "You will get a lot of exposure," instead of receiving \$2,500, why I asked it to be settled at \$1,000.

Mr. LISHMAN. You asked who?

Mr. LANIN. This Don Dumont.

Mr. LISHMAN. He is the head of Dumont Record Distributing Co.

Mr. LANIN. That is right.

Mr. LISHMAN. He said that he could not give you the \$2,500?

Mr. LANIN. No, he said—or I always say to many patrons throughout America—I say, "You are not going to run this affair for a benefit," and that was the case. I had to get the \$1,000 in order to pay the band. We have expenses, and so forth.

Mr. LISHMAN. Mr. Lanin, we are not critical about the scale. We are just trying to find out the facts.

Mr. LANIN. Surely.

Mr. LISHMAN. I would like to know now what your standard charge was, whether you received it, and, eventually, how much you actually did receive for it. As I understand it you told Mr. Dumont that your standard charge was \$2,500, is that it?

Mr. LANIN. More or less.

Mr. LISHMAN. And he told you that he could not give you more than \$1,000?

Mr. LANIN. That is right.

Mr. LISHMAN. And you agreed to go for \$1,000?

Mr. LANIN. Because it covered charity, which was in it. And that—

Mr. LISHMAN. How much were you actually paid by Dumont for your appearance?

Mr. LANIN. I sent a statement a few days after the engagement, and a check was received for \$400 and the balance was \$600.

Mr. LISHMAN. That balance is still unpaid?

Mr. LANIN. The balance is. That is why I am here. [Laughter.] I have no other reason to be here than that.

Mr. LISHMAN. Did you understand that WBZ undertook to lay on your records as compensation for this \$600 that was owed you?

Mr. LANIN. You must believe me, that so far as business dealings, whatever transactions, you would be surprised when you record for a company—the more you record for them, the longer you are there, the less you know what they do.

Mr. LISHMAN. Would you not be assisted if WBZ laid on your records? You were receiving a 5-percent royalty on sales of your recordings, were you not?

Mr. LANIN. Do you mean if they exposed our records?

Mr. LISHMAN. Yes.

Mr. LANIN. Definitely so. If they play our records over the air it would help. And I do not see anything collusive about that.

The CHAIRMAN. You did not what?

Mr. LANIN. I beg your pardon?

The CHAIRMAN. I did not get the last part of your remark.

Mr. LANIN. I said that I did presume, and Mr. Dumont told me, that they would be announcing "your name, that you are going to play at this party, and in turn that exposure is not harmful," for potential charity. If the charity made \$2 or \$50,000—I have played for charity where they have made \$350,000, as in Palm Beach. I have. I cannot control what the charity makes.

Mr. LISHMAN. We are all in favor of charity. We are trying to find out how the commercial arrangements were made here.

Mr. LANIN. Surely.

Mr. LISHMAN. Nobody is against charitable contributions as such. But, certainly, you were called upon to give more than a charitable demonstration, in other words, you received \$400 in cash?

Mr. LANIN. Yes.

Mr. LISHMAN. When you expected to receive \$1,000. I am asking, did you not, also, receive the laying on of your Epic records by WBZ as part of the compensation for this whole situation?

Mr. LANIN. That is entirely up to the record company and Mr. Dumont and the station. I do not have anything to say about those things. And believe me, you cannot have anything to say—you do not have anything to say.

Here are four statements asking for the \$600 from Don Dumont. And I know the \$600 will be mailed me by Epic, because I added to my royalties. That is why I did not worry about it, but these are four bills.

Mr. LISHMAN. How would this come to you from royalties?

Mr. LANIN. Because, if Don Dumont does not pay me, then Epic will.

Mr. LISHMAN. I have no further questions.

The CHAIRMAN. Mr. Mack?

Mr. MACK. None at the present moment.

The CHAIRMAN. Mr. Devine?

Mr. DEVINE. No.

The CHAIRMAN. Mr. Rogers?

Mr. ROGERS of Texas. Were the people charged a fee for attendance at this block party?

Mr. LANIN. No, Mr. Rogers, it was just in the open air. You just came right on to it on the open street.

Mr. ROGERS of Texas. Who paid the \$400 to charity?

Mr. LANIN. You mean the \$400 that I did receive—or do you mean the \$400 that was collected?

Mr. ROGERS of Texas. Yes, the charitable part.

Mr. LANIN. Just in regular barrels—the people went around and tossed in money—the nice people of Brockton distributed pennies, nickels, dimes, or whatever they had.

I was leading an orchestra. I was not paying too much attention to that. That is all I observed. They could have had \$4 million in the barrels or 4 cents.

Mr. ROGERS of Texas. You did not get to see the proceeds from the barrels?

Mr. LANIN. No, I did not.

Mr. ROGERS of Texas. Mr. Lanin, who was supposed to pay you this \$1,000?

Mr. LANIN. Mr. Dumont.

Mr. ROGERS of Texas. Mr. Dumont?

Mr. LANIN. Yes.

Mr. ROGERS of Texas. And he paid you \$400?

Mr. LANIN. Yes, sir.

Mr. ROGERS of Texas. I believe you said that the union scale required you to get \$1,000?

Mr. LANIN. Approximately.

Mr. ROGERS of Texas. And you only got \$400?

Mr. LANIN. Yes, sir.

Mr. ROGERS of Texas. Is the requirement with relation to union scales something that you have to comply with in regard to a labor union?

Mr. LANIN. Well, the union scale designates, first, the playing hours of the engagement. It might be \$30, \$40 for that. Then he gets mileage, so many dollars per hundred miles. Then he gets his tax for the union. They must get that.

In addition, if they leave early enough you have to pay for their dinner. You have to pay their transportation.

So you add the total up, the total budget together, and then if it comes out to \$954 you get \$1,000.

Mr. ROGERS of Texas. How does the union check up on whether or not you get union scale as you are supposed to?

Mr. LANIN. Well, the union has standard contracts throughout—they are the same contracts written for every band in America. The only difference is that they pick your name on the top. I think that

you pay \$3,000 a thousand sheets. Every band, Paul Whiteman—everyone has the same contract.

Mr. ROGERS of Texas. Mr. Lanin, \$400 was not the union scale in this instance, was it?

Mr. LANIN. It was not—it most certainly was not.

Mr. ROGERS of Texas. So what happens if you do not collect the union scale, are you penalized by the union?

Mr. LANIN. No, the men are paid.

Mr. ROGERS of Texas. The men are paid?

Mr. LANIN. They are paid. They must be paid. They were paid within 2 weeks of the engagement. I pay them on the 10th and 25th of every month, 52 weeks of the year. We have not been paid. I am not worrying about it. All I have to do is to get me a check from the record company.

Mr. ROGERS of Texas. That is not what I am getting at. Your organization is not penalized by the labor union, for not getting union scale, as long as you pay your musicians—that is all that they worry about?

Mr. LANIN. They gripe, Mr. Rogers, if you charge below the scale. You would be penalized if you did. You are perfectly right.

Mr. ROGERS of Texas. Suppose you charge above the scale and collect above the scale?

Mr. LANIN. Well, that is unlawful—that is collusive.

Mr. ROGERS of Texas. Is that not what happened in this case?

Mr. LANIN. This is the setup. Here are the bills I have for that \$600, which I will have as soon as I leave tonight.

Mr. ROGERS of Texas. And your books do not give credit to Mr. Dumont?

Mr. LANIN. Mr. Dumont?

Mr. ROGERS of Texas. Your books do not give Mr. Dumont credit for anything except the \$400 cash he paid you?

Mr. LANIN. That is right.

Mr. ROGERS of Texas. He paid you that by check?

Mr. LANIN. I do not know how he paid it. I am sure it must have been a check.

Mr. ROGERS of Texas. Your best estimate is that he still owes you \$600?

Mr. LANIN. Yes.

Mr. ROGERS of Texas. It is your intention to collect that from Mr. Dumont?

Mr. LANIN. Most definitely.

Mr. ROGERS of Texas. Or from Epic Records?

Mr. LANIN. Right.

Mr. ROGERS of Texas. Are you going to collect it as a debt from Epic Records, or are you going to simply add it to your royalties?

Mr. LANIN. I saw Mr. Dumont here yesterday. I do not think that there will be any doubt about him having the check in the mails today or tomorrow. [Laughter.]

Mr. ROGERS of Texas. Let me ask you one last question: Have you ever participated in any program where you were not paid in money, but entered into an agreement or an exchange of publicity for records made by your bands or for your name alone?

Mr. LANIN. Mr. Rogers, no.

Mr. ROGERS of Texas. You never have?

Mr. LANIN. I am not in that line of business. I have albums. I have played them for years. We have played a few albums on other engagements. We have done so for Tiffany, Whitney, and many others. We just played albums.

Mr. ROGERS of Texas. I am rather acquainted with your music. I have a teenage daughter. I hear it every day.

Were you at the Dade County convention in Miami?

Mr. LANIN. I happened to be in Palm Beach at the time, and went down, not as a member of it, because I am not a DJ, but to look over the beautiful hotel. I loved it. I had no business there.

Mr. ROGERS of Texas. And you did not enter into any transactions down there? For your name or your records?

Mr. LANIN. No. You can verify that statement, Mr. Rogers. I did not attend one meeting, because I had no right to be there.

Mr. ROGERS of Texas. Thank you. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Moss.

Mr. MOSS. I have some questions, Mr. Chairman.

I find that I am somewhat confused as to what you played for in Boston. You have mentioned it was charity?

Mr. LANIN. Surely.

Mr. MOSS. You were contacted by Mr. Dumont?

Mr. LANIN. Originally, Mr. Schicks of Epic.

Mr. MOSS. Mr. Schicks?

Mr. LANIN. He is the sales manager of Epic.

Mr. MOSS. Is Epic a regular label?

Mr. LANIN. That is a label, a subsidiary of Columbia Recording Co.

Mr. MOSS. Of Columbia Recording?

Mr. LANIN. Yes, sir.

Mr. MOSS. What is the relationship of Epic, Columbia, and Dumont?

Mr. LANIN. Epic makes its own labels under its own name. And the distributors of Epic records are individual men, different companies, throughout America. And Dumont is one in New England. And they have another one in California.

Mr. MOSS. Then Dumont contacted you?

Mr. LANIN. That is right.

Mr. MOSS. And you went at a reduced price?

Mr. LANIN. Yes.

Mr. MOSS. And it was promoted by WBZ in Boston?

Mr. LANIN. That is right.

Mr. MOSS. That is, the contest was promoted by them?

Mr. LANIN. That is right.

Mr. MOSS. And you agreed?

Mr. LANIN. Yes, as long as everything——

Mr. MOSS. At this point, what was charitable other than the cut price?

Mr. LANIN. The charitable part was that they said, as I mentioned previously, that they were announcing over the radio that any charity who wrote in this beautiful, strongest letter, would win this so-called Lanin orchestra for the block party.

Mr. MOSS. Any responsible charity?

Mr. LANIN. So long as it was charity. And the one in Brockton won.

Mr. Moss. And then the charity would have you available and they could sell tickets to the block party?

Mr. LANIN. No tickets. It was convenient for me to attend.

Mr. Moss. You were in partnership for the charity. What did they do, pass the hat?

Mr. LANIN. When we got there—I do not know what kind of a thing it was—I cannot tell you how Brockton is situated, but there is a great big court.

Mr. Moss. That does not matter.

Mr. LANIN. They had about 35,000 people, they claimed. No one paid—they just assembled there.

Mr. Moss. You entered into this?

Mr. LANIN. Yes.

Mr. Moss. To go up there for \$1,000?

Mr. LANIN. Yes.

Mr. Moss. Which is not your regular fee?

Mr. LANIN. Yes.

Mr. Moss. And you were to play for the charity winning the contest. Certainly, you had no trouble about the type of promotion that would be used by the organization in presenting it?

Mr. LANIN. I had a perfect understanding that Mr. Schicks and Mr. Dumont, that is, with them, that they would be advertising this block party, whoever won it, over the radio extensively.

Mr. Moss. And WBZ would be advertising the entire contest?

Mr. LANIN. Yes.

Mr. Moss. And you would be advertised—the contest and you?

Mr. LANIN. We were the orchestra.

Mr. Moss. By you, you are referring to the Epic label?

Mr. LANIN. Yes.

Mr. Moss. Are you a recording orchestra for any other label distributed by Dumont?

Mr. LANIN. No, no.

Mr. Moss. Only Epic?

Mr. LANIN. Yes.

Mr. Moss. How many recordings have you made?

Mr. LANIN. Many.

Mr. Moss. Was your understanding that the charity would not sell tickets to the block party?

Mr. LANIN. I must be perfectly frank about the workings of this charity. I knew nothing—I knew nothing—I only knew——

Mr. Moss. I am confident that you are a reasonably prudent businessman. You appear to be somewhat successful. I cannot believe that you were in complete ignorance as to specific details when you undertook this engagement. I think you know that full well——

Mr. LANIN. Mr. Moss——

Mr. Moss. That you knew what the terms of the agreement would be. I would like you to recite the terms of that agreement.

Mr. LANIN. That is right. The agreement, I repeat, was to play at our convenience for a certain agreed and specified sum. There is no use beating around the bush. You like exposure in this game. If they play your music on the air or on television, it is helpful.

Mr. Moss. You were told then, that as a part of this arrangement, there would be an increased exposure of Lanin's recordings over WBZ?

Mr. LANIN. I was not told that, as much we were a part of the agreement. They had to get a band. They could have gotten the late Tommy Dorsey.

Mr. Moss. That it would be an indirect benefit?

Mr. LANIN. A benefit to me.

Mr. Moss. You would have exposure through this?

Mr. LANIN. That is right.

Mr. Moss. So it was full consideration to you in determining that you would participate in this promotion?

Mr. LANIN. Yes. I am sure that I am not otherwise. In my heart and soul I felt that the exposure was correct, and it would not do us any harm. It was ethical. And I think I have nothing to cover.

Mr. Moss. When was this affair?

Mr. LANIN. September 26, 1958.

Mr. Moss. September 26, 1958.

Mr. LANIN. Yes.

Mr. Moss. And you billed the Dumont Co. for \$1,000; they sent you \$400?

Mr. LANIN. That is right.

Mr. Moss. And now some 14, 15 months later, \$600 is still unpaid. What is your custom, as a businessman, in collecting fees from clients?

Mr. LANIN. The people that we do business with—with whom we do business—the social set of America—I have to be very careful—and I always try and talk things over and have signed statements.

Mr. Moss. Have you ever used any legal remedy?

Mr. LANIN. Never in my life. I have never visited an attorney in my life.

Mr. Moss. Have you ever made a request for payment?

Mr. LANIN. I write—I consistently write. And then my accountant sometimes writes.

Mr. Moss. Do you have an agent?

Mr. LANIN. Never.

Mr. Moss. You collected everything that is owing?

Mr. LANIN. Due to the people with whom we do business, the top social set of America, I feel it is a package—I feel that the gross that I derive from playing for these people overbalances a few people who maybe cannot or are not in position.

Mr. Moss. Did you follow the normal method of collecting the \$600?

Mr. LANIN. That \$600 is like, in the bank. My checking account is more than \$600, because Columbia Record Co. can surely put up \$600.

Mr. Moss. You are dealing with the distributor?

Mr. LANIN. Yes.

Mr. Moss. The distributor of Epic labels?

Mr. LANIN. Yes. And any other.

Mr. Moss. Did Epic undertake to underwrite it?

Mr. LANIN. That is right. I agree with you most definitely.

Mr. Moss. I do not want you to agree with me. I want you to tell me whether this is correct.

Mr. LANIN. You get exposure. Then you hope that when people get to know you, like any other product, if you make a certain can of soup, and advertise it more than another, you get the sales, although the other may be just as good.

Mr. Moss. Epic will pay because Epic got the \$600 together?

Mr. LANIN. I do not say because of their exposure.

Mr. Moss. Why did they undertake to pay a bill by another company which is not a part of their own organization—they have the relationship with the firm as the distributor of their products.

Mr. LANIN. Yes.

Mr. Moss. Normally, the manufacturer does not undertake to underwrite the debts of his distributors, or to guarantee them. Why, in this instance, are they the underwriter of Dumont?

Mr. LANIN. I will be perfectly frank with you. I have not spoken to anybody in Epic.

Mr. Moss. Why do you assume that Epic would pay it for Dumont?

Mr. LANIN. Well—

Mr. Moss. Is there anything unusual about it? Unless there is something in the background.

Mr. LANIN. So far as I am concerned I made an agreement with Don Dumont to be paid \$1,000. And he is manager of Dumont.

Mr. Moss. He is an officer of Epic?

Mr. LANIN. No; of Dumont. They originated and set up this entire campaign and—

Mr. Moss. I understand that.

Mr. LANIN. I do not care where I get the money—I do not care whether it comes from the moon.

Mr. Moss. You have complete confidence that either Columbia, Epic, or somebody, apparently, will pay?

Mr. LANIN. Yes.

Mr. Moss. Because until yesterday you had more or less a standing hope of Dumont paying and were relying on Epic?

Mr. LANIN. I did not abandon the hope at all. In fact, I think Mr. Dumont, if he would have only sent a check a year and a half ago, I do not think it would be necessary for me to be here. That is a fact, Mr. Moss. I mean, they would or they could have just put a check in the mail.

Mr. Moss. Yes; but I still cannot figure why you feel that Epic would pay the bill.

Mr. LANIN. I do not say that I feel they will. I say I can demand it, because that is my company—I am contracted to them. They have the original agreement. I do not think it will reach that point.

Mr. Moss. You can demand that Epic pay you the \$600 which Dumont owes you—why should they pay somebody else's bill? That is what I cannot figure out.

Mr. LANIN. I do not know whether it is someone else's bill. I mean, if these people—

Mr. Moss. Epic was in on the affair as clearly a record promotion project?

Mr. LANIN. I would presume that such was the case. If Epic told me. Evidently, they were interested.

Mr. Moss. Another thing, you say you worked for them. Do you so presume that it is that?

Mr. LANIN. I would believe that you are perfectly right.

Mr. Moss. You do assume that?

Mr. LANIN. Yes; I mean—

Mr. Moss. Why?

Mr. LANIN. If they called you to play a block party, and they called you for a charitable affair, I do not think there is anything collusive about doing it.

Mr. Moss. I do not think that there is anything collusive about it. All I want to know is why you assume that Epic would pay. You made it clear that you thought that Epic and Dumont were together. I agree with you. Those are all of the questions I have, Mr. Chairman.

The CHAIRMAN. Mr. Mack.

Mr. MACK. I would like to ask you about Dumont. You know Dumont's first name; is it Don Dumont?

Mr. LANIN. Yes.

Mr. MACK. Do you know him quite well?

Mr. LANIN. Quite well? No. I know that he is the distributor of Epic Recording Co.'s records and many others. And I know that when you record you know the different distributors that sell your records.

I repeat every artist is interested in seeing that his records are sold, to get them out and to get exposure. I think that is business in the United States in general on every product, Henry Ford, and General Motors, and so forth.

Mr. MACK. So you are acquainted with him?

Mr. LANIN. With Don Dumont—personally, I have never associated with him.

Mr. MACK. You seem to be quite familiar with his operation?

Mr. LANIN. His operation—I am not really familiar with his operation. I know he is a creative man. And I suppose that he works up a publicity campaign which was to benefit charity. I am so sorry that the charity did not benefit financially. It was a publicity campaign which would in all probability benefit the sale of records. Maybe that is where Mr. Dumont would come in. And I would be unhappy if it was not legitimate and unethical and collusive. I am not interested in anything that is shady. I have a pretty good reputation, if you look up my record.

Mr. MACK. Do you know him well enough to know that he has a reputation for paying his bills?

Mr. LANIN. That I do not.

Mr. MACK. You do not know him that well?

Mr. LANIN. No; I do not.

Mr. MACK. What excuse, would you think, that he would have for not paying this bill, due for over 15 months?

Mr. LANIN. I think Mr. Dumont must be sitting in this room now. I saw him here yesterday.

Mr. MACK. I am hoping that I will have an opportunity to ask Mr. Dumont. At this time I am asking you.

Mr. LANIN. I think that he just feels that he just started—there is no reason for it—why get this over with—I do not understand, I

did not have to be here, it could have been avoided a thousand per cent—I have nothing to do with these hearings. It is not worth my while. He should have paid it ages ago. Mr. Dumont is in the room now, I am sure.

Mr. MACK. Did he give any excuse like saying that he was short of money?

Mr. LANIN. No, no; not like that.

Mr. MACK. And you had asked him—you had corresponded with him on several occasions before?

Mr. LANIN. Never corresponded—just sent him a bill.

Mr. MACK. You had general correspondence only of that kind?

Mr. LANIN. Yes; sure.

Mr. MACK. You did that on several occasions?

Mr. LANIN. I notice that my bookkeeper sent four bills here.

Mr. MACK. What are the dates on the bills?

Mr. LANIN. October 30, 1959; May 13; October 30, 1959; and there is one, January 28, 1960.

Mr. MACK. The first one you sent to him was in May of 1959?

Mr. LANIN. The first we sent was right after the engagement. We sent it the first part of the month after the engagement—maybe on the first.

Mr. MACK. That was before they sent you the \$400?

Mr. LANIN. Yes; that is right.

Mr. MACK. As a result you received a check for \$400?

Mr. LANIN. Yes; that is right. And I think personally, Mr. Dumont should have just put the check in the mail for \$1,000 and I would not be here today.

Mr. MACK. I think that we are in agreement on that. I was just wondering why. You have indicated that he had plenty of money and—

Mr. LANIN. I think he is in here. He is just foolish about the matter. Why don't you call Mr. Dumont himself?

Mr. MACK. Looking back upon it, you think it is foolish; correct?

Mr. LANIN. I think so, too. Why in the devil—does he think I am a millionaire or do not need the money?

Mr. MACK. Before coming before this committee in Washington, you thought he had been foolish?

Mr. LANIN. That was yesterday.

Mr. MACK. Thank you very much.

The CHAIRMAN. Mr. Lanin, how far ahead are you booked in your schedules?

Mr. LANIN. Well, I have dates on parties up to 1968—June, September, and December, the three periods. I have many months in the next few years where we do not have one engagement, but those 3 months we have bookings ahead.

The CHAIRMAN. Of course, that is commendable. Naturally, it shows that your orchestras are in great demand.

Mr. LANIN. I hope so, Mr. Chairman.

The CHAIRMAN. I think that your record speaks for itself. You are pretty hard to get, are you not?

Mr. LANIN. Once you have made an agreement for your present services, you must go forward.

The CHAIRMAN. You do have some vacancies throughout the year; that is, through each period of time?

Mr. LANIN. Yes. The more you know about the business, the more you feel that this junior prom will need you, and you hold off a little bit; there is nothing, but you hope maybe they will call you. Any annual national affair of importance, you wait it out a little bit. When they call you, as to a coming-out party or something like that, I put the date down. And then that is settled.

When they call for another orchestra, then you submit the other. You cannot put it up for more than 9 months in advance—you cannot book for more than that. You invite them to book 2 or 3 years in advance, but the average commercial date is possibly a year at tops.

But fortunately for me, I have many, many bookings. In fact, I expect to do so.

The CHAIRMAN. You had no difficulties filling the engagement for this particular block party, did you?

Mr. LANIN. They made the date convenient for my orchestra. They were very nice about it. I did not interrupt an engagement some place else. They arranged this block party when it was convenient for my band to play it. So I did not lose anything. And still I have made it a firm practice to play all charitable events around America at a minimum fee—no charge for my personal services.

The CHAIRMAN. That is commendable, of course, too, but the purpose of this meeting, the so-called block party or dance was a promotion for your own orchestra. Would you say also a promotion for the records involved?

Mr. LANIN. Mr. Chairman, I would say without hesitancy that is strictly a commercial venture, although I do not claim I am not charitable, but it was, also, business on getting exposure.

The CHAIRMAN. A commercial venture—it was an exposure and, so far as you were concerned, a matter of business, and the charitable phase of it was just simply an addition to it?

Mr. LANIN. No; it was charitable that night. If you know my past history I think you will find me not otherwise.

The CHAIRMAN. I am not referring to your part of it. I am talking about those who promoted it for the purpose of exposing the records.

Mr. LANIN. Certainly, Mr. Chairman.

The CHAIRMAN. I suppose you do not think that this committee will collect the \$600 debt for you?

Mr. LANIN. Thank you very much. I think you have done a grand job. I am not here for that under the ethics of what this committee is meeting for. That is what I am trying to convey.

The CHAIRMAN. You seem to be so sure that you are going to get the check.

If there is nothing further, you may be excused.

Mr. LANIN. Thank you.

The CHAIRMAN. Our next witness is Mr. Givens.

Will you stand and be sworn?

Do you solemnly swear that the testimony that you are about to give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. GIVENS. I do, sir.

TESTIMONY OF GEORGE WILLIAM GIVENS

The CHAIRMAN. What is your name, please, for the record?

Mr. GIVENS. For the record, my name is George William Givens.

The CHAIRMAN. What is your residence?

Mr. GIVENS. 1584 Beacon Street, Brookline, Mass.

The CHAIRMAN. What is your profession or business?

Mr. GIVENS. I am manager of radio station WORL in Boston, Mass.

The CHAIRMAN. You may proceed, Mr. Lishman.

Mr. LISHMAN. Were you at station WBZ at one time?

Mr. GIVENS. I was.

Mr. LISHMAN. In what capacity were you there?

Mr. GIVENS. As a producer, and later as musical director of the radio station.

Mr. LISHMAN. Do you know Mr. Paul G. O'Friel?

Mr. GIVENS. Yes, sir.

Mr. LISHMAN. He is general manager of WBZ?

Mr. GIVENS. That is true.

Mr. LISHMAN. Then he was general manager when you were employed by that station?

Mr. GIVENS. Yes, sir.

Mr. LISHMAN. Did Mr. O'Friel assign to you the task of rebuilding the record library of WBZ?

Mr. GIVENS. He did, sir.

Mr. LISHMAN. About what time did he give you that assignment?

Mr. GIVENS. If memory serves, this assignment was given to me in July of 1958. It came at a time when I was due to go on vacation. I went on vacation and came back in August. And I will say that we began to rebuild the WBZ library in September of 1958.

Mr. LISHMAN. What was the condition of the WBZ record library at that time?

Mr. GIVENS. Its contents were very poor. They had very few recordings, at least, not as many as an independent music operation should have.

Mr. LISHMAN. Did Mr. O'Friel give you certain instructions with regard to procuring long-playing phonograph record albums that were needed by WBZ?

Mr. GIVENS. Instructions?

Mr. LISHMAN. Yes, sir.

Mr. GIVENS. Yes, sir.

Mr. LISHMAN. Did he give you instructions as to how you were to approach record distributors?

Mr. GIVENS. I would not say they were instructions, sir. I would say it was the result of a general agreement among Mr. O'Friel and myself. Mr. O'Friel wanted me to secure these records without cost.

Mr. LISHMAN. Did he, also, indicate to you that he wanted you to contact record manufacturers as well as record distributors to obtain these records free of cost?

Mr. GIVENS. Perhaps I might give a little background. It was impossible for us to get these records from the distributors.

Mr. LISHMAN. The local distributors, you mean?

Mr. GIVENS. Yes, sir. I am referring to local distributors.

Mr. LISHMAN. Why was that impossible; could you not have purchased them?

Mr. GIVENS. Yes, sir.

Mr. LISHMAN. But you mean it was impossible to get them free?

Mr. GIVENS. Yes, sir; because of the quantity required—because of the number of recordings required to rebuild this library. I went to the local distributors and approached them on the possibility of getting records in this quantity, and they felt that it was out of the question economically. They felt that it was establishing a very bad precedent from their standpoint to give so many records.

Mr. LISHMAN. May I interrupt?

Mr. GIVENS. Yes, sir.

Mr. LISHMAN. From the testimony heard by this subcommittee, it is standard practice for a station to receive record albums free of charge. Do you agree with that testimony?

Mr. GIVENS. Not in that quantity, sir.

Mr. LISHMAN. Proceed with your testimony.

Mr. GIVENS. They felt that it would be establishing a very bad precedent to grant record albums in that quantity, because if they did it for one, they would have to do it for others. And if we wanted to pursue it further to do it on the national manufacturers level.

The CHAIRMAN. To make them available free of charge?

Mr. GIVENS. Yes, sir.

Mr. LISHMAN. Mr. Givens, in your discussions with Mr. O'Friel concerning this assignment to obtain free record albums, was Mr. Norman Prescott present at these discussions?

Mr. GIVENS. Yes; he was.

Mr. LISHMAN. And could you describe what you and Mr. Prescott did in carrying out the assignment given to you by Mr. O'Friel as station manager of WBZ?

Mr. GIVENS. To carry out the assignment, Mr. Prescott and I went to New York City for 3 or 4 days—I do not recall offhand the exact number of days—3- or 4-day trip to New York. At that time we contacted, Norm or myself, all 10 record manufacturing concerns.

We approached them on the possibility of rebuilding the library. And this basically, essentially, is the procedure we followed.

Mr. LISHMAN. Well now, to refresh your recollection did you contact a Mr. Shulman, the national promotion director or manager for Roulette Records?

Mr. GIVENS. Yes, sir.

Mr. LISHMAN. Did you contact a Mr. Joe Kolsky, president of Roulette Records?

Mr. GIVENS. Yes, sir.

Mr. LISHMAN. Did you contact a Mr. Charles Schicks of Epic Records?

Mr. GIVENS. Yes, sir.

Mr. LISHMAN. And Mr. Arnold Maxin, president of MGM Records?

Mr. GIVENS. Yes, sir.

Mr. LISHMAN. And Mr. Irv Jerome, sales manager of MGM Records?

Mr. GIVENS. Yes, sir.

Mr. LISHMAN. And Mr. Sidney Goldberg, vice president of Decca Records?

Mr. GIVENS. Yes, sir.

Mr. LISHMAN. And Mr. Don Ovens, national promotion, Capitol Records?

Mr. GIVENS. Yes, sir.

Mr. LISHMAN. And Mr. Jerry Wexler, president of Atlantic Records?

Mr. GIVENS. Yes, sir.

Mr. LISHMAN. And Mr. Bob Shad of Mercury Records?

Mr. GIVENS. Yes, sir.

Mr. LISHMAN. And Mr. Sal Peruggi of RCA Victor?

Mr. GIVENS. Yes, sir.

Mr. LISHMAN. And Mr. Jack Burgess, sales manager of RCA Victor?

Mr. GIVENS. Yes, sir.

Mr. LISHMAN. And Mr. Lee Hartstone of London Records?

Mr. GIVENS. I did not contact Mr. Hartstone personally, but Mr. Prescott did.

Mr. LISHMAN. And Mr. Mitch Miller of Columbia Records?

Mr. GIVENS. Yes.

Mr. LISHMAN. Now, in your contacts with each of the officials of these record companies, what did you say with respect to your being there before them?

Mr. GIVENS. We pointed out the exact purpose or our reason for the trip to New York. We pointed out to the individuals you have just indicated, we were there in New York for the purpose of rebuilding the WBZ library. We indicated we had come to them for their assistance in doing this. These are the gentlemen we had to see in order to get records in any quantity, particularly the quantity we wanted.

Mr. LISHMAN. When you approached, let us say, Decca Records, what quantity did you indicate that Decca Records should supply free?

Mr. GIVENS. Whatever quantity I, as musical director of the radio station, deemed essential to building up the Decca phase of our library.

Mr. LISHMAN. Did you ask Decca Records, and specifically, Mr. Goldberg, for approximately 200 free albums?

Mr. GIVENS. More if needed.

Mr. LISHMAN. And what was his reaction to that request?

Mr. GIVENS. As I recall, Mr. Goldberg sat back in his chair, looked us both right in the eye and said, "I have never done this before. I will do it this once. I will not do it again."

Mr. LISHMAN. In other words, he was rather reluctant about giving you 200 or more long-playing record albums?

Mr. GIVENS. Yes, sir, he was.

Mr. LISHMAN. Free?

Mr. GIVENS. Yes, sir.

Mr. LISHMAN. Did you meet a cordial response from any of the other persons you contacted?

Mr. GIVENS. Yes, sir, all responses were cordial.

Mr. LISHMAN. But did you meet any reluctance on the part of any of these people in furnishing such a large volume of free album records?

Mr. GIVENS. Not reluctance, no, sir.

Mr. LISHMAN. And were you successful in this mission?

Mr. GIVENS. Yes, sir.

Mr. LISHMAN. Do you recall approximately how many long-playing record albums you obtained free as a result of this New York trip?

Mr. GIVENS. It will have to be approximate, sir. I would say approximately 1,000.

Mr. LISHMAN. Yes. And did you also endeavor to obtain free record albums elsewhere than New York City?

Mr. GIVENS. Other than my initial contact with the local distributors, sir, I made no effort to contact outside New York City, because in nearly every instance the manufacturer is located in New York City.

Mr. LISHMAN. During your trip to New York did you contact Mr. Sam Clark of AmPar Records?

Mr. GIVENS. Mr. Clark was not there.

Mr. LISHMAN. Who did you contact in his organization?

Mr. GIVENS. Mr. Irwin Good.

Mr. LISHMAN. Did you succeed in getting them to give you free records? Do you recall how many you were able to get from that company?

Mr. GIVENS. Not as many as some of the others. We were offered a catalog to check over what we needed. I would say—now, this is an awfully broad generality, but I would say between 50 and 100.

Mr. LISHMAN. Now, isn't it true that most record manufacturers at the time you were engaged on this mission, to get them free, had clubs to which a station had to subscribe, or could subscribe, and pay a sum of money, for record albums?

Mr. GIVENS. They were not necessarily clubs. These are called record services for radio stations.

Mr. LISHMAN. Can you describe briefly what the nature of that service is?

Mr. GIVENS. The nature of this service provides any radio station with X numbers of recordings which are released by the various companies at a very liberal fee. The fee usually runs less than a dollar an album. You are guaranteed, usually, a minimum of 50 releases a year. Sometimes it goes 75, sometimes 100. For this, you pay a fee, depending on the company, ranging anywhere from \$35 to \$50 or \$75.

Mr. LISHMAN. Well, now did you emphasize in your contacts with these record company people that even though they let you have the records for WBZ, that they would never be paid for these records?

Mr. GIVENS. Yes, sir, I did.

Mr. LISHMAN. Did you indicate to them that WBZ would lay on the records of the labels that they manufactured?

Mr. GIVENS. We indicated that the records we came for would be used. I honestly have no recollection of having indicated that we would give further extension to laying on records. We made it very clear that any records we took were because we needed, and they would get definite exposure on the air. But as far as indication pertaining to what we would do in the future, I was in no position to make a commitment of that kind. And I honestly do not feel

we did indicate that there would be anything in the future as far as playing of records is concerned.

Mr. LISHMAN. Who besides Mr. O'Friel was aware of your trip and Mr. Norman Prescott's trip to New York, to secure these free records?

Mr. GIVENS. Why, any of the management of radio station WBZ, which would include Mr. O'Friel, it would include the program manager.

Mr. LISHMAN. Who was that?

Mr. GIVENS. The program manager? Mr. Melvin Bailey.

Mr. LISHMAN. And when you returned to Boston, did you have a meeting with Mr. O'Friel, or any other official of the station concerning your trip?

Mr. GIVENS. Yes, sir; I met with Mr. O'Friel.

May I go back, sir, so I can clarify the record?

Mr. LISHMAN. Yes, sir.

Mr. GIVENS. In addition to this, our headquarters personnel were aware that this trip was being conducted.

Mr. LISHMAN. By headquarters personnel, could you identify them?

Mr. GIVENS. The Westinghouse Broadcasting Co., operates on a headquarters station basis. The headquarters personnel are national program managers, national vice presidents in charge of programing, and so forth. These people were aware that this trip was being made to New York.

Mr. LISHMAN. Would you please identify the gentlemen by name?

Mr. GIVENS. Mr. Richard Pack is the vice president in charge of programs. Mr. Bill Kalen is the national program manager for the Westinghouse Broadcasting Co.

Mr. LISHMAN. And how did you know that they knew about your trip to secure these free records?

Mr. GIVENS. Well, in New York I visited them. I advised them this trip was being made for this purpose. And I am sure that Mr. O'Friel must have advised them we were also going to undertake this. As a matter of fact, as I recall, Mr. Kalen had occasion to be in Boston and I mentioned it to him then. This was before the trip.

Mr. LISHMAN. Is it usual for radio stations to send people out on a mission of this kind?

Mr. GIVENS. This is the first time I had ever gone on such a mission.

Mr. LISHMAN. Have you ever heard of any other representative of a radio station undertaking a similar mission?

Mr. GIVENS. No, sir; I have not.

Mr. LISHMAN. And how long have you been in the radio and television business?

Mr. GIVENS. I am 36 years old. I have have been in it since I was 11.

Mr. LISHMAN. Now, while you were at station WBZ, were any of these albums played?

Mr. GIVENS. Yes, sir.

Mr. LISHMAN. Was it announced that they were freebees, that they had been received free of charge at the time they were played?

Mr. GIVENS. No, sir; they were not.

Mr. LISHMAN. Now, as station manager, is it of WORL?

Mr. GIVENS. Yes, sir.

Mr. LISHMAN. Are you familiar with whether or not the Herald Traveler, a newspaper in Boston, publishes or advertises in the radio section programs on station WORL?

Mr. GIVENS. They do not carry our listings.

Mr. LISHMAN. Have they ever carried your listings?

Mr. GIVENS. Not to the best of my knowledge.

Mr. LISHMAN. Do you know whether the station had made attempts to have the Herald Traveler carry your listings?

Mr. GIVENS. Yes, sir, we have.

Mr. LISHMAN. And how did you make these attempts?

Mr. GIVENS. Our program schedule is made out weekly. This is common practice in the industry.

Mr. LISHMAN. And have you made direct contact with officials of the Herald Traveler?

Mr. GIVENS. I have not, sir.

Mr. LISHMAN. Do you know whether officials of WORL have?

Mr. GIVENS. I do not know, sir.

Mr. LISHMAN. Do the other newspapers in Boston carry a listing of station WORL programs?

Mr. GIVENS. Yes, sir, they do.

Mr. LISHMAN. And the Herald Traveler, then, is the only newspaper which fails to carry a listing of WORL?

Mr. GIVENS. I think I am safe in saying yes, sir.

Mr. LISHMAN. Do you feel that that is attributable to the fact that the Herald Traveler itself has a competing radio station?

Mr. GIVENS. I don't know the reason.

Mr. LISHMAN. Now, there is no question that Mr. O'Friel knew that you had to tell these companies that they should supply these records absolutely free of charge to WBZ?

Mr. GIVENS. I made this absolutely plain to them. I didn't want any misunderstanding on this, because this represented a considerable amount of recordings.

Mr. LISHMAN. This was not some kind of an individual attempt by you and Mr. Prescott to gain some fame in the station by getting these records free on your own?

Mr. GIVENS. No, sir.

Mr. LISHMAN. In other words, it was in accordance with either direct instructions—

Mr. GIVENS. Well, sir—

Mr. LISHMAN. Or a statement made to you by Mr. O'Friel, that you went on this mission?

Mr. GIVENS. Well, sir, I couldn't undertake a 4-day business trip to New York City without the knowledge or acceptance on the part of our management.

Mr. LISHMAN. But the purpose of the trip was discussed in advance with you, Mr. O'Friel, and Mr. Prescott?

Mr. GIVENS. So much so that I prepared an itinerary at least 10 days in advance, and notified the people that I was coming.

Mr. LISHMAN. Now, were these requests for free albums, did they include classical or semiclassical merchandise?

Mr. GIVENS. No, sir, this was confined strictly to the pop field.

Mr. LISHMAN. Strictly to popular music?

Mr. GIVENS. Yes, sir. There were no classical albums included in this at all.

Mr. LISHMAN. When you contacted record companies, did they give you their catalogs, and ask you to pick out the albums that you desired?

Mr. GIVENS. Yes, sir, they did.

Mr. LISHMAN. And was Mr. Prescott there on such occasions?

Mr. GIVENS. Yes, he was.

Mr. LISHMAN. In some instances?

Mr. GIVENS. Yes, he was.

Mr. LISHMAN. And when you reported back to Boston, with Mr. Prescott, to Mr. O'Friel, did he congratulate you on the success of your mission?

Mr. GIVENS. Yes, sir, the three of us were rather pleased with the results. We were given an assignment and carried it out.

Mr. LISHMAN. How much do you estimate it would have cost WBZ if it had had to pay for the furnishing of its library with the long-playing record albums?

Mr. GIVENS. Well, there is a misconception in some areas as to cost to radio stations. Radio station service would enable the station to get this at considerably less than a consumer would pay, and as a part of this service that we covered earlier. These records would cost the radio anywhere from \$0.75 to \$1, which varies from the list price.

Mr. LISHMAN. As contrasted with—

Mr. GIVENS. With the list price.

Mr. LISHMAN. \$4?

Mr. GIVENS. Of the commercial album, which runs \$3.98, \$4.98, and in some instances as high as \$5.98.

Mr. LISHMAN. I have no further questions.

The CHAIRMAN. Mr. Mack?

Mr. MACK. What was your position with the radio station?

Mr. GIVENS. At this time, this we are discussing now?

Mr. MACK. Yes.

Mr. GIVENS. I was the music director of the radio station.

Mr. MACK. And in that capacity, would you be in charge of the library?

Mr. GIVENS. Yes, Mr. Mack, I would be.

Mr. MACK. When Mr. O'Friel appointed you to this position, did he indicate how much money would be available to you for purchasing records?

Mr. GIVENS. No, sir, I had no indication what the budget was, or even if there was a budget.

Mr. MACK. Did you ever ask him if there would be—if it would be possible to buy records?

Mr. GIVENS. Yes, sir; I inquired of the possibility of availing ourselves of the record services.

Mr. MACK. And what did he say?

Mr. GIVENS. He indicated there would not be.

Mr. MACK. In other words, he was determined to secure records without paying for them?

Mr. GIVENS. If he could.

Mr. MACK. Now, I noticed that you testified to the effect that this was his idea rather than yours, to go to New York. Is that correct?

Mr. GIVENS. Yes, sir.

Mr. MACK. And you testified to the effect that it was not customary?

Mr. GIVENS. Well, now, wait, just a minute, gentlemen, if I may. May I go back?

Mr. MACK. Yes, I want it to be clear.

Mr. GIVENS. If memory serves, and I have played this over in my mind, it has been over a year since it has happened now, and at the time it obviously didn't take on this significance—I have tried to resolve as clearly in my own mind—when this assignment was given me, by Mr. O'Friel, with the thought of getting the free records from the distributors—this is how it began, the distributors on the local level—I remember thinking at the time that this is rather a difficult task, it is rather awesome in its proportion. And I went to Norm and asked him at the time how this could be done. And if memory serves, it was his suggestion that we go to New York, not Mr. O'Friel's. Mr. O'Friel agreed that this would be the next step. He then sanctioned the trip, and Mr. Prescott and I left for New York City.

Mr. MACK. If I remember the testimony yesterday, he indicated that it was his idea, and that he said it was entirely customary.

Mr. GIVENS. I did not hear any testimony yesterday, sir. I am trying to tell you basically what I know.

Mr. MACK. I understand. And it was his understanding that all of the stations, many stations had secured this.

Mr. GIVENS. My recollection is when I was given—

Mr. MACK. We are trying to tie down the definition of payola, and we had a slight difference of opinion on this matter. And he indicated that it was customary, almost standard procedure, for radio stations to go in and secure free records.

If I understood your testimony this morning correctly, you indicated that it is the only case you have ever heard about.

Mr. GIVENS. I gave that as my understanding, to the best of my knowledge, sir.

Mr. MACK. That is all the questions I have.

The CHAIRMAN. Mr. Springer?

Mr. SPRINGER. Mr. Givens, just one or two question.

At the time that you went to get the records from Mr. Goldberg—is that the correct name?

Mr. GIVENS. Mr. Goldberg, of Decca Records.

Mr. SPRINGER. Did I understand you to say that at that one stop you got about a thousand records?

Mr. GIVENS. No, sir, I would say our total was a thousand records. I would say approximately 200, give or take.

Mr. SPRINGER. Now, you knew that they were given to you free. And they understood they were given to you free?

Mr. GIVENS. Yes, sir.

Mr. SPRINGER. Now, did you make them any promises in return?

Mr. GIVENS. Only that the records we took from them would very definitely be used on the air, that they wouldn't be wasting their time on records, that the records they gave us would be played.

Mr. SPRINGER. In other words, the inducement for the free records was that you were going to play them?

Mr. GIVENS. Yes, sir.

Mr. SPRINGER. And that was clearly understood?

Mr. GIVENS. Yes, sir.

Mr. SPRINGER. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Rogers?

Mr. ROGERS. Mr. Givens, in what capacity were you employed at the station?

Mr. GIVENS. In charge of the library, the musical director of the radio station.

Mr. ROGERS. Well, does that put you in a policymaking position, or—

Mr. GIVENS. Yes, sir, it does—or did.

Mr. ROGERS. In other words, you handed out the records to the diskjockeys?

Mr. GIVENS. Well, it isn't as simple as that. I was in charge of the records which the diskjockeys used. They were free to go ahead and choose at their own discretion. I merely kept a check on them.

Mr. ROGERS. Did they discuss with you which records should be used?

Mr. GIVENS. No, sir.

Mr. ROGERS. They just told you what they wanted, and you gave it to them?

Mr. GIVENS. Yes, sir.

Mr. ROGERS. How long were you with that station?

Mr. GIVENS. I came to WBZ—well, I was with Westinghouse Broadcasting Co., actually since 1951, until December of 1958.

Mr. ROGERS. Are you a native of Boston?

Mr. GIVENS. No, sir, I am not. I am a native of Elmira, N.Y.

Mr. ROGERS. And did you say you had been working in this since you were 11 years old?

Mr. GIVENS. Yes, sir.

Mr. ROGERS. Now, Mr. Givens, when you went to New York, did all of the record companies know that you were going to the other record companies?

Mr. GIVENS. I can't say that they did know. I would assume that they did. I don't think you would send out a two-man team to visit one record company, sir.

Mr. ROGERS. You think they were afraid if they didn't give you some records you would go to the others?

Mr. GIVENS. No, sir, because I think they thought we were going to the others.

Mr. ROGERS. And they didn't want the other company to get an advantage over them?

Mr. GIVENS. I would only be speculating.

Mr. ROGERS. Yes. Well, that is what I am doing.

Could you have gotten these records by yourself, you think?

Mr. GIVENS. Not then. I don't think I could have gotten those records by myself.

Mr. ROGERS. Why?

Mr. GIVENS. I had only been in Boston a very short time, and at that time I was just part of the hired help.

Mr. ROGERS. You were not one of the top 10 DJ's?

Mr. GIVENS. No, sir.

Mr. ROGERS. Were you one of the top 10 librarians? Did they have any top 10?

Mr. GIVENS. Mr. Rogers, I may have thought so, but there was nothing categorically to indicate I would be.

Mr. ROGERS. I was wondering what yardstick they used to determine this top 10 in the DJ group. Do you know about that?

Mr. GIVENS. Well, I think that is kind of intangible. I would say the effect you have on your audience, your rating structure, your influence with your audience.

Mr. ROGERS. Who makes this?

Mr. GIVENS. Oh, polls are taken.

Mr. ROGERS. By whom?

Mr. GIVENS. Magazines, trade publications, telephone calls are made, ballots are distributed.

Mr. ROGERS. Who finally decides on the top 10? It looks to me like you would have a whole bunch of groups of 10's. Everybody would think they were the best picker, wouldn't they?

Mr. GIVENS. Mr. Rogers, I wouldn't have the slightest idea as to how I would determine the top 10 diskjockeys in the country.

Mr. ROGERS. But I noticed in your statement you said Mr. Prescott was one of the top 10.

Mr. GIVENS. He won a poll.

Mr. ROGERS. Who put on this poll?

Mr. GIVENS. I don't recollect. I do recall when I went to Boston that one of the first things in checking back and trying to find out about the people I was working with and for that a poll had been conducted and that as a result of this poll Mr. Prescott had been awarded the distinction of being one of the top diskjockeys in America. I couldn't tell you offhand what the poll was.

Mr. ROGERS. And he volunteered his services to go down as one of the top 10 DJ's and put the pressure on these record companies?

Mr. GIVENS. I think Norm volunteered his services as a diskjockey, to go down and help me in the project, yes, sir.

Mr. ROGERS. Well, now, you say volunteered his services to go down and help you in the project. Was the project to put the pressure on the record companies to get some records free?

Mr. GIVENS. Yes, sir.

Mr. ROGERS. That is what Mr. O'Friel wanted you to do, wasn't it?

Mr. GIVENS. He wanted us to get free records, yes, sir.

Mr. ROGERS. And the men in the executive branch of this organization, at the policymaking level, as you stated, knew about it, and underwrote it, did they not?

Mr. GIVENS. Yes, sir.

Mr. ROGERS. Now, Mr. Givens, you spoke of the Herald Traveler, is that a newspaper?

Mr. GIVENS. Yes, sir; it is.

Mr. ROGERS. Do they own a radio station?

Mr. GIVENS. A radio station? Yes, sir; they do.

Mr. ROGERS. What is the name of that?

Mr. GIVENS. Radio station WHDH.

Mr. ROGERS. Do they carry schedules of other radio stations?

Mr. GIVENS. Some radio stations, yes, sir.

Mr. ROGERS. They don't carry yours?

Mr. GIVENS. No, sir; they don't carry ours.

Mr. ROGERS. Does that cut down on your listening audience, because they don't carry it?

Mr. GIVENS. Well, I think it places us at a disadvantage, not to have our listings carried in any newspaper, large or small.

Mr. ROGERS. You mean you give it to them, but they won't carry it?

Mr. GIVENS. We give it to them, and they don't carry it.

Mr. ROGERS. They don't carry it?

Mr. GIVENS. For whatever reason. I don't know the reason.

Mr. ROGERS. Sort of payola in reverse, isn't it? You are injured, your station is injured by it, you think? You think you would have a bigger listener audience?

Mr. GIVENS. We are not helped by it.

Mr. ROGERS. Have you ever offered to pay them to carry it?

Mr. GIVENS. I never have.

Mr. ROGERS. What is your position now at WORL?

Mr. GIVENS. I am the station manager.

Mr. ROGERS. Do you have charge of seeing that the listening audience is increased?

Mr. GIVENS. Yes, sir.

Mr. ROGERS. Have you made any overtures at all to the Herald Traveler to get them to carry this?

Mr. GIVENS. Not personally, sir.

Mr. ROGERS. Have you had any discussions with them as to why they won't carry it?

Mr. GIVENS. No, sir, I have not.

Mr. ROGERS. Do you expect to?

Mr. GIVENS. Not right offhand. You have given me considerable food for thought, however.

Mr. ROGERS. Do you think it is an unfair practice for them not to do it when they are carrying their own?

Mr. GIVENS. An opinion?

Mr. ROGERS. Yes, sir, an opinion.

Mr. GIVENS. Yes, sir, it is my opinion it is.

Mr. ROGERS. Have you reported it to the FCC?

Mr. GIVENS. No, sir, I have not.

Mr. ROGERS. Do you intend to?

Mr. GIVENS. No, sir.

Mr. ROGERS. You mean whether they carry it or not you don't intend to report it, in connection with their radio station.

Mr. GIVENS. This has been the furthest from my mind.

Mr. ROGERS. It is a battle between you and the Herald Traveler?

Mr. GIVENS. I just figure that I can paddle my own canoe on this one.

Mr. ROGERS. Now, Mr. Givens, have you ever received any payola, for the want of a better term? Have you ever received any cash, gifts, or anything of value?

Mr. GIVENS. Other than the run-of-the-mill Christmas presents, I have received no payola, sir, no, sir, I have not.

Mr. ROGERS. You have not?

Mr. GIVENS. No, sir.

Mr. ROGERS. What did you say, in the run-of-the-mill?

Mr. GIVENS. Christmas—I have received gifts from record companies at Christmastime, when I was on the air.

Mr. ROGERS. Well, now, what do you mean, when you were a disk-jockey?

Mr. GIVENS. Yes, sir.

Mr. ROGERS. What kind of gifts were those?

Mr. GIVENS. Billfold, gift certificates.

Mr. ROGERS. Anything in the billfold?

Mr. GIVENS. No, sir. Tie clips, cuff links, and about a year ago I received three jars of jelly.

Mr. ROGERS. Everything a little less than the price of a good ham?

Mr. GIVENS. Yes, sir.

Mr. ROGERS. But you never did get paid any cash or anything of that kind?

Mr. GIVENS. I received three gift certificates.

Mr. ROGERS. For what?

Mr. GIVENS. Well, one was for \$15, one was for \$20, another for \$20. That was the total extent of the gift certificates. I bought two shirts with one, and had to put \$30 with the other two to buy a coat that I didn't need in the first place. So it cost me money. That is the extent of it.

Mr. ROGERS. That is what usually happens with gift certificates, Mr. Givens. I sympathize with you.

Now, as manager of the present station, have you had any difficulty in refusing any activities of this kind in recent months?

Mr. GIVENS. Refusing activity of this kind? I am sorry, Mr. Rogers, I don't follow you.

Mr. ROGERS. I said—well, have you been offered anything in recent months?

Mr. GIVENS. No, sir.

Mr. ROGERS. To engage in these activities?

Mr. GIVENS. No, sir.

Mr. ROGERS. When was your last offer made, or when was you last gift received?

Mr. GIVENS. I received a gift—I received some small items this Christmastime.

Mr. ROGERS. You think those were tokens of esteem, rather than anything to influence you?

Mr. GIVENS. Well, I was no longer in a position to be influenced, because I had left the air, and I think these were just a hangover from my diskjockey days, from people who didn't know I was no longer active on the air.

Mr. ROGERS. Did you send them back?

Mr. GIVENS. No, sir; I did not.

Mr. ROGERS. I believe that is all, Mr. Chairman.

The CHAIRMAN. Mr. Devine?

Mr. DEVINE. Mr. Givens, do you think there is anything morally or legally wrong—of course I am asking your opinion—on this trip to New York for WBZ?

Mr. GIVENS. No, sir; I must be honest with you. When I made this trip I made it cooperatively. I don't think there is anything legally wrong with it. I was a little remiss—I felt remiss from a personal standpoint. I kind of felt I was up there with my hat in my hand, getting a pretty considerable amount of merchandise from these people.

Mr. DEVINE. Begging for a handout, so to speak?

Mr. GIVENS. Yes, sir.

Mr. DEVINE. But based on the cost to the distributor, on each of these records, say Decca, for instance, it didn't cost them more than, say, \$100, \$150; did it?

Mr. GIVENS. But I think the thing that they were concerned with is the precedent it established.

Mr. DEVINE. But you didn't go just to one record distributor and promise to play their records? You hit 10, maybe, in New York?

Mr. GIVENS. We picked the 10 that we thought represented the major labels, the cream of the crop as far as backlog material was concerned.

Mr. DEVINE. And you made the selection of records, rather than taking what they gave you; is that correct?

Mr. GIVENS. I did the selecting.

Mr. DEVINE. You indicated what you wanted, and they gave those to you?

Mr. GIVENS. Yes.

Mr. DEVINE. Rather than their telling you had to play a certain record if they gave you the rest?

Mr. GIVENS. Yes.

Mr. DEVINE. Has anyone ever given you free cigarettes marked "Sample, not to be sold"?

Mr. GIVENS. No, sir. Look, I don't like to take on a holier-than-thou attitude. Whenever somebody offers me a cigarette, I say "No," that I don't smoke. But that is the reason.

Mr. DEVINE. You know the practice in the tobacco industry, to pass out free samples?

Mr. GIVENS. Yes, sir.

Mr. DEVINE. Do you see anything wrong with that?

Mr. GIVENS. No, sir.

Mr. DEVINE. That is also the practice in some other industries; is it not?

Mr. GIVENS. I believe it is.

Mr. DEVINE. Has your present station WORL—have they subscribed to this record service, or do they get free records from time to time?

Mr. GIVENS. We take free records which are mailed to us. But as soon as I assumed the managership of WORL the first thing I did was buy the major record services.

Mr. DEVINE. Was WBZ at the time you made your trip to New York, if you know, in rather shaky financial condition?

Mr. GIVENS. Was WBZ in shaky financial position? No, sir.

Mr. DEVINE. As far as you know they could have afforded to subscribe to the record service, rather than to beg for handouts?

Mr. GIVENS. Yes, sir.

Mr. DEVINE. I believe that is all, Mr. Chairman.

The CHAIRMAN. Mr. Moss?

Mr. MOSS. Mr. Givens, you indicated that in these thousand albums, you had only popular music.

Mr. GIVENS. Yes, sir.

Mr. MOSS. You were seeking the albums to replace a library out-moded because it was made up of '78's?

Mr. GIVENS. That is true.

Mr. Moss. How did you acquire, or did you acquire, a library of classical and semiclassical music?

Mr. GIVENS. Mr. Moss, I can't answer that, because our classic library—I am going to give you what I think we did. I can't—our classic library was used for an entirely different purpose. This was used for our FM facility. And, to the best of my knowledge, we paid for our FM library.

Mr. Moss. Is it the custom, in your 25 years' experience, for stations to pay for their libraries?

Mr. GIVENS. I would say it is becoming more so through the use of the record services which are available today.

Mr. Moss. Well, you have had a considerable period of time to observe. What has the custom been?

Mr. GIVENS. I can remember the days when I used to go into record stores and buy records for my radio station, just as a consumer would buy records today.

Mr. Moss. Stations, of course, now are primarily dependent upon recorded music, are they not?

Mr. GIVENS. Nearly wholly.

Mr. Moss. A similar situation to TV and its film library, correct?

Mr. GIVENS. I would say that this is a good comparison.

Mr. Moss. Is it the custom for the film library to be given, or is that purchased?

Mr. GIVENS. Not having affiliated with any television outlets, I cannot answer that. I would say that they pay plenty for their television library, their film library.

Mr. Moss. In your 25 years of experience, have you encountered any precedent for the rather unusual—well, I won't use that term—the very extensive demands of WBZ for recordings?

Mr. GIVENS. Mr. Moss, I have not.

Mr. Moss. And in your present station, you buy your records?

Mr. GIVENS. I buy the services which I think are essential to providing us with adequate or more than adequate—

Mr. Moss. And the labels you receive through the mail—

Mr. GIVENS. Are kept and incorporated into our library.

Mr. Moss. And are they the better known labels?

Mr. GIVENS. They are all labels, Mr. Moss.

Mr. Moss. I think that is all I have, Mr. Chairman.

The CHAIRMAN. Mr. Givens, let me, on behalf of the committee, thank you very much for your appearance here and your testimony.

You may be excused.

Mr. GIVENS. Thank you, sir.

Mr. Joseph Finan.

You will be sworn. Do you solemnly swear the testimony you give to this committee to be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. FINAN. I do.

TESTIMONY OF JOSEPH FINAN

The CHAIRMAN. Have a seat. What is your name?

Mr. FINAN. Joseph Finan.

The CHAIRMAN. What is your address?

Mr. FINAN. 1097 Wittlesey Lane, Rocky River, Ohio.

The CHAIRMAN. What is your business or profession, Mr. Finan?

Mr. FINAN. Currently, I am in charge of promotion and contact for the Head Wholesale Record Distributing Co. in Cleveland.

The CHAIRMAN. Mr. Lishman, you may proceed.

Mr. LISHMAN. Mr. Finan, by what radio station were you formerly employed?

Mr. FINAN. KYW, Westinghouse Broadcasting, in Cleveland.

Mr. LISHMAN. Approximately when did you enter employment with station KYW?

Mr. FINAN. It was October of 1956.

Mr. LISHMAN. And what were your duties with KYW?

Mr. FINAN. I was hired as a diskjockey, my program in the first half of my employment being aired between 12 and 4, and later from 2 until 6.

Mr. LISHMAN. Eventually, did you have a show of your own, except Sunday, from 10 a.m., to 2 p.m., daily?

Mr. FINAN. No, sir. I worked originally from 12 noon until 4, and then when the realignment in scheduling came about I worked from 2 until 6 o'clock, 6 days a week.

Mr. LISHMAN. When was your employment at station KYW terminated?

Mr. FINAN. 2:15, December 3.

Mr. LISHMAN. Did you resign or were you fired?

Mr. FINAN. I was discharged.

Mr. LISHMAN. Who notified you that you were being discharged?

Mr. FINAN. Mr. Tooke, Frank Tooke.

Mr. LISHMAN. Who is Mr. Tooke?

Mr. FINAN. He was the new vice president in charge of the Cleveland operation, of both radio and television.

Mr. LISHMAN. And what reasons did he give for discharging you?

Mr. FINAN. Violation of company policy.

Mr. LISHMAN. Did he identify that company policy?

Mr. FINAN. Well, I knew what he was referring to. It wasn't completely identified. It was in regards to activity, outside activity, promotional, and involving record companies and distributors.

Mr. LISHMAN. Well, before—did he just call you to his office, and discharge you?

Mr. FINAN. No, sir. We had—around November 1 I was called in and asked if I had ever engaged in any outside activities, if I had ever received financial assistance, or remuneration from record companies, distributors, or any outside source, and I answered that question by saying I had.

Mr. LISHMAN. Did you furnish him information at that time, or Westinghouse information at that time, concerning the amounts you had so received?

Mr. FINAN. Yes, sir. We dictated a memorandum. It was quite a frantic session. But, to the best of my knowledge, in order to cooperate with Westinghouse, I dictated a memorandum at that time.

Mr. LISHMAN. Who was present at that frantic session?

Mr. FINAN. Mr. Woodward.

Mr. LISHMAN. Who is Mr. Woodward?

Mr. FINAN. He is, I believe, assistant vice president, special assistant to Donald McGannon, president of Westinghouse Broadcasting.

Mr. LISHMAN. Who else was present?

Mr. FINAN. Ernest Wendell, program manager. May I refer to my notes, sir?

Mr. LISHMAN. Yes, sir; refer to any paper you desire.

Mr. FINAN. Ernest Wendell, program manager, Carl W. Vandergrift, general manager of KYW, and my Cleveland attorney, H. Donald Zimmerman.

Mr. LISHMAN. And at this first meeting, were you requested to furnish your employer with a list of the amounts you received from various record distributors, or record manufacturers?

Mr. FINAN. Yes, sir; I was.

Mr. LISHMAN. And did you furnish that list?

Mr. FINAN. I furnished him—

Mr. LISHMAN. Did you furnish such a list?

Mr. FINAN. Yes, I did, with the exception, at that time, I did not name the people involved in—I named the actual sums, but I did not name the people. I named the circumstances. I did name Mainline Cleveland, Inc.

Mr. LISHMAN. And when did you furnish this list?

Mr. FINAN. This was approximately November 1 or 2—somewhere in November.

No, I am sorry. I am about a month premature. This list—we had discussed this question of outside activities around November 1. There was a policy stated at that time concerning it. The list was furnished actually only 5 days prior to my dismissal.

Mr. LISHMAN. On December 3?

Mr. FINAN. Yes. It would be the last day—2 days—of November, or the first of December, somewhere in there.

Mr. LISHMAN. Do you have a copy of that list with you?

Mr. FINAN. Do I have the memorandum?

Mr. LISHMAN. Yes, sir.

Mr. FINAN. I have the memorandum here, sir, yes, sir; my copy.

Mr. LISHMAN. Whom in Westinghouse did you submit this list to?

Mr. FINAN. It was dictated in the office of H. Donald Zimmerman, and then was delivered into the hands of Carl Vandergrift, the general manager.

Mr. LISHMAN. And, thereafter, did you have another meeting with Westinghouse officials, where you had a discussion about the material in the list?

Mr. FINAN. Where I had a discussion about the material in the memorandum? No. After the memorandum was submitted, and subsequently, after a colleague's, Wes Hopkins', memorandum was submitted, that was on Tuesday—one day transpired, and I believe we were discharged on Thursday. The last memo went in Tuesday night. They were waiting for Mr. Hopkins, because it tied in with mine.

Mr. LISHMAN. Who is Mr. Hopkins?

Mr. FINAN. He is a colleague of mine on the station. He was another diskjockey on the station.

Mr. LISHMAN. Now did your memorandum indicate that you had received checks from Mainline Cleveland, Inc.?

Mr. FINAN. Yes, sir.

Mr. LISHMAN. Who are the officers of Mainline Cleveland, Inc.?

Mr. FINAN. Bill Shibley is president, is one; James Shibley, vice president. They are RCA Victor distributors in all fields, appliances, radio, and television. Myron Berneson is in charge of their record division.

Mr. LISHMAN. What arrangements did you have with Mainline Cleveland, Inc., in return for which they gave you sums of money?

Mr. FINAN. My arrangement was not with Mainline Cleveland, Inc. My arrangement originally took place with Mr. Allen Clark, field representative of RCA Victor.

Mr. LISHMAN. Well, now, could you describe Allen Clark's duties with RCA Victor, so far as you could observe?

Mr. FINAN. Mr. Clark was a field representative, as I understand, charged by Victor, not only to handle promotional activities, but he was liaison between Victor and their distributor, in this case an independent distributor. He also was a troubleshooter in the retail area.

Mr. LISHMAN. Of records?

Mr. FINAN. Of records only, yes, sir; in pop records only.

Mr. LISHMAN. Well, did Allen Clark first contact you in connection with this arrangement that you eventually made with Mainline?

Mr. FINAN. Yes, sir.

Mr. LISHMAN. And under what circumstances did he meet with you the first time?

Mr. FINAN. Well, of course, I had met him many times previously. He had worked in the area for approximately 6 months. Prior to that, he was assistant to the field representative, Bob Krueger, who was transferred to California. So I had met him on many occasions. At that particular time RCA Victor was having a great deal of difficulty in supplying the market with a commercial product. They were depending primarily on the sales of Elvis Presley records, and they were having extreme difficulty even with their standard artists, such as the Ames brothers and Dinah Shore, in selling their product.

Mr. Clark approached me, and before that Mr. Krueger had suggested subtly, or unsubtly, that some arrangement might be worked out.

Mr. LISHMAN. Who is Mr. Krueger?

Mr. FINAN. He was the original field representative for RCA Victor. He has been in Cleveland, to my knowledge, 4 years. I have been a diskjockey but 4 years. And I met him shortly after I started a program on radio station KYW.

He had suggested on numerous occasions, and we had many occasions to meet for cocktails, or for dinner, that some arrangement might be worked out, and I denied this possibility because of the fact that the product didn't deserve sufficient attention that he wanted. Mr. Clark, in our meeting, suggested a different approach, which I was very open to hearing. He suggested that due to Victor's release program, which was quite large, they were in the habit of releasing seven or eight records a week, that I might be hired to screen these records, to help them, or to give them knowledge of which records had commercial possibilities in my estimation.

I said that this might be acceptable, that if there was a good product, I would be very happy to advise them in that capacity. But that—we talked with no guarantee of airplay, no specific number of airplays at any specific time.

Mr. LISHMAN. Well, about what date was this that you had this conversation with Mr. Allen Clark?

Mr. FINAN. This was sometime early, possibly in January 1958.

Mr. LISHMAN. Do you know a Mr. Myron O. Berneson?

Mr. FINAN. Yes, I know Bernie very well.

Mr. LISHMAN. And is it correct that he is employed by Mainline Cleveland, Inc.?

Mr. FINAN. Yes, sir; he is the manager of their record division.

Mr. LISHMAN. And is it true that Mainline Cleveland, Inc., is a division of RCA Victor records?

Mr. FINAN. No, they are not owned by RCA Victor records. They are an independent distributor for RCA Victor.

Mr. LISHMAN. They are franchised?

Mr. FINAN. They are franchised; yes, sir.

Mr. LISHMAN. Now, Mr. Finan, I have before me an affidavit of Mr. Myron O. Berneson, and I would like to read a paragraph or two from it, and ask you if this is substantially correct, insofar as it makes reference to you.

Mr. FINAN. Yes, sir.

Mr. LISHMAN. In this affidavit of Mr. Berneson, which was verified December 2, 1959, it is stated, on page 2—pages 2 and 3—of the copy I have before me:

Affiant further states that Mr. Allen Clark told him, the affiant, that when he had contacted Joe Finan, and had asked Finan to give more attention to RCA label popular tunes on his radio program, Joe Finan had advised Mr. Clark that he would play and give special promotional attention to specific RCA label popular tunes for a fee of \$50 per week, for the special attention and promotion given each specific RCA label or release; and affiant also states that Mr. Allen Clark further advised him, the affiant, that Joe Finan would also insure that Wesley Hopkins, another prominent KYW diskjockey, who had a 4-hour diskjockey radio program following Finan's 4-hour diskjockey radio program, would also play and devote special attention to RCA label popular tunes for the same fee of \$50 per week, for each specific record or release promoted; and affiant states further that as a result of the verbal arrangements made by Mr. Allen Clark, the affiant began advising Joe Finan and Wes Hopkins of the names of the particular RCA label records that Mainline Cleveland desired Joe Finan and Wes Hopkins to devote special attention thereto, and for which special attention and services and promotion, Joe Finan and Wes Hopkins received payment of \$50 weekly for each specific record or release so favored.

Now do you confirm that the sworn statements of Mr. Berneson are correct insofar as they relate to the references to you and Mr. Hopkins?

Mr. FINAN. Sir, may I take that paragraph you just read in parts, to more fully explain?

Mr. LISHMAN. Yes. I will hand it to you, sir.

Mr. FINAN. Well, No. 1, Mr. Lishman, attending this meeting, over a drink were Allen Clark and myself. The approach that he had, in my understanding, was entirely different than from what Mr. Berneson said Mr. Clark has told him. I have no knowledge of what Mr. Clark has told Bernie.

We discussed a service of selection, and bringing to bear both our commercial senses on whether or not any specific Victor record had possibilities for commercial airplay.

I couldn't, No. 2, speak for Wes Hopkins, or for Chuck Young, because it was just not my prerogative.

No. 3, \$50 per week, special attention and promotion given each specific RCA label record or release, I think the record files that are available to this committee, if they are still there, and they usually are kept at KYW, would show that I played quite a few RCA Victor records. And if I have been paid \$50 per week for special attention and promotion given each RCA record label promotion or release, I could conceivably, at some time over the past period of 2 years, been making from them, alone, as high as \$600 or \$700. I can only refer you, for substantiation of that, to the KYW daily record of my show, which has been kept for the last 2 years.

Once again I have no knowledge of what Mr. Clark said to Mr. Berneson, because at the meeting, the initial meeting between Al and myself, there were just the two of us sitting there discussing the proposition. My understanding was that I was selling him a service, and that service was to consult with him, or tell him, out of the seven or eight Victor releases, which one or two had the capabilities or possibilities or none at all, if that was the case. And that was my understanding for quite a while.

Mr. LISHMAN. Well, Mr. Finan, in other words, you don't agree with Mr. Berneson's affidavit?

Mr. FINAN. No, sir; I do not.

Mr. LISHMAN. Well, do you agree that you were paid any sum of money for promoting or paying special attention to specific RCA label records or releases?

Mr. FINAN. Yes, sir; I do agree that I paid specific attention to some of their releases. But it was before the fact of playing. There was never a guarantee for specific playing.

Mr. LISHMAN. And did you receive payment of sums of money from Mainline Cleveland, Inc., for doing that?

Mr. FINAN. Yes, the checks came through Mainline. I assumed it was—in fact, I was told it was a bookkeeping procedure, that the distributor and RCA wished to work out.

Mr. LISHMAN. I have here photostats of 12 checks of Mainline Cleveland, made payable to your order during the period September 1958 to September 1959, together with photostatic copies of two other checks, which you will explain later. I would like to show you the photostatic copies of these checks. Now, Mr. Finan, in order to save time, I will read you the check number, its date, and the amount to indicate whether what I say is correct according to these photostatic copies, that you have before you. And I will start with check No. 29907.

Mr. FINAN. Yes, sir.

Mr. LISHMAN. And that is dated September 12, 1958?

Mr. FINAN. Yes, sir.

Mr. LISHMAN. In the amount of \$50?

Mr. FINAN. Yes, sir.

Mr. LISHMAN. And you received that from Mainline Cleveland, Inc.?

Mr. FINAN. Yes, sir.

Mr. LISHMAN. The next one is No. 29777, and is dated September 4, 1958, payable to your order, in the amount of \$50.

Mr. FINAN. Yes, sir.

Mr. LISHMAN. The next one is No. 30163, dated October 8, 1958, in the amount of \$150.

Mr. FINAN. Yes, sir.

Mr. LISHMAN. The next one is No. 30279, and it is dated September 15, 1958, in the amount of \$50.

Mr. FINAN. Yes, sir.

Mr. LISHMAN. The next one is No. 30619, and it is dated November 15, 1958, in the amount of \$150?

Mr. FINAN. Yes, sir.

Mr. LISHMAN. And the next one is No. 30914, and is dated November—December 7—is that November or December?

Mr. FINAN. November.

Mr. LISHMAN. November 7, 1958, in the amount of \$150.

Mr. FINAN. Yes, sir.

Mr. LISHMAN. The next one is No. 31263, dated December 2, 1958, for \$100.

Mr. FINAN. Yes, sir.

Mr. LISHMAN. The next one is No. 31266, dated December 2, 1958, and it also is for \$100.

Mr. FINAN. Yes, sir.

Mr. LISHMAN. The next is No. 31908, dated January 14, 1959, \$50.

Mr. FINAN. Yes, sir.

Mr. LISHMAN. The next one is No. 34257, dated June 23, 1959, \$50.

Mr. FINAN. Yes, sir.

Mr. LISHMAN. The next one is 34350, dated July 1, 1959, \$150.

Mr. FINAN. Yes, sir.

Mr. LISHMAN. The next one is 35109, dated August 13, 1959, \$50.

Mr. FINAN. Yes, sir.

Mr. LISHMAN. Now that makes a total, according to our computations, of \$1,100 received by you from Mainline Cleveland, Inc.; is that correct?

Mr. FINAN. Would you give me the figure again, sir?

Mr. LISHMAN. \$1,100.

Mr. FINAN. From Mainline Cleveland—well, that is substantially. I have a thousand dollars. Intermittent periods from February 1958 through January 1959, yes, sir.

Mr. LISHMAN. Now for what purpose did you receive these payments?

Mr. FINAN. It was my understanding that when I was called either by Mr. Berneson, Mr. Clark, or their promotion girl, Betty Elkins, that I would indicate to them what I thought were their substantial products, airable on KYW. To attest to that fact, on the checks that I was sent, on the flap, the part that we detached and kept for ourselves, they charged back the cost of this service to various specific records. The first time I got a check bearing this kind of notation, I questioned it.

Well, one of the records I had been playing was a good record. The other record I had never played, wouldn't play, and never considered it airable. The explanation given to me at that time was it was a bookkeeping procedure, and that I shouldn't worry my head about it.

And naively enough, I didn't worry my head about it. But that was the explanation given to me.

Mr. LISIMAN. Now in connection with these stubs that you saw, do you recall that some of them would contain names of records such as "Lollypop"?

Mr. FINAN. Yes, sir.

Mr. LISIMAN. And "Blue, Blue Day"?

Mr. FINAN. Yes, sir.

Mr. LISIMAN. And "Blue Boy"?

Mr. FINAN. That record I don't remember at all, sir.

Mr. LISIMAN. Well—

Mr. FINAN. There were names similar to that.

Mr. LISIMAN. "Look Who's Blue" and similar names?

Mr. FINAN. Yes, sir; there were names.

Mr. LISIMAN. And was the notation on these stubs to the effect that the amounts appearing thereon were payments to you for having aired these particular songs or records?

Mr. FINAN. The use of the word "promotion" was on the check stub. And these particular songs were listed. I am not sure of all the listings. But I know, as well as I am sitting here, that I never played a record called "Lollypop."

Mr. LISIMAN. Do you know whether Mr. Hopkins did?

Mr. FINAN. I have no way of telling. We did our shows separately.

Mr. LISIMAN. Well, in other words, if the books of the Mainline Cleveland, Inc., contain notations on the check stubs similar to what you have described, and what I have just mentioned, they are not correct?

Mr. FINAN. Well, they are correct, sir. They appear there. There is no doubt about it.

Mr. LISIMAN. There is no doubt about them appearing on the check stubs?

Mr. FINAN. No; they are there. That was not my question. My immediate question to Al Clark was I never played this record and I won't play this record. Why is this particular notation here? He told me it was a bookkeeping procedure—this is very often done in the record industry; they charge back expenses to particular song accounts. This comes out of the publishing and the revenue from the record.

Mr. LISIMAN. Now do the 12 checks which I have just identified as having been received by you from Mainline Cleveland, Inc., the record distributor for RCA Victor, represent all the money or payments that you received from Mainline?

Mr. FINAN. From Mainline, according to my notations, according to my tax returns, \$1,000, intermittent periods, from 1958 through January 1959. In 1959, I received a total of \$300 from them. I believe the discrepancy that you and I had is due to the \$150. There was \$150 in cash. And I can't recall the date of that. I just remember that it was there, because I had a notation.

Mr. LISIMAN. Would that be on or about May 13, 1958? I will show you a photostatic copy of a canceled check of Mainline Cleveland which may help you to refresh your memory about the cash payment made.

Mr. FINAN. I cannot verify whether this is the exact time. I have no knowledge of this check. I have never seen it.

Mr. LISHMAN. Well, is it a fact that Mr. Berneson of Mainline was the person who made the cash payments to you?

Mr. FINAN. I would imagine. I cannot remember the incident. As I said, I only have that notation for my own records at home. It could have been Berneson; it could have been Mr. Clark; it could have been Betty Elkins. I cannot remember who gave me the money.

Mr. LISIMAN. Who is Betty Elkins?

Mr. FINAN. She is in a promotion capacity. She calls on the radio stations, delivers the new records, and the like.

Mr. LISHMAN. Did you or any members of your family receive any other things of value from Mainline, Inc.?

Mr. FINAN. Shortly after my association with KYW, and completely unsolicited, a Victor television color set was sent to my home.

Mr. LISHMAN. And that is all that you received, other than the checks and cash you have already testified to?

Mr. FINAN. Yes, sir. To the best of my ability to remember.

Mr. LISHMAN. Do you know, or have you heard, whether Mainline Cleveland, Inc., was reimbursed for any of the money paid you by any other person or company?

Mr. FINAN. I don't know, but I imagine they were. The system of extra records, freebees, given by the manufacturer to the distributor to cover special services, promotion, and the like, is a common practice and has been since I have been involved, and before I was involved in the record industry.

Mr. LISHMAN. Do you know whether any of the checks that were made payable to you by Mainline, Inc., were reimbursed in money by RCA Victor?

Mr. FINAN. I have no way of knowing what their arrangement was. I do know, on Mr. Clark's say-so, that Victor was backing the arrangement that he had with me.

Mr. LISHMAN. Have you heard of Cosnat Distributing Co.?

Mr. FINAN. Yes, sir.

Mr. LISIMAN. Now what arrangement did you have with Cosnat with respect to its records?

Mr. FINAN. My association with the president of Cosnat, Mr. Jerry Blaine, goes back to practically the first day I went on the air 4 years ago in Cleveland. During a period of 1 year, in which I was unknown in the market, he was more than friendly, on absolutely no basis except that I was on the air. I was on a weaker station; I could do absolutely nothing for him. However, he did say to me at that time that if he could—if I possibly ran across any material, original material, coming out of the Cleveland market—and there were many people who would go and write a song, get a group together and cut it—that if I sent it to him, it would be possible to work out a financial arrangement for the work on my behalf.

I submitted a number of records to Cosnat, or to Jubilee, or to Mr. Blaine. None of them were acceptable to Jerry.

Later he suggested that rather than my sending this material, that he should put me on the basis of looking out for material for him.

Now what his motives were in that, and how I accepted it are two different things, possibly. But at no time for Jerry Blaine or for

Cosnat Distributing did I ever play a record a specific number of times or give guarantee of specific play.

Mr. LISHMAN. Mr. Finan, have you identified Jerry Blaine as an official of Cosnat Distributing Corp.?

Mr. FINAN. Yes, sir; he is the president.

Mr. LISHMAN. Is that a New York record distributing company?

Mr. FINAN. Yes, sir. They have five or six branches.

Mr. LISHMAN. And do they own or control J.G. Records?

Mr. FINAN. Jubilee Records; yes, sir.

Mr. LISHMAN. J.G. Records.

Mr. FINAN. Jubilee and J.G.—I am sorry. That is a subsidiary label.

Mr. LISHMAN. And that is a record manufacturing company owned and controlled by Cosnat?

Mr. FINAN. I believe there are two separate corporation entities, sir. They are run as separate operations. I do not think the distributing controls the manufacturing, or the manufacturing the distributing.

Mr. LISHMAN. Well, is it a fact that you had an arrangement with Cosnat that you would receive approximately \$25 weekly?

Mr. FINAN. Yes, sir. May I explain that more fully?

Mr. LISHMAN. Yes.

Mr. FINAN. In 1 week's average time, on a station such as KYW, which is an important station in an important market, one of the major breakout markets—and to explain this, this is where a record is exposed, and if the action starts there, it usually spreads to other parts of the country. This is true of Cleveland, Detroit, Pittsburgh, Philadelphia, and sometimes Boston.

We receive each week a fantastic amount of records. It could be 10 a day; it could be 20 a day. It has been as high as 200 a week. It is a physical—was a physical impossibility for me to listen to each and every record that came in. I just could not do it.

The arrangement was also based on the fact that Jerry asked not that I play his records, but that I listen, give special attention in listening to his records. He was worried about his records being lost in the shuffle. He never asked for a guarantee, and he never got it. But I did especially look out for his records, and I did sit down with them many times at home, and off the air, after hours, to see what substantially was there that could be played.

Mr. LISHMAN. Now for how long a period of time did you get this \$25 weekly from Cosnat Records?

Mr. FINAN. From Cosnat?

Mr. LISHMAN. Yes, sir.

Mr. FINAN. Approximately 25 weeks in 1958, and approximately 25 weeks in 1959—a continuing 50-week period in the 2-year period.

Mr. LISHMAN. And do you know whether Mr. Hopkins, your colleague diskjockey, also had similar weekly payments of \$25 from Cosnat?

Mr. FINAN. I was aware that he had some arrangement, but that arrangement was his own. I was not aware of how much of what was involved.

Mr. LISHMAN. Well, now, coming to J.G. Records, did you also have an arrangement with J.G. Records whereby you obtained \$25 weekly from it?

Mr. FINAN. Yes, sir.

Mr. LISHMAN. For how long a period did you receive the \$25 weekly payments from J.G. Records?

Mr. FINAN. Well, this was concurrent with the \$25 from Cosnat. Now these two companies are owned, overall, by the same company. And this did not indicate that any more special attention was going to be given to Jubilee or to J.G. or to any record that Jerry distributed in Cleveland. It was simply a bookkeeping way of handling it, and I believe it was paid for tax purposes in that fashion. The total was \$50 a week for a 50-week period.

Mr. LISHMAN. Now did there come a time, Mr. Finan, when you had an arrangement with Mercury Record Co. in Chicago?

Mr. FINAN. Yes, sir.

Mr. LISHMAN. What is Mercury Record Co.'s business?

Mr. FINAN. They produce pop singles, pop albums, and a limited classical catalogue.

Mr. LISHMAN. And did you have an agreement with Mercury Records whereby you would be paid \$50 weekly?

Mr. FINAN. Yes, sir.

Mr. LISHMAN. And for how long a period did this \$50 weekly payment from Mercury Records continue?

Mr. FINAN. Approximately 2 years—1958 and 1959.

Mr. LISHMAN. Now who paid you the money from Mercury?

Mr. FINAN. The money was paid by the local branch manager, Mr. Wade Whitman, in Cleveland.

Mr. LISHMAN. Do you know whether Mr. Hopkins, your colleague diskjockey, had a similar arrangement?

Mr. FINAN. I was aware that there was an arrangement. Once again, this was something that I could not tell. I could not tell how much at the time, or just what his specific arrangement was.

Mr. LISHMAN. Now is it correct that in addition to the weekly payment received from Mercury, that you would from time to time receive additional payment for benefits?

Mr. FINAN. Additional payments from Mercury?

Mr. LISHMAN. Yes.

Mr. FINAN. I cannot recall any additional payments.

Mr. LISHMAN. Or through Mr. Wade Whitman?

Mr. FINAN. Additional compensation through Mr. Whitman; no, sir. I could not recall any additional compensation.

Mr. LISHMAN. Was all this compensation of \$50 weekly for the 2-year period you have described made by check?

Mr. FINAN. No. Payment was made in cash and a withholding statement made at the end of the year.

Mr. LISHMAN. Now what was the purpose of your receiving—we will go back now to Cosnat.

What was the purpose of your receiving for a 25-week period at a stretch, \$25 a week from Cosnat?

Mr. FINAN. Mr. Lishman, with due respect to you, may I suggest that we tie the Cosnat payment and the J.G. payment together, because they were absolutely from the same company, the same consideration was involved in both.

Mr. LISHMAN. All right.

Mr. FINAN. It was a total payment of \$50.

Mr. LISHMAN. Well, I am trying to break them down. I want to find out if you were performing a different service for J.G. as Cosnat. But you say you performed the same services for both of them.

Mr. FINAN. Well, J.G., that was not my prerogative. That is the way the company wanted to pay it. Basically I was performing for Cosnat.

Mr. LISHMAN. What did you do to earn the \$25 a week from each of those companies—Cosnat and J.G.?

Mr. FINAN. Cosnat is an independent distributor, sir. They have approximately 40 lines, 40 different lines. The big business in the record business today is in the independent label. What Jerry asked me to do, and what I performed, and this is the extent of what he asked me to do, was to look out for his records, to at least listen, because it is a well-known fact that many diskjockeys do not listen, and as I said earlier, cannot listen, because of the tremendous volume of records that come in.

So for the \$50 a week, the special attention I gave, both after working hours on the station and at home, was to listen to all Jerry's records, not only Jubilee and J.G., but the other labels that he distributed, such as Atlantic and Roulette and on and on.

Mr. LISHMAN. Did you ever play any of the records that were distributed by Cosnat?

Mr. FINAN. Yes, sir. He has had many fine records.

Mr. LISHMAN. Did you ever play any of these records while they were what is called fresh, that is, new?

Mr. FINAN. Fresh—yes, sir. I began playing a lot of records, some for the first time.

Mr. LISHMAN. Did any of these fresh records of Cosnat which you aired over KYW, become hits?

Mr. FINAN. Yes, sir; a few did.

Mr. LISHMAN. Did you receive any extra compensation when as a result of such airing a hit was developed from a fresh record?

Mr. FINAN. From Cosnat, sir?

Mr. LISHMAN. Yes.

Mr. FINAN. No, sir. From time to time I would get a gift from Jerry, but it was not—he never made reference to what it was for or why.

Mr. LISHMAN. What kind of a gift would you receive?

Mr. FINAN. Cashmere sweater, a billfold that was extraordinary, that had special handwork. They were substantially good gifts, very good taste.

Mr. LISHMAN. Now, in connection with the 2-year period that you received \$50 a week from Mercury Record Co. in Chicago, what did you do to earn that \$50 a week?

Mr. FINAN. Well, Mercury was having the same problem as RCA-Victor and Decca in not knowing how to make a commercial record. And they were in difficulty not only in Cleveland, but all over the country.

Once again, the basis on which we arrived at the arrangement was that I should give special attention in listening to each and every record. There are many times when I have absolutely refused to play a Mercury record that was bad, in spite of any consideration. And there seemed to be no hesitancy on their part to accept my judgment of a record.

Mr. LISHMAN. Well, who did you make this arrangement with? What official of Mercury Record Co. entered into this arrangement with you?

Mr. FINAN. Mr. Art Talmadge, vice president of Mercury.

Mr. LISHMAN. And was he the man that first contacted you to work out this arrangement?

Mr. FINAN. Yes, sir.

Mr. LISHMAN. You did not go to him?

Mr. FINAN. Never.

Mr. LISHMAN. And did he come to Cleveland?

Mr. FINAN. The first time I met Art Talmadge was when he suggested that I accept 50 percent ownership of a song called "Hesitation Hop," recorded by Ralph Marterie. He also mentioned at that time—we talked about giving as much original material—this is something that each and every record manufacturer and publisher asked for when he came in, because a lot of material came to the disc jockeys. And we sent him a couple of things, suggested a Sarah Vaughan recording to him, which bombed, and made no money. And he later arrived at this same arrangement.

As for asking him, Mr. Talmadge came to Cleveland on numerous occasions and spoke to me personally.

Mr. LISHMAN. Well, did you make your arrangements with him during the summer of 1958?

Mr. FINAN. It must have been earlier. I have down here May 1958. That could be some indication that that is when it started.

Mr. LISHMAN. Now, in these arrangements that you had with Cosnat and J.G. and Mercury Record Co., were they in writing or were they all oral?

Mr. FINAN. They were oral, sir.

Mr. LISHMAN. Now, are you familiar with the Big Top Record Co. of New York City?

Mr. FINAN. Yes, sir.

Mr. LISHMAN. And is it correct that Big Top is owned by Hill & Range Publishing Co., a music publisher in New York?

Mr. FINAN. Yes, sir.

Mr. LISHMAN. Do you know Big Top's manager?

Mr. FINAN. Yes, sir.

Mr. LISHMAN. What is his name? Would it be John Beanstalk?

Mr. FINAN. Yes, Johnny Beanstalk—I am sorry.

Mr. LISHMAN. Did he approach you in Cleveland on behalf of Big Top Record Co.?

Mr. FINAN. Yes, sir.

Mr. LISHMAN. When did he do that?

Mr. FINAN. I do not have a date here. I just have the amount of the check. And I don't remember—I can't remember when—

Mr. LISHMAN. Do you have an approximate date? Can you give us an approximate time?

Mr. FINAN. Sometime last year. It could be maybe April, March or April.

Mr. LISHMAN. Now, what request did Mr. Beanstalk make of you on behalf of Big Top?

Mr. FINAN. He wanted to pay me for playing his records.

Mr. LISHMAN. Did you have any correspondence with him about that?

Mr. FINAN. Not to my knowledge. I had a secretary and a manager that handled a great deal of that.

Mr. LISHMAN. And how much did Mr. Beanstalk agree to pay you on behalf of Big Top Record Co.?

Mr. FINAN. After coming to me with the record, we sat down, we listened to the record, we listened to a couple of his things, as a matter of fact, and I rejected one because it was not worthy of air play. The other record did sound like a hit to me, and I accepted \$150 at that time to give that record extra consideration and play.

Mr. LISHMAN. What was the name of that record?

Mr. FINAN. Sir, I played so many I cannot remember specifically. I am sorry, I cannot remember.

Mr. LISHMAN. Well, did you receive more than that one payment from the Big Top Record Co.?

Mr. FINAN. Yes, sir, we made a similar arrangement on two other records.

Mr. LISHMAN. And during what year was this?

Mr. FINAN. This was all in 1959, to the best of my knowledge.

Mr. LISHMAN. And how much did you receive by way of checks from Big Top Record Co. in 1959?

Mr. FINAN. Well, each time it was \$150. I think there were three checks involved. That is what my records show—about \$450.

Mr. LISHMAN. Did you, while you were a diskjockey on KYW, air any of the records of Big Top Record Co. during 1959?

Mr. FINAN. Yes, sir. I aired a number of their records—possibly seven or eight. I was paid for three. Each record was \$150 apiece.

Mr. LISHMAN. When you give special consideration to a record, could you give us an idea as to how many plays that would mean on the air? Would that mean four times in a 4-hour period, or what?

Mr. FINAN. No, sir. It was against station policy. It was against Westinghouse policy, as promulgated by Mark Olds, the program director, that no record should be played more than once on a show.

When I say special consideration, that consideration might be a matter of 3 days, because when you are playing a record you get an immediate reaction, the kind of reaction where people call the retail stores after they have heard the record, or the kind of reaction from your fellow workers on the station. Perhaps your manager will say that is a bad record. And that might be all the special consideration.

There is never a guarantee that can possibly be given. And a record on KYW, according to station policy, was only allowed, only in special instances with few exceptions—and that usually dictated by the management, for overall station promotion—there are a few exceptions—we are only allowed to play it once a show, as the records on my show for the last 2 years will tend to show.

Mr. LISHMAN. Now, Mr. Finan, did there come a time when you had an arrangement with United Artists Record Co. of New York City?

Mr. FINAN. Yes, sir.

Mr. LISHMAN. Was this arrangement oral or in writing?

Mr. FINAN. This was an oral—there was an oral arrangement. I did not correspond. Lester Leeds, who is now deceased, made the arrangement with me, and wrote me from time to time.

Mr. LISHMAN. About when did Mr. Leeds, a United Artists official, make this arrangement with you?

Mr. FINAN. It started early—I believe to the best of my knowledge—these are in my records. I have not got the specific date or the specific week. It was either February or March of 1959.

Mr. LISHMAN. How long did it continue?

Mr. FINAN. A period of about 6 months.

Mr. LISHMAN. And what were the terms of this oral arrangement that you had with Mr. Leeds?

Mr. FINAN. I received \$100 a month.

Mr. LISHMAN. For what purpose?

Mr. FINAN. Once again, manufacturers are constantly aware, afraid, and sensitive to the fact that diskjockeys may not look at that material. And that is all they ask me to do. Because they knew I maintained control of the show. So I promised them that every record that I heard, every record that came in, I would listen to. I promised them no specific play.

Mr. LISHMAN. Did you play any of the records of United Artist Records Co., while you were a diskjockey at KYW?

Mr. FINAN. Yes, sir, I played many of their records over a 2-year period.

Mr. LISHMAN. And during the time that you were receiving this hundred dollars a month from the company, did you have any success in developing any of their fresh records into hits?

Mr. FINAN. I cannot remember any record I was primarily responsible for. I suppose I contributed to the sales of any records that I played on my show.

Mr. LISHMAN. Well, now, did there come a time, Mr. Finan, when you had an arrangement with the Shad Record Co., of New York City?

Mr. FINAN. Yes, sir.

Mr. LISHMAN. And about when did you enter into this arrangement?

Mr. FINAN. This arrangement took place over the last 7 months of 1959.

Mr. LISHMAN. And what were the terms of this? Was it an oral arrangement?

Mr. FINAN. Yes, sir.

Mr. LISHMAN. What were the terms of this arrangement?

Mr. FINAN. \$200 a month.

Mr. LISHMAN. And for what purpose?

Mr. FINAN. For consideration of—special attention and listening to his records, and if I liked them, of course playing them, as I did with any label.

Mr. LISHMAN. For how long did that agreement last?

Mr. FINAN. Seven months, sir.

Mr. LISHMAN. And did you play any of the records of the Shad Record Co., during the time that you were receiving these payments?

Mr. FINAN. Yes, I did.

Mr. LISHMAN. You played them on the air, over KYW?

Mr. FINAN. Yes, sir.

Mr. LISHMAN. And did you contribute, in your opinion, to causing any so-called fresh records of Shad to become a hit?

Mr. FINAN. I could not take credit or responsibility for starting any particular record or enthusing people about his particular records. Certainly once again I probably contributed.

Mr. LISHMAN. Now, there came a time, Mr. Finan, when you had an arrangement with Hugo & Luigi Productions of New York City, is that correct?

Mr. FINAN. Yes, sir.

Mr. LISHMAN. Was this an oral agreement?

Mr. FINAN. Yes, it was, sir.

Mr. LISHMAN. And who contacted you on behalf of Hugo & Luigi Productions?

Mr. FINAN. Hugo & Luigi.

Mr. LISHMAN. Hugo's last name is Peretti?

Mr. FINAN. Well, this is going to sound strange, but I never got their last names attached to the right man, although I have known them a couple of years.

Mr. LISHMAN. Is Luigi's last name Creatori?

Mr. FINAN. Yes.

Mr. LISHMAN. And are Hugo & Luigi an independent producing team who have arrangements with RCA for release of their records under the RCA label?

Mr. FINAN. No, sir. Now they are in complete charge of the Victor operation as far as artists and repertoire are concerned.

Mr. LISHMAN. In other words, Hugo & Luigi are now A. & R. men for RCA Victor.

Mr. FINAN. Yes, sir.

Mr. LISHMAN. And as A. & R. men, do you know what their duties are?

Mr. FINAN. Yes, sir.

Mr. LISHMAN. What do they do?

Mr. FINAN. They find, sometimes write, select, produce—that would be the extent of their duties now.

Mr. LISHMAN. Do they select artists who will be recorded?

Mr. FINAN. Yes.

Mr. LISHMAN. And they select the songs that will be used by the artists?

Mr. FINAN. Yes, sir.

Mr. LISHMAN. They have a very important influence in the record business; do they not?

Mr. FINAN. Tremendous.

Mr. LISHMAN. Now, when were you contacted by Hugo & Luigi to provide services to these experts?

Mr. FINAN. Well, it was shortly after they began their association with RCA Victor.

Mr. LISHMAN. In other words, these men who were so expert that RCA Victor hired them for their skill and knowing what would be a commercial success on records felt that they had to come to you to get the benefit of your skill as a consultant?

Mr. FINAN. No, sir; I did not say that.

Mr. LISHMAN. Well, what did they hire you for?

Mr. FINAN. We discussed an arrangement of \$200 a month.

Mr. LISHMAN. Yes, sir.

Mr. FINAN. For special consideration to their records. There was no discussion at that time of breakdown as to—

Mr. LISHMAN. With Hugo & Luigi, then, you were not a consultant.

Mr. FINAN. We did not discuss consulting at all.

Mr. LISHMAN. And did they undertake to pay you, and did you receive \$200 a month?

Mr. FINAN. Yes, sir.

Mr. LISHMAN. How long did that last?

Mr. FINAN. Seven months.

Mr. LISHMAN. What consideration did you give for receiving this \$200 a month from Hugo & Luigi?

Mr. FINAN. In the first place, the first thing I did for them, before the consideration, before the fact, was select a man to represent them promotionally in the northern Ohio area. When he left them, I was also responsible for selecting his successor. And, of course, I would be more than aware of their records in making up my show, in this particular case.

Mr. LISHMAN. And did you use RCA Victor label records during the time you were receiving this \$200 a month from their A. & R. men, Hugo & Luigi?

Mr. FINAN. Yes, sir.

Mr. LISHMAN. Now, Mr. Finan, did there come a time when you had an arrangement with Decca Record Co., of New York City?

Mr. MACK. Mr. Lishman, is it going to take some time? The hour is 12:30.

Mr. LISHMAN. We have several more record companies and distributors. We have quite a few questions in addition.

Mr. MACK. Under the circumstances, since it is now 12:30, I think the committee should recess and we will resume the questioning at 2 o'clock this afternoon.

(Whereupon, at 12:30 p.m., the hearing was recessed, to reconvene at 2 p.m. of the same day.)

AFTERNOON SESSION

Mr. MACK (presiding). The committee will come to order.

When we recessed this morning, we were receiving testimony from Mr. Joseph A. Finan.

Mr. Lishman, do you have some additional questions?

Mr. LISHMAN. Yes.

Mr. Finan, did there come a time when you made arrangements with Decca Records Co., of New York City, concerning payments that company would make to you?

TESTIMONY OF JOSEPH FINAN—Resumed

Mr. FINAN. It was through Decca; yes, sir.

Mr. LISHMAN. Were these arrangements oral?

Mr. FINAN. Yes, sir.

Mr. LISHMAN. And who in Decca contacted you with regard to this arrangement?

Mr. FINAN. He was—

Mr. LISHMAN. Was it Mr. Glazeman?

Mr. FINAN. No, Mr. Bill Glazeman, although he was the general manager for Decca—they own their own distributing setup in Cleve-

land—it was through his general manager who was there such a short time that I never really—

Mr. LISHMAN. Was his name Bob Gerhard?

Mr. FINAN. Bob Gerhard; that is the name. I do not know him except his first name is Bob; is that correct?

Mr. LISHMAN. Yes. And it was Mr. Gerhard, the general manager of Decca?

Mr. FINAN. He was under Mr. Glazeman and under Mr. Bill Green. He was the third in line.

Mr. LISHMAN. And about when did he contact you?

Mr. FINAN. This one is really very difficult for me to remember. I think it was somewhere in the middle of 1959, somewhere in the summer of last year.

Mr. LISHMAN. What was the nature of your discussion with Mr. Gerhard on behalf of Decca Records?

Mr. FINAN. He was interested in a particular record and the discussion I had with him was so short and so perfunctory that I cannot recall the name of the record, along with the actual arrangements, although I think it was—the money that was involved was \$150, I believe, in cash.

Mr. LISHMAN. Did you discuss an arrangement whereby you would receive four payments of about \$100 each with Mr. Gerhard?

Mr. FINAN. No, nothing ever like that was indicated that was to be done.

Mr. LISHMAN. For what purpose did Mr. Gerhard wish to make these payments to you?

Mr. FINAN. For a special consideration given to this particular product.

Mr. LISHMAN. What was this particular product?

Mr. FINAN. This particular product was an off-brand record. And when I say off-brand, I mean a small record manufacturer that Decca had taken over for national distribution. I cannot recall the name of the record or even the label. I do know that it was a small company that had decided to allow Decca to distribute its records nationally.

Mr. LISHMAN. Did you, while you were a diskjockey in KYW, air this record on the air?

Mr. FINAN. Very, very briefly. I aired the record, and the record had absolutely no potential, and I immediately stopped playing the record and so indicated to Bob.

Mr. LISHMAN. How much did you actually receive in total, approximately, from Decca Record Co.?

Mr. FINAN. I can remember one payment of \$150. I cannot remember \$400—four distinct separate payments.

Mr. LISHMAN. What was the special consideration that you rendered for this record?

Mr. FINAN. That I should listen to this particular record, report back to him whether or not it was airworthy. And if I liked it, to play it.

I reported back that I did not like it, and I did not play it.

I played it for a couple of days. And it had absolutely nothing.

Mr. LISHMAN. Did there come a time when you had an arrangement with the Cameo Records Co. of Philadelphia with respect to the payment of money to you?

Mr. FINAN. Yes.

Mr. LISHMAN. About when did you make these arrangements?

Mr. FINAN. This was in 1959. Once again I have no dates listed in my records. It could be anywhere from April to the summer.

Mr. LISHMAN. Was this an oral arrangement?

Mr. FINAN. Yes, sir.

Mr. LISHMAN. And who contacted you on behalf of Cameo Records Co.?

Mr. FINAN. The owner of Cameo, Mr. Bernard Lowe.

Mr. LISHMAN. Is he in Philadelphia?

Mr. FINAN. Yes, sir.

Mr. LISHMAN. Is it spelled L-o-w-e?

Mr. FINAN. Yes, sir.

Mr. LISHMAN. Now, what business is Cameo Records Co. in?

Mr. FINAN. Cameo Records produces top singles, that is, the 45 variety of records for the market.

Mr. LISHMAN. What was the substance of those oral arrangements you had with Mr. Bernard Lowe on behalf of Cameo Records?

Mr. FINAN. Well, it involved once again verifying—of course, every record manufacturer thinks he has a hit—most of them do not. In his particular case he not only had a hit, but he was starting a new artist who later was proven to be one of the top, young Bobby Riddell—it was one of the tops in the country. He asked for my opinion on the basis of the first record of Bobby Riddell. I indicated to him at that time that I not only liked the record, but as soon as possible I would be happy to promote Bobby Riddell's interests through record hops, having Bobby appear in Cleveland. And this was the basis of the arrangement.

Mr. LISHMAN. And how much was paid to you by Cameo Records?

Mr. FINAN. In 1959 I received checks for a total of about \$450.

Mr. LISHMAN. Have you ever received any other cash or valuable material from Cameo Records?

Mr. FINAN. No, sir. This was what my record indicates. I cannot recall anything else.

Mr. LISHMAN. Did there come a time when you made an oral arrangement with Carlton Records of New York City, for the payment of sums of money to you?

Mr. FINAN. Yes, sir.

Mr. LISHMAN. About when did you make this arrangement with Carlton Records?

Mr. FINAN. In June of 1958. And the amount of money involved there was \$650.

This arrangement was changed in 1958. And I received—and these are approximate figures—two checks amounting to, approximately, \$400. This was based on the sale, or the impact of the Carlton Record in the market. It was a payment after the fact.

Mr. LISHMAN. Who contacted you on behalf of Carlton Records?

Mr. FINAN. I spoke at one time to the president of Carlton, Mr. Joe Carlton.

Mr. LISHMAN. And the arrangement you had with him was oral?

Mr. FINAN. Yes, sir.

Mr. LISHMAN. And what was the purpose of paying you these sums of money?

Mr. FINAN. Well, Carlton, to give you some background, Mr. Carlton was for many years with the RCA-Victor and he decided through his own methods of distribution, sales promotion and all of the problems that are inherent in owning and running a record company, that he would go on his own. He was fortunate enough to get himself a couple of good artists like Bryant, and it was based on the number of releases. Joe released oh, I would say, maybe 10 records, of which I listened to 2 of the 10. We accepted or I accepted, rather, 2 that I thought were airable, and so reported to him.

Mr. LISHMAN. Did you, also, have an arrangement whereby you were to receive a 2-cent commission on each record sold in that area?

Mr. FINAN. Yes. Once again this was based on the fact that, No. 1, I believed that the record was airable on KYW. Naturally, I reported that this record could contribute to our competitive position in Cleveland, and to my enhancement as a diskjockey. And we worked out an arrangement whereby for $2\frac{1}{2}$ cents—no, yes, $2\frac{1}{2}$ cents per thousand sold in the Cleveland area, and 3 cents if the record went over 20,000.

Mr. LISHMAN. About how much in total did you receive?

Mr. FINAN. To the best of my recollection—and this is not an exact figure—there were two checks amounting to somewhat in the neighborhood of \$400.

Mr. LISHMAN. Mr. Finan, did you air any records of Carlton Records during your period over station KYW?

Mr. FINAN. Of the 10 releases they had I felt 2 were airable. And later was proven right by the fact that they were hits all over the country.

Mr. LISHMAN. Were those fresh records at the time you introduced them?

Mr. FINAN. They were not fresh to the Cleveland market alone—they were new records, yes, sir, but they were released in five markets, Detroit, Philadelphia, Chicago, and Pittsburgh.

Mr. LISHMAN. Mr. Finan, I believe there have been 10 companies from whom you have received payments of money including Mainline, is that correct?

Mr. FINAN. I did not count them, Mr. Lishman. I will accept that.

Mr. LISHMAN. Will you check that?

Mr. FINAN. Well, I have more than that here.

Mr. LISHMAN. Are there any other companies with whom you had arrangements for receiving money in connection with phonograph records?

Mr. FINAN. Yes, sir, Epic Records, in August of 1959. And this took place over a period of, perhaps, 4 months. I am very vague—very vague on this.

Mr. LISHMAN. Yes

Mr. FINAN. For a total of \$400.

Mr. LISHMAN. Who made your arrangements—who made the arrangements with you on behalf of Epic Records?

Mr. FINAN. This was handled between the promotion manager of Epic and the local distributor. And I cannot remember—they change promotion managers of that company so rapidly, I cannot remember

which one this was, but the name of the local distributor is the Custom Distributing, since out of business, and that was Mr. Henry George.

Mr. LISHMAN. How much money did you receive under that oral arrangement?

Mr. FINAN. That was for \$100 a month. And it was a total of \$400.

Mr. LISHMAN. And for what purpose did you receive that money—what services did you render for it?

Mr. FINAN. Once again, as in the case of many of these companies, especially Epic or RCA-Victor, they needed help outside of their own organization, in their own department, their own promotion men, who were surprisingly deficient in being able to market a product that was commercial, and they went to the outside, to the people such as myself who have had a background in the business and understand the record business and broadcasting for help. Once again, telling them what their probabilities were with the artists they had.

They had a number of releases, too many in fact. Probably—well, I hesitate to give a figure, but it was 10 to 15. And all of these, perhaps, in that time they had a Roy Hamilton record that was acceptable and of quality for the air.

Mr. LISHMAN. Mr. Finan, is not Epic Records a division of Columbia Records?

Mr. FINAN. Yes.

Mr. LISHMAN. Does not Columbia Records have A. & R. men?

Mr. FINAN. They are separate entities, sir. Whether it is for tax—it is not for tax purposes. Columbia is under the direction of Mitch Miller and they produce one kind of music. Columbia prides itself on the fact that it produces everything in the field of popular except—with the exception of rock and roll.

Epic handles some of the rhythm artists they have, and some of the rock and roll tunes that were not too successful.

Mr. LISHMAN. Did you air any Epic Records while you were on KYW?

Mr. FINAN. Yes.

Mr. LISHMAN. At the time that you were receiving this money?

Mr. FINAN. Not only during the time, but before and long after. The only record that I called them specifically about, the only record that I suggested they had an opportunity of promoting through their fieldmen was the Roy Hamilton release.

Mr. LISHMAN. And do I understand you correctly that you received these payments for the purpose of being a consultant to that company with regard to the commercial possibilities of the records?

Mr. FINAN. Yes, sir. That is the tag that has been put on the thing. That is substantially exactly what it is, special services for all of their materials, telling them which is bad and whether this is good, and I cannot conceivably in good conscience do it over the station.

Mr. LISHMAN. Does not Epic have its own A. & R. men?

Mr. FINAN. They have a number of them. That is one of the problems.

Mr. LISHMAN. What other record companies did you have arrangements with whereby you received payments of money or other valuable consideration?

Mr. FINAN. Do you have Cosnat?

Mr. LISHMAN. Yes. About when did you make your arrangements with Cosnat?

Mr. FINAN. I hope that you will forgive me. I did the best job that I possibly could in coming down here to give as candid and as complete information as I possibly could, but some of these dates are vague, because through the years I have dealt with 400 record companies, and 10,000 records, and Cosnait was in 1959, and I received three checks from them in the evaluation of about \$600.

Mr. LISHMAN. Do you recall who on behalf of Cosnat made this arrangement with you?

Mr. FINAN. George Paxton is the president. I did not talk to George. Now I have a lapse of memory. Myron King, the second in command.

Mr. LISHMAN. And for what purpose did you get this payment from Cosnat?

Mr. FINAN. Well, once again, each one of these arrangements, and each one of these record companies, have common problems. This particular company was born out of a publishing house, the Paxton Publishing House, and they were new to the field of recording, and they were fighting and struggling and spending a great deal of money, perhaps as high as \$10,000 on each recording and promoting records and having people in the field, and most times this came to naught, and rather than do this they once again enlisted the services of people they considered expert, such as myself, to tell them whether or not it was worth an investment, and each record is separate, a separate financial entity—whether or not they should invest the \$10,000 or twenty, or whatever is necessary, or should they forget it.

In many instances I told them to forget it. In a couple of instances I told them that they had something.

Mr. LISHMAN. Did you air Cosnat records over KYW?

Mr. FINAN. Yes, sir; before, during, and since that.

Mr. LISHMAN. Are there any other record companies with whom you had similar oral arrangements?

Mr. FINAN. Meridian Music is a publishing firm.

Mr. LISHMAN. About when did you enter into that arrangement?

Mr. FINAN. This was, once again, these are—this is on the label—sometime in 1959, the Wren label.

Mr. LISHMAN. Approximately how much did you receive from this company?

Mr. FINAN. A total of \$300. I believe that was two payments of \$150 each.

Mr. LISHMAN. For what purpose were these payments made to you?

Mr. FINAN. Well, once again, it was verification. These people who spend all of this money in the record business which involves great amounts of money, have to verify, even though they believe they have a hit—the people and their family and their relatives believe they have a hit—they do not believe this is essentially true, because of the nature of the business.

A record that everybody thinks can be a hit can be nothing but a dud. They wanted to verify in their own opinion from, perhaps, not only me, but other jockeys—I am not aware whether other jockeys in any other parts of the country were consulted—they wanted to

verify whether or not the record was worth their investment, which would be substantial, and they would make this on the basis of a cross section of many different places, including mine.

Mr. LISHMAN. Are there any other companies?

Mr. FINAN. London Records.

Mr. LISHMAN. When did you make that arrangement?

Mr. FINAN. In this particular case the arrangement was made for me. There was no arrangement made. There was no formal understanding. As a matter of fact, Mr. Walt McGuire, who is sales manager of London Recording, asked me on many occasions if I would place them on KYW. "I am unable to do this, Mr. McGuire." And the people that were mentioned before had, he said. And I told him that I did not think that was proper. His problem was that of hiring a promotion manager to cover Cleveland, Columbus, Youngstown, Akron, and the like. He asked me if I would help him find such a promotion man. And I immediately suggested Mr. Frank Barry. Frank was subsequently hired and in a 6-month period performed outstanding service—made London a factor in our market for the first time in a couple of years. And to the best of my recollection the \$200 was a gift after the fact.

Mr. LISHMAN. Did you air London records at this time over KYW?

Mr. FINAN. In the 3-year period I aired many London records, albums, everything I possibly could play within the context of my show.

Mr. LISHMAN. What other companies made payments of money or other things of value to you?

Mr. FINAN. Madison Records.

Mr. LISHMAN. When was that arrangement made?

Mr. FINAN. Once again, Mr. Lishman, I have, as I said, wracked my brains so that I would come in with the fullest information possible. I can only say it was sometime in 1959.

Mr. LISHMAN. Who contacted you on behalf of Madison?

Mr. FINAN. A very good friend, Larry Uttel.

Mr. LISHMAN. And what was the nature of the arrangement that you had with Madison Records?

Mr. FINAN. Larry had invested what money he had in making a record called the "Soldier Boy." He asked me for my help as a friend, which he got immediately, but only after I had known the fact that it was playable, and that was proven to be correct, because it did become a record that climbed not only in Cleveland, but all over the country. And after that particular fact became true, Larry got orders. I was given a check for \$150.

Mr. LISHMAN. Did you air any records of the Madison Co. over KYW?

Mr. FINAN. I aired that particular record. He had three releases following that. I did not feel that they would contribute to the betterment of KYW and our market.

Mr. LISHMAN. What other companies?

Mr. FINAN. That is it.

Mr. LISHMAN. That is it?

Mr. FINAN. Yes, sir.

Mr. LISHMAN. As I counted that, that makes a total of 15 record companies from whom you received payments of money or other valuable considerations.

Mr. FINAN. Those are the ones that I have listed.

Mr. LISHMAN. Did any record company, instead of making payments of money to you, make loans to you?

Mr. FINAN. Yes. I received a loan which I am still paying back for \$1,700—I owe \$1,700 on the loan right now.

Mr. LISHMAN. What company made the loan?

Mr. FINAN. Chess Records.

Mr. LISHMAN. What was the total principal amount of the loan?

Mr. FINAN. I think it was \$2,000.

Mr. LISHMAN. Was it \$2,500, rather than \$2,000?

Mr. FINAN. It was about a year and a half ago. That very well could be.

Mr. LISHMAN. It could very well be \$2,500?

Mr. FINAN. Yes, sir.

Mr. LISHMAN. Do you have any papers with you whereby you could verify that figure?

Mr. FINAN. No, I do not. I really—

Mr. LISHMAN. Would you accept the figure of \$2,500 as being the loan that Chess Records made you?

Mr. FINAN. Yes, sir.

Mr. LISHMAN. Chess Records is located in Chicago?

Mr. FINAN. Yes, sir.

Mr. LISHMAN. And what officer or employee of Chess Records arranged this loan for you?

Mr. FINAN. Well, I talked to both Uttels, very close friends for 4 years, and I picked up a phone, and I asked him for the money, and he gave it to me.

Mr. LISHMAN. Did they ask you to air any of their labels over KYW?

Mr. FINAN. No, sir.

Mr. LISHMAN. Have you, as a matter of fact, aired such a record label over KYW?

Mr. FINAN. Since the first day I have been on the air with WJAL—they are very close friends of mine.

Mr. LISHMAN. What interest rate was charged you on this loan of \$2,500?

Mr. FINAN. To my knowledge, none, since there might be, it is conceivable, but I do not think I was charged any interest. I do not think there is any interest.

Mr. LISHMAN. Did you give a note for this loan?

Mr. FINAN. No, sir; my personal word.

Mr. LISHMAN. Was it given to you in cash?

Mr. FINAN. No. I believe it was—I believe it was sent by check.

Mr. LISHMAN. And when it was sent by check did a letter accompany the \$2,500 check?

Mr. FINAN. That I cannot remember, because, actually, I do not handle the financial end. It went to my wife. She knew it was coming and she took care of it from there.

Mr. LISHMAN. When was that made repayable?

Mr. FINAN. There was no stipulation. I told them that I would make every effort to pay it back within a matter of 6 months, if it became possible.

Mr. LISHMAN. Were there any other companies from whom you obtained loans in the record business?

Mr. FINAN. No, sir; not to my knowledge, no.

Mr. LISHMAN. Well, now, going back, excluding the loans, just confining ourselves to the 15 record companies from whom you received payments of money, would you accept the figure of, approximately, \$15,000 as the amount you received from these 15 companies over about a 2-year period?

Mr. FINAN. Yes, \$5,000 in 1958 and \$10,225 in 1959. That is exclusive of the loan. I did not—

Mr. LISHMAN. That is exclusive of the value of any gifts?

Mr. FINAN. Yes.

Mr. LISHMAN. Now, to clarify the record, first of all you were employed as a diskjockey by KYW; is that correct?

Mr. FINAN. Yes, sir.

Mr. LISHMAN. How many hours a day were you required to devote to your duties as a diskjockey?

Mr. FINAN. There was no actual requirement. The total time put in at the station, both for radio and television—I had extensive television responsibility at KYW—would amount to reporting in, approximately, at 12 o'clock, when I was working 2 to 6, and I usually left there at night at midnight, a total of about 10 hours. And most of the record listening would be done at home, since most of the records were mailed to my house.

Mr. LISHMAN. You received a salary from KYW?

Mr. FINAN. Yes, sir.

Mr. LISHMAN. What was that salary?

Mr. FINAN. Do you mean totally from radio? I have never broken it down; the total from radio and television last year was approximately \$38,000 or \$40,000.

Mr. LISHMAN. What were your duties as a diskjockey? Was there not the matter of listening to records, that would be suitable, to be aired over KYW by you as such diskjockey?

Mr. FINAN. Yes, sir; it was. In the industry, realistically, no broadcasting company, including Westinghouse, expects its men to listen to each and every record. It is just a physical impossibility.

Mr. LISHMAN. I appreciate that, but a part of your duties as a diskjockey, for which you were paid this salary, was listening to selected records to see whether they were suitable for airing over that station: is that correct?

Mr. FINAN. Yes, sir. And this I did. As a record was kept by Westinghouse in Cleveland, catch as catch can, they kept it the last 2-year period—I know for the last year I listened to not only the people mentioned here, but to Columbia, to Capital, and all of the other record labels.

Mr. LISHMAN. In connection with your duties as a diskjockey, in connection with determining what records were suitable and airable, there was the actual airing of the records?

Mr. FINAN. The airing of the record: yes.

Mr. LISHMAN. And comments made by you concerning the records and other matters?

Mr. FINAN. Yes, sir.

Mr. LISHMAN. Did you comment on the records as they were being played?

Mr. FINAN. From time to time. I can explain.

In the beginning of the independent radio, Cleveland was one of the best markets in the country for record manufacturers. And when there was no competition in the industry, so far as independent operation was concerned, we had a man working in the market who commented on each and every record. And this was his method of selling records and selling everything else.

However, with competition being introduced, and more quality programing coming about, this screening and making stupendous statements, just did not seem substantially to be the way to sell. So that as a matter of business application, and as a performer, using that sense that would make the station money and myself, I usually restricted my comments on records. I would say something, naturally, about some of the records of some of the companies here involved in this. That was the extent of it. It was not a question of constantly using repetitious and flowery phrases and drive.

Mr. LISHMAN. Well, Mr. Finan, for example, would you say in connection with a fresh record by one of these companies from whom you received money, "You may have heard Frank Sinatra and Dinah Shore, but the record you are about to hear is going to be a smash-eroo." Would you use such language as that in commenting upon a record that you were to air?

Mr. FINAN. Well, that is a part of my vocabulary. I am not—

Mr. LISHMAN. I am just trying to get your technique that you used in promoting or giving special consideration to these records.

Mr. FINAN. I think I said just about that in representing every companies' offering at one time or another that I thought that this record was going to be a hit. I might have used the word "smash," or—

Mr. LISHMAN. Would you, introducing the record, use the names of admittedly great talent, we will say, like Dinah Shore and others, and then work in some unknown artist's record on this pitch as warranting the attention of the listening public?

Mr. FINAN. No, sir. This I would not, for this reason: I mentioned the record earlier of Bobby Riddell. I believe myself that this young man was going to be a star. And when I talked about Bobby Riddell I talked about an artist.

They might be involved in a good piece of material. They would have one record and you would never hear from them again. I would not say that Joe Smith on this particular record is a great artist compared to Sinatra. It would be foolish to say so.

And No. 2, I have never believed in that. I tried to maintain as reasonable an attitude as possible on the air.

Mr. LISHMAN. Well, Mr. Finan, we have you having a salaried position as a disc jockey, and as I understand your testimony you were acting in three other capacities for certain other companies than KYW, and you correct me if I am wrong—with respect to some record companies you gave your services in terms of special consideration to the records, is that correct?

Mr. FINAN. Yes, sir.

Mr. LISHMAN. Were some of these 15 companies you performed such services for and received payment for just simply from listening to the record and evaluating the commercial possibilities?

Mr. FINAN. Yes, sir.

Mr. LISHMAN. And for some of these companies you acted as a consultant, is that correct?

Mr. FINAN. Yes, sir.

Mr. LISHMAN. As to the commercial quality of that product?

Mr. FINAN. Yes.

Mr. LISHMAN. You have testified that it took you, approximately, 10 hours a day to take care of your duties as a disc jockey for KYW.

About how many hours a day would you devote to your clients who were paying you for special consideration?

Mr. FINAN. At my house each evening through the daily mail I would receive, perhaps, 15 records. Some of these records would require 20 seconds listening, because you could determine immediately, having a feel for the business, that something dreadfully is wrong with this particular record.

Other records I would listen to time and time and time again, to see what the cumulative effect was on me.

Other records I would listen to and would know immediately that this was a good record.

The total time—the time spent is not the kind of time that I could give a time estimate on. I cannot possibly tell you. I did not punch a timeclock on it.

I realize that it is incredible to believe that this much money is paid for this kind of service, but I beg you to understand the peculiarity of our record business. It is a business in which millions and millions of dollars are involved. I do not know how anyone else operates in any other part of the country. I know that on my premise, first and foremost, from a practical application standpoint, \$40,000 a year is a very fine position as I had at KYW. And the happiness I had at being there.

I equate that against the \$5,000 or \$10,000 for 1959.

I did perform these services, but these services never in any way jeopardized my independent judgment of what kind of material should go on, because my basic responsibility to my family and myself and to KYW was to maintain a competitive position, to become No. 1, which we did in that market—which we did through the cooperation of all.

Mr. LISHMAN. I would just like to have you approximate, if you can, Mr. Finan, about how many hours a day was spent on your work of special consideration and listening and as a consultant?

Mr. FINAN. Well, if I were to equate it in the time I spent, I would say, at least, an hour a day was spent outside of the area of the station listening at the station, too, that I did at home. The work that was involved—I did not use this word "consultation"—comparing with my colleagues in the business field. Many times I would call many friends who were on the air and ask them, "Do you, also, think this is a good or bad record?" I wanted to compare my own judgment. As these companies want to verify theirs.

Mr. LISHMAN. Mr. Finan, do you have an interest in any record company?

Mr. FINAN. Yes, sir, I own a record company.

Mr. LISHMAN. What is the name of it?

Mr. FINAN. Cosmic.

Mr. LISHMAN. Who do you own it with?

Mr. FINAN. I own it with attorney H. Donald Zimmerman.

Mr. LISHMAN. Did you own it while you were with station KYW?

Mr. FINAN. Yes.

Mr. LISHMAN. Did you air the records of Cosmic while you were there?

Mr. FINAN. Yes, sir. We made several records and I aired two. I aired one. The other one was given to Art Record for distribution. As our records will show the other record became what we thought was a national hit, being played on all of the stations throughout the country and achieved a certain amount of popularity. That record has—

Mr. LISHMAN. Is that not the Chess label?

Mr. FINAN. Yes.

Mr. LISHMAN. Chess loaned you the \$2,500?

Mr. FINAN. Yes.

Mr. LISHMAN. Were the Cosmic records aired by you fresh records?

Mr. FINAN. Yes, sir. We invested money and time in the studio on the records. They were ours—original in the Cleveland area.

Mr. LISHMAN. You believe that as the result of your airing these records it helped some of them?

Mr. FINAN. The first record—we lost on the first one \$1,000. On the second record which we thought was a hit, we got a return of, perhaps, 100,000 records, with a total income on the record of \$5,000, which was divided among the officers and the people that worked in Cosmic Records.

Mr. LISHMAN. Mr. Finan, do you know Mark Olds?

Mr. FINAN. Yes, very well.

Mr. LISHMAN. What was his position at station KYW?

Mr. FINAN. He was the program director.

Mr. LISHMAN. Did Mr. Olds ever offer you anything of value in return for playing a particular record?

Mr. FINAN. No, sir.

Mr. LISHMAN. Or for playing a record of a particular company?

Mr. FINAN. No, sir.

Mr. LISHMAN. What person on KYW selected the records that you played?

Mr. FINAN. The primary responsibility for selecting records was our librarian, Charles Young, but we all—every disc jockey there—had an opportunity to select a certain amount of records that came to his attention. And if Mr. Young did not like them, we could go to the program director.

Mr. LISHMAN. Did anyone connected with KYW ever put any pressure on you to play a particular record?

Mr. FINAN. What kind of record?

Mr. LISHMAN. Either indirect, or pressure with regard to your holding the job?

Mr. FINAN. No.

Mr. LISHMAN. Pressure by offering you money?

Mr. FINAN. No, sir.

Mr. LISHMAN. Or any other kind of pressure?

Mr. FINAN. No. There was a time when I was asked to play a record, but I did not for a moment.

Mr. LISHMAN. Who asked you to play it?

Mr. FINAN. In that particular case I was asked by Mark Olds to listen to it. He asked me to listen. He was a very fair guy. He asked me to make up my own mind. I did. I played it out of courtesy for another person in our relationship, and after putting it on the air for 2 days, decided that it would not be a hit, and I stopped playing it.

Mr. LISHMAN. Mr. Finan, do you know Mr. Bud Wendel?

Mr. FINAN. Yes, sir.

Mr. LISHMAN. What was his position or what position does he hold now?

Mr. FINAN. He is the program director.

Mr. LISHMAN. Do you know Mr. Gil Faggen?

Mr. FINAN. Yes, sir, he is the music director of KYW.

Mr. LISHMAN. Mr. Charles Getz?

Mr. FINAN. Yes.

Mr. LISHMAN. What is his position?

Mr. FINAN. Charlie is in charge of promotion—promoting activities for the station that will affect the public image of the station.

Mr. LISHMAN. Did any of these persons ever bring pressure on you of any kind to play records of a particular company or a particular record?

Mr. FINAN. I think it was—the fact that these gentlemen, Bob Wendel, no; Charlie Getz was formerly with the New York Giants, very much interested in sports, spent a great deal of time and effort in making an album called “History of the Cleveland Indians,” which has been a very fine album, and has been received in the Ohio Valley. He asked me, but with the proviso if I would look at it, if I would play it and I said that I would. I played it a couple of times. It was a fine album. There was no pressure and no thought of losing my job doing anything that might violate my friendship with these people.

Mr. LISHMAN. Do you recall in October 1959 that the record album “Rendezvous” was requested to be featured?

Mr. FINAN. “Rendezvous” by whom, sir?

Mr. LISHMAN. That is the title of the album.

Mr. FINAN. I cannot remember it, the request, because I cannot remember the album.

Mr. LISHMAN. Do you recall the Spotlight record list?

Mr. FINAN. Yes, sir.

Mr. LISHMAN. And the Top 40 tune list?

Mr. FINAN. Yes, sir. I lived with it a long time.

Mr. LISHMAN. Did any of the personnel at Westinghouse indicate to you what, on these lists of songs, you should air while a disc jockey?

Mr. FINAN. Well, “The Spotlight Record” is a record that would require playing, but there was no jealous or private jurisdiction over “The Spotlight Record.” There were many times that I could bring in a record and have it spotlighted. We did that, as a matter of policy. We took the very best records we thought possible, and we played them on all shows. As far pressure, the only pressure was that

it was management policy—management dictated out of New York—and not privy to anyone's private concern in Cleveland.

Mr. LISHMAN. Do you recall any personnel at Westinghouse telling you that they would like a record on, "What a Night," sung by the Chippendales?

Mr. FINAN. Yes. Bob Wendell told me that, sir.

Mr. LISHMAN. Rather urged you to air that record?

Mr. FINAN. When you say "urged"—

Mr. LISHMAN. Did he try to suggest to you—

Mr. FINAN. He suggested only this, that he thought it was a very fine record. I listened to the record, and I concurred. And that, subsequently, was proven by the fact that it was a national hit, not only in Cleveland.

Mr. LISHMAN. I have no further questions.

Mr. FINAN. May I just say this. I would like to go back to one thing that I said earlier. I thought I made it clear, but I would like to go back to the RCA-Victor—Main Line affidavit. In that affidavit it was stated that I had asked Mr. Clark express consideration to play the record and that I would receive \$50 per week per specific record.

I said earlier in my testimony this morning that if this were the case there would have been times when I could have conceivably made \$500 or \$600 a week from Main Line.

I made from Main Line, as a matter of fact, and it is a matter of record which contradicts the affidavit, \$1,000 within the period of 1958, and 1959 \$300. As a matter of fact, for some reason, these were intermittent periods. They became dissatisfied. I do not know what was in their mind. I was charged by the vice president of the corporation that, that is, in the Cleveland papers, of inventing the word "payola," which I deny. I also never sought Mr. Berneson. I never asked for money. And their dissatisfaction, and their asking me and strongly suggesting that I play certain records that I did not want to play brought this whole procedure to an end.

We also mentioned a record earlier today, "Lollypop"—not only my version, but I consistently played the Katy version of the Chordettes. This I recall from this morning.

Mr. LISHMAN. Thank you.

The CHAIRMAN (presiding). Mr. Mack.

Mr. MACK. This morning you said it was a station policy for them to play only one record, one particular record on one program, is that right?

Mr. FINAN. Yes, sir, with the exception of extreme circumstances when we altered this, that such a record should be given extra consideration. It was the opinion of everyone there.

Mr. MACK. I am interested in the exceptions. When did you decide that there would be exceptions?

Mr. FINAN. Well, for example, Mitch Miller—I think it was a Mitch Miller album, on the Confederacy—coming up to the 100th anniversary of the Civil War. It was a new album. It was being featured by other stations. We were always sensitive to pure competitive situations. After we became the No. 1 station in town we wanted to maintain that position. We wanted to continue that as much as possible daily.

When we got the new album, the history of the Civil War, the War Between the States, we featured it. And we featured it extensively over a period of about 3 or 4 days.

Mr. MACK. Who made the decision in this case? Did you make the decision or did the manager of the station make the decision?

Mr. FINAN. Well, at all times the policy decision, a decision involving our policy of playing music, was made after suggestions, perhaps, from a disc jockey, perhaps from the record librarian, perhaps from management, perhaps from the girl in the continuity department, that this might be a good idea, and that it was a cooperative effort at all times. There was no one person who was completely in charge or responsible for that music or what we did in the way of promotion.

There would be times for a period of 1 or 2 weeks when you decided to play those records that sold a million, that people wanted to hear, and we would feature one of those every 10 minutes. And this was agreed to by everybody, the program director, the disc jockeys, and the record librarian and sometimes the girl who worked in continuity.

Mr. MACK. There was no hard and fast policy as to who had the authority to make the decision, is that correct?

Mr. FINAN. I never had the authority.

Mr. MACK. Let me see if I understand. You had to talk with three or four other people in the station before they would finally agree that you could make an exception and play a record twice on the program?

Mr. FINAN. Yes, sir. If there was a valid reason that a record should be played twice on the show, it was taken under advisement by the record librarian. He was, of course, the one who reported to the program manager. In an independent operation such as ours the manager works very closely with the record librarian and with the disc jockey.

Mr. MACK. The program manager makes the decision, or had made the decision?

Mr. FINAN. Well, ultimately, in the chain of command somebody had to be charged with the responsibility. He might have OK'd it—simply OK's somebody else's idea.

Mr. ROGERS. And he would have to approve the recommendation that you had made, or the recommendation the librarian had made, is that correct?

Mr. FINAN. Yes, sir.

Mr. ROGERS. Thank you very much.

The CHAIRMAN. Mr. Devine?

Mr. DEVINE. Mr. Finan, getting back to the day of your discharge from KYW, I believe you said that occurred at 2:15 in the afternoon, on December 3.

Mr. FINAN. Yes, sir, I remember it very well.

Mr. DEVINE. And the reasons given to you by whoever that person was were "outside promotional activities," is that correct?

Mr. FINAN. I have a letter of discharge. I would like to read this, rather than saying something, which might conceivably—

Mr. DEVINE. Does it get to the point or wander all over the road?

Mr. FINAN. Well, may I read just a portion, and you can stop me. I think it is self-explanatory.

Reference is made to numerous conversations you have had with representatives of KYW over the past several weeks. It is concluded from these conversations that there is no doubt that over the recent past while employed as a radio personality of KYW, you have received from third party interests, sums of money and other considerations which individually and in the aggregate reached excessive proportion. While it is obviously suspected that these sums were paid in consideration of your taking action in preferential handling of the giver's records, labels or company, and this fact need not necessarily be established in order for the conduct to be in violation of a relationship existing between you and the station.

Mr. DEVINE. Do you know when your station people first had the information that you were engaged in these activities?

Mr. FINAN. No, sir, I don't. The first time we had a discussion is when they called me in on approximately November 1, and asked me if I had been participating in outside activities. I answered in the affirmative. And that is the first time we had a discussion specifically.

Mr. DEVINE. You had no discussion with your station manager in the year or so before this letter?

Mr. FINAN. No, sir.

Mr. DEVINE. Would you say that the practice in which you were engaged as a "consultant," is a common practice in the broadcasting industry generally?

Mr. FINAN. I am not hedging on the answer, because I honestly don't know. I have heard payola as a specific word that was born in the music business very, very long ago. It was tradition and custom, there are variations on it, in my own mind.

Mr. DEVINE. Well, let's confine it, then, rather than the general industry—let's confine it to the Ohio area, such as in Toledo, Akron, Columbus, Dayton, and Cincinnati, in addition to Cleveland.

Mr. FINAN. I have no idea.

Mr. DEVINE. You have no knowledge?

Mr. FINAN. No, sir.

Mr. DEVINE. Now, this \$38,000 to \$40,000 figure that you related awhile ago, would you again identify what that relates to?

Mr. FINAN. Well, that is not strictly from radio.

Mr. DEVINE. That is your overall income?

Mr. FINAN. That is my overall income from KYW. It was paid in a lump sum.

Mr. DEVINE. What specifically was your salary for KYW in the year 1958?

Mr. FINAN. In 1958 approximately the same—it was around \$37,000, and perhaps \$19,000 to \$20,000 of that was from radio.

Mr. DEVINE. You spoke of London records, and one Frank Perry as a promotion man.

Mr. FINAN. Yes, sir.

Mr. DEVINE. You said he was a promoter not only in the Cleveland area, but also Akron, Columbus, and so forth.

Mr. FINAN. Yes, sir, the records in Ohio are distributed from two sources—out of Cincinnati, and out of Cleveland. Many of the promotion men of these companies will call on Akron, Columbus—from Cleveland, will call on Akron, Columbus, Youngstown, and the smaller communities.

Mr. DEVINE. Could you identify those companies, please?

Mr. FINAN. Well, yes, I can identify the distributorships who touch those areas. Cosnat, Head, Mercury, Victor—I am not sure about

Victor. Their promotion is rather shabby. I don't think they get down to Columbus. Columbia, I don't believe they go to Columbus, either. King. All of these at one time or another, Mr. Devine, will make a trip into Columbus to visit the stations, to drop into the retail stores, to see whether or not their merchandise is being prominently featured.

Mr. DEVINE. These contacts are made through promotion men; is that correct?

Mr. FINAN. Yes, they call on the stations to see if the stations are being serviced, if they are getting their records by mail, if the jockeys are getting theirs, and the like.

Mr. DEVINE. That is all, Mr. Chairman.

Mr. ROGERS. Mr. Finan, what age man are you?

Mr. FINAN. 32, sir.

Mr. ROGERS. How long have you been in this radio-TV business?

Mr. FINAN. I have been in entertainment, radio and television for 10 years. I have been a disc jockey for 4.

Mr. ROGERS. Did you ever have any other kind of job? Did you do other work of any kind?

Mr. FINAN. For brief periods of time, I was an actor after getting out of school.

Mr. ROGERS. An actor?

Mr. FINAN. Yes.

Mr. ROGERS. You mean in motion pictures?

Mr. FINAN. No, sir, the legitimate stage.

Mr. ROGERS. Now, you said you got \$38,000 to \$40,000 a year. Now, was that, say, for 1958?

Mr. FINAN. Yes, it was approximately that for 1958.

Mr. ROGERS. In 1958. Now, did you have other income?

Mr. FINAN. In 1958?

Mr. ROGERS. Yes.

Mr. FINAN. No, sir—other than the income I have stated here.

Mr. ROGERS. Well, now, what is that income?

Mr. FINAN. The \$5,000 from these outside activities.

Mr. ROGERS. In other words, your total income, then, was somewhere around \$43,000, for 1958?

Mr. FINAN. I can't recall the exact figure, but somewhere around there.

Mr. ROGERS. Well, now, this amount of \$5,000, was that all of the money you received from these record companies and other people on the outside, over and above your salary?

Mr. FINAN. No, no, no. I see what you are driving at. No, I was doing record hops, also, at the time.

Mr. ROGERS. You were doing record hops?

Mr. FINAN. Record hops, yes, sir.

Mr. ROGERS. That is the kind where they don't put them on the air? They just have block parties—that sort of thing—and you get paid for it?

Mr. FINAN. Yes, sir, I got paid for it. Organizations would have, such as PTA's, school groups, school classes, would have a record hop. I would attend, and play records for the teenagers.

Mr. ROGERS. Couldn't the teenagers play those records?

Mr. FINAN. Well, the teenagers, thankfully, liked to see the personalities they listen to on radio. And our being there enhanced the fact that the PTA or whatever group was sponsoring it would garner themselves a greater audience.

Mr. ROGERS. And you did ad libbing during this time, did you not? That is, discussing the records at the record hops? You would say this is a Decca record?

Mr. FINAN. As a matter of fact, never, whether it was at Westinghouse, KYW—as a matter of fact, that is policy at Westinghouse, we never mentioned specific labels. That was absolutely stated policy. You were not allowed to mention a specific label. You could say this is such and such a record by so and so, but you could not mention the label or show preferential treatment. At a record hop, I was too busy conducting dance contests. The first hour and a-half was involved in signing autographs, conducting dance contests, giving away records, and the like, there was no chance—

Mr. ROGERS. Who paid you for this service?

Mr. FINAN. Well, we usually operated, not in 1958, but the last year we operated on a 50-50 split, most likely. The PTA and myself, after they took out the minimal expenses, they would get 50 percent and I would get 50 percent.

Mr. ROGERS. Fifty percent of what?

Mr. FINAN. Of whatever came in. Sometimes I would go home with \$40, and other nights, I think, the most I went home with was \$200. These were in small towns.

Mr. ROGERS. You mean people had to pay to get into the record hops? They were not free?

Mr. FINAN. No, they were not free. They were for the benefit of the PTA and myself.

Mr. ROGERS. Did you ever receive any money from the record companies for playing certain records at these record hops?

Mr. FINAN. No. They would be interested, very interested, in knowing what kind of reaction there was. This is one of the ways that a diskjockey finds out what the kids, the teenagers like. You play a record, and if they come up and ask you to repeat the record seven or eight times, you have a pretty good indication. So they would be interested. But that all contributed to the fact that when I gave them an opinion on a record, there was subsequent backing, in my own mind, or verification.

Mr. ROGERS. That is what I am coming to. How did you know they were interested in this—record companies? Would they come to see you, and ask you?

Mr. FINAN. That they were interested in record hops? They were not interested in record hops.

Mr. ROGERS. No, wait a minute. You said that they were interested in what records were played at these record hops. Now, what I want to know is how do you know which record companies were interested? Did they come to you and say, "Mr. Finan, which records did you play?"

Mr. FINAN. Mr. Rogers, during an average day, I would talk on the phone with at least 10 to 15 different record companies. It got so bad that the station refused to allow me to take calls on the air. I

was in constant contact. And when I was on the air, my manager was talking to them.

Mr. ROGERS. Now, was that the consultation service?

Mr. FINAN. Yes, and that was constant. It was immediate and constant at all times.

Mr. ROGERS. And the record companies were paying you for that consultation service?

Mr. FINAN. That was my understanding of it, Mr. Rogers.

Mr. ROGERS. Was that the \$5,000 you got, over and above your salary?

Mr. FINAN. Yes. As I indicated, with the couple of variations that I told Mr. Lishman, and the \$10,000 this past year.

Mr. ROGERS. You got \$10,000 in 1959, and \$5,000 in 1958?

Mr. FINAN. Yes, sir.

Mr. ROGERS. Now, how much did you get out of the record hops?

Mr. FINAN. The record hops? Well, due to the fact that I was on television late at night, I could only perform on Saturdays, and I never worked during the summer.

Mr. ROGERS. I know. But how much did you get out of it for a year?

Mr. FINAN. I am trying to arrive at that, because I didn't put that down here.

I would say it averaged, maybe, \$100 a Saturday or a weekend. I would say maybe thirteen, fourteen hundred dollars—maybe \$2,000.

Mr. ROGERS. Now, did you consider any of this as gifts or earned income? How did you consider that?

Mr. FINAN. From the record hops?

Mr. ROGERS. From all of it, over and above your salary.

Mr. FINAN. Everything I considered earned income.

Mr. ROGERS. Everything. And you reported everything on your income tax?

Mr. FINAN. To the best of my knowledge, yes, sir.

Mr. ROGERS. Well, I mean, now, you are the only one that has any knowledge about what your income was.

Mr. FINAN. And I am not very good with figures. But I know that as far as Internal Revenue, that we are straight as we possibly can be. This was all considered by me earned income.

Mr. ROGERS. And it was reported as such, and was not considered gifts for any purpose?

Mr. FINAN. No, I never listed anything as gifts.

Mr. ROGERS. Did you get any gifts of any kind from any of these people—cars, or suits of clothes?

Mr. FINAN. I never got cars or suits of clothes. I got shirts. And I will admit that they were good shirts. I got a couple of cashmere sweaters. And I got an RCA Victor television set from Mainline, very early in my career as a diskjockey, which I didn't solicit, it was sent.

Mr. ROGERS. Those are what you call fringe benefits? You didn't report those?

Mr. FINAN. You mean did I report the receipt of a color TV set?

Mr. ROGERS. Yes.

Mr. FINAN. On my income tax?

Mr. ROGERS. Yes.

Mr. FINAN. No, I didn't. At that time, I didn't have anybody handling my taxes, because my income early in my career was the kind that my wife and I could sit down and figure out. I didn't realize that was a reportable item.

Mr. ROGERS. What was that set worth?

Mr. FINAN. I have no idea. To Mainline?

Mr. ROGERS. How long ago did you get it?

Mr. FINAN. About 3 years ago.

Mr. ROGERS. They were selling for about a thousand dollars, then, were they not?

Mr. FINAN. It was almost a 50 percent markup.

Mr. ROGERS. I don't know about the markup. But if you had gone in a retail establishment, and bought one, it would cost you about \$900 to \$1,000?

Mr. FINAN. Well, I know it is a substantial gift, but I never valued it at how much.

Mr. ROGERS. Now, did you testify that you never at any time approached anyone, any company, or any person whomsoever, and told them that you would be glad to render this service for so much money?

Mr. FINAN. Mr. Rogers, I know this is incredulous for anybody to believe who is not in our industry, and I want to repeat it. Millions of dollars are made in this industry every year. It has grown since the growth of independent radio after the advent of television. These amounts, while they may seem very substantial to the public, to many people in this room, and to you, to the record companies, were not insignificant—money isn't insignificant—but it was the kind of investment that might save them thousands of dollars—has saved them thousands of dollars. Now, having my own little record company, and after all the sweat and toil that we put in, with recording the material, with spending hours on the phone with artists, and people, and promotion, I know myself, in my own little venture, how much verification a man needs. A record manufacturer, who is dealing in thousands of dollars—

Mr. ROGERS. That is a good speech, but what I am getting at is this. Do you ask any of these record companies to help you out a little bit on the side?

Mr. FINAN. Mr. Rogers, I never did. And I want to verify this by going back to the record, and going right back to the affidavit that I was shown here.

Mr. ROGERS. All I want is the answer.

Mr. FINAN. No, I didn't.

Mr. ROGERS. Did you or didn't you?

Mr. FINAN. I absolutely did not.

Mr. ROGERS. How long had you been doing this before you started taking these side payments?

Mr. FINAN. Approximately a year and a-half.

Mr. ROGERS. Did you discuss it with your employer?

Mr. FINAN. No, sir, I did not.

Mr. ROGERS. Did it seem sort of unusual, or odd, or sort of immoral to you to be doing it?

Mr. FINAN. No, sir, it did not seem immoral, because I felt I was rendering a service.

Mr. ROGERS. But you were employed by this radio station and TV station, were you not?

Mr. FINAN. Yes, sir.

Mr. ROGERS. And it was during the time that they were paying you, that you were engaging in these consultation services for which you were also being paid?

Mr. FINAN. My primary responsibility was working for KYW, radio and television, which I performed to the best of my abilities. And I felt that in no way was there a conflict of interest.

Mr. ROGERS. Well, why didn't you discuss it with them, then?

Mr. FINAN. I discussed outside promotional activities when my contract was renewed. My first contract was for 2 years. At that time, at the time of the renewal of the contract, I sat with Mr. Gordon Davis, and I asked him to insert in the contract—I told him that for personal reasons I had to make more money, and I wanted to be involved in outside promotional activities. Mr. Davis, and the management of KYW, had been, up until the time they fired me, I am sure, substantially assured that I would perform my duties objectively, which I still believe I am. And he, rather than putting it in the contract, we talked about a gentlemen's agreement, which was entirely logical, because this man was a gentleman. He said I could do, I could operate in outside activities. When I formed the record company, I was—

Mr. ROGERS. Did he ever ask you to give him a percentage of the money you were getting?

Mr. FINAN. Never.

Mr. ROGERS. Turn it over to the company?

Mr. FINAN. Never.

Mr. ROGERS. Well, Mr. Finan, when you were doing this, didn't you—you appreciated the fact that the reason they were paying you this amount of money, which you say doesn't seem like much to these record companies, but it may be appreciable to us—didn't you understand and appreciate the fact that they were doing this in order to gain an unfair advantage insofar as the advertisement of their records was concerned, or to pushing something onto the public, the public might not want?

Mr. FINAN. What these gentlemen felt, I have no way of telling.

Mr. ROGERS. I am talking about what you felt.

Mr. FINAN. No, I didn't feel in the slightest that they were gaining an unfair advantage, because—

Mr. ROGERS. You don't think they have been handing you \$50 a week just for fun, do you?

Mr. FINAN. I had turned down—if I got \$10,000 last year, and \$5,000 the year before, I have turned down a like sum, because somebody asked me if I would play a specific record a specific number of times on the air. And I have denied that request at any time it was made. I did not feel that any company on this list was getting an unfair advantage.

Mr. ROGERS. Well, why do you think these people gave you this money?

Mr. FINAN. I think these people gave it to me to emotionally settle their own stomachs, rather than having ulcers, where they could verify in their mind, sitting in New York, that Joe Finan, and KYW, and the people on their station, who are very important to them,

because we are the route by which they expose their product, they called us and said, "is this a good record?" We would say yes. They would say, "is it capable of being on KYW?" We would say yes. No mention of a specific play. Many times these people called up and said, "what about this record?" We said, "it is a dud, forget it, we can't possibly play it."

Mr. ROGERS. You may have come upon an ulcer cure that will pay you more than the payola. I never heard of a remedy like that curing a disease or ailment just by them paying out money. I have heard about a lot of them paying it out and not getting cured.

Mr. FINAN. Well, they got value received in the substantial moneys they saved in not spending for 3,000 diskjockeys services all over the country.

Mr. ROGERS. They were trying to take a shortcut here to get an unfair advantage actually, no matter what words you put it in, were they not? If they had not gotten a service out of you that would produce that result, they wouldn't have paid you that money, would they?

Mr. FINAN. No, sir, I think there is no doubt about it. They thought they were getting value received.

Mr. ROGERS. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Moss?

Mr. MOSS. Mr. Finan, do you feel that they were paying you the money to get your expert judgment as to the marketability of the recordings?

Mr. FINAN. Yes, sir, that is exactly how I feel.

Mr. MOSS. And you had a total of 15 clients?

Mr. FINAN. Yes, sir.

Mr. MOSS. Are you still acting as a consultant to Mercury Record Co?

Mr. FINAN. No, sir. I will speak to that point.

Mr. MOSS. Let's just check these. Are you acting as a consultant to Cosnat Distributing Corp?

Mr. FINAN. On occasion; yes, sir.

Mr. MOSS. When was the last time?

Mr. FINAN. Oh, approximately 2 weeks ago, when I got on the phone and talked about—

Mr. MOSS. And did they pay you for that?

Mr. FINAN. Not yet.

Mr. MOSS. Have they made an arrangement to pay you for it?

Mr. FINAN. Yes, sir.

Mr. MOSS. How many of these clients have you retained?

Mr. FINAN. Have retained my services now?

Mr. MOSS. Yes.

Mr. FINAN. Well, none of them, but I would like to expand on that point.

Mr. MOSS. None of them have retained your services?

Mr. FINAN. No.

Mr. MOSS. Did they stop their payments, then, some time toward the end of 1959?

Mr. FINAN. Yes, sir, they stopped when I asked them to stop, which was the day I was fired.

Mr. Moss. Well, if they were buying your expert knowledge, why did you ask them to stop just because you had been taken off the payroll?

Mr. FINAN. Because, sir, in being fired and discharged, I am now under a cloud of suspicion, and I was hoping that I wouldn't have to embarrass any of them, even by discussing what I made, which might be misunderstood, and I asked them to stop the payments, and at the same time dissolved my board membership in DJA for the same reason. I am still capable of being a pretty good diskjockey, but I really don't want to embarrass anyone.

Mr. Moss. Well, let's go back now. You say you are 32. You have been in radio and television for a 10-year period, approximately 4 years, the last 4 years, as a diskjockey.

Prior to becoming a diskjockey, what were your duties?

Mr. FINAN. I spent a year working in an advertising agency. I was in charge of time buying, media, production. It was a small agency. I did everything in the operation. But most of my work was done with buying time on particular stations, and understanding which stations could deliver to our advertisers the most money for their dollar spent.

Mr. Moss. Is that an agency concerned only with the buying of radio and TV time, or was it a general agency dealing with other media as well?

Mr. FINAN. It dealt with other media as well. But I specifically, being knowledgeable in the radio-TV field, dealt only with radio and TV. Newspapers were handled elsewhere.

Mr. Moss. Prior to the year with the advertising agency, what did you do?

Mr. FINAN. Prior to that, I was radio staff announcer.

Mr. Moss. With what station?

Mr. FINAN. I started with WTAM, which later became KYW. Prior to that, I was at WPIC, in Sharon, Pa. And prior to that—

Mr. Moss. Staff announcer?

Mr. FINAN. Staff announcer, and playing records. And prior to that, I was working in Butler, Pa., in my hometown. That is where I started in radio.

Mr. Moss. And how long were you in Butler?

Mr. FINAN. In Butler, I spent a year.

Mr. Moss. When did you leave Butler, Pa.?

Mr. FINAN. Well, I have been in radio and television 9 years. In 1951, and 1952, I went to WPIC in Sharon.

Mr. Moss. When did you go to—

Mr. FINAN. In 1953, a year later.

Mr. Moss. When did you first start as a diskjockey, or playing records, as part of your announcing activities?

Mr. FINAN. The first time I played records was in Butler, on WISR. It was a music and news station, which is the only kind of station operative in a market of 28,000 to 30,000 people. At WPIC, I did the same, plus delivering newscasts. I did everything on both those stations.

When I came to WTAM, it was at that time still affiliated with the National Broadcasting Co., and I made staff announcements and station breaks, and delivered infrequent commercials. I left there. I

went into the advertising agency for a year. And then I went to WJW, about a year and a half prior to my employment in KYW. I was employed October 1956 at KY, so it must have been 1955—early 1955 that I was at WJW.

Mr. Moss. Is WJW where you first became a diskjockey?

Mr. FINAN. Well, in the strict sense of the word, yes. A diskjockey in a major market. But I was charged with that same responsibility on my first two radio jobs. WISR and WPIC.

Mr. Moss. Well, did you have a regular program, regularly scheduled program of recorded music at those stations?

Mr. FINAN. Yes, I did.

Mr. Moss. But up until approximately 2 years ago you hadn't been retained as a consultant by anyone, on its problems of distribution or talent?

Mr. FINAN. Distribution, in those small markets, is nonexistent—a nonexistent business, because those records at Sharon come out of Pittsburgh, Pa.

Mr. Moss. That is the point I wanted to get at. Were you really of the opinion that in the course of this background which you have just stated that you had developed expert knowledge, marketable knowledge, of the problems of the distribution of recordings.

Mr. FINAN. Yes, sir, I think I did. I put in an initiate at two stations, where I was constantly—

Mr. Moss. How did you deal with distribution of recordings as an employee of a station which broadcast rather than sold music?

Mr. FINAN. Would you rephrase that?

Mr. Moss. How did you gain knowledge of the problems of distribution when you were employed by a station which broadcast music, but did not sell it?

Mr. FINAN. Well, no station I have ever worked for has sold music. A certain amount of exposure—

Mr. Moss. We have heard others who have claimed to have become expert in problems of distribution, working in a field which has a peculiar type of divorce from the problems of distribution. And I am puzzled as to how you gained this expert knowledge in a field which is very competitive, where there are many experts who have gained their expert knowledge in that field, and not in a related field.

Mr. FINAN. There are not that many experts, although it is a multi-million dollar business. The number of people involved in the business, proportionately to other businesses, is relatively small.

Mr. Moss. You feel, then, that you gained an expert knowledge about distribution problems as an employee of a radio or TV station?

Mr. FINAN. Yes, sir; because distribution in records differs radically from the distribution of, for example, sparkplugs.

Mr. Moss. Well, before you go any further—I had a little bit of acquaintance with the marketing of recordings, quite a number of years ago. And I don't think the difference is quite as marked as you would indicate. Maybe there have been problems as a result of the multiplying of labels in recent years, but there have been increased opportunities for those in radio, as radio has converted from network programming to its status now of being virtually in many areas an electronic jukebox. These things have all acted to create, perhaps, peculiar problems in gaining the advantages which a radio exposure

can give to an otherwise unknown artist, or label. But aren't those primarily a new type of problem which has developed?

Mr. FINAN. Well, Mr. Moss, first you learn the records, and you understand what makes a commercial record.

Mr. MOSS. What makes a commercial record?

Mr. FINAN. I am sorry I said that.

Mr. MOSS. I am not. I have it down as a question I would have asked later.

Mr. FINAN. Well,—

Mr. MOSS. It sounds good to you?

Mr. FINAN. It depends on so many things. If I were availed of an opportunity to take 10 records and sit down, and listen to the merits of the 10 records—a record must be commercial. By commercial, I mean it must be in tempo with the psychological impact of the times.

Much of our music has been frenetic. Much of our society and many of the world problems we have had, as human beings, contribute to the frenetic music that we have had. You understand that if you are an expert in recognizing music, hence the rise of rock and roll, which was not synthetically induced by diskjockeys, as I have heard charged in other areas, but which I think, only as a layman, is directly attributable to the problems that affect us all.

In the area of a ballad, it must be commercial—the story must be a story that is told for the broadest mass audience. Intellectual levels are taken into consideration.

Mr. MOSS. What level do you aim for?

Mr. FINAN. Well, I am not a record manufacturer, sir. I am only—

Mr. MOSS. Telling people whether they should continue to market, push it, or take it off. You have to impose the same judgment the manufacturer would.

Mr. FINAN. I only try to interpret what I think the public wants at the time that I am asked a specific question. I am not trying to dictate a specific pattern a record must follow, or a story line in a ballad. And I try to acquaint myself with as many facts as possible to arrive at that judgment.

Mr. MOSS. How do you judge the principal ingredients in a commercially successful record?

Mr. FINAN. For today's market, in the—

Mr. MOSS. No, did you use audience reaction?

Mr. FINAN. Oh, yes; there are many ways.

Mr. MOSS. Well, what type of audience reaction did you use?

Mr. FINAN. There is the immediate audience reaction, after a record is played on the air. First and foremost you make a judgment, should the record be played. After it is played on the air, if it is a hit record, there is an immediate reaction, through inquiry at the retail level.

Mr. MOSS. How do you coordinate that with your activity?

Mr. FINAN. Do I?

Mr. MOSS. How? How do you relate one to the other?

Mr. FINAN. Geographically, in the northern Ohio area, if we are getting requests for a record all over town, if the inquiry starts, this is the beginning of a spark that might inflame a hit. Then there is the request action we get. Those inquiries through the mail, saying please play such and such a tune for so and so. Then there is a reaction that

a record gets in other parts of the country. We watch very carefully Chicago, Detroit.

Mr. MOSS. You watch sales across the country?

Mr. FINAN. Yes, we watch sales, as the sales are interpreted through our trade magazines, Broadcasting, Cashbox, Variety, Billboard.

Mr. MOSS. Who put together your top 40?

Mr. FINAN. The primary responsibility for putting together the top 40 list was our record librarian.

Mr. MOSS. Were you required to play the recordings on the top 40, a given number of them?

Mr. FINAN. Yes. It just made good sense to play the hit records, and we certainly did. That was policy. To get as many hits on the radio as possible.

Mr. MOSS. Did you have a secondary responsibility here, or do you have a cooperative responsibility with the library in formulating the list?

Mr. FINAN. We had a top 40, and an adjacent 30 at times and sometimes an adjacent 40 records, records we called the up and comers.

Mr. MOSS. Did you assist in putting together the list?

Mr. FINAN. I didn't actually physically assist, but I could suggest a record, either to our record librarian, or if he was not in agreement, the program director was the final judge.

Mr. MOSS. But you could submit records?

Mr. FINAN. Yes.

Mr. MOSS. But were you normally requested to express an opinion?

Mr. FINAN. Oh, yes; we worked very cooperatively at KYW, and were constantly exchanging views about records.

Mr. MOSS. I asked you if, in the normal course of putting together a list of 40 hit tunes, whether or not it was customary to have you go over the list and express your opinion as to the accuracy of the list—whether it correctly reflected?

Mr. FINAN. No; it wasn't my job to call the retail stores. But in most cases—

Mr. MOSS. I asked you if you went over the list.

Mr. FINAN. Oh, yes; I went over the list, and usually we were all in agreement with the list, as it was prepared.

Mr. MOSS. You called the local retail stores to determine what the public was requesting in record sales?

Mr. FINAN. This is based on the premise that if a customer spends a dollar for a record, this is a solid vote of confidence in that record. And if it happens throughout the city, and throughout northern Ohio, this looks like a substantial hit.

Mr. MOSS. Now, you stated that this never jeopardized—these various consulting arrangements, never jeopardized your independent judgment; is that correct?

Mr. FINAN. No, sir.

Mr. MOSS. Did it have a tendency to restrict the area in which that independent judgment was exercised?

Mr. FINAN. No, sir; my record lists are, I am sure, on file at KYW for, as I said, the last year or 2 years. I played all labels, many labels that are not mentioned here.

Mr. MOSS. That isn't what I asked you. I asked you if it had a tendency to restrict the area in which this independent judgment was exercised.

Mr. FINAN. I don't believe so.

Mr. Moss. Now, you testified that you would go home in the evening, and listen to 10 or 15 new recordings, that you couldn't possibly listen to all of them. Now, you had clients, 15 of them. And they were paying you for a measure, at least, of attention to their labels. So you felt honorbound to earn your fee. You listened to them sufficiently to pass judgment. Then didn't you have to disregard some that you might have listened to otherwise?

Mr. FINAN. No, sir.

Mr. Moss. You mean you would have played all of them anyway?

Mr. FINAN. Most of them. Anything—

Mr. Moss. Did you play all of them always?

Mr. FINAN. Anything that was on the air, anything that has been on the air, under my jurisdiction, my 4 hours, I would have played anyway.

Mr. Moss. How do you know? Did you play all that you received?

Mr. FINAN. No, sir. A lot of records I rejected, whether they were client's or anyone else's.

Mr. Moss. You rejected without even listening?

Mr. FINAN. No, I did listen to them.

Mr. Moss. Did you listen to all of the records you received?

Mr. FINAN. Yes, sir; to the best of my ability. But it was a physical impossibility to listen to 200 a week.

Mr. Moss. Did you listen to all of the records you received? You have given a very equivocal answer. I want a direct answer. The answer is "No," isn't it? You stated that you did not listen to all that you received.

Mr. FINAN. No, sir.

Mr. Moss. Now, you have really fouled us up. Let's start over.

Did you listen to all that you received?

Mr. FINAN. To every record that came into the station under my name?

Mr. Moss. To every record that was sent to you, did you listen to it? Did you play it? Not on the air, but did you play and listen to it?

Mr. FINAN. Substantially the greatest proportion of records were either listened to by myself, the client's records naturally, or by my manager.

Mr. Moss. Well, now, your manager couldn't exercise your judgment.

Mr. FINAN. After working—

Mr. Moss. I am talking of the independent exercise of your own judgment, because you stated that your independent judgment, that cannot be in anyway the judgment of your manager. It is your judgment. Therefore, it would be a case of your listening to it. Now, you did not play all of the records you received, did you?

Mr. FINAN. I did not physically play all the records I received, no, sir; I did not physically play all the records I received.

Mr. Moss. And not having played them, then certain of them were not given the benefit of your independent judgment?

Mr. FINAN. Of my listening?

Mr. Moss. That is right. But your client's recording were listened to?

Mr. FINAN. In the main; yes, sir.

Mr. Moss. So you could earn your fee?

Mr. FINAN. Yes, sir.

Mr. Moss. So at least to the extent that you had these 15 clients, and listened to their records, you narrowed the opportunity for listening to someone else?

Didn't you?

Mr. FINAN. Well, seemingly on the surface here. I can only verify or corroborate what I am saying by a production of my record lists.

Mr. Moss. That only shows me what you played. It doesn't show me what you didn't listen to.

Mr. FINAN. Well, that is a very difficult thing to answer, Mr. Moss, with all due respect.

Mr. Moss. I think it is so difficult to answer, because it shows when you devote your time to activities of your clients, that you finally reached a point where you have to disregard others. You do create an area of preference here, and you do definitely limit the area in which you can exercise that judgment. To that extent, you create an unfair advantage for those who have paid you on the side for services which may or may not have a real value, but certainly did gain them the opportunity to have their product considered, with the possibility of it being aired on the station where you were an employee.

That is all the questions I have, Mr. Chairman.

The CHAIRMAN. How much family do you have, Mr. Finan?

Mr. FINAN. I have three sons.

The CHAIRMAN. I don't believe I have any more questions.

I will say that it appears to me a rather pathetic, tragic situation, as a fine-looking young man, a successful young man in business, that you would progress to the position of a \$40,000 salary, and then jeopardize your position, and what you had worked for, by letting someone, obviously trying to promote their own particular product, bring you into little \$50 and \$100 incidents here and there, adding up to a substantial sum.

To me, that reflects pretty bad light, in connection with the industry who would try to impose themselves on you, and jeopardize what otherwise appeared to be a very bright future in this field.

I am sure you have thought about that a great deal since, and will think about it some more as the days go by.

Did you have any other comments you wanted to make? You have been here a good long while.

Mr. FINAN. No, sir; other than the fact that I have appreciated the very fair treatment that I have gotten before the committee. There are areas in broadcasting it pains me to see taking such a bad beating. I think a clarification of our industry and the prerogative of future legislation is in your hands. I hope that I have contributed to that in some small way. And thank you, once again, for your treatment.

The CHAIRMAN. Well, you certainly have helped to point up a sad situation within the industry.

Sometimes, as it has been said before, and I think it is very true, that those engaged, after being entrusted to the powerful spectrum of the broadcasting industry, apparently forget you are to operate in the public interest, and start operating in some other interest, more so than in the public interest.

It should not be an indictment against the entire broadcasting industry as such. But it certainly reflects on the entire industry, and it should be a warning to all concerned that there are principles and practices that are decent and that the American people are going to make sure they are followed.

You may be excused. Thank you very much for your appearance.

This will conclude the hearings for today. The committee will recess until 10 o'clock in the morning, and we will return to the caucus room in the Old House Office Building. The first witness in the morning, when we reconvene at 10 o'clock, will be Mr. Wesley Hopkins.

(Whereupon, at 3:45 p.m., the committee recessed, to reconvene at 10 a.m., Wednesday, February 10, 1960, in the caucus room, Old House Office Building.)

RESPONSIBILITIES OF BROADCASTING LICENSEES AND STATION PERSONNEL

WEDNESDAY, FEBRUARY 10, 1960

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON LEGISLATIVE OVERSIGHT
OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The special subcommittee met, pursuant to recess, at 10 a.m., in the Caucus Room, Old House Office Building, Hon. Oren Harris (chairman of the special subcommittee) presiding.

Present: Representatives Harris (presiding), Mack, Rogers of Texas, Moss, and Devine.

Also present: Robert W. Lishman, chief counsel; Herman C. Beasley, chief clerk to the special subcommittee; Beverly M. Coleman, principal attorney; Jack Marshall Stark, minority counsel; Oliver Eastland, chief investigator; and James P. Kelly, investigator.

The CHAIRMAN. The committee will come to order.

At the outset, I would like to acknowledge that Mr. Joseph Finan has requested a further appearance this morning to read a statement. Mr. Finan was given the opportunity at the close of his prepared testimony yesterday to make any further statements that he desired.

Since I have not had an opportunity to go over this four-page statement and in view of the time that has elapsed, we will hold this in abeyance.

The first witness this morning will be Mr. Wesley Hopkins.

Will you be sworn, Mr. Hopkins? Raise your right hand.

Do you solemnly swear that the testimony you will give to the subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. HOPKINS. I do.

TESTIMONY OF WESLEY HOPKINS

The CHAIRMAN. State your name for the record.

Mr. HOPKINS. My name is Wesley Hopkins.

The CHAIRMAN. What is your residence?

Mr. HOPKINS. 30400 Wolf Road in Bay Village, Ohio.

The CHAIRMAN. What is your profession, Mr. Hopkins?

Mr. HOPKINS. At the present time I am unemployed.

The CHAIRMAN. Mr. Lishman, you may proceed.

Mr. LISHMAN. Mr. Hopkins, have you been employed in the past by station KYW in Cleveland?

Mr. HOPKINS. Yes, sir.

Mr. LISHMAN. On what date did you enter employment with KYW?

Mr. HOPKINS. I started with KYW in the year 1956—February of 1956.

Mr. LISHMAN. In what capacity?

Mr. HOPKINS. I was hired as a radio personality, diskjockey on that station.

Mr. LISHMAN. And prior to going to KYW in 1956, what occupation did you have?

Mr. HOPKINS. Well, as a matter of fact—I am at the present time 33 years of age—and I have been in radio broadcasting and TV work all my life. I started when I was 17 in it.

Mr. LISHMAN. Were you with a radio station prior to 1956?

Mr. HOPKINS. Yes, sir.

Mr. LISHMAN. What station?

Mr. HOPKINS. That particular station was in my home town which is in Trenton, N.J. We call it WTTM.

Mr. LISHMAN. And for how long a period were you at WTTM?

Mr. HOPKINS. I worked there from 1953 until I joined KYW in 1956.

Mr. LISHMAN. What was the nature of your occupation at WTTM?

Mr. HOPKINS. I was hired as a program manager, the program director and, also, I did the early morning record show there.

Mr. LISHMAN. Prior to your employment by WTTM in 1953, had any other radio station employed you?

Mr. HOPKINS. Yes, sir; I worked in New York City for radio station WNEW.

Mr. LISHMAN. During what period did you work for WNEW?

Mr. HOPKINS. It was for a period of 2 years, from 1951 until 1953.

Mr. LISHMAN. What was the nature of your duties at WNEW?

Mr. HOPKINS. Basically, staff announcer there.

Mr. LISHMAN. And prior to being at state WNEW, had you been with any other radio station?

Mr. HOPKINS. Previous to that, I was employed in my home town with radio station WTTM. I started there in 1944. I worked there until I joined the New York station.

Mr. LISHMAN. How did you start in 1944?

Mr. HOPKINS. What I actually did?

Mr. LISHMAN. What was the nature of your first job in the radio station?

Mr. HOPKINS. I was staff announcer, sir.

Mr. LISHMAN. At station KYW, you were a staff announcer and a diskjockey, or were you more than that?

Mr. HOPKINS. Well, it is true, I was on the staff, but I think that I was hired primarily to work on the air as a diskjockey.

Mr. LISHMAN. Did you have a show except Sunday, every day?

Mr. HOPKINS. Actually, for quite a long time I worked 7 days a week.

Mr. LISHMAN. When was your employment at KYW terminated?

Mr. HOPKINS. The exact date, I believe, was December 3, 1959.

Mr. LISHMAN. And did you resign voluntarily, or were you discharged?

Mr. HOPKINS. I was discharged.

Mr. LISHMAN. What person, what official of KYW, did the actual discharging?

Mr. HOPKINS. The gentleman's name was Mr. F. A. Tooke. He is the vice president for Westinghouse Broadcasting, Inc.

Mr. LISHMAN. Was anyone else present when Mr. Tooke discharged you?

Mr. HOPKINS. When I was actually fired?

Mr. LISHMAN. Yes.

Mr. HOPKINS. Yes, sir. The general manager; his name was Carl Vandergrift.

Mr. LISHMAN. Any other person present?

Mr. HOPKINS. At that time; no, sir.

Mr. LISHMAN. Did you receive your discharge orally or in writing?

Mr. HOPKINS. I was fired by a two-page letter.

Mr. LISHMAN. Do you have that letter with you?

Mr. HOPKINS. Yes, sir.

Mr. LISHMAN. May I see the letter, please?

Mr. HOPKINS. Yes.

Mr. LISHMAN. Would you mind reading this letter into the record, as being the one that was actually received by you from Mr. Tooke on December 3, 1959?

Mr. HOPKINS. Yes, sir; I will be glad to. It is dated December 3, 1959, and addressed to Wesley Hopkins, 30400 Wolf Road, Bay Village, Ohio:

DEAR MR. HOPKINS: Reference is made to the numerous conversations you have had with representatives of KYW over the past several weeks. It is concluded from these conversations that there is no doubt that over the recent past, while employed as a radio personality on KYW, you have received from third party interests sums of money which individually, and in the aggregate, reach excessive proportions. While it is obviously suspected that these sums were paid in consideration of your taking action in preferential handling of the giver's records, labels, and companies, this fact need not necessarily be established in order for the conduct to be in violation of the relationship existing between you and the station. This is based upon the fact that the receipt of such sums of money would seriously impinge upon your effectiveness and the impartial selection that is expected of a diskjockey and the reliance of the public upon the integrity of the ultimate program.

In view of these facts, under the contract with you dated February 13, 1958, there is no other course for the station to pursue but to terminate your services effective immediately and to declare such contract at an end.

The impact of this upon your career and upon the station is fully recognized. The basic question, however, continues to be how the radio industry can effectively stamp out payola and preserve the integrity of this programming from the occasional temptation offered by third parties with totally selfish interests.

In this connection, you are undoubtedly aware of the present hearings before the House Legislative Oversight Committee under Congressman Oren Harris. This inquiry, by focusing on the magnitude and the difficulty of coping with this problem and exposing it to the cold scrutiny of the public, can do much to eliminate this current regrettable situation.

Your fullest assistance to this committee is strongly urged: so much so that, on your request, KYW will suspend the finality of the above termination by offering to review your entire case at the conclusion of the committee's proceedings and findings and in the light of your cooperation and the facts as they will then exist. This offer should not be interpreted as any assurance in advance of your being reinstated. This cannot be done.

Obviously, this is no obligation now on your part in this matter. The offer will be a continuing one and is made without prejudice. If you become associated

with another broadcasting station or enter other activities that would represent a conflict of interest, then no purpose would be served by leaving this offer outstanding.

It is hoped, in any case, that you will give this your serious consideration.

Very truly yours,

F. A. TOOKE, *Vice President.*

Mr. LISHMAN. Subsequent to the receipt of this letter, did you have any conversations with Westinghouse officials concerning your firing?

Mr. HOPKINS. Yes, sir.

Mr. LISHMAN. With whom did you have conversations?

Mr. HOPKINS. Mr. Carl Vandergrift, the general manager of the station.

Mr. LISHMAN. And with any other persons?

Mr. HOPKINS. I think Bud Wendel, the program director, was there at the time.

Mr. LISHMAN. About when did you have these conversations?

Mr. HOPKINS. It was approximately November 1, 1959.

Mr. LISHMAN. That was prior to your receipt of this discharge letter?

Mr. HOPKINS. Oh, considerably.

Mr. LISHMAN. Subsequent to your receipt of that letter, did you have any discussions with Westinghouse officials?

Mr. HOPKINS. I beg your pardon—no, sir.

Mr. LISHMAN. Well now, prior to receiving the December 3, 1959, letter, did you have discussions with any Westinghouse officials?

Mr. HOPKINS. Yes. On that particular date they called me in.

Mr. LISHMAN. And what was the substance of that discussion that you had on November 1?

Mr. HOPKINS. Mr. Vandergrift, the general manager of the station, informed me that he had reasonable proof that I had been accepting money from outside interests, outside recording interests, and he advised me to stop it immediately, which I did.

Mr. LISHMAN. Did he tell you from whom he had received this information?

Mr. HOPKINS. No, sir; he did not.

Mr. LISHMAN. You know of Mainline of Cleveland, do you not?

Mr. HOPKINS. Yes, sir.

Mr. LISHMAN. What is the business of Mainline Cleveland?

Mr. HOPKINS. They are in the record and music business. They have many of the RCA-Victor products. I believe they are the distributors there for RCA-Victor in the northern Ohio area.

Mr. LISHMAN. That includes records?

Mr. HOPKINS. Yes, sir.

Mr. LISHMAN. I would like to show you a photostatic copy of 12 canceled checks of Mainline Cleveland, Inc., made payable to your order, and I will read the check numbers, the dates, and the amounts, and ask you if they are correct, and ask you, if in fact, you received each of the amounts mentioned from Mainline Cleveland, Inc.

The first of the checks is numbered 29778, and it is dated August 4, 1958, in the amount of \$50; is that correct?

Mr. HOPKINS. Yes, sir.

Mr. LISHMAN. The next check is numbered 29909, dated August 12, 1958, in the amount of \$50; is that correct?

Mr. HOPKINS. Yes, sir.

Mr. LISHMAN. The next is numbered 30162, and it is dated September 8, 1958, in the amount of \$150; is that correct?

Mr. HOPKINS. That is correct.

Mr. LISHMAN. And the next is numbered 30278, and is dated September 14, 1958, in the amount of \$50.

Mr. HOPKINS. September 15.

Mr. LISHMAN. This list has September 14. Correct me if this list is incorrect. September 15?

Mr. HOPKINS. This says the 15th: yes, sir.

Mr. LISHMAN. The next check is numbered 30617 and it is dated October 15, 1958, in the amount of \$150; is that correct?

Mr. HOPKINS. Yes, sir.

Mr. LISHMAN. The next one is numbered 30915 and is dated November 7, 1958, in the amount of \$150; is that correct?

Mr. HOPKINS. That is correct.

Mr. LISHMAN. The next one is numbered 31364, dated December 2, 1958, in the amount of \$100, is that correct?

Mr. HOPKINS. Yes, sir.

Mr. LISHMAN. The next one is numbered 31365, and is dated December 2, 1958, in the amount of \$100; is that correct?

Mr. HOPKINS. Yes, sir.

Mr. LISHMAN. The next one is numbered 31909, and is dated January 14, 1959, in the amount of \$100; is that correct?

Mr. HOPKINS. That is correct.

Mr. LISHMAN. The next one is numbered 34264, and it is dated June 26, 1959, in the amount of \$50; is that correct?

Mr. HOPKINS. It is dated 9-24-59 here.

Mr. LISHMAN. I will accept that.

Mr. HOPKINS. It is 6-24-59 here.

Mr. LISHMAN. I will take the date on the check.

The next one is numbered 34349. It is dated July 1, in the amount of \$150; is that correct?

Mr. HOPKINS. That is right.

Mr. LISHMAN. The next one is numbered 35108 and it is dated August 13, 1959, in the amount of \$50; is that correct?

Mr. HOPKINS. Yes, sir.

Mr. LISHMAN. The total of these checks received by you from Mainline Cleveland, Inc., was \$1,100, is that correct?

Mr. HOPKINS. The figure I have here is a thousand.

Mr. LISHMAN. You admitted the individual items.

Mr. HOPKINS. Yes, sir.

Mr. LISHMAN. That they are correct?

Mr. HOPKINS. Yes.

Mr. LISHMAN. Whatever that adds up to, that is the amount, and it appears that it is \$1,100.

Mr. HOPKINS. Very good.

Mr. LISHMAN. Is \$1,100 correct?

Mr. HOPKINS. Yes, sir.

Mr. LISHMAN. In addition to receiving these checks from Mainline Cleveland, Inc., did you, through Mr. Myron Berneson of Mainline Cleveland receive certain amounts in cash?

Mr. HOPKINS. I never recalled any cash; no, sir.

Mr. LISHMAN. Mr. Hopkins, we have here the affidavit of Mr. Myron O. Berneson, who is employed by Mainline Cleveland, Inc., and in his affidavit he states, and I quote:

The first payment of money to Joe Finan and Wes Hopkins were in the amount of \$50 cash to each individual as evidenced by a copy of Mainline Cleveland, Inc.'s, canceled check No. 27832, dated 2-17-58, payable to the order of Myron O. Berneson, attached hereto and made a part of this affidavit.

And again in this affidavit he states:

Mainline Cleveland, Inc., second payment of moneys to Joe Finan, Wes Hopkins, and Charles Young were to the best of the affiant's recollection in the amount of \$150 cash to each of the three individuals just named, as evidenced by a copy of Mainline Cleveland, Inc.'s, canceled check No. 29944, dated 5-13-58, payable to the order of Myron O. Berneson, attached hereto and made a part of this affidavit.

Does that refresh your recollection that you did receive a \$50 cash payment and \$150 cash payment from Mr. Berneson?

Mr. HOPKINS. Sir, I would not dispute those figures. In my own records here I have in the year 1958 I received from RCA a thousand dollars, and in the following year, 1959, \$300. So that is \$1,300. This is what I have in my records. I do not dispute that.

Mr. LISHMAN. What arrangements did you have with Mainline Cleveland, Inc., for making these payments?

Mr. HOPKINS. Well, actually, the arrangement with Mainline per se actually began with RCA-Victor records, and the local field distributor that RCA-Victor had.

Mr. LISHMAN. Is that Mr. Clark?

Mr. HOPKINS. Mr. Clark, yes.

Mr. LISHMAN. Did he contact you?

Mr. HOPKINS. Yes, sir.

Mr. LISHMAN. What did Mr. Clark say to you?

Mr. HOPKINS. He asked me if I could help him. It seems at that particular time, as I recall, this was in the early part of 1958, he said that RCA-Victor was in a great deal of difficulty in putting records on the market and getting people behind them and promoting the records at that time. He asked me if I would help him and assist him and give him my opinions on their record releases that were coming out.

Mr. LISHMAN. Did he indicate to you that he felt that RCA records were not being aired sufficiently on KYW?

Mr. HOPKINS. Yes, sir: I believe he did say that.

Mr. LISHMAN. And what did Mr. Clark propose to do, so far as you were concerned?

Mr. HOPKINS. So far as I was concerned—I am sorry.

Mr. LISHMAN. Yes.

Mr. HOPKINS. So far as I was concerned, I think all he expected from me was my opinion on the releases that came out from time to time, what I thought about the records, if I thought they had any commercial potentiality.

Mr. LISHMAN. Well, in your capacity as a diskjockey for KYW did you, in fact, air RCA-Victor records?

Mr. HOPKINS. Oh, indeed.

Mr. LISHMAN. During the time that you were receiving these payments for Mainline Cleveland, Inc.?

Mr. HOPKINS. Yes, sir.

Mr. LISHMAN. Did Mr. Clark in his conversations with you indicate how these payments would be made?

Mr. HOPKINS. Well, I believe, as I recall, he said the payments would be made through Mainline, Inc., the local RCA-Victor distributor—they were to be made by check, and that half of the money, as I understood, would come from RCA and half from Mainline, Inc.

Mr. LISHMAN. And did you actually perform the services that were contemplated in your arrangement with Mr. Clark?

Mr. HOPKINS. I tried to, sir.

Mr. LISHMAN. Well, would you describe what services you did perform?

Mr. HOPKINS. Surely.

Mr. LISHMAN. And did you, among other things make any written recommendations either to Mr. Clark or Mainline Cleveland concerning records?

Mr. HOPKINS. Never any written recommendations that I can recall, sir. The setup, to the best of my recollection, was as follows: RCA on the average would come out with about, oh, perhaps in the neighborhood of 20 to 25 per month releases, perhaps more. Mr. Clark would see to it that I got the records, sometimes way in advance of the national release date.

He inquired what I thought—what I thought about the records, if they had any appeal, in my opinion, and I in turn would speak with him.

Mr. LISHMAN. You would speak with Mr. Clark?

Mr. HOPKINS. Yes, sir.

Mr. LISHMAN. About how often during this time did you speak with Mr. Clark about these records?

Mr. HOPKINS. I saw a great deal of Mr. Clark—on the average I would say twice a week.

Mr. LISHMAN. Would he, personally, have the records delivered to your home?

Mr. HOPKINS. Yes, most of the time. Sometimes when he thought he had a particular exciting release he would rush it down to the radio station.

Mr. LISHMAN. And on occasion you played these records over the air in your capacity as a diskjockey?

Mr. HOPKINS. Oh, yes, sir.

Mr. LISHMAN. Did you have an arrangement with Mercury Record Co. of Chicago whereby they would make certain payments to you?

Mr. HOPKINS. Yes, sir.

Mr. LISHMAN. About when did you make this arrangement?

Mr. HOPKINS. I believe my association with Mercury started in the springtime of 1958—I believe the month was May.

Mr. LISHMAN. With whom did you meet on behalf of Mercury?

Mr. HOPKINS. I met with the local representative of Mercury Records. The chap's name is Mr. Wade Whitman.

Mr. LISHMAN. Did you ever meet President Talmans of Mercury Records?

Mr. HOPKINS. I think I met him once.

Mr. LISHMAN. What was the proposition that Mr. Whitman made to you?

Mr. HOPKINS. Practically the same as RCA-Victor. At this particular time the major labels—the major recording companies—were in a great deal of turmoil. The smaller labels, the smaller companies were cracking through with a lot of great hits, a lot of the national hits. And they were frankly concerned.

Mercury, at that time, as I recall, did not have—at this particular time in May, might have had one national hit.

Mr. LISHMAN. Did they complain to you that their labels were not receiving sufficient airing on KYW?

Mr. HOPKINS. No, I do not think they did.

Mr. LISHMAN. Did they complain that their labels were not receiving what they believed adequate airing on other stations?

Mr. HOPKINS. No, sir; that statement was not made to me, if I recall.

Mr. LISHMAN. As I understood, they came to you to find out what means they could pursue which would insure that their records would receive wider distribution; is that correct?

Mr. HOPKINS. Not necessarily distribution, as I look at it.

Mr. LISHMAN. Wider sales?

Mr. HOPKINS. Wider sales.

Mr. LISHMAN. Is not one of the most important elements in the sale of records, the airing of the record over a radio or a TV station?

Mr. HOPKINS. Definitely.

Mr. LISHMAN. And yet you were not told that they felt slighted in not having their records aired either over KYW or any other station?

Mr. HOPKINS. No, I think at this time, I think they were in their own minds convinced something was wrong in their own organization. They felt that they were not putting out commercial records.

Mr. LISHMAN. Did they invite you to come into their own organization and study their personnel setup?

Mr. HOPKINS. No, sir.

Mr. LISHMAN. Did you?

Mr. HOPKINS. No, sir.

Mr. LISHMAN. Is it a fact that what you did, chiefly, was to listen to the records that they sent you, either in whole or in part, and then give your judgment as to whether they were what would be known as a commercial record?

Mr. HOPKINS. That is true, sir. They wanted for sure for me to listen to the records.

Mr. LISHMAN. And this was the only arrangement that you had with Mercury Records?

Mr. HOPKINS. Yes.

Mr. LISHMAN. And under the terms of that arrangement, did you receive weekly payments?

Mr. HOPKINS. Yes, sir.

Mr. LISHMAN. How much did you receive weekly from Mercury Records for this service?

Mr. HOPKINS. I believe it was \$50 a week.

Mr. LISHMAN. For how long a period did that continue?

Mr. HOPKINS. As I say, I believe it started in May of 1958 and it ended when Mr. Vandagriff called me into the office, the station manager, and told me to stop all outside activity, which was approximately December 1, 1959.

Mr. LISHMAN. Mr. Hopkins, did you enter into an oral arrangement with Cosnat Distributing Corp. of New York, whereby you would receive certain sums of money from that company?

Mr. HOPKINS. That I did, sir.

Mr. LISHMAN. What business did Cosnat Distributing Co. have.

Mr. HOPKINS. This is strictly a firm that distributes and sells many record labels. They may have as many as 30 or 35. They distribute them pretty much on a national basis.

I think they have five or six offices around the country.

Mr. LISHMAN. What official or employee of Cosnat contacted you in regard to this arrangement?

Mr. HOPKINS. Mr. Jerry Blaine, the president of the firm.

Mr. LISHMAN. Did Mr. Blaine tell you that he did not feel that Cosnat labels were receiving the airing on the stations that they deserved?

Mr. HOPKINS. No, he did not make that particular complaint.

Mr. LISHMAN. What complaint did Mr. Blaine have?

Mr. HOPKINS. He actually did not have any complaint.

Mr. LISHMAN. What reason did he give for desiring your services?

Mr. HOPKINS. He wanted to make sure that I would not miss listening to his records.

Mr. LISHMAN. Did you furnish him with advice concerning the quality of his records?

Mr. HOPKINS. Not so much Mr. Jerry Blaine himself, but I did talk almost daily with his local Cosnat representative.

Mr. LISHMAN. Who was the local representative?

Mr. HOPKINS. His name is Mr. Michael Lipton.

Mr. LISHMAN. And is it a fact that Cosnat records would be given to you, to which you would listen, and then give the benefit of your reaction to Mr. Lipton?

Mr. HOPKINS. This is indeed true, sir.

Mr. LISHMAN. And did you receive weekly payment for this service?

Mr. HOPKINS. Yes, sir.

Mr. LISHMAN. And how much each week did you receive?

Mr. HOPKINS. I believe the sum was \$25 a week.

Mr. LISHMAN. And for how long a period did you get this payment of \$25 a week?

Mr. HOPKINS. To the best of my recollection, it started in June of 1958, and this also ended about the same time as my association with Mercury Records, and the date there would be about December 1, 1959.

Mr. LISHMAN. Do you have anything showing the amount that you received in total?

Mr. HOPKINS. Yes, sir.

Mr. LISHMAN. From Mercury Records Co.?

Mr. HOPKINS. From Mercury?

Mr. LISHMAN. Yes.

Mr. HOPKINS. To the best of my ability, sir, I believe in 1958 I received \$1,450, and in 1959, I received \$1,950.

Mr. LISHMAN. Now, with Cosnat, do you have any figures showing the approximate total that you received from that company?

Mr. HOPKINS. Yes, I have, sir.

Mr. LISHMAN. Would you please state what they are?

Mr. HOPKINS. The figure for 1958 was \$675, and in 1959, \$1,000.

Mr. LISHMAN. Mr. Hopkins, did you also have an arrangement with Big Top Record Co. of New York City, whereby that company would pay you certain sums of money?

Mr. HOPKINS. Yes, sir, I did.

Mr. LISHMAN. You understand that Big Top is owned and controlled by Hill & Range Publishing Co., a music publishing firm in New York?

Mr. HOPKINS. Yes.

Mr. LISHMAN. Who, on behalf of Big Top, contacted you to work out this arrangement?

Mr. HOPKINS. I believe the chap's name was Bienstock—I do not know how to spell it.

Mr. LISHMAN. And was Mr. Bienstock the Big Top manager in the Cleveland area?

Mr. HOPKINS. No, I believe he was their national manager out of New York.

Mr. LISHMAN. Did this company have what you would call regular record releases?

Mr. HOPKINS. No. They were a smaller company.

Mr. LISHMAN. What reasons did Mr. Bienstock give to you for securing your services?

Mr. HOPKINS. Again, I think the basic reason was that he was concerned that this was a small company. And, certainly, a highly competitive field, and he was concerned and, perhaps, rightly so, that his records would be lost in the shuffle, and I think he wanted some sort of guarantee that I would take the time and the effort to listen to his records in their entirety.

Mr. LISHMAN. This arrangement was made and consummated at a time when you were a diskjockey for KYW, is that correct?

Mr. HOPKINS. That is right.

Mr. LISHMAN. And did you ever make any written report to Big Top Records concerning your work for them?

Mr. HOPKINS. Not that I recall.

Mr. LISHMAN. For how long a period did this arrangement with Big Top continue?

Mr. HOPKINS. This was a sporadic kind of arrangement. I had no association with them whatsoever the year 1958. As I said, they did not have too many releases.

Mr. LISHMAN. About how much in total did you receive from Big Top Record Co.?

Mr. HOPKINS. I can tell you exactly, sir. It is \$300 for the year 1959.

Mr. LISHMAN. And none in 1958?

Mr. HOPKINS. No, sir.

Mr. LISHMAN. Did you have any arrangement with United Artists Record Co. in New York City?

Mr. HOPKINS. No.

Mr. LISHMAN. Or with the Shad Record Co. in New York?

Mr. HOPKINS. Yes.

Mr. LISHMAN. With whom did you make your arrangements—was this arrangement for the payment of money to you made by the Shad Record Co.?

Mr. HOPKINS. Yes, sir.

Mr. LISHMAN. With whom did you make that arrangement?

Mr. HOPKINS. Mr. Robert Shad. I believe he is the president of the firm.

Mr. LISHMAN. About when did you make that arrangement?

Mr. HOPKINS. This, also, is placed in the year 1959. I believe it was sometime in the spring.

Mr. LISHMAN. This was an oral arrangement?

Mr. HOPKINS. Yes, sir.

Mr. LISHMAN. And what were the terms of this oral arrangement?

Mr. HOPKINS. He was to pay me \$75 a month.

Mr. LISHMAN. For what purpose?

Mr. HOPKINS. This, again, was a very small company and in a tremendous recording field—he wanted my assurance and my word that I would take the effort and the time to listen to his records.

Mr. LISHMAN. Is it a fact that during the time that you were a diskjockey at KYW you played some of the Shad Record Co. recordings?

Mr. HOPKINS. Yes, sir.

Mr. LISHMAN. And the same is true with regard to the Big Top Record Co. recordings?

Mr. HOPKINS. That is true.

Mr. LISHMAN. Can you state the approximate total of the amount you received from the Shad Record Co.?

Mr. HOPKINS. For the year 1959 I believe the figure was \$575.

Mr. LISHMAN. And you received nothing other than that?

Mr. HOPKINS. No, sir. That is to the best of my recollection.

Mr. LISHMAN. Now, Mr. Hopkins, did you have an arrangement with Hugo & Luigi Productions?

Mr. HOPKINS. No, I did not.

Mr. LISHMAN. Did you ever have any arrangement with Hugo & Luigi as individuals when they were A. & R. men for RCA-Victor?

Mr. HOPKINS. No, sir.

Mr. LISHMAN. Did you have an oral arrangement with the Decca Co. of New York City?

Mr. HOPKINS. No, sir.

Mr. LISHMAN. Were you not contacted in the summer of 1959 by Bill Glazeman of Decca Record Co.?

Mr. HOPKINS. No, sir.

Mr. LISHMAN. Do you know Bob Gerhard?

Mr. HOPKINS. Yes.

Mr. LISHMAN. Did he speak to you on behalf of Decca Records?

Mr. HOPKINS. Practically all of the time.

Mr. LISHMAN. Did you enter into any arrangements with him whereby you received sums of money for the playing of certain of the Decca records?

Mr. HOPKINS. For the playing of certain Decca records?

Mr. LISHMAN. Well, let us say, first of all, for any purpose.

Mr. HOPKINS. This was extremely minute, as I recall, sir.

Mr. LISHMAN. Would the amount be, or would it amount to, about two or three cash payments of \$75 each from Mr. Gerhard?

Mr. HOPKINS. That could be correct, sir.

Mr. LISHMAN. What was the purpose—and who is Mr. Gerhard?

Mr. HOPKINS. Mr. Gerhard at that time, I believe, was the promotional director for Decca, Coral, and Brunswick Records for the Cleveland area.

Mr. LISHMAN. And for what purpose were these two or three cash payments of \$75 made to you by Mr. Gerhard?

Mr. HOPKINS. These were, as I recall it, individual cases, with new records. They were not even released on the national market, and he was concerned with whether or not they had a chance of taking off or of reaching some sort of popularity in the Nation. And since Cleveland was a basic, what they call a breakout market for a record, why he wanted by opinion on the releases.

Mr. LISHMAN. Did you have an arrangement with Cameo Record Co. of Philadelphia whereby you received payments of certain sums from that company?

Mr. HOPKINS. Just one time, sir.

Mr. LISHMAN. Who was the person who contacted you on behalf of Cameo—was it Mr. Bernard Lowe?

Mr. HOPKINS. No, sir; it was not. I believe he is the president of the company. I believe the local promotion man did.

Mr. LISHMAN. And for what purpose did he contact you?

Mr. HOPKINS. They thought—I think the particular record that they had in mind was by a new artist—I think it was Bobby Riddell. This, as I recall, was his first record—his first release. And they wanted my opinion whether or not I thought the record had a chance to make it.

Mr. LISHMAN. And did you receive certain cash payments from Cameo Records for this service?

Mr. HOPKINS. I can only recall one, sir.

Mr. LISHMAN. How much was that?

Mr. HOPKINS. I believe it was \$75.

Mr. LISHMAN. Did you have any arrangements with Carlton Records, New York City?

Mr. HOPKINS. Yes, sir.

Mr. LISHMAN. That arrangement involved the payment to you of certain weekly payments?

Mr. HOPKINS. Yes, sir.

Mr. LISHMAN. Who in behalf of Carlton contacted you to make this arrangement?

Mr. HOPKINS. Mr. Joseph Carlton, the president of the company.

Mr. LISHMAN. When did he first meet with you, approximately?

Mr. HOPKINS. This, I believe, was in June of 1958.

Mr. LISHMAN. And what did Mr. Carlton say to you at that time?

Mr. HOPKINS. At that particular time Carlton Records was a fairly new company. They more or less were just beginning to get their feet on the ground, as it were. And I think he felt that he needed some assistance in picking the correct record for national release.

Mr. LISHMAN. And what amount of compensation was your fee for these services?

Mr. HOPKINS. It was \$25 a week, sir.

Mr. LISHMAN. For how long a period?

Mr. HOPKINS. That started in June of 1958, and this ended the early part of 1959, I think, perhaps in the month of March.

Mr. LISHMAN. Mr. Hopkins, about how much in total did you get from Carlton Records?

Mr. HOPKINS. For the year 1958, I am sure the amount was \$650. And for 1959, \$300.

Mr. LISHMAN. Now, with respect to the companies from whom you received payments, do you have before you the approximate total received by you from all of these companies, including Mainline Cleveland?

Mr. HOPKINS. Approximate total; yes, sir. For the year 1958 I believe it will come to approximately \$5,000. And for the year 1959, approximately \$7,000.

Mr. LISHMAN. And during this time, what was your salary at KYW?

Mr. HOPKINS. I got a raise in 1959. Let's see. In 1958, I think the average, sir, it was about \$400 a week, both years.

Mr. LISHMAN. \$400 a week.

Now, in addition to the companies already testified to, from whom you received the payments, are there any other companies in the record business from whom you received payments, either by check or by cash?

Mr. HOPKINS. Yes, sir.

Mr. LISHMAN. Would you name the first of these companies, please?

Mr. HOPKINS. Yes, sir; Jubilee Records.

Mr. LISHMAN. Where is Jubilee Records located?

Mr. HOPKINS. In New York City, I believe is the home office.

Mr. LISHMAN. Yes.

Mr. HOPKINS. They are actually a subsidiary—I am not sure that is the correct term here—they are tied in with the Cosnat Distributing. I received from Jubilee, for the year 1958, \$675.

Mr. LISHMAN. And for what purpose was that payment made to you?

Mr. HOPKINS. The arrangement here was not so much—they didn't particularly want my opinion so much on the records, as they were concerned that I might miss them in the shuffle. On the average, we received at the radio station about 200 records a week, which is practically—well, it is almost an impossible thing to listen to all of these records. I think they wanted some sort of a guarantee that I would take the time to hear them.

Mr. LISHMAN. And then would you report back orally to their representative, as to the commercial quality of the records you listened to?

Mr. HOPKINS. Yes, sir; I would.

Mr. LISHMAN. And what other record company did you have a similar arrangement?

Mr. HOPKINS. Well—

Mr. LISHMAN. Did you receive anything in 1959 from Jubilee Records?

Mr. HOPKINS. Yes, sir.

Mr. LISHMAN. How much did you receive in 1959?

Mr. HOPKINS. To the best of my knowledge, the figure here is \$225.

Mr. LISHMAN. You received a total of approximately \$875 from Jubilee?

Mr. HOPKINS. Yes, sir.

Mr. LISHMAN. With what other companies did you have an arrangement for the payment of compensation to you?

Mr. HOPKINS. Coed Records, sir.

Mr. LISHMAN. And who contacted you on behalf of Coed Records?

Mr. HOPKINS. Mr. Marvin Cane. I am not sure of his title.

Mr. LISHMAN. And what did Mr. Cane wish you to do?

Mr. HOPKINS. This was an extremely small company at the time. They only put out one or two releases, perhaps, every 2 or 3 months. Even though they were a small company—because of the fact that they were a small company, they were concerned about the outlay that they had to make to produce a recording of a commercial nature. They wanted some sort of a guarantee that I would listen to their records, and tell them what I felt about them.

Mr. LISHMAN. And how much money did you receive from Coed, for these services?

Mr. HOPKINS. I have here a figure of \$275, sir, and I think that is—

Mr. LISHMAN. That is for both years?

Mr. HOPKINS. Yes, sir.

Mr. LISHMAN. Now, did you have an arrangement with any other companies, in addition to Coed?

Mr. HOPKINS. From the End Recording Co.

Mr. LISHMAN. What arrangement did you have with the End Recording Co.?

Mr. HOPKINS. This particular sum that I received was for listening to one record that they had. I can't recall what it was, sir.

Mr. LISHMAN. And how much were you paid for that?

Mr. HOPKINS. \$200.

Mr. LISHMAN. Do you remember whether you aired that record over KYW?

Mr. HOPKINS. I don't recall the name of the record. As I recall, I wasn't too impressed with it.

Mr. LISHMAN. You don't remember, though, whether it went out over the air?

Mr. HOPKINS. As I recall, I wasn't so impressed with their release, and I don't think I did play it.

Mr. LISHMAN. Who contacted you on behalf of End Records?

Mr. HOPKINS. The local distributor, the local promotion man for End Records. His name escapes me at this time, sir.

Mr. LISHMAN. Now, with what other companies did you have an arrangement.

Mr. HOPKINS. That is basically it, sir.

Mr. LISHMAN. What is the approximate total of the amount that you received from these additional companies? I make it out to be \$1,275, or thereabouts. Is that correct?

Mr. HOPKINS. I will accept that, sir. I haven't had it broken down that way.

Mr. LISHMAN. About \$1,400?

Mr. HOPKINS. I will accept that, sir. I haven't broken it down that way.

Mr. LISHMAN. Now, did you ever receive any gifts from a company in the record business?

Mr. HOPKINS. Any major gifts, sir?

Mr. LISHMAN. Any gifts.

Mr. HOPKINS. Yes, sir.

Mr. LISHMAN. From what companies did you receive these gifts?

Mr. HOPKINS. Practically all of them. But this was at Christmastime.

Mr. LISHMAN. Were any of these gifts of a substantial nature?

Mr. HOPKINS. No, sir.

Mr. LISHMAN. What, in your opinion, would be the market value of the most expensive gift you received in that manner?

Mr. HOPKINS. I would say \$25.

Mr. LISHMAN. Did you have an interest in any company that is in the record or radio business?

Mr. HOPKINS. No. I do not, sir.

Mr. LISHMAN. Did you have at the time you were a diskjockey at KYW?

Mr. HOPKINS. Unfortunately, I never had an interest, sir.

Mr. LISHMAN. Did any record company or record distributing company ever make a loan to you?

Mr. HOPKINS. No, sir.

Mr. LISHMAN. And are the payments you have testified to here this morning, approximately all the payments that you received from persons in the record business while you were employed as a diskjockey at KYW?

Mr. HOPKINS. Yes, it is, sir.

Mr. LISHMAN. While you were at KYW, did any official of the station at any time, suggest to you rather strongly, a record or a label that you should air?

Mr. HOPKINS. Never, I would say, by using force or muscles, sir. It was suggested once in awhile. But—if I could work in a particular record on my show.

Mr. LISHMAN. I have no further questions, Mr. Chairman.

The CHAIRMAN. Just one point I wish to clarify Mr. Lishman that I did not understand fully.

This concerns the \$5,000 which the witness received in 1958, and the \$7,000 in 1959. Who was that from?

Mr. HOPKINS. You mean the grand total, sir, for 1958?

The CHAIRMAN. Yes. That was a total you received of the funds you have described for 1958?

Mr. HOPKINS. Yes, sir. In 1958 I received an approximate total of \$5,000.

The CHAIRMAN. And 1959?

Mr. HOPKINS. And the year 1959 approximate total of \$7,000.

The CHAIRMAN. That clears it up.

Mr. Mack?

Mr. MACK. I have no questions.

The CHAIRMAN. Mr. Devine?

Mr. DEVINE. Mr. Hopkins, rather than the broad general term of payola, would you describe the moneys you received from these various record companies as a listening fee, rather than payola in its broadest sense?

Mr. HOPKINS. Absolutely.

Mr. DEVINE. Did you, during the time that you were a diskjockey for KYW in Cleveland, did you at any time ever lay on a record

merely because you had received a fee from that distributing company?

Mr. HOPKINS. Absolutely not, sir.

Mr. DEVINE. And, to the contrary, did you at any time, as a disk-jockey for that station, intentionally lay off of a record that may have been popular elsewhere for the reason that that distributing company did not pay you a fee?

Mr. HOPKINS. On my word of honor, no, sir.

Mr. DEVINE. I will ask you one further question, Mr. Hopkins.

Did you personally ever initiate the collecting of a fee from any given distributing company, or was the fee arrangement always initiated by the record company itself?

Mr. HOPKINS. I assure you, sir, it was not necessary on my part to go out fishing, as it were. I was contacted in every case by the recording firm.

Mr. DEVINE. Your answer to that, then, would be that you never did initiate the collecting of the fee, or a fee arrangement with a distributing company, is that right?

Mr. HOPKINS. That is quite right.

Mr. DEVINE. And one final question. Was there any particular area in the facilities of KYW that was known as the payola booth?

Mr. HOPKINS. I read about that in the local Cleveland newspaper, one of the local Cleveland newspapers. I believe the particular individual quoted was Mr. Shipley, Mr. James Shipley, the vice president of Mainline in Cleveland. And, as I recall the article, I believe he referred to the third floor men's room as the payola booth.

Mr. DEVINE. Do you know why?

Mr. HOPKINS. No, I do not.

Mr. DEVINE. You don't know who happened to tag that name?

Mr. HOPKINS. No, I do not.

Mr. DEVINE. Do you have any personal knowledge of payola as such within the State of Ohio?

Mr. HOPKINS. Not to my knowledge, sir.

Mr. DEVINE. No further questions.

The CHAIRMAN. Mr. Rogers?

Mr. ROGERS. Now, Mr. Hopkins, how much money did you get altogether from this source outside of your regular salary?

Mr. HOPKINS. From this particular source, sir?

Mr. ROGERS. Yes.

Mr. HOPKINS. Well, for 2 years the approximate total would be \$12,000.

Mr. ROGERS. And you call that a listening fee?

Mr. HOPKINS. Yes, sir, in most cases.

Mr. ROGERS. That would be a lot of listening, wouldn't it—\$12,000 worth of listening?

Mr. HOPKINS. I feel that I worked fairly hard for it.

Mr. ROGERS. Well, did you listen more one week than you did another week? I notice you got different sized checks.

Mr. HOPKINS. No. That would basically depend on the number of releases from the various companies.

Mr. ROGERS. In other words, you were obligated to listen to anything they sent up to you, for these fees?

Mr. HOPKINS. Well, I felt that this was my duty, yes.

Mr. ROGERS. Well, now, Mr. Hopkins, you speak of this as a listening fee, and you have referred to the term payola. Now, would you define payola for me? Give me your idea of what you mean by payola.

Mr. HOPKINS. My definition of the word payola is play for pay.

Mr. ROGERS. Playing for pay?

Mr. HOPKINS. Yes, sir.

Mr. ROGERS. But it wouldn't include listening for pay?

Mr. HOPKINS. I don't think so.

Mr. ROGERS. Well, now, could you enlarge on that just a little bit? You say playing for pay. You mean playing a record on the air, and being paid to play that on the air?

Mr. HOPKINS. Well, I would like to say here, sir, that never in my broadcasting career did I accept any money for specific air play at a specific time.

Mr. ROGERS. Well, but you did receive money for specifically listening to a record at a specific time, or specific times, didn't you?

Mr. HOPKINS. Yes, I did, sir.

Mr. ROGERS. And you don't deny that you played some of those records on the air that you listened to?

Mr. HOPKINS. Not at all.

Mr. ROGERS. But your position is that insofar as your pay was concerned, it was only for the listening part, and not for the playing part?

Mr. HOPKINS. Yes, I do, sir. I maintain that my judgment was not influenced by a particular, we will say, Carleton record. If I happened to like the record I would play it, and if I didn't I wouldn't play it, regardless of the listening fee.

Mr. ROGERS. Regardless of the listening fee?

Mr. HOPKINS. Yes, sir.

Mr. ROGERS. But you did play a lot of the records that you listened to which were sent to you by companies who were paying you this listening fee?

Mr. HOPKINS. Yes, sir, if I liked the record.

Mr. ROGERS. Did you play more records from the listening fee companies or more from the ones that didn't pay you listening fees?

Mr. HOPKINS. I never actually broke it down, sir. It didn't influence me in one way, I assure you. To me the most important thing was my show, and my program on the air. And in order to maintain high ratings and popularity, in a very competitive business, you have got to play the best record at all times. And this, to me, was the most important thing.

Mr. ROGERS. And the money that these people paid you, didn't influence you one bit in the world?

Mr. HOPKINS. Not as far as air play is concerned, no, sir.

Mr. ROGERS. Well, how did it influence you? You say it didn't influence you as far as air play.

Mr. HOPKINS. Well, if I listened to one of their records and I thought it was good—remember, they were paying me to take the time, the time away from my show and home, to listen to their particular product. If I liked the record, I would play it.

Mr. ROGERS. Was the time you were using to listen to this, the same time you were being paid for by the radio station?

Mr. HOPKINS. No, sir. No. My arrangement with the station was that I had a 4-hour record show, and that is all I was contracted for.

Mr. ROGERS. And you didn't do any of your listening in that 4-hour period?

Mr. HOPKINS. No. It would be an impossibility.

Mr. ROGERS. Did you discuss with your superiors, or the people employing you, whether or not you ought to be doing this?

Mr. HOPKINS. No, sir, I did not.

Mr. ROGERS. Never did discuss it?

Mr. HOPKINS. No, sir.

Mr. ROGERS. Did you get discharged?

Mr. HOPKINS. Yes, sir.

Mr. ROGERS. Why did you get discharged?

Mr. HOPKINS. Well, as I testified before, the radio station apparently did not like the idea of my accepting fees from recording companies.

Mr. ROGERS. What did they say about it? We know that they must not have liked something you did, because they discharged you. But what did they say about it? When they discharged you—did they say, "Mr. Hopkins, you are discharged, you have been doing things we don't like." Or did they pinpoint it?

Mr. HOPKINS. I was fired via this two page letter, sir. And it goes into detail why I was fired.

Mr. ROGERS. You put that in the record?

Mr. HOPKINS. Yes.

Mr. ROGERS. Now, did you talk to anybody about it? Didn't you talk to someone about that letter?

Mr. HOPKINS. Well, when I was discharged, this letter was handed to me by the vice president for Westinghouse in the Cleveland area, Mr. Tooke.

Mr. ROGERS. Mr. Tooke?

Mr. HOPKINS. Yes, sir.

Mr. ROGERS. And what did he say to you when he gave you the letter? "Read this on your way out?" What did he say to you?

Mr. HOPKINS. Mr. Tooke was fairly new in the market, unfortunately for him. And he was quite disturbed. He was broken up about it. He was very sad.

Mr. ROGERS. How do you know he was broken up about it? What did he say?

Mr. HOPKINS. To the best of my recollection, sir, he thought it was a shame that a young fellow, who had worked so long in the broadcasting business, became involved in something that apparently did not look quite right.

Mr. ROGERS. You said he was new at the business. You mean he was still honest? He hasn't been in the business long enough to get tainted, or what?

Mr. HOPKINS. You are speaking of Mr. Tooke?

Mr. ROGERS. Mr. Tooke, yes.

Mr. HOPKINS. Mr. Tooke, I am sure, has been in the broadcasting business for years. No. I meant he was new to the Cleveland market.

Mr. ROGERS. New to the Cleveland market?

Mr. HOPKINS. Yes, sir.

Mr. ROGERS. Oh, they have different codes of ethics in different markets?

Mr. HOPKINS. No. He was vice president for Westinghouse, and I believe he worked for a time in Boston. He was their representative in Boston. And then he was transferred to Cleveland.

Mr. ROGERS. Well, is the Boston code of ethics and the Cleveland code of ethics different?

Mr. HOPKINS. I shouldn't think so.

Mr. ROGERS. I shouldn't either, from the testimony we have heard.

What did Mr. Tooke say that disturbed him about this, Mr. Hopkins? Did he say he thought it was dishonest, unfair?

Mr. HOPKINS. No, as I recall he didn't say that. He thought it was a shame. He said, "I have some very bad news for you. I have a letter for you which I have dictated, and you are not going to like it."

Mr. ROGERS. And you didn't, did you?

Mr. HOPKINS. No, I did not.

Mr. ROGERS. Well, he did discuss at length with you what you had been doing, didn't he?

Mr. HOPKINS. Mr. Tooke did not, sir; no, not at great length.

Mr. ROGERS. Who did?

Mr. HOPKINS. Mr. Carl Vandergrift, the general manager of the station did.

Mr. ROGERS. And did he take the position that what you had done was wrong?

Mr. HOPKINS. He maintained that it was against company policy, what I had done.

Mr. ROGERS. You mean unethical or wrong?

Mr. HOPKINS. He didn't define it, sir. He said it was against the company policy, and that is why I was being fired.

Mr. ROGERS. You gathered, though, did you not, Mr. Hopkins, that they considered this as an unfair, or illegal, or an immoral practice and that was the reason they let you go?

Mr. HOPKINS. It was never actually defined in those words, sir. They used the phrase company policy, and that was it.

Mr. ROGERS. Company policy? That is all they ever told you about it?

Mr. HOPKINS. Yes, sir.

Mr. ROGERS. And you just assumed that that was the only thing involved. They didn't tell you anything about doing it in the future, or what your future might be in this business?

Mr. HOPKINS. Well, via this 2-page letter, they had some comment on that.

Mr. ROGERS. No, I am referring to their talk with you, Mr. Hopkins. Letters say one thing, and mouths say another. Surely they talked to a young man like you about a thing like this, before they discharged you.

Mr. HOPKINS. Well, the first time they talked to me at all about any of these outside interests that I had was on November 1, 1959. I was called into the office by Mr. Carl Vandergrift, the general manager at the station, and he said it had come to his knowledge that I had been accepting fees, accepting money, from outside interests, from recording companies, et cetera. This was against

company policy, and would I please stop it, which I did immediately. This was November 1, 1959, or thereabouts, approximately.

Mr. ROGERS. And you stopped it?

Mr. HOPKINS. Yes, sir.

Mr. ROGERS. Now, when did you get this letter?

Mr. HOPKINS. The letter is dated December 3, 1959.

Mr. ROGERS. About a month after he had warned you to quit it?

Mr. HOPKINS. That is right.

Mr. ROGERS. And you did quit it?

Mr. HOPKINS. I certainly did.

Mr. ROGERS. Then you didn't expect this letter, did you?

Mr. HOPKINS. No, I must confess I didn't.

Mr. ROGERS. And he never talked to you about it again after that? He just said "you are out"? And you have not been back working for him since December 3?

Mr. HOPKINS. No, sir; I have been unemployed since that time.

Mr. ROGERS. You are not working now?

Mr. HOPKINS. No, sir.

Mr. ROGERS. Have you made attempts to get placed in other radio or television businesses?

Mr. HOPKINS. Not really; no.

Mr. ROGERS. You have made no applications of any kind?

Mr. HOPKINS. No; I have not.

Mr. ROGERS. Have you run up against any situations where you think you could be employed if it hadn't been for this situation?

Mr. HOPKINS. Not as yet, sir; no. Not as yet.

Mr. ROGERS. You have not. Do you expect to, Mr. Hopkins?

Mr. HOPKINS. I don't know.

Mr. ROGERS. You do hope to go back into radio and television, though?

Mr. HOPKINS. I certainly do. It is about the only thing I know how to do.

Mr. ROGERS. How old are you now?

Mr. HOPKINS. 33.

Mr. ROGERS. Were you ever engaged in any other business before you got into radio and TV?

Mr. HOPKINS. No; it has been my only occupation.

Mr. ROGERS. No other business of any kind? Never worked for anyone else?

Mr. HOPKINS. No, sir.

Mr. ROGERS. You wouldn't be familiar, then, whether there were side payments in other businesses of any kind?

Mr. HOPKINS. Only from hearsay, what I have heard.

Mr. ROGERS. What do you mean by that?

Mr. HOPKINS. Well, I think the term "payola" is fairly well accepted in many businesses in America, not necessarily in the broadcasting industry.

Mr. ROGERS. And you say you got that from hearsay? Did you get it from other people in the radio and TV business?

Mr. HOPKINS. Well, of late they have had a quite a lot of comment on it.

Mr. ROGERS. As a matter of fact, a lot of the people that you discussed this with, the people you were operating with, think that goes on in all businesses; don't they?

Mr. HOPKINS. I have heard that opinion expressed many times, sir.

Mr. ROGERS. And actually that was your feeling and philosophy about it, wasn't it—take whatever you can get?

Mr. HOPKINS. I didn't look at it that way at all, sir.

Mr. ROGERS. You looked at it as a listening fee?

Mr. HOPKINS. I thought I was doing a genuine service; yes.

Mr. ROGERS. Well, let me ask you one more question about that, and then I will quit.

Mr. HOPKINS, you said you never did solicit anybody?

Mr. HOPKINS. Never.

Mr. ROGERS. Did the ones that came and talked to you about it, say, "We want to hire you to do some listening, Mr. Hopkins."

Mr. HOPKINS. Yes, sir.

Mr. ROGERS. To listen to our records, and we are going to pay you \$50 or \$150 a week to do that?

Mr. HOPKINS. They wanted to be guaranteed that their records would not be lost in the shuffle.

Mr. ROGERS. Now, what do you mean by that? I have heard that expression—would not be lost in the shuffle. What is the shuffle.

Mr. HOPKINS. Well, I can't emphasize too much—

Mr. ROGERS. What they meant, Mr. Hopkins, was to be sure that their records were to be played on the air?

Mr. HOPKINS. I didn't take it that way. That was not my interpretation at all. They came to me, and they wanted me to just listen to their records.

Mr. ROGERS. Yes, sir; I understand, and you did that. You played quite a few of their records on the air.

Mr. HOPKINS. If I liked the records, I would play them. If I didn't, I certainly would not.

Mr. ROGERS. That is all.

The CHAIRMAN. Some of the records you liked, though; didn't you?

Mr. HOPKINS. Yes, sir.

The CHAIRMAN. Mr. Moss?

Mr. Moss. Mr. Hopkins, did your employer ever discuss with you the policy of the station in this area prior to November 1959?

Mr. HOPKINS. No, sir.

Mr. Moss. You had a total, I think, of 16 years in broadcasting. Have you heard of payola in broadcasting prior to the time it was brought into the spotlight last fall?

Mr. HOPKINS. Yes, sir.

Mr. Moss. Do you think that others who had spent many years in broadcasting had a general knowledge of the practice? Mr. Tooke, for example?

Mr. HOPKINS. I have no way of knowing, sir, I don't know.

Mr. Moss. I am not asking you if you knew. I said do you think that you had a general knowledge of the practice?

Mr. HOPKINS. You are asking for my opinion?

Mr. Moss. Oh, yes; that is all I want.

Mr. HOPKINS. My opinion is "Yes."

Mr. Moss. In other words, it isn't something that occurred so rarely as to be an exception in broadcasting?

Mr. HOPKINS. I think the term was certainly bandied about, sir; yes.

Mr. Moss. When you entered into these agreements, verbal agreements, and I think you have indicated the first was in 1958—

Mr. HOPKINS. That is correct, sir.

Mr. Moss. Did you have any reason to believe that it might be contrary to the policy of your company?

Mr. HOPKINS. Since company policy had never been stated, to the best of my knowledge, I wasn't aware of it.

Mr. Moss. How were you first brought into this activity of accepting payments for—what you have defined as opinion or advice?

Mr. HOPKINS. I am not sure I understand you, sir. You mean the first time I was approached?

Mr. Ross. Yes.

Mr. HOPKINS. The first time that I was approached, as I can recall, was by Mr. Clark, Mr. Allen Clark, from RCA-Victor Records.

Mr. Moss. Did you ever discuss with Mr. Clark any other employees of your station?

Mr. HOPKINS. No. This was none of my business, sir.

Mr. Moss. Were you aware that other employees also had been engaged as advisors or consultants?

Mr. HOPKINS. At the time that Mr. Clarke spoke with me, he mentioned that he had already made this type of an arrangement with one other employee of this particular station, yes, sir.

Mr. Moss. Did he suggest that the two of you coordinate your views as the marketability of records, on the commercial value of records?

Mr. HOPKINS. He didn't suggest it.

Mr. Moss. He didn't?

Mr. HOPKINS. No.

Mr. Moss. What happened when he got an opinion from you that a record had very high commercial appeal, and from another disk-jockey on the same station that it had no merit at all?

Mr. HOPKINS. It could happen that way, yes.

Mr. Moss. If you felt it had high commercial value, did you play it?

Mr. HOPKINS. Yes, sir.

Mr. Moss. Did you play a record for Decca by Bobby Riddell?

Mr. HOPKINS. I don't believe that was on the Decca label, sir. I think it was on the Cameo label.

Mr. Moss. You were requested by Mr. Gerhardt to listen to a recording—I think you indicated in your testimony earlier—a record by Bobby Riddell?

Mr. HOPKINS. Yes, sir.

Mr. Moss. Did you play it?

Mr. HOPKINS. Yes, sir, it was an excellent recording.

Mr. Moss. And was this the instance where you received just \$75, and that is all you ever received from Mr. Gerhardt?

Mr. HOPKINS. This particular arrangement was not with Mr. Gerhardt, sir.

Mr. Moss. Who was it with?

Mr. HOPKINS. It was with the local promotion man for that particular label, I believe it was Cameo. I just can't remember his name.

Mr. Moss. Oh, Cameo?

Mr. HOPKINS. Yes, sir.

Mr. Moss. That is correct. So, for Cameo, the promotion man contacted you and asked your informed opinion on the commercial merits of a recording by Bobby Riddell, and you listened to it, and you said it had it, and you went ahead and played it, and you got \$75?

Mr. HOPKINS. They paid me a fee for giving my opinion on this particular record. You must remember that in this case Bobby Riddell at the time was an unheard of artist. He was brand new. I believe this was his first recording in the business. To the best of my knowledge, this was his first record. They were concerned with whether or not they should put a lot of money in promotion, and back this boy, nationwide ads, et cetera. They thought they had a potential hit. I agreed. It was a wonderful record.

Mr. Moss. But you did play the record, you did get \$75, and this was the only transaction you had with Cameo?

Mr. HOPKINS. Yes, sir.

Mr. Moss. Do you have any knowledge of this statement which Mr. Finan sent to the committee this morning?

Mr. HOPKINS. Do I have knowledge of it, sir?

Mr. Moss. Yes.

Mr. HOPKINS. If you mean have I read it, the answer is "No."

Mr. Moss. Well, did you discuss with Mr. Finan the general content of the statement?

Mr. HOPKINS. Not in great detail, no, sir.

Mr. Moss. Would you agree with this quotation from the statement: "I am authorized by Mr. Hopkins to say that he joins me in this statement"? Is he authorized by you to make that statement?

Mr. HOPKINS. I frankly wasn't aware that it was written down that way.

Mr. Moss. Well, now, that is what I asked you. I asked you if he was authorized by you to state that you joined him in the statement.

Mr. HOPKINS. Since I actually haven't read the statement, sir, I would defer on that.

Mr. Moss. Did you tell him to go ahead and issue it, and you would join him in it?

Mr. HOPKINS. Well, I don't think you quite understand. I have not read this at all, really, in detail. And—

Mr. Moss. Let's put it another way. I understand this statement has been released to the press, and commented on before the TV cameras:

I am authorized by Mr. Hopkins to say that he joins me in this statement.

Is this a true statement? Is he authorized to make this statement on your behalf? Yes or no?

Mr. HOPKINS. Yes.

Mr. Moss. He is authorized? That is fine. Then I assume that you are underwriting the content of the statement?

Mr. HOPKINS. Yes, sir.

Mr. Moss. Are you aware that he makes the observation that—

I have never granted a single record or a single company preferential airtime for the money that we received from those companies. Insofar as I can see, the only thing that this committee has to the contrary is an affidavit from a distributor in which the latter says he heard that I made commitments for air time. Under oath, I state this is not so. All this committee has to do is examine the station logs—

et cetera.

Are you aware of this portion of the statement?

Mr. HOPKINS. I would agree with that; yes, sir.

Mr. Moss. Were you here yesterday?

Mr. HOPKINS. Yes, sir.

Mr. Moss. I am going to read here a portion of the transcript of yesterday and ask whether you believe the committee is farfetched in its conclusions. In discussing contracts by people from Decca, or Gerhardt, I believe Mr. Lishman asked:

What was the nature of your discussion with Mr. Gerhardt on behalf of Decca records, Mr. Finan?

He was interested in a particular record. The discussion I had with him was so short and so perfunctory that I cannot recall the name of the record, along with the actual arrangements, although I think it was, the money that was involved was \$150, I believe, cash.

Mr. Lishman said, For what purpose did Mr. Gerhardt wish to make these statements to you?

Mr. FINAN. For a special consideration given to this particular product.

Mr. LISHMAN. What was this particular product?

Mr. FINAN. This particular product was an offbrand record, and when I say offbrand, I mean a small record manufacturer that Decca had taken over for national distribution. I cannot recall the name of the record, or even the label. I do know that it was a small company that had decided to allow Decca to distribute its records nationally.

Mr. LISHMAN. Did you, while you were a dickjockey at KYW, play this record on the air?

Mr. FINAN. Very briefly, I aired the record, and the record had absolutely no potential. I immediately stopped playing the record and so indicated to Bob.

Mr. LISHMAN. How much did you actually receive in cash from Decca Record Co?

Mr. FINAN. I can remember one payment of \$150.

Mr. LISHMAN. What was the special consideration that you rendered for this record?

Mr. FINAN. That I should listen to this particular record, report back to him whether or not it was airworthy, and if I liked it, to play it. I reported that I did not like it, and I did not play it. I played it for a couple of days, and it had absolutely nothing.

Now, he admits that he aired it, he admits that he played it. He admits that it had no merit, and he goes on to say that he played it for a couple of days.

Did the committee, in your judgment, infer incorrectly, that he had in this instance, at least, received the direct payment for a specific service on behalf of a particular record?

Mr. HOPKINS. I think in this particular case perhaps he was looking for comment, some sort of comment, from the listening audience, perhaps to help gage his opinion.

Mr. Moss. Are you aware that we have been informed by Westinghouse that they don't have these logs referred to?

Mr. HOPKINS. I am sorry, sir, I didn't hear.

Mr. Moss. Are you aware that the Westinghouse people have informed us that they don't have the logs referred to in this statement, as to what was broadcast?

Mr. HOPKINS. This is the first time I have heard it.

Mr. Moss. They are not available to the committee.

Mr. LISHMAN. May I interrupt, Mr. Moss?

Do you know what the practice is at KYW in the keeping of logs?

Mr. HOPKINS. I was always under the impression that the station logs and music logs, records, were kept at least for a year.

Mr. LISHMAN. Where did you get that impression?

Mr. HOPKINS. Well, pretty much general knowledge, I must admit. I think I heard it from the record librarian of the station.

Mr. LISHMAN. Did you ever see the logs that had been kept there for a year?

Mr. HOPKINS. Not for a year. I saw them kept——

Mr. LISHMAN. Well, what is the basis in fact for the statement I have just read that we could have obtained this information from logs in possession of that station? Did you see those logs there?

Mr. HOPKINS. I have seen music lists——

Mr. LISHMAN. I am not asking about music lists. Did you see these logs in that station?

Mr. HOPKINS. How long ago, sir?

Mr. LISHMAN. At any time.

Mr. HOPKINS. Yes, sir.

Mr. LISHMAN. How long ago was the last time you saw them?

Mr. HOPKINS. Around the first of December.

Mr. Moss. Mr. Hopkins, you said that perhaps Mr. Finan was trying to get audience reaction on this record which he stated flatly had nothing.

Mr. HOPKINS. Well, perhaps——

Mr. Moss. Did you sometimes play records that had nothing?

Mr. HOPKINS. If I thought a record had nothing, I would not play it, sir, no.

Mr. Moss. You would not play it?

Mr. HOPKINS. I would not.

Mr. Moss. Have you ever played one that you thought had nothing?

Mr. HOPKINS. I hope not.

Mr. Moss. This happened here. You subscribed to this statement. The committee has apparently been very harsh with this young man, in taking his own words at face value, his testimony of yesterday. Do you still subscribe to that view?

Mr. HOPKINS. Subscribe to what view, sir?

Mr. Moss. To the view that we have been very unfair here. The statement that you authorized as your own.

Mr. HOPKINS. Yes, sir.

Mr. Moss. You still think we have been unfair to conclude, from the transcript which I just read to you, that the payment of these funds had any bearing on the playing of a record, even in one instance?

Mr. HOPKINS. Never in my case, sir, no, sir.

Mr. Moss. I am not asking you about your case. I am asking you about this statement which I read to you, and the transcript of testimony which I read to you.

Mr. HOPKINS. I think in the particular case—I have no way of knowing—but I would assume in this particular case Mr. Finan was looking for public reaction to the record. Perhaps he thought he would give it a play for one or two days and see if there was any reaction whatsoever, and this might help his judgment.

Mr. Moss. Then he was getting his payment there in advance of rendering a judgment?

Mr. HOPKINS. Well, perhaps he thought this would—

Mr. Moss. He was being paid to determine what the audience reaction was to a recording, is not that the case? Is that what you are trying to say?

Mr. HOPKINS. I don't look at it in that light at all.

Mr. Moss. He was going to get the audience reaction. In his own opinion it had nothing. So he played it for a couple of days. And you assume that that was to get audience reaction? Frankly, for some of the stuff I have heard on some of these programs, I don't doubt but what a lot of it has been played on that same basis. The reaction probably has been in many instances like my own, to snap the thing off, as quickly as possible.

Were you aware that these record companies, for instance, Mainline, never listed their payments to you on their invoices to RCA as purchasing advice or paying for consultation services? Are you aware of that?

Mr. HOPKINS. I am aware of that, on the flap of the particular checks that we received, several particular records were named. And, as I understand, this was some sort of a bookkeeping arrangement that Mainline had with RCA.

Mr. Moss. Oh, it was. It is one which was required, I think, in general that any business, in order to properly substantiate its transactions and maintain a true and accurate set of books for tax purposes, true and accurate set of books in the instance here of one check, \$100 to you, and \$100 to Mr. Joseph Finan, says:

KYW record promotion, December 1958. "Don't Tarry Little Mary." "Rudolph the Red Nose Reindeer Cha Cha."

Promotion. Those records which had to be fully substantiated in the corporate accounting of RCA-Victor branded this as what it was, promotion. In each and every instance, KYW promotion—there are four of them here. And, again, it is promotion and check to Mr. Finan, Mr. Hopkins. And each and every one of these, carefully documented records of the companies, as payments for promotion.

Now—incidentally, did RCA consult with you as to whether "Rudolph the Red Nose Reindeer" was an appropriate Christmas piece?

Mr. HOPKINS. "Rudolph the Red Nose Reindeer"; is that the cha cha cha?

Mr. Moss. Yes.

Mr. HOPKINS. I don't recall. I don't think they did.

Mr. Moss. You were paid for that. Did you have any expert judgment on that?

Mr. HOPKINS. As I recall, I was not asked about that particular record.

Mr. Moss. You say, then, that this record of the payment by RCA is inaccurate, and does not reflect the facts?

Mr. HOPKINS. Absolutely.

Mr. Moss. You left the employment of Westinghouse Broadcasting December 3, 1959?

Mr. HOPKINS. Yes, sir.

Mr. Moss. How many companies were clients of yours at that time? Or immediately prior to that time?

Would 15 be an accurate summation?

Mr. HOPKINS. I would say more like 12, sir.

Mr. Moss. How many companies are you now acting as adviser to?

Mr. HOPKINS. Not one.

Mr. Moss. You still have the same competence, the same good judgment you had before leaving Westinghouse, haven't you?

Mr. HOPKINS. Yes, sir.

Mr. Moss. You characterize yourself as presently unemployed?

Mr. HOPKINS. Yes, sir.

Mr. Moss. Would you be interested in having any clients on this consulting basis?

Mr. HOPKINS. Yes, sir.

Mr. Moss. Any of them sought you out?

Mr. HOPKINS. Not at the present time.

Mr. Moss. Doesn't that sort of lead you to conclude that perhaps they were interested in one of your connections rather than your judgment?

Mr. HOPKINS. Perhaps they feel now that I have lost touch with the business—

Mr. Moss. Oh, you lose touch with the business in such a brief period?

Mr. HOPKINS. Yes, sir; it is an amazing thing.

Mr. Moss. Your expert judgment diminishes? You no longer have the same value to your client?

Mr. HOPKINS. I didn't mean that.

Mr. Moss. What else did you mean?

Mr. HOPKINS. I meant that the record market is constantly changing.

Mr. Moss. I hope it is for the better.

Mr. HOPKINS. I hope so, too. New trends, various gimmicks for records. Perhaps they feel I am not up on it, since I have been out of work for a couple of months.

Mr. Moss. Well, but in each of the days you have been out of work, you would have been just as receptive to a contact. The day after you left you were certainly interested in finding something else to do. Did any of them contact you then? Have they sought you out at all since you left KYW?

Mr. HOPKINS. No, sir; they have not.

Mr. Moss. They have not?

Mr. HOPKINS. No, sir.

Mr. Moss. And that doesn't suggest to you at all that they were interested in your connections as a diskjockey?

Mr. HOPKINS. I think they felt at the time that I had—

Mr. Moss. You have everything you had then, excepting the opportunity to air the record; isn't that correct?

Mr. HOPKINS. That is true.

Mr. Moss. And they no longer want to pay you for your judgment?

Mr. HOPKINS. Not as far as I know, sir.

Mr. Moss. That seems to be true of some of your colleagues.

You indicated in your statement that some of the officials of KYW had strongly suggested, I believe, that you play records; is that correct?

Mr. HOPKINS. I don't think I used the word "strongly," sir, no.

Mr. Moss. Well, what did you use?

Mr. HOPKINS. They suggested on occasion that I play a certain record; yes.

Mr. Moss. Were they just offhanded suggestions, or did they pursue it?

Mr. HOPKINS. No.

Mr. Moss. They never did make more than the offhand comment, "I wish you would play such-and-such"?

Mr. HOPKINS. That is true, sir.

Mr. Moss. Did you ever play any of the records they suggested?

Mr. HOPKINS. Yes.

Mr. Moss. Who were some of the people who requested that you play these records?

Mr. HOPKINS. Two of the individuals at the station.

Mr. Moss. Two?

Mr. HOPKINS. Two of the individuals at the station.

Mr. Moss. Executive personnel?

Mr. HOPKINS. Yes, sir.

Mr. Moss. Policy personnel?

Mr. HOPKINS. At that particular time, yes.

Mr. Moss. High policy?

Mr. HOPKINS. Yes. Two of the individuals there pooled their resources and formed a rather small producing company. As a matter of fact, I think they only produced one record, one album.

Mr. Moss. Who were those two individuals?

Mr. HOPKINS. The names are Mark Olds. Mark was the program director at the time. He is no longer there. The other individual is Charles Getz. He was in charge of promotion at the station, and I believe he is still employed there. They got together and produced an album, an LP, and I just don't recall the label. But it was a special salute to the local baseball team, the Cleveland Indians.

Mr. Moss. That was fairly safe, then, in that case. Was that the only instance?

Mr. HOPKINS. Yes, sir.

Mr. Moss. The only instance where you were ever requested to play a record by executive personnel?

Mr. HOPKINS. There was another time. Again, this was in an off-hand manner. I think the individual involved had a friend who wrote the song, and he suggested if I liked the record, why don't I spin it a few times?

Mr. Moss. Did you like it?

Mr. HOPKINS. No; I didn't.

Mr. Moss. Well, I must admit at this point in regard to the policies of your employer, I am certainly at a loss to determine what they might be. I know that in Boston they retained personnel who had done about the same thing you did and were fired for it. And in Boston they

seemed to be very diligent in going out and making rather heavy demands on the recording industry for the building up of a library. Rather a confused policy. It certainly doesn't appear to be one of consistency.

I think that is all the questions I have, Mr. Chairman.

The CHAIRMAN. Mr. Hopkins, has your entire years in the broadcasting business been as a diskjockey?

Mr. HOPKINS. Primarily, sir. Either that or as staff announcer.

The CHAIRMAN. You were being paid a salary of a little more than \$20,000 a year; were you not?

Mr. HOPKINS. During my employment at KYW; yes.

The CHAIRMAN. How long were you employed at that station?

Mr. HOPKINS. Not quite 4 years.

The CHAIRMAN. Four years?

Mr. HOPKINS. Not quite 4.

The CHAIRMAN. Now, you have recounted item by item, as the record shows, that in addition to your regular salary, you had been receiving payments from the companies which you have so indicated here. In 1958, in addition to your salary, you were paid a total of some \$5,000, according to your own statement.

Mr. HOPKINS. Yes, sir.

The CHAIRMAN. In 1959, you were paid, up until December 3, 1959, in addition to your regular salary, \$7,000, approximately, according to your own statement?

Mr. HOPKINS. Yes, sir.

The CHAIRMAN. Did your employer know that you were receiving any or all of these payments from these record companies?

Mr. HOPKINS. I have no way of knowing, sir. I just don't know.

The CHAIRMAN. Well, then, so far as you know, they did not know about it?

Mr. HOPKINS. I don't know.

The CHAIRMAN. Did you ever tell them?

Mr. HOPKINS. No, sir.

The CHAIRMAN. Was it ever mentioned in any way before the first of November 1959?

Mr. HOPKINS. Oh, perhaps in a facetious manner; yes.

The CHAIRMAN. By your employer?

Mr. HOPKINS. Not by my employer, but perhaps by a few members of management; yes.

The CHAIRMAN. In other words, are you telling the committee that this was mentioned and sort of accepted as a fact, everything was all right, nobody said anything about it?

Mr. HOPKINS. Well, as I say, sir, I have no way of knowing if they were aware of the arrangements that I had or not. All I know is that in a facetious manner, hardly ever, really, but once in awhile, in a kidding way, yes, it would be mentioned.

The CHAIRMAN. You never did admit to them that you were receiving this money, did you?

Mr. HOPKINS. They never asked me, sir. I would have if I happened to be asked.

The CHAIRMAN. You never did tell them?

Mr. HOPKINS. The first time they asked me I told them.

The CHAIRMAN. But that was nearly 2 years afterwards, from the time these arrangements had been made?

Mr. HOPKINS. That is correct.

The CHAIRMAN. Did you have any such arrangements prior to 1958?

Mr. HOPKINS. No, sir; I did not.

The CHAIRMAN. If the record companies had not approached you in this manner, and had not offered you these amounts for the purposes you have tried to justify, then you very likely would not have received it, would you?

Mr. HOPKINS. I don't follow you, sir, I am sorry.

The CHAIRMAN. If the record companies who paid you these weekly or monthly sums had not come to you, and made a proposition to you, then you would not have been engaged in this practice, would you?

Mr. HOPKINS. That is absolutely right, sir.

The CHAIRMAN. If the record companies had not come to you, and made the proposition to you, which you accepted, and for which you received the money, you very likely would not have lost your job, would you?

Mr. HOPKINS. I would say that is right.

The CHAIRMAN. You have lost your job, have you not?

Mr. HOPKINS. Most assuredly.

The CHAIRMAN. Would you say that was pathetic or not?

Mr. HOPKINS. Well, I am not exactly broke at the moment.

The CHAIRMAN. In other words, you are not willing to say that because of these practices and because you have lost your job, in a profession you have followed for 12 years, that that would not be pathetic insofar as you were concerned?

Mr. HOPKINS. I would say that my current situation, sir, is far from pathetic. I expect to work again, and soon.

The CHAIRMAN. But you think it is all right, though, and just another matter of course that you were fired?

Mr. HOPKINS. As a matter of course?

The CHAIRMAN. Yes.

Mr. HOPKINS. I am sorry, I don't understand you, sir.

The CHAIRMAN. You don't think there is any significance insofar as your own personal life is concerned, that you were fired for these practices?

Mr. HOPKINS. As far as my own personal life is concerned?

The CHAIRMAN. Yes.

Mr. HOPKINS. No.

The CHAIRMAN. You do not. It is very difficult for me to understand the attitude of a man who has had 12 years in a business, and is approached by record companies for a specific purpose, which has been stated here, assuming that your testimony—the facts—are the truth, as you honestly and conscientiously intend it to be—and then because of that you have lost your employment and over \$20,000 a year. And you say that you don't think there is anything unusual about it?

Mr. HOPKINS. Oh, I didn't say that, sir. Certainly it is an unusual situation. But I believe before, you used the term pathetic.

The CHAIRMAN. You don't think it is pathetic?

Mr. HOPKINS. I don't think my current situation is pathetic at all.

The CHAIRMAN. I am not talking about your current situation. I am talking about the fact that you got fired because of these practices.

Mr. HOPKINS. I think it was unfortunate.

The CHAIRMAN. You think it is unfortunate, and not pathetic?

Mr. HOPKINS. That is the way I feel about it, sir, yes.

The CHAIRMAN. Well, do you think, then, that Mr. Finan—he lost approximately a \$40,000 job—that it was only unfortunate, and that there was nothing pathetic about it?

Mr. HOPKINS. I think he expects to work again, and very, very soon, sir.

The CHAIRMAN. But you don't think it is pathetic that he would get lured into, as you have, accepting payments from these recording companies, which he did, and for which you both lost your employment? And you don't think that is pathetic at all?

Mr. HOPKINS. As far as I was concerned, no, I do not. It was a business arrangement, and I was performing a service, which I certainly did.

The CHAIRMAN. You do not think that we are so naive as to fall for the kind of explanation which you have given to a situation where the facts will speak for themselves, do you, Mr. Hopkins?

Mr. HOPKINS. All I know is, sir, that I am telling you the truth.

The CHAIRMAN. Now in the statement in which you have joined Mr. Finan, the second objection raised was to a statement I made yesterday, that such was illegal. You have testified that these innumerable checks, which totaled up to some \$1,100, from Mainline Cleveland, Inc.—are you aware of the fact that the Federal Trade Commission has filed a cease and desist order proceedings against Mainline Cleveland, Inc.?

Mr. HOPKINS. Yes, sir; I have read it.

The CHAIRMAN. You are aware of the fact that this is a distributing company for RCA?

Mr. HOPKINS. Yes, sir.

The CHAIRMAN. Are you aware of the fact that the Federal Trade Commission filed proceedings also against RCA?

Mr. HOPKINS. Yes.

The CHAIRMAN. Are you aware of the fact that proceedings were also filed against Cosnat Distributing Co.?

Mr. HOPKINS. Yes, I believe I read about it.

The CHAIRMAN. Are you aware of the fact that proceedings were filed against the Bernard Low Enterprises, which owns Cameo Record Co.?

Mr. HOPKINS. Yes.

The CHAIRMAN. These are all proceedings filed by the Federal Trade Commission, because of unfair trade practices; is that right?

Mr. HOPKINS. As I interpret it, sir. I am no expert. I don't know.

The CHAIRMAN. Yes. Well, now, if that was not illegal, then such procedures could not be filed, could they?

Mr. HOPKINS. I cannot see that I have done anything illegal, sir.

The CHAIRMAN. No. It is all right, then, for one to receive, but it is bad for one to pay?

Mr. HOPKINS. I guess it all depends on your point of view.

The CHAIRMAN. Probably it does.

Now, you are considered to be, were considered to be, one of the outstanding diskjockeys in the country; weren't you?

Mr. HOPKINS. I hope so.

The CHAIRMAN. You have worked for that reputation?

Mr. HOPKINS. Yes, sir.

The CHAIRMAN. I think it is commendable that you were able to make a reputation of that kind.

Now, as a matter of fact, a diskjockey can take any record, if it has any substance to it whatsoever, and through the broadcast medium, make it a very popular record; can't he?

Mr. HOPKINS. I disagree, sir.

The CHAIRMAN. You do not think that the playing of records through the broadcast media has anything to do with forming the opinion of the people regarding that particular record?

Mr. HOPKINS. I think it can help. But I think that the basic thing is that it has got to be what we call in the trade a commercial record. The record, in slang, the record has got to have "it". And if it hasn't got "it", it is not going to make it commercially, no matter how often you play it. It just won't happen.

The CHAIRMAN. Then is it true that a lot of records that have "it" never are brought to the attention of the public, and therefore the public does not have the benefit of that record?

Mr. HOPKINS. This conceivably could happen; sir, yes. It could happen. Although I find it hard to believe. I think somewhere in the Nation, if a record was released, and it had any potential at all, I am sure that someone would come to that conclusion.

The CHAIRMAN. Well, obviously, Mr. Hopkins, your testimony here, I think, has been very frank, and I think the facts speak for themselves. And in my humble judgment, they need no further interpretation.

Mr. LISHMAN. May I ask one question?

Mr. Hopkins, have you heard of the practice in the broadcasting industry of "covering" a record?

Mr. HOPKINS. Yes, sir.

Mr. LISHMAN. Have you ever participated in covering a record?

Mr. HOPKINS. No, sir.

Mr. LISHMAN. What is this practice of covering a record?

Mr. HOPKINS. I think what is meant by the term is that a record may come out by a certain company, and perhaps other companies may hear about it. They may decide in their minds that this particular record has potential. It may make it in the national market. And perhaps we should put out a version of the same tune. And I think that is what is meant by covering a record.

Mr. LISHMAN. Well, let's get into this a little more.

Is it a fact that a record may be produced by a small company, by an unknown composer, and rendered by an unknown artist, and on a comparatively unknown label. A diskjockey will air it, find the reaction good, and immediately tip off RCA Victor, or Columbia, that this is a wonderful record, and they better go out now and cover it, and smother it, with a rendition of their own on a big label. Do you know of that practice?

Mr. HOPKINS. I don't know of it personally, but I am sure it could happen; yes, sir.

Mr. LISHMAN. And that is what covering a record means?

Mr. HOPKINS. Yes, sir.

Mr. LISHMAN. And the diskjockey's function in the covering operation is extremely important; isn't it?

Mr. HOPKINS. Well, in this day and age, sir, I don't think it makes any difference any more. A small company has just as much chance of getting a national hit as a big company. In fact, I think most of the top lists around the country, and the trade magazines, I think, would bear me out, that most of the lists are made up of recordings from smaller companies. Not necessarily from the major labels.

Mr. LISHMAN. I have no further questions, Mr. Chairman.

The CHAIRMAN. Mr. Hopkins, that will be all for you, and you may be excused.

Mr. HOPKINS. Thank you, sir.

The CHAIRMAN. Thank you very much for your appearance here.

Mr. HOPKINS. You are welcome.

The CHAIRMAN. The committee will recess until 2 o'clock.

(Whereupon, at 12:05 p.m., the committee recessed, to reconvene at 2 p.m., the same day.)

AFTERNOON SESSION

The CHAIRMAN. The committee will come to order.

Mr. Young, will you stand and raise your right hand?

Do you solemnly swear that the testimony you are about to give to this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. YOUNG. I do.

TESTIMONY OF CHARLES YOUNG

The CHAIRMAN. Where do you live, and what is your address?

Mr. YOUNG. I live at 2814 Walbrook Avenue, Cleveland, Ohio.

The CHAIRMAN. What is your business or profession?

Mr. YOUNG. At the present time I am unemployed.

The CHAIRMAN. You may proceed, Mr. Lishman.

Mr. LISHMAN. Mr. Young, by what radio station were you formerly employed?

Mr. YOUNG. By radio station KYW in Cleveland, Ohio.

Mr. LISHMAN. And when did you begin your employment with KYW?

Mr. YOUNG. In February of 1957.

Mr. LISHMAN. Prior to that time had you been employed by a radio station?

Mr. YOUNG. No. Before this I was employed mostly by radio distributors and record distributors.

Mr. LISHMAN. I did not hear your answer.

Mr. YOUNG. Not before 1957.

Mr. LISHMAN. So that your first employment by a radio station was in 1957?

Mr. YOUNG. Yes.

Mr. LISHMAN. What were your duties at station KYW?

Mr. YOUNG. I was the music librarian of radio station KYW. My duties consisted of keeping the library stock with the latest long-playing records, to screen and catalog the albums, to maintain a constant look for the top ones for the station's use.

Also to make available the many songs that were in the catalog. To take care of the longplay albums, and to keep in contact with the jobbers and the distributors pertaining to the most popular songs, to check the trade magazines, Billboard, the Cash Box, Variety; to assist, when asked, with the work of KYW in programing shows, and to produce shows when called upon.

Mr. LISHMAN. Were you the music librarian for the Joe Finan and Wes Hopkins shows?

Mr. YOUNG. I was the music librarian for KYW which consisted of all of the shows on that station.

Mr. LISHMAN. Those are two of the shows on that station?

Mr. YOUNG. Yes, they were.

Mr. LISHMAN. They were on that station?

Mr. YOUNG. Yes.

Mr. LISHMAN. In connection with your work, involving such magazines as Cash Box, did you ever send lists to Cash Box indicating the most popular records which were being played at your station?

Mr. YOUNG. We issued a list weekly which went to all of the trade magazines. Sometimes they used our lists; sometimes they did not. Sometimes they published them; sometimes they did not.

Mr. LISHMAN. Did any record distributor ever come to you and ask you to put his labels on the list that you forwarded to Cash Box?

Mr. YOUNG. Many record distributors came to me asking listings on this.

Mr. LISHMAN. Did you do that?

Mr. YOUNG. Yes, I did to the extent that they had a song that was one of the top songs on our station and in the stores, and appeared on our sheet, it would be sent to Cash Box, and they would use it.

Mr. LISHMAN. Do you recall whether or not any of these labels were owned by Chess Records?

Mr. YOUNG. Would you repeat the question, sir?

Mr. LISHMAN. The information you furnished to Cash Box, with respect to the most popular songs broadcast over your station—I asked you if you recall any of such recordings bearing a Chess Recording Co. label?

Mr. YOUNG. Yes.

Mr. LISHMAN. Chess, as I understand it—

Mr. YOUNG. Chess Recording had some very popular songs in the period that I was with the radio station. And I suppose that some of them were listed in the lists forwarded to Cash Box.

Mr. LISHMAN. You were here when Mr. Finan testified yesterday that he had received a loan of \$2,500 from Chess?

Mr. YOUNG. Yes, I was here.

Mr. LISHMAN. And were you here when he testified concerning the payment he received from, approximately, 15 record companies?

Mr. YOUNG. I was here.

Mr. LISHMAN. It is apparent that the list to Cash Box consisted of the most popular records on your station, and were also recordings of the 15 companies Mr. Finan received payment from?

Mr. YOUNG. Some of these were, because of the popularity of the songs that were listed on our sheet. And in reference to the songs that were selling in the stores—records that were programed over national television shows, which helped the songs become popular, and because of that we tried to give an honest description of what was going on in that area. That is why some of these records were on our sheets.

Mr. LISHMAN. I would like to pursue this topic in more detail later on, but right now, I will ask you when your employment at station KYW terminated?

Mr. YOUNG. In November of 1959.

Mr. LISHMAN. In November?

Mr. YOUNG. I think it was the 1st of November.

Mr. LISHMAN. Did you resign, or were you discharged?

Mr. YOUNG. I was discharged.

Mr. LISHMAN. What official of Westinghouse discharged you?

Mr. YOUNG. Mr. Bud Wendel, the program director.

Mr. LISHMAN. What did he say when you were discharged; did he do this in writing or orally?

Mr. YOUNG. He explained two or three or four little reasons, one being the fact that he thought I was taking money or checks, or whatever he called it, something to that effect, a statement like that, that in his belief I was receiving money and to list the particular sums that I was getting paid for it.

Mr. LISHMAN. Now are those all of the reasons that were given to you by him?

Mr. YOUNG. No; there were some which he mentioned having to do with the way the library was being run. There were some other little items. I cannot remember them. They were immaterial.

Mr. LISHMAN. Are you familiar with the distributor for RCA-Victor records in northern Ohio known as Main Line Cleveland, Inc.?

Mr. YOUNG. I am.

Mr. LISHMAN. Did you receive checks from Main Line?

Mr. YOUNG. I did.

Mr. LISHMAN. Do you remember who signed those checks?

Mr. YOUNG. No; I do not remember who signed the checks.

Mr. LISHMAN. What arrangements did you have with Main Line Cleveland for receiving these checks?

Mr. YOUNG. To the best of my knowledge I had never committed any arrangement with Main Line Cleveland to receive checks from them.

Mr. LISHMAN. Well, for what purpose did Main Line Cleveland give you these checks?

Mr. YOUNG. Main Line Cleveland, the promotion man, came to me, and submitted a certain amount of sums to me regularly for my opinion, what I thought of them, and I gave my honest opinion. I never asked Mr. Clark of Main Line Distributing for a check, money, pertaining to the songs that he submitted to me. They did send me checks. I never asked for them. I gave them my personal opinion on the song. It did not influence me one way or the other. And I accepted the checks.

Mr. LISHMAN. If I should tell you that we have the canceled checks made to your order by Main Line Cleveland during the period August

3, 1958, to August 13, 1959, in the amount of \$50 each and totaling \$450—some of them \$100 each—would you accept that as the total amount you received in checks from Main Line Cleveland?

Mr. YOUNG. Seeing I have no records with me—my wife has them—I suppose that would be true.

Mr. LISHMAN. Well, we will show you the checks if you would like to see them.

Mr. YOUNG. No; I believe you are citing the true facts.

Mr. LISHMAN. In addition to receiving checks from Main Line Cleveland, Inc., did Mr. Burneson ever give you cash?

Mr. YOUNG. Not to the best of my knowledge; no.

Mr. LISHMAN. Did you ever receive money or other valuable considerations from companies other than Main Line Cleveland who were engaged in the record business?

Mr. YOUNG. Yes; I have.

Mr. LISHMAN. Would you please name these companies and the amounts you received?

Mr. YOUNG. I do not have my records with me. I received money—I received cash from Mercury Records—I think maybe one or two checks; some from Time Records, from Roulette, one or two checks from Coed Distributing, Cosnat Distributing. Offhand, I think that might be all—I am not sure.

Mr. LISHMAN. That is all that you can recollect at the present time?

Mr. YOUNG. Yes.

Mr. LISHMAN. And, approximately, how much did you get from Mercury Records?

Mr. YOUNG. To the best of my recollection, at first I think I received a couple of \$50 checks—\$50 in cash, and then \$100 in cash.

Mr. LISHMAN. That would be \$200, approximately, from Mercury?

Mr. YOUNG. No; I received intermittently six or seven, maybe, or maybe more—I just do not know offhand.

Mr. LISHMAN. Can you give us an approximate total of what Mercury paid you?

Mr. YOUNG. I would say eight or nine hundred dollars.

Mr. LISHMAN. Eight hundred?

Mr. YOUNG. Eight or nine hundred dollars. Maybe less—I do not remember.

Mr. LISHMAN. You can give us your best recollection, in view of the fact that you do not have your records with you.

Mr. YOUNG. I now that there were a couple of \$50 cash payments from the distributor, and then \$100 in cash from the distributor; I think intermittently—I do not remember, 6, 7 or 8 or 9. Offhand, I do not know. It was not steady. At times it came in.

Mr. LISHMAN. These were more or less regular intervals then?

Mr. YOUNG. Yes.

Mr. LISHMAN. And do you recollect, approximately, how much you received from Time Records?

Mr. YOUNG. Three or four checks, I think, for \$75 each.

Mr. LISHMAN. That would be a total in the neighborhood of \$300 then?

Mr. YOUNG. Yes; I think so.

Mr. LISHMAN. From Roulette, can you tell us now about that?

Mr. YOUNG. From April—from August to November, I think, there were five checks in 1959 for \$100 each.

Mr. LISHMAN. How many checks did you say?

Mr. YOUNG. Five.

Mr. LISHMAN. Of \$100?

Mr. YOUNG. \$100 each.

Mr. LISHMAN. That is \$500. And from Coed Records, what did you receive?

Mr. YOUNG. I think two or three checks for \$25 each.

Mr. LISHMAN. And from Cosnat, what did you receive?

Mr. YOUNG. I received \$25 a week by check for maybe 12 to 14 months.

Mr. LISHMAN. 12 or 14 months?

Mr. YOUNG. Yes.

Mr. LISHMAN. Of \$25 each?

Mr. YOUNG. Yes.

Mr. LISHMAN. Mr. Young, for what purpose did these companies make these payment to you?

Mr. YOUNG. Well, I suppose, first let me add that, I would like to put my background in front of the committee.

Mr. LISHMAN. Yes, sir.

Mr. YOUNG. In 1947 I worked for a records store in Cleveland, from 1947 to 1948. In 1948 to 1955 I worked for a record distributing company called Ohio Record Distributors. And we distributed Mercury records and many other independents.

From 1955 to 1957 I worked for Cosnat Record Distributors of Cleveland in promotion, following up the radio stations in promoting their records.

And from 1957 to 1959 I worked for KYW—3 years in radio.

In this period of time I made many friends. Mr. Blaine from Cosnat, Mr. Kolsky of Roulette, Mr. Shad of Mercury, and someone from Time Records. Indirectly, I helped promoting, selling, analyzing, advising these people on their records, seeing that I was tied into the distributing business. These people showed a lot of respect for my judgment on songs. They thought a lot of the distributors I worked for on their particular records. And in general, became very close friends with me.

Mr. LISHMAN. Mr. Young, would you exercise your judgment as a librarian, like pulling out records of these particular companies, to be aired on the programs over KYW?

Mr. YOUNG. No, I would not. Mr. Thomas came to me with a record and said, "I would like to send you a monthly check for your advice."

One of their problems was on labeled records by unknown artists. And because of the time, he would send these records to my house, and he would call me and ask me what I thought of these records. And this went on for a period of 3 months. And not one of the records did I ever say to him was of any value, sales value or commercial value or radio value. He never used any of these records which might eventually be hit records. And because of this, he sent me a check, or he paid me cash, I do not remember—he might have paid it in cash or check—for my information on these particular records.

Then after 2 months went by, they would come up with some popular song, and he kept sending a check, kept advising the Mercury distributor, which was the branch manager, to give me the sum of \$100 a month for, I suppose he thought that I would look after his records, but I made it clear to Mr. Wolverton that I did not accept money to put it on the list, to promote any particular records for any company. I had a sense of value of music that was given to me by all distributors and manufacturers, and I never felt that I was obligated to anybody to give them more promotion or more advice or more programing than anything—not even anything else they might have given me for it, such as gifts or anything else.

Mr. LISHMAN. About how many records were in the library at KYW?

Mr. YOUNG. When I came to KYW in 1957, we had about 4,000 78 r.p.m. records. We had about 1,500 to 2,000 long-play records. And I would say we had about 5,000 45 r.p.m.

Mr. LISHMAN. About how many records would be played on a full day's program at KYW?

Mr. YOUNG. Well, the programs are broken down into four segments. Each 4 hours, depending on the commercial breakdown of the show, we would put out about 50 or 55 records on a show.

Mr. LISHMAN. You say you had how many thousand records available to pull these 50 out of?

Mr. YOUNG. Well, we had, I think we had 4,000 78 r.p.m. records. We had about 5,000 of the 45's, and maybe 1,500 or 2,000 long-play records when I came. Each week we would add to the catalog many records that came in. Many would be discarded. Some were discarded. Our 78 stock stayed about the same, because we used them for special shows.

Mr. LISHMAN. How rapidly did the 45's increase from the 5,000 mark?

Mr. YOUNG. They increased rapidly.

Mr. LISHMAN. About how many 45's did the station receive each week?

Mr. YOUNG. 200 or 300 records a week.

Mr. LISHMAN. Now, I am coming back to how you exercised your judgment. In 45's alone, you had more than 5,000 records, as librarian from which you could choose, either to program or to put on your top 40 list.

What criterion did you use in selecting 50 records out of the 5,000 in the library for a show?

Mr. YOUNG. We did not determine—

Mr. LISHMAN. How?

Mr. YOUNG. Depending on the particular show. Well, as I stated, I had a top 40 listing which we secured through the record distributors and the stores, and through the trade magazines. This is how we could—this is how we came to break down the top 40 list.

Then there were many records which we cannot characterize, on another list, which was available to the station to be used. Sometimes 70, 80 to 100 records change each week, adding so many to the top 40 weekly, depleting the list, and we took off so many of the top 40, broke that down to the records that were still popular where they were available.

Each week the list consisted of maybe 100 to 125 records that were available that were good for programing.

Mr. LISHMAN. In other words, you played a major part in making up this daily list of what 50 records would be played at the station?

Mr. YOUNG. Indirectly, I did.

Mr. LISHMAN. Would you consult with Mr. Finan and Mr. Hopkins in making the list up?

Mr. YOUNG. Yes. We would discuss current records daily, as they came in.

Mr. LISHMAN. Would you also discuss with these gentlemen the fact that all three of you were receiving payments as consultants from a number of record companies?

Mr. YOUNG. Sometimes we would be aware of it; sometimes we would not be aware of it.

Mr. LISHMAN. But you all knew you were being paid for your consultation services and judgment by the record companies, did you not?

Mr. YOUNG. I suppose we did.

Mr. LISHMAN. Do you not feel that when you were exercising your judgment as to what the 50 records would be, the chances would be pretty good that you would only pick those records from companies from whom you received money?

Mr. YOUNG. I have never received money—I have never specifically been told by any manufacturer—

Mr. LISHMAN. I am not asking what you were specifically told by anyone. In exercising your judgment which you say was independent, did you not really feel that here were three men, you and Mr. Finan and Mr. Hopkins, selecting 50 records that should be played over the station—did you not feel the fact that you were receiving money from the distributors of these records, that it influenced your judgment?

Mr. YOUNG. No, it did not influence me in one way or the other.

Mr. LISHMAN. Well, Mr. Young, is it not a fact that when Coed Records would send a record to you, accompanying it would be a \$25 check, stating in effect, "Hope you will find this useful on your program?"

Mr. YOUNG. Coed Records never came and sent me a check saying, "Hope you will find this useful on your new home." Never mentioned the record to me. They would send me records at home. I think that the station itself only played one record, that is, Coed record, and it was a song called "Sixteen Candles," which became a national hit. And I am sure that it was the only record that was played on radio station KYW for a short period of time that I was associated indirectly with Coed.

Mr. LISHMAN. Do you know a record manufacturer by the name of Jack Gould?

Mr. YOUNG. Yes, I do.

Mr. LISHMAN. Did you ever tell a record manufacturer who wanted you to hear a record over KYW that he was doing business with the wrong distributor?

Mr. YOUNG. I certainly would never associate myself—

Mr. LISHMAN. I am asking, did you ever make that statement to a record manufacturer?

Mr. YOUNG. I am sure I did not.

Mr. LISHMAN. Do you not recall telling a certain small manufacturer of records that he was doing business with the wrong distributor?

Mr. YOUNG. If I can remember the question at hand with Mr. Jack Gold, he either had the original song, or there was another one—he had the original song, I think a group recording—I cannot remember the song. And there was a problem that arose from him to the extent that he said that were playing the other version of this particular song. And one of the reasons for this being that I was indoctrinated in the Westinghouse policy when I came with them in 1957—I did not understand their policy on programing—it was broken down for me with experience in about 6 months period. What we tried to do was to program male, female, group, instrumental, so many songs in a given period, so many songs in another, never two, three, in a row.

Let me bring this out, Jack Gold came to me with this song—

Mr. LISHMAN. What was the name of the song?

Mr. YOUNG. I cannot remember the song.

Mr. LISHMAN. Was it "Little Billy Boy?" or was it "Love Me Forever?"

Mr. YOUNG. I think it was "Love Me Forever." "Love Me Forever" was by Dumont, and he had a recording of it in Paramount. We aired the Jack Gold song.

Mr. LISHMAN. When you say "we," is that Mr. Finan?

Mr. YOUNG. Well, I am thinking of the station in that consideration—it is not just Mr. Finan or Mr. Hopkins—it was the station. Remember, the record was there for everybody on the station. I remember the Jack Gold song. We had given to him statements telling him that there was a shortage of girl singers. We needed girl singers for programing. This is a fine recording of the song—and it did not show any preference. He thought he was entitled to all of the programing of this particular song, and he made a point of it, to go to Mr. Davis, who was the general manager of Westinghouse KYW. And also at this meeting was Mr. Olds, program director and myself.

Mr. LISHMAN. Mr. Young, I would like to get the details of this situation a little more clearly in the record. Is it not true that after you called this certain small manufacturer who came to you to get a record, he came back to you and Mr. Finan again—after you told him that he had the wrong distributor?

Mr. YOUNG. I never have told anybody that he was doing business with the wrong distributor.

Mr. LISHMAN. That is clear, but the same man came back to you again and asked you if you would air another record that he had; is that correct?

Mr. YOUNG. I cannot remember that. He sent us many records regularly, as did other labels. We used our sound judgment.

Mr. LISHMAN. I am just asking. I am going through these questions and find out. Maybe I can refresh your memory a little, to see if it will not do that. Do you not remember, that when he did not get anywhere with you or Mr. Finan on the phone, and once in a personal conference, he went to the station manager?

Mr. YOUNG. That is right.

Mr. LISHMAN. And what did he tell the station manager—what was his complaint to the station manager?

Mr. YOUNG. I do not remember the conversation or his complaint.

Mr. LISHMAN. Well, did not it wind up, by having this manufacturer inform you and Mr. Finan, that unless he heard his record played in your station he was going to take off for Washington and air some complaints?

Mr. YOUNG. I really do not remember what he said, but I know the fact was stated before the general manager and the program director of KYW—I was in the meeting—the program director and the general manager talked to a certain extent, and I thought we settled the question. We were acquainted with the record before it came to town. Both were fine recordings. Maybe died out in a month.

Mr. LISHMAN. I am not inquiring about that. I now want to ask, is it not a fact that within a few hours after the small record manufacturer had told the station manager and you that he was going to make a complaint in Washington within the next few hours his record was played four times over that station?

Mr. YOUNG. That is not true—not true.

Mr. LISHMAN. Prior to November 1, when you were discharged by KYW, had any official of Westinghouse questioned you concerning the receipt of outside payments?

Mr. YOUNG. Vaguely. I think me and Mike Gross once discussed it.

Mr. LISHMAN. Who?

Mr. YOUNG. Mike Gross, who was the program director at the station. I cannot remember the occasion. I vaguely remember he did discuss it with me. He did not make a point of it. He never told me one way or the other whether wrong, right or indifferent. That is as far as I know. Never talked to me before.

Mr. LISHMAN. I have no further questions.

Mr. MOSS (presiding). Mr. Rogers have you any questions?

Mr. ROGERS. Are you a native of Cleveland?

Mr. YOUNG. I was born in Columbus, Ohio.

Mr. ROGERS. You have lived in that general area?

Mr. YOUNG. All my life.

Mr. ROGERS. When were you discharged?

Mr. YOUNG. From KYW?

Mr. ROGERS. Yes.

Mr. YOUNG. I think the 1st of November of 1959.

Mr. ROGERS. How old are you?

Mr. YOUNG. I am 35 years old.

Mr. ROGERS (Texas). You were discharged in November 1959?

Mr. YOUNG. Yes, sir.

Mr. ROGERS. Why were you discharged?

Mr. YOUNG. Well, it came to their attention that I had been receiving gifts, checks, payola, if you want to put it that way, to the extent that these gifts influenced my judgment in what records should be listed, programed, advised to the D.J.

Mr. ROGERS. Did they write you a letter telling you that?

Mr. YOUNG. No. I was told verbally—told verbally by Mr. Bud Wendel's office.

Mr. ROGERS. I did not get that.

Mr. YOUNG. Bud Wendel.

Mr. ROGERS. I did not get that name. Mr. Wendel's office?

Mr. YOUNG. Yes.

Mr. ROGERS. Was he the station manager?

Mr. YOUNG. Yes, he was.

Mr. ROGERS. And he just called you there and told you that he was discharging you?

Mr. YOUNG. He gave me a few reasons, but to me they were not sense—they were senseless. Primarily, it was because of the gifts.

Mr. ROGERS. It was the gifts—what gifts, now? Do you mean an automobile or something like that?

Mr. YOUNG. No, checks, cash, whatever you want to call it.

Mr. ROGERS. You say gifts. Do you mean that you did not report that on your earned income?

Mr. YOUNG. I received withholding statements from most, I am sure all the companies that sent me checks or money, and I put them on my income tax.

Mr. ROGERS. Then they were not gifts, they were earned income?

Mr. YOUNG. I specifically told no one that I was playing on the list any particular records for them for payment.

Mr. ROGERS. I am not talking about that. I am not talking about why you did it. I am talking about gifts. You would not pay any income tax on gifts. So if you paid income tax, you were not treating them as gifts, were you?

Mr. YOUNG. The money that I did not ask for or solicit.

Mr. ROGERS. And they sent you withholding statements showing how much they had paid you?

Mr. YOUNG. Yes.

Mr. ROGERS. So you knew how much you had received from each company, so that you could pay the proper amount of income tax?

Mr. YOUNG. Yes.

Mr. ROGERS. And you did that, did you not?

Mr. YOUNG. Yes, I did.

Mr. ROGERS. Why were you receiving this money—you say that you were getting checks regularly—what was the purpose for your receiving it?

Mr. YOUNG. Well, this goes back to my distributing days. I suppose, possibly, Mr. Kolsky came to town one day and took me out to dinner. He did not say whether he was getting enough record playing or getting enough sales from his distributor. He was very friendly. He said, "I would like to send you the sum of \$100 per month starting as of right now."

"Mr. Kolsky, I have always liked you," I said. "I have always listened to all records that came into the radio station, every record, every side of every record. I might have missed a couple."

I said, "It would not influence me one way or the other. You have a good record, there is no reason for this check."

He said, "I would like you to have it."

I said, "Well, it will not influence my judgment. My judgment would be the same as to whether it is sound, according to my experience in record distributing sales, programing," where it proved it was sound. "And you so say," I said. So I accepted it.

Mr. ROGERS. Then it was in your mind what Mr.—what is his name?

Mr. YOUNG. Mr. Kolsky.

Mr. ROGERS. Mr. Kolsky, what he had in mind was to influence you, was it not?

Mr. YOUNG. I suppose that is true, sir.

Mr. ROGERS. Well, I mean, don't suppose—that is the reason you went through all of this long statement you have just given us, telling him that you were not going to be influenced, is that not right?

Mr. YOUNG. I told him that I was not influenced. We had played these same records.

Mr. ROGERS. I am not talking about that. I am talking about when Mr. Kolsky said, "I am going to give you \$100 a month." Then you immediately suspicioned that he was trying to influence you, did you not?

Mr. YOUNG. He was—I am sure that he was.

Mr. ROGERS. And you took the money, did you not?

Mr. YOUNG. I did.

Mr. ROGERS. But you were not influenced?

Mr. YOUNG. I told Mr. Kolsky—

Mr. ROGERS. I am not asking what you told Mr. Kolsky. Were you influenced?

Mr. YOUNG. I was not influenced in the least.

Mr. ROGERS. How long did he keep up these payments?

Mr. YOUNG. Each one of them, I think a month or—

Mr. ROGERS. What did you consider these payments, these \$100 payments for?

Mr. YOUNG. I did not consider he gave them to me. He sent them to me. I did not go out of my way to listen to his records, any more than any other records.

Mr. ROGERS. I am not going into that. I am asking you what did you consider the \$100 being paid to you for that you paid income tax on. Mr. Kolsky did not look like Santa Clause, did he?

Mr. YOUNG. No, that is true. He felt that they would influence my listening of his songs. I felt that it would not have any—that it would not—that there would not be any reason for listening to his songs, giving him preferential listings. He sent me the check. It made me—it gave me an added income.

Mr. ROGERS. Yes, I know that. But you did consider that it was for the purpose of getting you to give preferential treatment to records that he was distributing, is that correct?

Mr. YOUNG. In a way it did and in a way it might have been that the past performance of myself with Mr. Kolsky throughout the time that Roulette was in business.

Mr. ROGERS. You did not consider it as a listening fee?

Mr. YOUNG. No, I did not.

Mr. ROGERS. You considered it just a gratuity—Mr. Kolsky liked you, and he was giving you this, in appreciation of the fine work you were doing, and he continued to appreciate it as long as you played his records, did he not?

Mr. YOUNG. I like Mr. Kolsky. I have no reason to believe that he dislikes me. If I get a job on a radio station, I will show him the same treatment I have always showed him in the past. If I can

influence the sale of good records I will try my best to help him along.

Mr. ROGERS. You mean if you get a job tomorrow and you can influence the sale of his records?

Mr. YOUNG. Influence the records, good records.

Mr. ROGERS. Wait a minute. Let me finish. Are you telling this committee that if you get another job tomorrow in radio or television and Mr. Kolsky pays you \$100 a month to influence the sales of his records—

Mr. YOUNG. I will never accept a gift or a check from a distributor, manufacturer, publisher, or anybody again.

Mr. ROGERS. You never will again?

Mr. YOUNG. That is right.

Mr. ROGERS. Why won't you?

Mr. YOUNG. Because I felt that me being in this, was part of receiving these gifts from the distributors, the manufacturers, and—

Mr. ROGERS. Then your opinion is, that you do not think it is wrong, but you will not do it again because you are liable to get fired again, is that right?

Mr. YOUNG. The people in the business, in the concerns, is more important, than what I make from it, their ill feeling for me. My job is of more importance to me than the added income it would give me.

Mr. ROGERS. Your job is pretty important. Do you mean that if you had known you were going to get fired you would not have taken this in the first place?

Mr. YOUNG. I suppose that statement is true.

Mr. ROGERS. Does not this Mr. Kolsky like you any more?

Mr. YOUNG. I am sure he does.

Mr. ROGERS. He does not like you \$100 a month worth, does he?

Mr. YOUNG. I do not expect him to.

Mr. ROGERS. Why do you not expect him to do that?

Mr. YOUNG. Because I am not in radio right now.

Mr. ROGERS. Because you are not able to influence the sale of his records, that is right, is it not?

Mr. YOUNG. I would not influence the sale of his records more than any other records of distributors, manufacturers, or anybody involved in sending records to the radio station I worked for.

The CHAIRMAN. May I interrupt?

Mr. ROGERS. Yes.

The CHAIRMAN. Are you trying to say to us, that you were willing and did take the money monthly, and then did not render any service or do what was expected of you?

Mr. YOUNG. In my mind I rendered no service. The only service I rendered was for the station I worked for.

The CHAIRMAN. There was some reason that the man paid you \$100 a month, was there not?

Mr. YOUNG. I suppose he tried to influence me one way or the other, maybe—I am sure many of these labels were successful with many of the records we played before, after receiving gifts—and I do not believe—I know that I—I know in my mind that I did not take the money for any kind of influence from these people. Some 8 or 10

years I have known them all—some 2 or 3 years I have known them. They respected my judgment of song, to the extent that they may be popular songs on major labels, such as Capitol, Victor, Columbia, Coral. I would like to put some of them on the record, such as "Champagne," "I Walk Alone," True Love," "The Banana Boat Song"—some of those more popular songs in the last 3 to 4 year.

The CHAIRMAN. That really is not the answer to the question I asked. The question I asked was, they paid you the \$100 in an effort to influence you to do certain things.

Mr. YOUNG. I believe they did.

The CHAIRMAN. You believe they did?

Mr. YOUNG. Yes.

The CHAIRMAN. You believe that is what was being done?

Mr. YOUNG. I specifically told them that it would not influence me—each one of them.

The CHAIRMAN. I know that, but just answer the question—you believe they paid you the \$100 a month to influence you?

Mr. YOUNG. Yes, they did.

The CHAIRMAN. In effect?

Mr. YOUNG. Yes, they did.

The CHAIRMAN. You knew that was what they were giving you the \$100 for?

Mr. YOUNG. That is right.

The CHAIRMAN. Then do you not think it is wrong to take their money and not provide the service for them or do what they thought you were doing for them?

Mr. YOUNG. I just cannot answer that.

The CHAIRMAN. You cannot? All right.

Mr. ROGERS. Did you enter during this period of time—how many months did this money come to you, over a year, was it not?

Mr. YOUNG. Yes.

Mr. ROGERS. You got it the first of the month or the last of the month, or what?

Mr. YOUNG. I cannot recollect.

Mr. ROGERS. During that period of time, was there any time, say, a period of a month or a week or a couple of months that you did not play any of the records submitted by Mr. Kolsky?

Mr. YOUNG. I am sure that any of these people that sent me checks, that there were times where they might have went a day or a week or a month where they might not have had the record, so far as I can see, played.

Mr. ROGERS. Do you not know, as a matter of fact, that had you not played Mr. Kolsky's record for a whole week, that he would have gotten in touch with you very quickly?

Mr. YOUNG. The promotion man would be in daily trying—or tried to influence a song on the air—and I would give him the same thing I would give any other promotion man. We try our best with the time available.

We also play many long play albums on this station.

Mr. ROGERS. I know that, but these long answers just do not get us anywhere. You know in your own mind that if you had not played his records for a week, there would have been some talking between you and Kolsky, or there would have been no more \$100 checks?

Mr. YOUNG. Mr. Kolsky never called me or pressured me about any of these records, so long as I can remember.

Mr. ROGERS. So long as you played them there was no need for him to do so. You told Mr. Harris that you were not influenced one bit. You told me that, did you not?

Mr. YOUNG. Yes, I did.

Mr. ROGERS. Yet, you knew that he was paying you \$100 a month in order to influence you, did you not?

Mr. YOUNG. Yes.

Mr. ROGERS. Well, now, do you not think that it was fraudulent for you to take this money, knowing what the intended purpose was, and then not doing it?

Mr. YOUNG. Available for the material that they had, there was only so much time available. Our station——

Mr. ROGERS. I am not talking about that. I am talking about whether or not you——

Mr. YOUNG. I want to bring up the point that there is only so much time available for the material at hand. I cannot play everybody's records and everybody's albums and everybody's this and that and give everybody a fair shake.

Mr. ROGERS. I understand that, it was especially hard to give people a fair shake who did not send you \$100 a month.

Mr. YOUNG. That is natural, because many of the songs that the station was solely responsible for were our major labels that had no considerations at all.

Mr. ROGERS. And——

Mr. YOUNG. You talk of money.

Mr. ROGERS. And you were not getting \$100 a month from them?

Mr. YOUNG. Many songs reach our No. 1 list that we had never received a gift from.

Mr. ROGERS. Yes. You, of course, could not play all of Mr. Kolsky's records all of the time. That would have looked rather suspicious, would it not?

Mr. YOUNG. If Mr. Kolsky had the material available that were 15 or 20 of his records, if they were in preference to the material available, we would have played them all.

Mr. ROGERS. Let me ask you this question, Mr. Young, and stop the long answers.

If a man pays you to do something, and you understood what he was paying you for, and you did not do what was expected, do you not think it would be dishonest for you to take the money?

Mr. YOUNG. Not when I pointed out to him that it would not influence me in the least.

Mr. ROGERS. Then I see that this explanation clears your conscience?

Mr. YOUNG. No.

Mr. ROGERS. So long as you told him that you were not, it did not make any difference?

Mr. YOUNG. I think that there was more to it than that.

Mr. ROGERS. I do not see——

Mr. YOUNG. The association and friendship with the distributor, with the manufacturer.

Mr. ROGERS. Yes?

Mr. YOUNG. With my judgment.

Mr. ROGERS. That friendship stopped when you lost your job, did it not?

Mr. YOUNG. I suppose it did—I do not—

Mr. ROGERS. Let me ask you one other question.

You say that you got fired in November?

Mr. YOUNG. Yes.

Mr. ROGERS. By Mr. Wendel?

Mr. YOUNG. Mr. Wendel.

Mr. ROGERS. Mr. Wendel, did he talk to you about Mr. Finan or Mr. Hopkins taking money, too?

Mr. YOUNG. No, he did not.

Mr. ROGERS. Did you tell on them?

Mr. YOUNG. Did I tell on them? He did not question me about them.

Mr. ROGERS. You did not offer any testimony—you did not say, "Mr. Wendel, there are other people that are doing this, too?"

Mr. YOUNG. I did not.

Mr. ROGERS. You just took your medicine. Did you know about the other boys doing it?

Mr. YOUNG. At times I assumed it. At times I did not. At times I assumed it and others I did not.

Mr. ROGERS. I do not get you. Did you?

Mr. YOUNG. I did not.

Mr. ROGERS. You just knew that it was a general practice, did you not?

Mr. YOUNG. I have heard it has been said that it was the practice.

Mr. ROGERS. You were the librarian, were you not?

Mr. YOUNG. I was.

Mr. ROGERS. Did they ask you and say, "Mr. Young, what records does Mr. Kolsky want us to play this week?"

Mr. YOUNG. No.

Mr. ROGERS. How did you get the records for Mr. Kolsky played?

Mr. YOUNG. With the same amount—in the long run, the same way all companies—they would mail them—they would bring them to the record distributor, the promotion man.

Mr. ROGERS. They would mail them to you as the librarian?

Mr. YOUNG. They would mail them to the station, to the librarian, to my house, and so forth.

Mr. ROGERS. Then you would give them to Mr. Finan and Mr. Hopkins?

Mr. YOUNG. I would screen the records and make them available for D.J.'s.

Mr. ROGERS. And you would simply say, "Now, Mr. Finan, Mr. Hopkins, please play this record that Mr. Kolsky has distributed."

Mr. YOUNG. I would say that if the record had merit. I was always concerned about the songs, whether they were Kolsky's or Capital's. We were.

Mr. ROGERS. That is all.

Mr. DEVINE. Does the music director have any control over this, take yourself as an example?

Mr. YOUNG. Indirectly, yes.

Mr. DEVINE. Can you tell the diskjockeys what records should be played on a given day, and are they required to follow your instructions?

Mr. YOUNG. They would take my advice, because of my experience. We made available to them close to 120 records a week that were playable, that were hit records. They suggested many of the records that were good. People have different tastes.

Mr. DEVINE. Were they in a position to exercise their own independent judgment?

Mr. YOUNG. To a certain extent.

Mr. DEVINE. That is not very conclusive.

Mr. YOUNG. Well, it was sort of a liberal—it wasn't looking down to the particular amount of records in a given hour, or 4 hours. We try to work together. We try to form opinions. We talk to each other about particular records.

Mr. DEVINE. Well, as a matter of fact, he had the final say on what would be played?

Mr. YOUNG. The DJ had the final say of what record would be played on his program.

Mr. DEVINE. Did you prevent him or prohibit him from playing any given records?

Mr. YOUNG. The shows were all produced before they went on the air. The shows were directed to the program director. He would look over the show, okay the show. Many times the general manager would be presented the show. It would come back to me. And it would be marked okay, or they would be orally stated they were okay, and the show would go on the air.

Mr. DEVINE. Do you mean to say that two diskjockeys had a 4 hour program, each following the other, during which time they would play maybe 50 or 75 records, that that was all gone over in production?

Mr. YOUNG. That is true. Every show on the station, except some of the night shows, were produced a day, sometimes a few hours before they were to go on the air.

Mr. DEVINE. Well, you would have to work very closely to produce them, would you not?

Mr. YOUNG. I was to advise and help produce some of the shows. If they asked me, I would help them to make the shows up, yes.

Mr. DEVINE. Just one other thing. You made a statement in answer to one of Mr. Lishman's questions, I think, concerning Mr. Gold, and you said, to the best of my recollection, "he was entitled to have his record played." Just what did you mean by that?

Mr. YOUNG. Well, it was a good record, it was a programing record. I didn't feel that it was going to sell. It wasn't on the top 40. We put it on the songs that were available to be played. We broke them down to males, females, groups, and instrumentals. There might have been 10 or 15 in each category.

The reason we broke it down this way is because the shows were produced this way.

Mr. DEVINE. You haven't answered my question. What did you mean by saying he was entitled to have his record played?

Mr. YOUNG. It was a good record. It was available to be played. And I am sure it was played.

Mr. DEVINE. You mean the particular one you are talking about was a good record?

Mr. YOUNG. Yes, it was.

Mr. DEVINE. If he happened to have a turkey on that one, was he still entitled to have it played?

Mr. YOUNG. Most records were screened. We tried to eliminate the records that we couldn't give air play because of the amount of records that were available. We just can't play all the records, and you can't play all the albums. We try to the best of our knowledge to come up with the right records that would satisfy the public listening to them.

Mr. DEVINE. Did you mean to indicate he was entitled to have his records played because he had paid for your services?

Mr. YOUNG. He had not paid for my services. He was impudent to the extent that he said the competition was not entitled to have their record made. At the time there was a female cover of a song he had by a group, and there were very few girl singers available to us for our production, and we needed to play her version as well as his version.

Mr. DEVINE. Mr. Young, what is a gasser?

Mr. YOUNG. I think it is a slang word meaning something that is exciting.

Mr. DEVINE. That is a term commonly employed by D.J.'s, is it not?

Mr. YOUNG. I have heard it.

Mr. DEVINE. Indicating that a song is red hot?

Mr. YOUNG. Yes.

Mr. DEVINE. I have no further questions.

The CHAIRMAN. Mr. Moss?

Mr. YOUNG. Can I say something, sir?

The CHAIRMAN. Yes.

Mr. YOUNG. The fact that Westinghouse programing was broken down to play a lot of—many LP's, shortened the amount of pop records that we could play against other radio stations in the area. We figured that according to the rating services available, that at no given time was there more than 22 percent of a kid audience available during the day at its peak time, at the kids' peak time. And, for this reason, we played many long play albums, and we were more cautious about the songs that were given to us for screening, that got on KYW. It might have been that it was more competitive on our station.

Mr. Moss. Mr. Young, as the station librarian, did you have the responsibility for making up the log of tunes broadcast on the programs?

Mr. YOUNG. No; I did not.

Mr. Moss. Who had the responsibility for—

Mr. YOUNG. The diskjockey.

Mr. Moss. And was the logging done after the record was played, or was it part of the production format, the script, or whatever you might call it?

Mr. YOUNG. All shows were produced 2 hours before they went on the air. Some a day before.

Mr. Moss. Now, when you say produced—do you mean that they were scheduled in detail?

Mr. YOUNG. They were scheduled and timed.

Mr. Moss. And the listing of recordings which would be played?

Mr. YOUNG. That is right.

Mr. Moss. Was written out?

Mr. YOUNG. Typed out.

Mr. Moss. Now, was this typed list made 2 hours before broadcast time the log, which has been referred to in these hearings?

Mr. YOUNG. I think they mention it as the log. Actually, it was the programing sheets.

Mr. Moss. And this was the only listing of the records actually played, which was maintained in the station?

Mr. YOUNG. That is true.

Mr. Moss. And for how long were the logs kept?

Mr. YOUNG. For the time I was there—back in November, when I was fired, I think the sheets were there for at least a year and a-half.

Mr. Moss. You think they kept all the sheets for at least a year and a-half?

Mr. YOUNG. Yes.

Mr. Moss. Who had responsibility for keeping those sheets?

Mr. YOUNG. My assistant.

Mr. Moss. Your assistant?

Mr. YOUNG. Yes.

Mr. Moss. Then they were kept under your direction?

Mr. YOUNG. That is right. It was station policy.

Mr. Moss. The station policy directed that you have your assistant keep these sheets?

Mr. YOUNG. That is true.

Mr. Moss. And it is your certain knowledge, that at the time you left the station in November of 1959, the files contained the sheets for a period of at least 18 months?

Mr. YOUNG. I am sure of it.

Mr. Moss. And these were the detailed sheets?

Mr. YOUNG. That is true.

Mr. Moss. Were these lists kept at the Cleveland station, in the Cleveland station's files?

Mr. YOUNG. When I left the library, they were in a special file, and they were kept.

Mr. LISHMAN. Mr. Moss, may I interrupt at this point?

Mr. Moss. Yes, Mr. Lishman.

Mr. LISHMAN. I have just been reminded by Mr. Eastland that we subpoenaed this material from the station, and we were told they were not available.

Mr. Moss. That is an important point.

Mr. LISHMAN. WBZ in Boston told us that.

Mr. Moss. I think we should check on the Cleveland operation.

Now, how many record companies were paying you during the time you were with the station in Cleveland?

Mr. YOUNG. I would say in the neighborhood of six or seven.

Mr. Moss. Six or seven?

Mr. YOUNG. Not regularly, though.

Mr. Moss. What was that?

Mr. YOUNG. Not regularly.

Mr. Moss. Well, six or seven were paying you, some regularly, some on occasion?

Mr. YOUNG. Right.

Mr. MOSS. What occasions—when you had an occasional payment, what usually brought it about?

Mr. YOUNG. Well—

Mr. MOSS. Was Coed typical—where you received a recording and a \$25 check?

Mr. YOUNG. Yes; he would send it to my house. I remember the letters stating, "Buy something for your home."

Mr. MOSS. Mr. Young, what did you think he was trying to buy with that check which accompanied each of the records he sent you?

Mr. YOUNG. My influence.

Mr. MOSS. Your influence. Did you feel that in each instance payment was made to you that there was an effort to buy your influence?

Mr. YOUNG. Well, for Mercury; no.

Mr. MOSS. Why?

Mr. YOUNG. Well, Mercury started out, Art Talmadge came to me with these unlabeled, unmastered records, and he wanted me to listen to these records. This went on for a period of 3 months. I listened to all of his records. He called me once a week. I told him that not one of the records I thought were commercial, or good for air time. I never heard from these records again.

Mr. MOSS. Mercury Records?

Mr. YOUNG. Mercury Records.

Mr. MOSS. And were any of the Mercury labels being played on the programs of your station during this period?

Mr. YOUNG. Mercury Records have always had top recording artists, the Platters, Patti Page. There was no reason for us not to play a Patti Page or a Platter.

Mr. MOSS. That is interesting, because you have just told me that for a period of 3 months, all of their releases were sent to you, and you were asked to comment on them.

Mr. YOUNG. These were unlabeled, unknown artists.

Mr. MOSS. These were unlabeled, unknown artists. These were not Mercury recordings as such?

Mr. YOUNG. I don't know where Art Talmadge got these masters or records. All I know is he asked for my specific judgment. I told him that I didn't think any of them were—

Mr. MOSS. That is sufficient. He asked for your judgment. Were you also receiving at this time regular Mercury releases?

Mr. YOUNG. Yes.

Mr. MOSS. And you were also receiving payment from Mercury for listening to these unlabeled records?

Mr. YOUNG. Primarily that was the reason for it.

Mr. MOSS. Do you feel that you are particularly well qualified to express a judgment as to the commercial possibilities of a recording?

Mr. YOUNG. I honestly do.

Mr. MOSS. Why?

Mr. YOUNG. Because of my experience in all facets of the industry.

Mr. MOSS. What are the facets in which you are experienced?

Mr. YOUNG. A year as a record-store attendant.

Mr. MOSS. A year as a record—

Mr. YOUNG. A record store—I was a salesman.

Mr. MOSS. You were selling records in a store for 1 year?

Mr. YOUNG. Right.

Mr. MOSS. In Cleveland?

Mr. YOUNG. In Cleveland, Ohio; yes.

Mr. MOSS. This was a retail record store?

Mr. YOUNG. Yes.

Mr. MOSS. For 1 year?

Mr. YOUNG. Yes.

Mr. MOSS. Now, what is next?

Mr. YOUNG. I went to work for a record distributor.

Mr. MOSS. For how many years?

Mr. YOUNG. I was associated with Ohio Record Distributors, which handled Mercury records at the time—Mercury wasn't a big label—for 6 years.

Mr. MOSS. You were for 6 years—

Mr. YOUNG. My job—

Mr. MOSS. You were associated with them in what capacity?

Mr. YOUNG. My job at first was in the shipping department.

Mr. MOSS. You shipped records?

Mr. YOUNG. That is right.

Mr. MOSS. For how long?

Mr. YOUNG. For maybe a year.

Mr. MOSS. For 1 year.

Mr. YOUNG. Then I ordered all records for this distributor, and we had small labels as well as large.

Mr. MOSS. Well, now, let's get this. You ordered records from the manufacturers for this distributor?

Mr. YOUNG. That is true.

Mr. MOSS. And you prepared the purchase forms?

Mr. YOUNG. Yes, sir.

Mr. MOSS. And for how long did you do this?

Mr. YOUNG. For my complete association, which was from 1948 to 1955.

Mr. MOSS. For 5 years, then, you ordered records?

Mr. YOUNG. I ordered, sold, promoted, the records—

Mr. MOSS. I want this so that it is very clear. We have you down for 1 year in the shipping department.

Mr. YOUNG. Yes.

Mr. MOSS. Then you said that you were in the order department. You were ordering, you were preparing purchase orders.

Mr. YOUNG. Yes, sir.

Mr. MOSS. And sending them on to the various manufacturers?

Mr. YOUNG. Yes.

Mr. MOSS. Now, how long did you do this job?

Mr. YOUNG. Ordering records?

Mr. MOSS. Well, for Ohio Record Distributors. You said this is the company you worked for.

Mr. YOUNG. From 1955 to 1958.

Mr. MOSS. All right, now, this is the ordering phase of your job. Now, what else did you do?

Mr. YOUNG. I selected and sold the records that were shipped from these companies. I selected the samples that we would order from.

Mr. MOSS. You selected the samples?

Mr. YOUNG. They would send advance samples of these songs.

Mr. MOSS. Yes.

Mr. YOUNG. They would also send these samples to the radio stations.

Mr. MOSS. Well, were you dealing only with radio stations?

Mr. YOUNG. No; they sent ordering samples to the record distributors.

Mr. MOSS. What did you do with those samples?

Mr. YOUNG. We listened to them and judged them.

Mr. MOSS. Who would listen to them?

Mr. YOUNG. Me, and I think—

Mr. MOSS. Who owned it?

Mr. YOUNG. Mr. Nate Calkin.

Mr. MOSS. How large a company was it?

Mr. YOUNG. It was a large company, and it was associated with the largest store in Cleveland in records.

Mr. MOSS. How many employees did it have?

Mr. YOUNG. I think there were two or three shipping clerks. I assisted in the sales over the counter.

Mr. MOSS. The wholesale sales over the counter?

Mr. YOUNG. Yes, sir. I think there were two girls.

Mr. MOSS. In other words, when a distributor or retailer would come up and say, "I want a dozen number such-and-such," you would fill the order?

Mr. YOUNG. That is true.

Mr. MOSS. All right. That exercised no independent judgment or developed no competency in the field of what was good and what was bad. You just knew that was moving over your counter?

Mr. YOUNG. No, this is not true. We would receive advance samples of the songs by the artists that were recording for the independent labels and Mercury records, Cadence. We selected and—

Mr. MOSS. Your company received them. Was the responsibility yours for determining whether you would order a new label or not?

Mr. YOUNG. Yes, and also the radio station involved. The radio stations in Cleveland might have played the record before we would receive a sample, or there might be calls from the record stores.

Mr. MOSS. Were you the manager of the company?

Mr. YOUNG. Assistant manager.

Mr. MOSS. You were assistant manager. Did the manager exercise any judgment as to what should be ordered?

Mr. YOUNG. To a certain extent, yes; but he always gave me the full responsibility.

Mr. MOSS. He always delegated to you the full responsibility for ordering everything that was purchased?

Mr. YOUNG. Most of everything that was purchased.

Mr. MOSS. From the new records as well as refilling orders to your various customers?

Mr. YOUNG. Yes.

Mr. MOSS. And you did this for 5 years?

Mr. YOUNG. I did this for 7 years.

Mr. MOSS. Now, you moved directly from the shipping department role into the role where you had primary responsibility for determining which records would be purchased by this large wholesale distributor of records?

Mr. YOUNG. That is true.

Mr. MOSS. It is interesting, I can tell you. I have heard many, many interesting stories on this committee.

So on the basis of this 6 years' association with the record distributor, you felt you had developed a certain expert knowledge which would permit you to advise Mercury records as to the commercial possibility of its pressings?

Mr. YOUNG. Mercury and many other labels—Cadence, many other independent labels that had large hits.

Mr. MOSS. Aside from Mercury, all of the other people who paid you, the other six or seven, did you think that they were buying your expert knowledge, or your influence?

Mr. YOUNG. I specifically told them—

Mr. MOSS. I didn't ask you that.

Mr. YOUNG. I suppose they were. They thought they were.

Mr. MOSS. I asked you what you thought they were doing.

Mr. YOUNG. They were trying to influence me.

Mr. MOSS. They were trying to influence you. You had no illusions about this at all?

Mr. YOUNG. No, I didn't. I didn't have any illusions.

Mr. MOSS. In every one of the instances except Mercury?

Mr. YOUNG. Later on, I didn't have the advance records to judge by, but the money came through anyway.

Mr. MOSS. Now, did you have knowledge that your associates at the station, Mr. Hopkins, Mr. Finan, were also being paid by these same companies in some instances?

Mr. YOUNG. To a certain extent, yes.

Mr. MOSS. Well, what extent? You either had knowledge or you didn't have.

Mr. YOUNG. They discussed many of these records with me. I gave them my full attention. We listened to the records over and over again.

Mr. MOSS. Where?

Mr. YOUNG. We had three record booths from which we produced the shows.

Mr. MOSS. You listened on your station time and equipment to these recordings?

Mr. YOUNG. That was my job.

Mr. MOSS. To decide whether or not they had commercial possibilities, whether you should take care of your clients' records?

Mr. YOUNG. Many times these records were listened to before they were submitted by me. Sometimes I stayed 5 or 6 hours overtime, which I wouldn't get paid for, just to make sure that we would be caught up with all the records that were available, that were sent to us, so that they would be available if they were good to be played that night.

Mr. MOSS. How many hours did you work at the station regularly?

Mr. YOUNG. Most of the time I started at 9, and most of the time I didn't get home until 8, 9, 10 o'clock.

Mr. MOSS. How many hours were you supposed to work?

Mr. YOUNG. Eight hours a day.

Mr. MOSS. And you managed a record library of what—about 10,000 recordings?

Mr. YOUNG. Seventy-five percent of the records were cataloged before I came there. About every 6 months we would deplete so many long-play albums and so many singles that we felt should be depleted to make room for new records. All the records were broken down under artists and were cataloged.

Mr. Moss. I didn't ask you that. I asked you how many records you had in your library.

Mr. YOUNG. At least 10,000.

Mr. Moss. At least 10,000 records. And you weeded them out every 6 months?

Mr. YOUNG. We tried to.

Mr. Moss. It wasn't a continuing process?

Mr. YOUNG. There wasn't enough time to do it.

Mr. Moss. But you still had 4 or 5 hours a day every day?

Mr. YOUNG. All the records were greenstocked and cataloged under special numbers.

Mr. Moss. But when you were listening in the listening booth to these recordings—

Mr. YOUNG. I found that it was necessary for me to listen to all the records daily, I felt.

Mr. Moss. The reason that you listened to these recordings—was this in order to enable you to do a better job of putting together a program for your station, or was it for the purpose of auditioning the records sent to you by the people who were paying you money?

Mr. YOUNG. If this was a fact, the radio station would have never received—

Mr. Moss. I think you can tell me whether it was for one reason or the other.

Mr. YOUNG. It was for the benefit of the station.

Mr. Moss. You listened then only for the benefit of the station?

Mr. YOUNG. That is true.

Mr. Moss. And Mr. Finan and Mr. Hopkins joined you frequently in listening to these recordings?

Mr. YOUNG. They submitted particular records to me, discussed these records.

Mr. Moss. Did you listen to them alone?

Mr. YOUNG. I listened to these records many times before they were submitted to me.

Mr. Moss. Were these submitted to you for the purpose of getting them included on the program?

Mr. YOUNG. I hold one thing as a fact. That people have different tastes.

Mr. Moss. Oh, I know that. Let's not state the obvious. I ask you if they were submitted to you for the purpose of getting them on the program.

Mr. YOUNG. Sometimes yes, sometimes no. Sometimes for my judgment.

Mr. Moss. Did they request you to put them on the program?

Mr. YOUNG. Sometimes they would ask me if we shouldn't play these particular records on the program.

Mr. Moss. Now I think you people—putting together a 4-hour show, Mr. Hopkins—did he have 4 or 2 hours?

Mr. YOUNG. Four hours.

Mr. Moss. How many hours did Mr. Finan have?

Mr. YOUNG. Four hours.

Mr. Moss. For the purpose of putting together a show, I think they probably dealt with you much more direct than just coming up and hinting feebly that they might like you to listen to a recording.

Mr. YOUNG. I worked with all the DJ's daily.

Mr. MOSS. How many DJ's did you have?

Mr. YOUNG. I think we had six.

Mr. MOSS. Each of them doing how many hours?

Mr. YOUNG. The shows were broken down from 6 to 10, from 10 to —

Mr. MOSS. How many hours were they doing?

Mr. YOUNG. Four-hour shows, except maybe at night, the all-night show was about 6 or 7 hours, and there was a couple of breaks at night for special programing.

Mr. MOSS. Were Mr. Finan and Mr. Hopkins operating on the best time, the preferred time?

Mr. YOUNG. I think the best time in radio is between—

Mr. MOSS. I didn't ask you that. I asked you if they were operating then.

Mr. YOUNG. Were they operating?

Mr. MOSS. In the best time—Mr. Hopkins and Mr. Finan.

Mr. YOUNG. They had fine times, but I wouldn't say they were better than the morning shows.

Mr. MOSS. I don't care. I merely asked you if they were operating in the best times.

Mr. YOUNG. I wouldn't say they were the best times. I think all time on radio is the best time.

Mr. MOSS. Did you have a feeling that any of the other diskjockeys were receiving pay from any of the companies seeking advice?

Mr. YOUNG. I don't know.

Mr. MOSS. Well, I didn't ask you that. I asked you if you had a feeling. You said you had in the case of these two gentlemen. Do you have it in regard to any of the others?

Mr. YOUNG. I can't answer it, because—

Mr. MOSS. Why not? You have an idea. I am only asking for that. I am not asking you for knowledge.

Mr. YOUNG. I would say "No."

Mr. MOSS. You don't think they did?

Mr. YOUNG. No.

Mr. MOSS. Why do you feel that these two did? Were they a little more aggressive in their suggestions?

Mr. YOUNG. I think so.

Mr. MOSS. They pushed their merchandise a little harder?

Mr. YOUNG. They didn't push their merchandise, because I think the sole judge—the last judge of the material available—

Mr. MOSS. That isn't what I asked you. I asked you, first, if they were a little more aggressive. You said "Yes."

Mr. YOUNG. They were more aggressive diskjockeys than the other diskjockeys at the station.

Mr. MOSS. I wasn't asking about their ability as diskjockeys. I asked if they were a little more aggressive in pushing their stuff with you. The first response was "Yes." The second response was "No." Now which is it?

Mr. YOUNG. I don't say "Yes." For the reason given, they were more aggressive in taking an interest in the popular records, as against the other DJ's on the station.

Mr. Moss. They made more of a business out of them? Is that your impression?

Mr. Young. I don't really know.

Mr. Moss. Well, you concluded from their behavior that they were taking payments for various reasons, and that the other four disk-jockeys at the station were not.

Mr. Young. They took more interest in the music.

Mr. Moss. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Young, has anyone asked you what your salary was as record librarian at KYW?

Mr. Young. My salary was \$175 weekly.

The CHAIRMAN. That was over what period of time?

Mr. Young. I started at \$150, and a year before I left it was raised to \$175.

The CHAIRMAN. Thank you very much.

Mr. Young. Thank you for having me.

The CHAIRMAN. You may be excused.

Mr. E. E. Eicher?

Do you solemnly swear that the testimony you give to this committee to be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Eicher. I do.

TESTIMONY OF EDWARD E. EICHER; ACCOMPANIED BY RICHARD P. KENNY, COUNSEL, AMERICANA HOTEL

The CHAIRMAN. Will you state your name?

Mr. Eicher. Edward E. Eicher.

The CHAIRMAN. What is your address?

Mr. Eicher. My address is 1345 Northeast 140th Street, North Miami, Fla.

The CHAIRMAN. What is your business or profession?

Mr. Eicher. I am the special service director for the Americana Hotel, and for Tisch Hotels, Inc., which operates the Americana.

The CHAIRMAN. At what place?

Mr. Eicher. Bal Harbour, Miami Beach, Fla.

The CHAIRMAN. I notice you have someone with you.

Mr. Eicher. At my right is counsel for the hotel, Mr. Richard P. Kenny.

The CHAIRMAN. Is Mr. Kenny here to testify or to advise you?

Mr. Eicher. Mr. Kenny is not here to testify. He is to advise me, sir.

The CHAIRMAN. Very well. The rules so provide, Mr. Kenny, and you are familiar with that.

Mr. Kenny. Yes, I am familiar with your rule in that regard.

The CHAIRMAN. Thank you very much.

Mr. Lishman, you may proceed.

Mr. Lishman. Mr. Eicher, what is your present employment?

Mr. Eicher. I am the special services director for the Americana Hotel.

Mr. Lishman. In Miami Beach?

Mr. Eicher. In Miami Beach, Fla., yes, sir.

Mr. Lishman. How long have you been so employed?

Mr. Eicher. 3½ years.

Mr. LISHMAN. You are here in response to a subpoena served by the subcommittee on Mr. Charles T. Craddock, is that correct?

Mr. EICHER. Yes, sir, that is correct.

Mr. LISHMAN. And who is Mr. Craddock?

Mr. EICHER. Mr. Charles T. Craddock is the vice president and general manager of the Americana Hotel.

Mr. LISHMAN. And that subpoena was served on Mr. Craddock, January 20, 1960?

Mr. EICHER. That it was.

Mr. LISHMAN. And that subpoena required the production of certain records pertaining to the second annual pop diskjockey convention, held at the Americana Hotel, May 28 to 31, 1959, inclusive, which was sponsored by the Storz Stations?

Mr. EICHER. That is correct, sir.

Mr. LISHMAN. Were these subpoenaed records of the Americana Hotel forwarded to this subcommittee?

Mr. EICHER. That they were, yes.

Mr. LISHMAN. Will you please state briefly why you are here today, in place of Mr. Craddock, the general manager, who is under subpoena?

Mr. EICHER. Yes, I would be happy to. We thought that perhaps the interest of this committee would be better served by having someone here who is more familiar with the records, and more familiar with this specific convention. I happened to book this convention, and serviced it while it was at the Americana. And, therefore, I am intimately familiar with the information which was subpoenaed. Mr. Craddock is happy to appear here, and will not have any objection to appearing. But the subpoena which was served stated he did not need to appear. And we thought it might expedite your phase of this operation if I appeared in his stead.

Mr. LISHMAN. Well, Mr. Eicher, I hand you an exhibit, compiled from the ledger cards of the Americana, which pertains to this diskjockey convention, and ask you if this is a correct—it contains a correct computation of the amounts of money paid to the Americana Hotel by the various record companies whose names are listed on this exhibit.

Mr. EICHER. I have before me a list that was compiled by the committee. And spot checking through the records which I also have before me, the answer is "Yes."

Mr. LISHMAN. In other words, the figures that appear on this exhibit correspond with the actual records of the Americana Hotel, concerning these payments?

Mr. EICHER. Yes, sir; that would be correct.

Mr. LISHMAN. I would like to have you read this exhibit into the record, if you don't mind, Mr. Eicher.

Mr. EICHER. This is the Second Annual International Radio Programming Seminar and Diskjockey Convention, sponsored by Storz Stations, Americana Hotel, Miami Beach, Fla., May 29-31, 1959, expenses of record companies, \$117,664.95, compiled from ledger cards submitted by the Americana Hotel:

Atlantic Records, 157 West 57th Street, New York City, \$3,270.50.
 Cadence Records, 119 West 57th Street, New York City, \$703.99.
 Capitol Records, 1750 North Vine Street, Hollywood, Calif., \$19,812.71.
 Carlton Records, 345 West 53th Street, New York City, \$1,860.05.
 Coed Records, 1619 Broadway, New York City, \$126.35.

Columbia Records, 799 Seventh Avenue, New York City, \$9,415.39.
 Decca Records, 445 Park Avenue, New York City, \$509.54.
 Del-Fi Records, Inc., 1610 North Argyle, Hollywood, Calif., \$600.39.
 Dot Records, Sunset and Vine, Hollywood, Calif., \$19,485.92.
 Liberty Records, 6124 Santa Monica Boulevard, Hollywood, Calif., \$6,576.64.
 London Records, 539 West 25th Street, New York City, \$42.69.
 Mercury Records, Chicago, Ill., \$8,843.52.
 MGM Records, 1540 Broadway, New York City, \$484.65.
 RCA Victor, 155 East 24th Street, New York City, \$8,569.81.
 Roulette Records, 659 10th Avenue, New York City, \$19,158.60.
 The Storz Station, 222 South 15th Street, Omaha, Nebr., \$3,013.45.
 United Artists, Inc., 729 Seventh Avenue, New York City, \$3,389.61.
 Vee Jay Records, Inc., 2129 South Michigan Avenue, Chicago, Ill., \$1,481.31.
 Warner Bros. Records, 666 Fifth Avenue, New York City, \$819.83.
 Total, \$108,164.95.

The Storz file includes 34 other ledger cards in various names; charges thereon aggregate \$9,500; payments \$1,400. The names of the registrants are not listed herein as the subcommittee does not know who is liable for the unpaid charges, \$8,100.

Mr. LISHMAN. Now, Mr. Eicher, do you know whether the Americana Hotel was the only hotel which was occupied by diskjockeys during this convention?

Mr. EICHER. The Americana Hotel was not the only hotel occupied.

Mr. LISHMAN. About how many other hotels were occupied by the diskjockeys during this convention?

Mr. EICHER. In the Bal Harbour area, which is a separate city, in which this was held, there were five other hotels which had diskjockeys. In addition to this, many diskjockeys stayed elsewhere, throughout Miami Beach, and we have no record of that, sir.

Mr. LISHMAN. About how many other hotels, do you say?

Mr. EICHER. There were five others in the Bal Harbour area, in addition to the Americana, and an unknown number in Miami Beach.

Mr. LISHMAN. Yes, sir. Now before going further, there has been compiled from records subpoenaed from the Americana, an exhibit showing certain functions which took place at the Americana Hotel during this convention. It gives the date, the nature of the function, and the amount paid. It is understood that some of the figures in this exhibit may possibly be included, in one or two instances, in the \$117,000, about which you have testified.

Mr. EICHER. Yes, sir; I believe they are all included in that total, sir.

Mr. LISHMAN. They are all included?

Mr. EICHER. To the best of my knowledge; yes, sir.

Mr. LISHMAN. Now do you have this second exhibit before you?

Mr. EICHER. Yes, sir; I do.

Mr. LISHMAN. Have you had the opportunity of verifying that this exhibit correctly reflects the expenditures and information that is contained in the records of the Americana Hotel?

Mr. EICHER. Yes, sir; I have checked these records against the information which I see here before me, which has been compiled by the committee, and find that they are the same.

Mr. LISHMAN. That it correctly reflects your records?

Mr. EICHER. Yes, sir.

Mr. LISHMAN. Would you read this exhibit into the record?

Mr. EICHER. This is a record of the Second Annual International Radio Programming Seminar and Diskjockey Convention, sponsored

by Storz Stations, Americana Hotel, Miami Beach, Fla., May 29-31, 1959.

The following functions were paid for by the record companies in the amounts listed below :

Breakfast, May 30, Atlantic Records, 157 West 57th Street, New York, \$1,770.
 Cocktail party, May 29, Capitol Records, Inc., Hollywood and Vine, Hollywood, Calif., \$12,357.15.
 Reception, May 29, Carlton Records Corp., 345 West 58th Street, New York, N.Y., \$755.17.
 Reception, May 30, Carlton Records Corp., 345 West 58th Street, New York, N.Y., \$414.63.
 Total, \$1,169.80.
 Lunch, May 30, Columbia Records Sales Corp., 799 Seventh Avenue, New York, N.Y., \$3,325.00.
 Buffet, May 29, Columbia Records Sales Corp., 799 Seventh Avenue, New York, N.Y., \$2,812.85.
 Dinner, banquet, May 30, Dot Records, Inc., Sunset and Vine, Hollywood, Calif., \$14,950.
 Cocktail party and buffet, May 28, Mercury Records, Inc., 35 East Wacker Drive, Chicago, Ill., \$8,625.53.
 Lunch, May 29, Radio Corp. of America, RCA Victor Records Division, 155 East 24th Street, New York, \$3,540.
 Barbecue and dance, May 30-31, Roulette Records, Inc., 659 10th Avenue, New York, N.Y., bar, \$8,850, barbecue, \$4,205, breakfast, \$2,360.
 Total, \$15,415.
 Buffet breakfast, May 29, United Artists Records, 729 Seventh Avenue, New York, \$1,770.
 Lunch, May 28, Rank Film Distributors of America, 729 Seventh Avenue, New York, \$318.60.
 Poolside reception, May 30, Liberty Records, Inc., 6124 Santa Monica Boulevard, Hollywood, Calif., \$4,079.54.
 Grand total, \$68,133.47.

Mr. LISHMAN. Mr. Eicher, the information so far derived and placed in the record from the books and records of the Americana Hotel reflect functions and activities and expenditures by record companies, is that correct?

Mr. EICHER. Yes, sir; that is correct.

Mr. LISHMAN. Now in addition to record companies attending the convention, there were a number of other companies not in the record business who also attended, is that correct?

Mr. EICHER. They were in allied businesses; yes, sir.

Mr. LISHMAN. They were in allied businesses?

Mr. EICHER. Yes, sir.

Mr. LISHMAN. And these companies in allied businesses, the amount that was expended by them is included in the records subpoenaed by the subcommittee, is that correct?

Mr. EICHER. Yes, sir; that is correct.

Mr. LISHMAN. Now I hand you the tabulation made from the records subpoenaed from the Americana and ask you to read the total amount paid by companies allied with record companies to the Americana Hotel for their participation or for the services they had had during this diskjockey convention.

Mr. EICHER. This is an adding machine total of some 12 ledger accounts, and the total is 26,000—I am sorry, \$2,617.41.

Mr. LISHMAN. Thank you, Mr. Eicher.

Mr. Eicher, included in the information which we subpoenaed from your Americana Hotel, are records which show the number of individuals who attended the convention, is that correct?

I will hand you this computation and the records upon which it is based, and ask if it is correct.

Mr. EICHER. Thank you, sir.

Yes, sir; these are apparently miscellaneous ledger accounts. Is that what you inquired about?

Mr. LISHMAN. Yes.

Mr. EICHER. I have here the miscellaneous ledger accounts and an adding machine total which was provided by the committee, and the total shows \$9,862.35.

Mr. LISHMAN. Well, what does the figure that you have just read represent?

Mr. EICHER. These, apparently, sir, are miscellaneous ledger accounts of people who were there during the convention, and who apparently paid their own tabs. I notice several names here, for example, with which I am familiar. And apparently these are separate individual accounts, which were paid individually.

Mr. LISHMAN. Yes. So that my question was in error when I stated that this was a tabulation showing the number of individuals. Rather it shows the number of—the amount of money paid by certain individuals for their attendance, which had not been paid by a record company.

Mr. EICHER. Yes, sir; that is correct.

Mr. LISHMAN. Now, Mr. Eicher, do you know approximately how many people attended this diskjockey convention?

Mr. EICHER. I do not know, but I can make a guess.

Mr. LISHMAN. About how many would you guess?

Mr. EICHER. We estimated between 2,000 and 2,500.

Mr. LISHMAN. Was it necessary, then, to reserve rooms at other hotels than the Americana?

Mr. EICHER. That it was.

Mr. LISHMAN. And were such reservations made by the Americana Hotel?

Mr. EICHER. That they were.

Mr. LISHMAN. Included in the material we subpoenaed, were there Americana sales report forms of confirmed bookings, dated August 13, 1958?

Mr. EICHER. There is an Americana sales report form showing the rooms which we had confirmed to the convention—not the rooms which were occupied, but the rooms we guaranteed them would be available when they came down, yes, sir.

Mr. LISHMAN. And what does that show?

Mr. EICHER. I don't have it here, sir. I think you have the records.

This report reflects the fact that approximately 2,000 rooms were committed by the hotels in the Bal Harbour area to the diskjockey convention, for their use. It should be augmented by other figures which are probably in the records here someplace, which show that 753 rooms were used in the Bal Harbour area.

In other words, these are the figures that we thought would attend, and the others are the figures of what actually did attend.

Mr. LISHMAN. Mr. Chairman, to save time, I would like to have included in the record at this point a Thermo-Fax copy of this Americana sales report form of confirmed booking, dated August 13, 1958.

The CHAIRMAN. Is that what you have just identified, Mr. Eicher?

Mr. EICHER. Yes, it is. These are bookings which we confirmed to Storz, but all these rooms were not used. They did not all show up.

I am trying to clarify this for the committee's use later. In other words, there were not 2,000 confirmed bookings in the area. There were actually 753, which eventually showed up. But we were holding 2,000 rooms for this, in the event that many people did show up.

The CHAIRMAN. Let it be received, with that explanation.
(The document referred to is as follows:)

CC: File
J. R. Weidbaugh
J. Bersbach
S. Braslow
Reservation Dept.
Banquet Dept.

C O P Y

THE TISCH HOTELS
AMERICANA

8/14/58
L. Ronco

SALES REPORT FORM -- CONFIRMED BOOKING

DATE August 13, 1958ASSOCIATION POP MUSIC DISC JOCKEY CONVENTION & SEMINAR

CONTACT Mr. Bill Stewart TITLE General Manager
Storz Stations
ADDRESS Omaha, Nebraska TELEPHONE _____

DATE OF MEETING* May 29 to June 2, 1959 ATTENDANCE Approximately 5000 persons

RATES EXTENDED European Plan rates: EXHIBITS _____
\$14. - \$24. per day, single or double occupancy

REPORT:

Parlors are priced at:
\$25., \$30., and \$35. per day, additional

AMERICANA	375 rooms 45 suites	
SINGAPORE	200 rooms	
BALMORAL	200 rooms	European Plan rate: \$12, \$14, \$16, and \$18 per day, double occupancy
BEAU RIVAGE	250 rooms	
COLONNADE	9 rooms @ 20 rooms @ 25 rooms @ 25 rooms @ 21 rooms @	\$10. daily, European Plan \$12. daily, " " \$14. daily, " " \$16. daily, " " \$18. daily, " " (single or double occupancy)
BAL HARBOUR	150 rooms	\$10. daily, European Plan \$14. daily, Mod. American Plan (single occup) \$18. daily, Mod. American Plan (double occup)
IVANHOE	200 rooms	\$12. - \$14., \$16., \$18. per day With parlors \$16. per day.
KENILWORTH	200 rooms	

* Some arrivals on May 28, 1959.

HOTEL AMERICANA/s/ C. T. Craddock

Mr. LISHMAN. Now, Mr. Eicher, did you write a letter under the date of June 3, 1959, to each of the record companies who had participated in the diskjockey convention, and paid bills at the Americana Hotel?

Mr. EICHER. May I see the letter to which you refer, sir?

Mr. LISHMAN. Yes, sir.

Mr. EICHER. Yes, sir, I did.

Mr. LISHMAN. Do you have a copy of the letter which was sent in the same form to other record companies besides the one mentioned thereon?

Mr. EICHER. Yes, sir, I do.

Mr. LISHMAN. Could you read into the record this letter that you wrote of June 3, 1959?

Mr. EICHER. This is a letter of June 3, 1959. It is a form letter which went to several people. This one is addressed to Mr. Joe Kol-sky, Roulette Records, Inc., 659 10th Avenue, New York, N.Y.

DEAR JOE: Now that the second annual diskjockey convention is past history, I want to take this opportunity to drop you a brief note and express our appreciation for the part you played in making it a success. We enjoyed working with you during the convention, and hope we will be able to work together in other projects to our mutual advantage in the future.

Regards,

ED EICHER.

Similar letters, exact letters, went to Columbia Records, RCA Victor, Carlton Records, Mercury Records, United Artists, Capitol Record, Atlantic Record, Liberty Records, Dot Records, and Roulette Records.

Mr. LISHMAN. Mr. Eicher, I hand you a press and information release by RCA Victor Records, reading, "RCA Victor Plans Special 'Millionaire' Promotion for Miami Disk Jockey Convention," and ask you if you can identify this as having been circulated and used at that convention?

Mr. EICHER. This is a press release from RCA Victor Records which was circulated prior to the convention, and it is entitled "RCA Victor Plans Special 'Millionaire' Promotion for Miami Disk Jockey Convention."

Mr. LISHMAN. Did the promotion plan outlined in this press release culminate, or did it occur as indicated in that press release?

Mr. EICHER. The promotion as indicated—it did occur and was culminated, but with certain restrictions which the hotel placed upon it.

Mr. LISHMAN. What were the restrictions that the hotel placed upon it?

Mr. EICHER. Your question, sir, what were the restrictions?

Mr. LISHMAN. Yes.

Mr. EICHER. The tone of this press release indicated that each diskjockey coming down would be given a million dollars in play money, and he would, through his own ingenuity, be given every opportunity to increase this million dollars by such ways as he might devise. And that every time he dropped by the RCA hospitality suite, he would receive an additional \$5,000. The implication from the release was that this would be a form of gambling, with possible roulette wheels or dice or something like this involved. And we immediately called the police chief, the prosecuting attorney for Dade County, Mr.

Stewart of the Storz stations, and a representative of RCA Victor Records, and explained to them that under no circumstances would we tolerate gambling in any way, shape, or form.

They assured us in return that they had never intended to have gambling in any way, shape, or form, it was merely an unfortunate wording of the release which they had put out.

Mr. LISHMAN. Mr. Chairman, I would like to have this RCA Victor press release inserted in the record at this point.

The CHAIRMAN. Let it be received.

(The document referred to is as follows:)

RCA VICTOR PLANS SPECIAL "MILLIONAIRE" PROMOTION FOR MIAMI DJ CONVENTION

NEW YORK.—RCA Victor is planning a special promotion to make the Nation's diskjockeys richer and happier in the forthcoming Miami diskjockey convention, it was reported by George L. Parkhill, manager popular advertising and promotion.

Every DJ upon arrival and registration at the Miami convention will receive an envelope from RCA Victor containing auction stage money in the amount of \$1 million. Through his own ingenuity each DJ is free to increase (or decrease) his money through Saturday, May 30.

On that day at poolside at the American Hotel at 5 p.m. sharp, RCA Victor will hold an auction at which the DJs will be able to bid for five prizes with the auction money they have accumulated. Prizes to be auctioned are a Studebaker Lark, a trip to Europe for two (via Sabena Airlines), \$500 worth of Botany clothes, an RCA Victor Color TV set, and an RCA Victor Deluxe Stereo set.

RCA Victor, throughout the convention, will hold open house at their suite in the Hotel Americana, where RCA Victor will make it easy for the diskjockeys to augment their million dollar funds. Each time a diskjockey is served in the RCA Victor hospitality suite, he will receive \$5,000 in stage money. Victor will also sponsor the luncheon on Friday, May 29. At Saturday night's banquet, May 30, two RCA Victor artists, Caterina Valente and Lou Monte, will be among the entertainers.

Hosting for RCA Victor will be W. W. Bullock, vice president, Commercial Records Creation Department. Other Victor executives attending the convention are Steve Sholes, Charlie Grean, Sal Peruggi, Jack Dunn, Pat Kelleher, George Parkhill, Ben Rosner, Hugo and Luigi, Mike Collier, Ed J. Hines, and Emmett Dunn.

Mr. LISHMAN. In connection with this RCA Victor projected promotion plan, were there certain interdepartmental memos of the Americana Hotel that related to that?

Mr. EICHER. Yes, sir, there were.

Mr. LISHMAN. I will hand you two of these, and ask you to identify them for the record.

Mr. EICHER. These are two interdepartmental memos which relate to this specific function.

Mr. LISHMAN. And what is the substance of the first memo?

Mr. EICHER. The substance of the first memo is to our convention coordinator, indicating that RCA Victor records will need an amplifying system at the poolside at 5 p.m., on Saturday, May 30, for the purpose of carrying out the auction which they had planned.

Mr. LISHMAN. And what is the substance of the second interdepartmental memo?

Mr. EICHER. The substance of the second goes to Mr. Stewart, of Storz Broadcasting Co:

Re my discussion with you and the police chief and RCA Victor Records, I believe it is now clearly understood that there can be no form of gambling or

gambling equipment in evidence at the Americana during your convention. Thank you for obtaining for us assurance from RCA officials that there will be full cooperation in upholding the law.

Mr. LISHMAN. Well, is it a fact that during this convention, Mr. Eicher, that the hotel would not grant reservations except to disk-jockeys or their affiliated guests, or whatnot, except through the prior approval of the Storz station?

Mr. EICHER. Yes. Persons desiring to attend this convention had to send in a reservation form to Storz Broadcasting Co., and they indicated which hotel these persons would be assigned.

Mr. LISHMAN. I have a letter here of January 27, 1959, addressed to Mr. Bill Stewart, national director of programing, of Storz stations, in Omaha, Nebr., from your reservation department. I would ask you to read that into the record—if this is a correct copy of the letter—I would ask you to read the paragraph on page 2 which indicates this arrangement.

Mr. EICHER (reading):

It is our understanding that all requests for reservations are to be referred to Mr. William Stewart, in care of the Storz stations, Omaha, Nebr., who will in turn approve and send to the Americana for confirmation.

Mr. LISHMAN. Do you know whether Mr. Stewart is still employed by Storz?

Mr. EICHER. It is my understanding that he is not.

Mr. LISHMAN. Mr. Chairman, these questions today were to introduce some basic documentary material which may be of use to the subcommittee in future hearings.

I have no further questions of this witness at this time.

The CHAIRMAN. It isn't clear to me, Mr. Eicher, about the attendance and records which have been presented here.

As I understood, there were 2,000-plus rooms booked.

Mr. EICHER. No; the rooms were held in anticipation of booking.

The CHAIRMAN. That were held. But only 700 and something were actually booked?

Mr. EICHER. Yes, sir; that is correct.

The CHAIRMAN. Does that mean there were 700-odd people in attendance?

Mr. EICHER. No, sir. That figure means that many diskjockeys found it to their advantage to make reservations elsewhere, outside the Bal Harbour area, and attend the convention without actually being in the Bal Harbour area.

The CHAIRMAN. Do you know how many people—diskjockeys, did attend the convention?

Mr. EICHER. I want to understand your question clearly. How many actual diskjockeys, I do not. I know the total attendance.

The CHAIRMAN. What was the total attendance of the diskjockey convention?

Mr. EICHER. We estimated about 2,000, 2,500, 2,000 to 2,500.

The CHAIRMAN. I understood you to say at the outset it was somewhere between 2,000 and 2,500.

Mr. EICHER. Yes, sir; that is correct.

The CHAIRMAN. But there were only 750 rooms actually used of the original 2,000 held for booking?

Mr. EICHER. That is true; yes, sir. Many people who were in attendance were local people, who came up and did not stay at the hotel. And many were people who stayed in hotels elsewhere in Miami, on Miami Beach, and came up to the convention.

The CHAIRMAN. As you have already testified, a great many stayed at other hotels.

Mr. EICHER. Yes, sir; outside the Bal Harbour area. And the Bal Harbour area is the only one we have a record on.

The CHAIRMAN. Did these record companies pay the hotel expense, too—that is the rooms, for the time these particular rooms were used?

Mr. EICHER. Talking about guest rooms now?

The CHAIRMAN. Yes.

Mr. EICHER. Our records reflect that certain record companies did pick up certain accounts; yes, sir.

The CHAIRMAN. Well, the thing that I was—

Mr. EICHER. Certain room accounts.

The CHAIRMAN. The thing that I was trying to figure out—you described a moment ago a total of \$117,000 plus, and how it was distributed among the various record companies.

Mr. EICHER. Yes, sir.

The CHAIRMAN. When you outlined the events for which payments were made, a total of \$68,000, I was wondering what the additional \$48,000 or \$49,000 was for?

Mr. EICHER. The additional—the difference between those two figures would reflect room revenue—room rent charged against the company, telephone bills, tax, paid outs, and miscellaneous items of this nature.

The CHAIRMAN. Then a substantial part of it was for payment of the rooms, guest rooms themselves?

Mr. EICHER. Yes, that is true. For example, Atlantic Records might have had 10 people there, and included in their total is their room rent and expenses incurred on their rooms while they were there.

The CHAIRMAN. And that, of course, was payment for rooms used by the personnel or the people from Atlantic Records themselves?

Mr. EICHER. In some cases, yes. I think there are some cases where that is not the case. For example—well, Pat Boone came down, I recall as an example. And Pat had his wife with him. And along with them came former Governor Frank Clement of Tennessee and his wife. And these accounts were picked up by one of the record companies. And is reflected in the total for that record company.

The CHAIRMAN. Maybe I had better stop now.

Did the record companies pay the room expense of the diskjockeys who attended the convention? Did they underwrite it?

Mr. EICHER. It is my recollection that these master accounts show that there were some dickjockeys whose tabs were picked up, but certainly not all of them. Many of those whose tab wasn't picked up, was in that other figure of miscellaneous accounts.

The CHAIRMAN. That was the information I was seeking.

Mr. EICHER. Mr. Chairman, may I make just a remark here?

In defense of former Governor Frank Clement of Tennessee, who attended most of these functions, we found that this was a most—he found it a most dignified and proper convention, as did a former mayor of Miami Beach, as did certain radio station owners who at-

tended, and many other people of prominence who attended these functions. And there was no complaint or cause for embarrassment to any of these people who attended.

The CHAIRMAN. Well, I would assume that is so. And I would assume that any special guests who had a part to play on the program, or something there, would have the hotel and other expenses paid.

Mr. EICHER. Yes, sir, I think that is customary.

The CHAIRMAN. Mr. Devine?

Mr. DEVINE. I have no questions. You covered it very well, Mr. Chairman.

The CHAIRMAN. Mr. Mack?

Mr. MACK. I would like to know if you had any type of a registration. Normally at conventions there is a registration procedure to go through. Is it customary at your hotel to have a desk for the registration of those people attending the convention?

Mr. EICHER. Yes, sir, our records which have been subpoenaed will show that a person desiring a room would turn in a blank form indicating the type of room he wanted, the hotel he wanted it in, and the rate he wanted to pay. Then when he arrived at the hotel he signed a registration card, and these cards are part of the records which are here, sir.

Mr. MACK. He signed a general registration card at the hotel?

Mr. EICHER. Yes, sir.

Mr. MACK. That would be the same type of registration card you would have when you are not having conventions?

Mr. EICHER. Exactly, yes, sir.

Mr. MACK. My question is, was there any type of registration for the convention itself?

Mr. EICHER. Yes, sir, there was.

Mr. MACK. Well, then, isn't it possible to tell exactly—for you to tell exactly how many registered for the convention?

Mr. EICHER. No, sir. That registration desk was run by Storz Broadcasting Co., and we have no knowledge of how many identification badges, for example, they put out, or anything like that.

Mr. MACK. In other words, all of those records would be turned over to the Storz?

Mr. EICHER. No, they compiled it originally. We didn't turn it over. We had nothing to do with their registration desk.

Mr. MACK. And they have the custody of these records?

Mr. EICHER. Yes, sir, they would.

Mr. MACK. Then you would not know whether there was a fee required along with registration or not?

Mr. EICHER. I wouldn't know that, no, sir. We didn't charge a fee. I don't know whether they did or not. I don't believe they did.

Mr. MACK. You said you don't think they charged a fee?

Mr. EICHER. No, sir, I don't believe they did.

Mr. MACK. Well, isn't it rather unusual, or—you were somewhat surprised when you found that approximately 1,500 of the participants in the convention decided not to stay at your hotel and the other hotels where you made reservations?

Mr. EICHER. Yes, we found it pitiful.

Mr. MACK. You had no explanation as to why many of them—you might say three-fourths of them, decided not to stay at your hotel or at the hotels where you had made reservations?

Mr. EICHER. Yes, I think there is a very logical reason for it, sir. Many of these diskjockeys—the hotels in the Bal Harbour area had decided that they would not honor due bills, due bills being a process whereby room and board would be exchanged for commercial radio time—in other words, exchanging services for room reservations. The hotels in the Bal Harbour area decided we would not go into such an arrangement. And many people who called us up were told we were not going into this, and, as a consequence, they stayed elsewhere, where perhaps this would be acceptable.

Mr. MACK. Then that must have been a very important item, if three-fourths of the participants at the convention decided not to stay at your hotel for this reason.

That is all I have, Mr. Chairman.

Mr. ROGERS. Mr. Eicher, just one thing. I notice on this list you have here, barbecue and dance. It says bar, \$8,850, barbecue \$4,200, and breakfast, \$2,300. How come there is so much on the bar and so little on the other?

Mr. EICHER. Well, bourbon costs a little more than eggs. Seriously—which is the truth. The liquor costs more than the food. Do you want me to elaborate on that just a minute?

Mr. ROGERS. If you would.

Mr. EICHER. As I recall, there were some 2,000 bottles of alcoholic beverage consumed.

There were, apparently, 2,000, taking round numbers, bottles of bourbon consumed during that 8-hour recording session by Count Basie. And that figure is reflected in the bar figure which you see before you.

At midnight, when they started this session, they served a buffet-type barbecue, and that is the figure of \$4,000 you see. And concluding at the next morning, they served scrambled eggs and coffee, and Danish pastry, and that sort of thing, and that is the breakfast figure.

Mr. ROGERS. It doesn't seem there were very many left to eat breakfast. That was an all-night thing, beginning at 12 o'clock?

Mr. EICHER. It was an all-night recording session, yes, sir. They didn't dance. It was where you sit and listen.

Mr. ROGERS. That is all.

The CHAIRMAN. Mr. Moss?

Mr. MOSS. I believe you mentioned that the former Governor, Frank Clement, of Tennessee, was there. What was he there for? Was he a diskjockey?

Mr. EICHER. Former Gov. Frank Clement, of Tennessee, was there as a speaker. They had a regular series of seminars and meetings during the day. And the former Governor, Frank Clement, of Tennessee, spoke at one of them, pointing out the importance of the diskjockey in today's way of life.

He was immediately followed by someone of the armed services who made a presentation to the diskjockeys for their aid in recruiting.

Mr. MOSS. Is that a civilian official or military official?

Mr. EICHER. I think it was one of the military branches, if I remember rightly.

Mr. Moss. You don't recall?

Mr. EICHER. It is in the program, sir, which you have a copy of.

Mr. Moss. Was the mayor there to greet them?

Mr. EICHER. No, sir, he was not.

Mr. Moss. Well, you mentioned the mayor.

Mr. EICHER. The mayor and many of these dignitaries attended this all-night session we are talking about.

Mr. Moss. Where they had the bar, barbeque, and breakfast?

Mr. EICHER. Yes, sir.

Mr. Moss. I heard the 3 B's descriptive of the convention, but they were not bar, barbeque, and breakfast.

Mr. EICHER. What were they, sir?

Mr. Moss. I understand they made a headline.

I think that is all the questions I have.

The CHAIRMAN. Any further questions of this witness?

Mr. LISHMAN. No, sir.

The CHAIRMAN. Mr. Eicher, thank you very much for your appearance here today.

Mr. EICHER. I want to thank you for the opportunity to appear here, and assure you if there are any further questions, just call us. We will help you in any way we can.

The CHAIRMAN. I assume that the information, such as we have received from your hotel, would have to be received from other hotels.

Mr. EICHER. I would assume that would be the procedure, yes, sir.

The CHAIRMAN. Thank you very much. We are sorry if we have inconvenienced you.

Mr. EICHER. Not at all, sir. Thank you for your consideration.

The CHAIRMAN. You may be excused.

The CHAIRMAN. Is Mr. Stan Richards here? Are you Mr. Stan Richards?

Mr. RICHARDS. Yes, sir.

The CHAIRMAN. Will you be sworn, please?

Do you solemnly swear the testimony you give to this committee to be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. RICHARDS. Yes, I do.

The CHAIRMAN. Have a seat.

TESTIMONY OF STAN RICHARDS

The CHAIRMAN. You are Mr. Stan Richards?

Mr. RICHARDS. Yes, sir.

The CHAIRMAN. What is your address?

Mr. RICHARDS. 111 Killisite Road, Brookline, Mass.

The CHAIRMAN. What is your business or profession?

Mr. RICHARDS. I am a diskjockey.

The CHAIRMAN. Mr. Lishman, you may proceed.

Mr. LISHMAN. Mr. Richards, were you formerly a diskjockey at station WILD, Boston?

Mr. RICHARDS. Yes, sir.

Mr. LISIMAN. When did you leave that station?

Mr. RICHARDS. I believe it was December 19 or 20 of last year.

Mr. LISIMAN. And prior to being with station WILD, did you formerly work at other stations in Boston?

Mr. RICHARDS. Yes, sir.

Mr. LISIMAN. What other stations had you worked with?

Mr. RICHARDS. WCOP, WBZ television, WORL.

Mr. LISIMAN. In all instances were you an announcer or diskjockey.

Mr. RICHARDS. I was in addition to being a diskjockey, and an announcer, a program director and a so-called executive vice president.

Mr. LISIMAN. Where were you executive vice president?

Mr. RICHARDS. At WILD.

Mr. LISIMAN. Who was the owner or licensee of WILD?

Mr. RICHARDS. Mr. Nelson Noble.

Mr. LISIMAN. Why did you leave station WILD?

Mr. RICHARDS. Well, I was signed to a 1-year contract, which began on December 15, 1958, and was to continue to 1959, the same date, December 15. At the end of the 1-year period, or just short of that period, there was a clause in the contract stating that 30 days prior to the expiration of the contract the owner had the right to renew this contract, which he did not.

Mr. LISIMAN. Now, this is a little out of order, but in order to connect it with the witness who just preceded you, did you attend the diskjockey convention in Miami, Fla., in May 1959?

Mr. RICHARDS. Yes, sir.

Mr. LISIMAN. Were you a guest of Lester Leeds, now deceased, who was then connected with United Artists?

Mr. RICHARDS. Yes, sir.

Mr. LISIMAN. How did that come about?

Mr. RICHARDS. Well, Lester had called me on the telephone one day and asked me if I was going to the convention. I said I did not think so. He asked me why, and I said, well, it was an expensive trip, and I did not really see that much of a reason for going. And then he explained to me that he thought the convention would be a lot of fun, and it would be nice to get to know some of the other diskjockeys in the country. And he also said that there shouldn't be any expense on my part, other than getting to and from Boston, "because I happen to have a hotel room at the Americana," and he said, "I would like to invite you as my guest."

He said, "I have to pay the same amount of money whether you are in the room or I am in the room alone. It costs the same thing. We have to pay for two people, even though there is going to be only one."

So I said I would let him know, and I did.

About a week later I said yes, I thought I would go to the convention. I had a particular motive for going to the convention. At that time I was separated from my wife, and she had custody of the two children I have, my two sons. They were living in Miami. So more important to me than attending the convention was the fact that it gave me a change to see my children, which I did.

May I say something here, too. As far as the invitation given to me by the late Mr. Leeds, I did not see anything wrong with this.

I did not consider it payola. I considered it just about the same thing as when a radio and television editor of a newspaper goes on a trip sponsored by a television sponsor or a program, to be their guest, to view a so-called forthcoming show where we understand the tab is picked up not by the newspaper they work for, but by the prospective sponsor.

Mr. LISHMAN. Yes.

In addition, is it a fact that your employer, the head of the company, the licensee, Mr. Lester Noble, was also invited to go to this convention?

Mr. RICHARDS. His name is Nelson, sir.

Mr. LISHMAN. Nelson Noble.

Mr. RICHARDS. Mr. Leeds said to me, "We have five or six rooms we are renting." I assumed that when he said "we" he meant the company that he worked for. And if I knew of anybody else at the station that would like to go, he would like them come along and stay there as his guest. He in particular mentioned Mr. Noble. He said that he liked Nelson, he had met him, and if he wanted to come down and be his guest at the Americana, he was welcome, too.

Mr. LISHMAN. Mr. Richards, I will show you a Thermo-Fax copy of the account card or signature card of the Americana Hotel, front desk, May 28, 1959, and ask you to identify this and state the substance of what appears thereon. And I particularly call your attention to the notation in the upper right-hand corner.

Mr. RICHARDS. Yes, sir.

Mr. LISHMAN. Would you read this into the record?

Mr. RICHARDS. It says, "One twin." I imagine that means a twin room. Then it says the initial "N," and the name Noble, "the Americana Hotel, front desk, May 28, 2 p.m., 1959."

Mr. LISHMAN. And then does it also show on the same document the fact that you have registered in and the time that you registered—over there on the other side?

Mr. RICHARDS. It says, "May 28, 2:08 p.m."

Mr. LISHMAN. Yes, sir; and that is when you registered?

Mr. RICHARDS. If that was a Thursday afternoon, that was it.

Mr. LISHMAN. That card indicates that it was expected that Mr. Noble would be with you.

Mr. RICHARDS. There was a mistake here, sir. It says here "Norman Richards." I do not understand why that is on this particular thing. It says "Stan Richards," and then "Norman Richards." That is why I said one twin—I assume they meant the room, because I do not have a twin named Norman Richards. I am an only child.

Mr. LISHMAN. It does contain your name and the name of Mr. Noble.

Mr. RICHARDS. It contains three names; yes, sir.

Mr. LISHMAN. And you occupied that room—I assume you were there alone. Is that right?

Mr. RICHARDS. No; there was somebody else in the room with me.

Mr. LISHMAN. We will come to that.

Mr. RICHARDS. Soon, I hope.

Mr. LISHMAN. Well, who was the other person?

Mr. RICHARDS. He was another diskjockey.

Mr. LISHMAN. What was his name?

Mr. RICHARDS. William, fortunately—William Marlowe.

Mr. LISHMAN. Was he a guest of Lester Leeds, too, do you know?

Mr. RICHARDS. As far as I know.

Mr. LISHMAN. Did Lester Leeds pay your bill at the Americana?

Mr. RICHARDS. He was supposed to.

Mr. LISHMAN. Did you pay the bill?

Mr. RICHARDS. No, sir.

Mr. LISHMAN. Do you know how much your bill came to?

Mr. RICHARDS. No, sir.

Mr. LISHMAN. Well, I will show you a Thermo-Fax copy of the Americana account card for the room occupied by you, which purports to list the charges made by you during your stay, and ask you if this is, in your recollection, a correct representation of the amounts expended on your behalf while you were in that room.

Mr. RICHARDS. Well, some of these things I don't remember.

For example, there is something here called restaurant, and then it says "DOM." I do not know what that means. I do not remember going into any restaurant where we had to pay for anything. As a matter of fact, at the convention there was very little you could pay for.

Mr. LISHMAN. Well, do you recognize any of the chargeouts contained on that card?

Mr. RICHARDS. What do you mean by chargeouts?

Mr. LISHMAN. Do you recognize a charge on there in the amount of \$117.42 made at a clothing store in Miami?

Mr. RICHARDS. Yes.

Mr. LISHMAN. Did you make that purchase?

Mr. RICHARDS. Yes, sir. That was in the hotel.

Mr. LISHMAN. What did you purchase at that store?

Mr. RICHARDS. I purchased a jacket, a shirt, and I think a pair of slacks.

Mr. LISHMAN. Now, is it a fact that the total amount shown on that account card for the 3-day period of the convention is \$279.16?

Mr. RICHARDS. Yes, sir.

Mr. LISHMAN. Do you know how much of that was reflected—how much of that includes any charges that were attributable to Mr. Marlowe staying in the room with you?

Mr. RICHARDS. I imagine half of them.

Mr. LISHMAN. What did you do for United Artists, or what had you done for them in the past, which merited this payment on your behalf?

Mr. RICHARDS. Nothing, other than the fact I played what I considered to be good music, and I've never played rock and roll records since I have been in radio. I only played records that I felt were of entertaining quality, whether they were United Artists, Columbia, or any other company. I did nothing in return for Mr. Leeds, or United Artists. I was very happy to have him as a friend, may his soul rest in peace. He was a good friend.

Mr. LISHMAN. Did you ever play any records for United Artists as a diskjockey?

Mr. RICHARDS. Probably less than any other company.

Mr. LISHMAN. Did Tommy Leonetti ever appear as a guest artist on any of your shows in Boston in 1958?

Mr. RICHARDS. In 1958—no.

Mr. LISHMAN. When did he appear?

Mr. RICHARDS. Well, I do not remember the date, but he appeared on one of my television programs. It must have been around 1956, if I were to guess.

Mr. LISHMAN. What station were you with then?

Mr. RICHARDS. WBZ-TV, Westinghouse, in Boston. I was not with them. We used their facilities. I had better explain this to you.

I was not on WBZ's payroll. I was paid by the producer of the show who packaged the show. In other words, it was an outside production whereby he purchased the time from WBZ, and I was paid by him.

Mr. LISHMAN. Was this show called the Totem Pole Matinee?

Mr. RICHARDS. Yes, sir.

Mr. LISHMAN. What was WBZ's attitude toward this show, if you remember?

Mr. RICHARDS. Well, we—I say we—the producer of this show, I should say, put the idea of the show together and he wanted me to act as the so-called star of the show. I thought it was a terrific idea, and I was convinced that it could be a big and very popular show.

He then went to WBZ and they laughed and said they could not imagine anybody watching somebody dance on television, especially teenagers. So they turned the show down. But the producer of the show was determined that it could be a good show and a popular show, and by the way it was endorsed by the archbishop, now the cardinal of Boston. And he then went out and sold the show to Howard Johnson, the restaurant chain, and then WBZ was forced to put the show on the air by virtue of the advertiser and the advertising agency. So they put it on.

However, the show was owned by the producer, and they did everything it seemed, possible to try to destroy the show because it became such a huge success, and they were not able to take the bows for it. And this means I will never work at Westinghouse, probably.

Mr. LISHMAN. Well, when Leonetti appeared on the show, did you pay him?

Mr. RICHARDS. Yes, sir. I did not pay him, no. He was paid by the producer.

Mr. LISHMAN. Did you hand the check to Leonetti immediately after the program?

Mr. RICHARDS. No, sir. But it is my understanding that the producer did.

Mr. LISHMAN. And are you aware of the fact that Mr. Leonetti was then asked to endorse the check and return it to you?

Mr. RICHARDS. No, sir. There were never any checks returned to me in any form on any shows I have ever done.

Mr. LISHMAN. Do you understand that Mr. Leonetti endorsed the check and returned it to the producer?

Mr. RICHARDS. No, sir; I do not.

Mr. LISHMAN. Have you ever heard of that happening with respect to talent which appeared on the show?

Mr. RICHARDS. Yes, sir.

Mr. LISHMAN. But you never heard about it in connection with Leonetti?

Mr. RICHARDS. No, sir.

Mr. LISHMAN. Where did you hear about this?

Mr. RICHARDS. Well, some years ago I had heard there was a man named Bob Horn who did the American Bandstand show in Philadelphia which is now presided over by Dick Clark, and it was my understanding—now, please don't quote me on this—this is hearsay—it was my understanding that there was no budget for talent on the show. That was one reason why they were not paid.

Another reason why they were not paid was because some of the union officials, I guess, were lax in their duties, or at least there was an argument by some of these shows and their producers and the stations against the union, which is controlling these shows, and these stations contend that a lip sync—and if you are not familiar with this, it is where the artist sings along with the record—it is actually not a live performance, and because of this the station insisted the artists should not be paid, because they were not actually performing. So this has been a general argument in our business for a long time.

Mr. LISHMAN. It has been argued that is a subterfuge to get around having to pay the talent.

While you were with station WILD, did you play records on your show every day?

Mr. RICHARDS. Yes, sir.

Mr. LISHMAN. Were any of these records distributed by Music Suppliers, Inc.?

Mr. RICHARDS. Yes, sir.

Mr. LISHMAN. Were any of these records distributed by Mutual Distributors?

Mr. RICHARDS. Yes, sir.

Mr. LISHMAN. Are you friendly with Harry Carter, a partner in Music Suppliers, Inc.?

Mr. RICHARDS. Very.

Mr. LISHMAN. Did you play golf or have you played golf with him at the Commonwealth Country Club?

Mr. RICHARDS. Yes, sir.

Mr. LISHMAN. Are you aware that Mr. Carter has membership at this club, paid for by Music Suppliers, Inc., for the purpose of entertaining diskjockeys?

Mr. RICHARDS. I do not know if that is why he has the membership. I know he has a membership there. And he has extended many invitations to the diskjockeys—to be his guest and play golf there.

Mr. LISHMAN. Did you ever borrow any money from Harry Carter and Mutual Suppliers, Inc.?

Mr. RICHARDS. Yes, sir.

Mr. LISHMAN. For what purpose?

Mr. RICHARDS. For what purpose did I borrow the money?

Mr. LISHMAN. Yes, sir.

Mr. RICHARDS. Because I was in financial need of money, to pay bills.

Mr. LISHMAN. How much did you borrow in total from Harry Carter?

Mr. RICHARDS. I do not remember the figure. I would not even hazard a guess. I imagine you have the figures there.

Mr. LISHMAN. How much did you borrow from Music Suppliers?

Mr. RICHARDS. Well, that is what you are talking about. Music Suppliers and Harry Carter to me is one and the same.

Mr. LISHMAN. Did you sign any notes for these loans?

Mr. RICHARDS. No, because we were friendly enough, I guess, that he never had to ask me for one.

Mr. LISHMAN. Did you put up any collateral?

Mr. RICHARDS. No, sir.

Mr. LISHMAN. Was any interest charged on the loan?

Mr. RICHARDS. No.

Mr. LISHMAN. Is it a fact that you still owe Music Suppliers money?

Mr. RICHARDS. Yes, sir.

Mr. LISHMAN. How much do you still owe Music Suppliers?

Mr. RICHARDS. I don't know. It would be a couple of thousand dollars.

Mr. LISHMAN. Did you ever play any of the records of Music Suppliers, Inc., on the air while you were a diskjockey at WILD?

Mr. RICHARDS. Yes, sir.

Mr. LISHMAN. Did you tell an investigator from this committee that if it came to a question of playing one of two records, that you would play the record belonging to a "friendly" distributor?

Mr. RICHARDS. If I thought it was as good a record or better.

Mr. LISHMAN. Well, does Music Suppliers, Inc., come under the category of a friendly distributor?

Mr. RICHARDS. Yes, sir; very.

Mr. LISHMAN. Now, did you also receive vacation money from Music Suppliers, Inc.?

Mr. RICHARDS. Yes, I did.

Mr. LISHMAN. About how much did you receive?

Mr. RICHARDS. Gentlemen, I do not know. It is hard to answer that. I do not know what period you are talking about.

Mr. LISHMAN. Well, would this be reflected in the books of Music Suppliers, Inc.?

Mr. RICHARDS. I imagine it would. I do not know anything about his business or his books.

Mr. LISHMAN. Well, were any of your employers at the station aware that you were receiving money from record distributors?

Mr. RICHARDS. I think my employer was, yes.

Mr. LISHMAN. Did he require you sign an affidavit to that effect?

Mr. RICHARDS. No.

Mr. LISHMAN. Why didn't he?

Mr. RICHARDS. I don't know.

Mr. LISHMAN. Did you ever discuss the receipt of these moneys with your employer?

Mr. RICHARDS. No.

Mr. LISHMAN. At any time when you played a record of Music Suppliers, Inc., did you ever announce on the air that payments had been made to you by that company?

Mr. RICHARDS. Yes.

Mr. LISHMAN. When did you do that?

Mr. RICHARDS. Well, at one time they had what they called the hit record of the week, and they purchased radio time from the em-

ployer. I don't know what they paid for that. But he would pay so much money. And in return for his money he would receive so many plays of the record at specific times—I think it was three times a day. Usually it was tagged, "This is Music Suppliers' hit record of the week."

Mr. LISHMAN. Well, wasn't that payment actually received by the station owner, rather than by you?

Mr. RICHARDS. That is right. I never received payment to play any records, sir. As a matter of fact, let me say and go on record here that in your records you will not find payments from any distributor in Boston, or any gifts, let's put it that way, to me, other than I believe Music Suppliers, except maybe some Christmas gifts. This has been a very common practice in the music business, to receive gifts, whether they be in cash, meals, tickets to a theater for your wife or your family. I think that if every diskjockey were to tell the truth, and the truth were to be known, all over America, I don't care where he is, these courtesies are given to them. Maybe one of the reasons that I was never a so-called payola diskjockey—I was never on anybody's payroll for any weekly amount of money. I never asked anybody to give me money to play their records. Maybe one of the reasons is because I had very low ratings. And this is very questionable as far as the ratings go.

I would like to get this into the record here and now, because according to one of the rating services, Pulse, Inc., at one time I think I owed them six listeners for a month. Yet in that month period, where I owed them those listeners, I received about 18,000 inquiries into a particular contest that we had. So something doesn't make sense somewhere along the way.

Mr. LISHMAN. Did you ever give what are known as exchange checks to Harry Carter?

Mr. RICHARDS. Yes, sir; I have some of these with me.

Mr. LISHMAN. About how much?

Mr. RICHARDS. I do not know. I would say in the thousands.

Mr. LISHMAN. Now will you describe what an exchange check is, please?

Mr. RICHARDS. Well, when I was going through some of my financial troubles, which dealt with my personal life, at times I would be pressed for a bill which would be due, for example, tomorrow. I did not have the money for the bill to be paid tomorrow, so I would go to Harry and say, "If you will give me \$300 which I need for tomorrow, I will give you a check and I will date it a week from now at which time you can deposit this check and it will clear because at that time I will have received some money from other sources, and then the check will be made good." Which he did. We swapped many of these.

Mr. LISHMAN. Well, would it be correct to say that you owe approximately \$3,100 to—

Mr. RICHARDS. It could very well be. I would not question him if he said any amount of money, because I believe him to be a very honest individual.

Mr. LISHMAN. Did you ever receive money or things of value from record distributors other than Music Suppliers, Inc.?

Mr. RICHARDS. Yes. I do not remember all of the things.

Mr. LISHMAN. Could you name some of the other record distributors from whom you received money or other considerations of value?

Mr. RICHARDS. Well, there was Mutual in Boston, on Christmas they gave me, I don't remember what it was—I think it was \$50 in cash. I think they gave me \$50 in cash. That is the only time they ever did give me anything. Not that I wanted anything from them. But their representative came around and said, "Here, we did not have time to buy you a Christmas gift, but do whatever you want with this. Buy yourself a Christmas gift and have a good time."

Some of the major companies also mailed us gifts. I must have 25 wallets I received on Christmas, 30 pairs of cuff links, and things of that nature. Mr. Perry Como once sent me a box of cheese which smelled up the house for 3 months.

Mr. LISHMAN. Well, Mr. Richards, if I should tell you that according to the books and records of Music Suppliers, Inc., and Mutual Distributors and Records, Inc., that for the period 1957 to 1959 you received \$6,225, would that be accurate?

Mr. RICHARDS. I imagine it would be.

Mr. LISHMAN. And each of those companies are record distributors?

Mr. RICHARDS. Yes, sir.

Mr. LISHMAN. For what purpose did they pay you that amount of money?

Mr. RICHARDS. Well, I mentioned before I do not know why, really, because my ratings were so low. As a matter of fact, so far, since I have been here, sir, all I have heard is why the diskjockeys have taken the money. Nobody has said anything about why the man has given the money to the diskjockey. And it will be interesting to hear from some of these people as to why they did give this money.

Mr. LISHMAN. They are going to be here as witnesses.

Mr. RICHARDS. As a matter of fact, I often wonder, because nobody said to me play this record for 3 weeks because I am going to give you X amount of dollars—it is very hard to explain, with all due respect to you gentlemen here—I have heard stories where some politicians earn \$17,000 a year but yet a man would spend \$10,000 on his campaign. So maybe you wonder, you say why is he spending this \$10,000? He hasn't made any verbal agreement or written agreement with the man. But yet we all know this takes place. I would parallel this the same way. I see nothing wrong in it.

A man I imagine hopes he will win my favor by doing this. But we have made no deals. I have made no deals.

Mr. LISHMAN. But you did play records distributed by these companies.

Mr. RICHARDS. Well, I had to because—I could not play records if I did not play any distributed by them. They had every record that was ever made.

Mr. LISHMAN. Well, why do you think they paid you this money?

Mr. RICHARDS. Like I say, I imagine in return for favors that I could do them. I was in a position to do them favors. I will say this—well, one particular favor I was asked many times by people in the business, such as these distributors, was to put a particular record star on my show for an interview and give them exposure. I saw nothing wrong with this. And I did. If I thought there was anybody but Fabian, I would interview them. I don't mean to put Fabian

down. He is a nice boy probably. But some of these guitar-playing singers that came from you know where, they can't even say their name. And Bostonians are fairly proper people that listen, so we did not put those kind of people on.

Mr. LISHMAN. Don't you think that when Mr. Carter would ask you, for example, to put on as a guest artist, someone like Joni James, I am told that by having that artist appear on that program he expected it to enhance the sale of the records that were being put out.

Mr. RICHARDS. Certainly, yes, sir. It would enhance the artist's record more if I would play it. I mean after awhile we used to discuss this. I said I didn't understand the purpose of them being there—I think it does much more good if I were to play the record.

You see, by giving diskjockeys money, I think—or gifts—I think that some of these people have in the back of their mind, it is the same old thing as when we used to go to school and we used to give our teachers better gifts than the kids that sat next to you. Why did you give this teacher a better gift? Probably because you felt that maybe when she marked you in school, it would be a little bit better. Well, maybe that is the reason these distributors give these gifts.

By the way, I would like to enter on the record that I know of many many businesses—as a matter of fact, this seems to be the American way of life, which is a wonderful way of life. It is primarily built on romance—I will do for you, what will you do for me?

Mr. LISHMAN. Well, how about the record distributors that cannot afford to pay the payola?

Mr. RICHARDS. He never had any trouble with me, sir. I would play his records. What record distributor cannot afford to pay it, though? I mean they do pretty well, I guess. I mean they spent \$100,000 at the convention, so things must be pretty good in the record business.

Mr. LISHMAN. Mr. Chairman, we have had an accountant on loan from the General Accounting Office who has gone over the books and records of Music Suppliers, Inc., and has made a report with a set of schedules indicating the amounts of money paid to the witness by Music Suppliers, Inc., Records, Inc., and Mutual Distributors. I think that this evidence could be placed in the record at a later time, because this accountant will be with us for some time. Then we can proceed with the next witness. As far as I am concerned we will reserve the right to put in these schedules at a later date. Otherwise we can call the accountant now and put it in.

The CHAIRMAN. Has this witness testified to each of these items?

Mr. LISHMAN. No, sir; but he has testified to the substantial accuracy of the sum total figure, which was read to him.

The CHAIRMAN. Has this witness had an opportunity to see this?

Mr. RICHARDS. I will take their word for it. I mean these are copies of the records. I am not going to question you on this.

The CHAIRMAN. Very well. Let it be received as an exhibit.

Mr. LISHMAN. The paper being received as an exhibit is a 2-page Thermo-Fax copy prepared by the accountant, Mr. Keelan, entitled, "Boston Record Distributing Companies, Schedule of Payments to Stan Richards for 3-Year Period, 1957 to 1959."

(The document referred to is as follows:)

BOSTON RECORD DISTRIBUTING COMPANIES

Schedule of payments to Stan Richards for 3-year period, 1957-59

Date	Check No.	Source	Account	Amount		Total
				Paid	Repaid	
<i>1957</i>						
Jan. 1	Balance	Music Suppliers, Inc.....	Loans receivable.....	\$500		\$500
Feb. 28		do.....	do.....	500		500
May 31		do.....	do.....	300	\$300	0
<i>1958</i>						
Feb. 28		do.....	do.....	500		500
Sept. 30		do.....	do.....	500		500
		Total.....		2,300	300	2,000
<i>1957</i>						
July 29	13900	Music Suppliers, Inc.....	Exchange.....	350		350
Aug. 12		do.....	do.....		350	350
Oct. 4	14170	do.....	do.....	300		300
10		do.....	do.....		300	300
18	14247	do.....	do.....	300		300
28		do.....	do.....		300	300
Nov. 29	No check	do.....	do.....	50		50
15	(E.M.I.)	do.....	do.....		50	50
26		do.....	do.....		50	50
Dec. 17	14477	do.....	do.....	200		200
27	14559	do.....	do.....	300		300
28		do.....	do.....		200	200
		Total, 1957.....		1,500	1,250	250
<i>1958</i>						
Jan. 13	Balance	Music Suppliers, Inc.....	Exchange.....	250		250
27	14603	do.....	do.....	350		350
27	14708	do.....	do.....	500		500
13		do.....	do.....		300	300
23		do.....	do.....		350	350
Feb. 17	No check	do.....	do.....	350		350
19	No check	do.....	do.....	350		350
7		do.....	do.....		350	350
May 5	15141	do.....	do.....	300		300
		Total, 1958.....		2,100	950	1,150
<i>1959</i>						
May 19	16761	Music Suppliers, Inc.....	Promotion (scope) ..	25		25
<i>1957</i>						
Feb. 5	13223	Mnsic Suppliers, Inc.....	Advertising.....	500		500
Mar. 25	13442	do.....	do.....	25		25
May 2	13578	do.....	do.....	420		420
June 4	13897	do.....	do.....	75		75
10	13727	do.....	do.....	450		450
July 10	13869	do.....	do.....	150		150
Sept. 4	14031	do.....	do.....	50		50
Oct. 22	14250	do.....	do.....	250		250
Nov. 7	14294	do.....	do.....	200		200
7	14295	do.....	do.....	50		50
Dec. 10	14425	do.....	do.....	50		50
19	14502	do.....	do.....	150		150
27	14560	do.....	do.....	50		50
		Total, 1957.....		2,420		2,420
<i>1958</i>						
Jan. 15	14666	Music Suppliers, Inc.....	Advertising.....	50		50
Aug. 7	15528	do.....	do.....	100		100
Dec. 17	16082	do.....	do.....	150		150
		Total, 1958.....		300		300

Schedule of payments to Stan Richards for 3-year period, 1957-59—Continued

Date	Check No.	Source	Account	Amount		Total
				Paid	Repaid	
1959						
May 19	16760	Music Suppliers, Inc.....	Advertising.....	\$100	-----	\$100
Nov. 16	17452	.....do.....	.....do.....	30	-----	30
		Total, 1959.....		130	-----	130
1957						
Dec. 18	5456	Mutual Distributors, Inc...	Advertising.....	50	-----	50
1957						
Dec. 18	2426	Records Inc.....	Unknown.....	100	-----	100
1958						
Jan. 28	2583	.....do.....	.....do.....	50	-----	50

SUMMARY

Source	Account	1957	1958	1959	Total
Music Supplies, Inc.....	Loans.....	\$1,000	\$1,000	None	\$2,000
Do.....	Exchange.....	250	900	None	1,150
Do.....	Promotions.....	None	None	\$25	25
Do.....	Advertising.....	2,420	300	130	2,850
Mutual Distributors, Inc.....	do.....	50	None	None	50
Records Inc.....	Unknown.....	100	50	None	150
Total.....	-----	3,820	2,250	155	6,225

Mr. RICHARDS. May I say something, sir?

The CHAIRMAN. Yes.

Mr. RICHARDS. Don't interpret anything I said—I am just trying to be honest and fair with you people. I do not feel you have had much of a shake so far from what I have heard.

Indeed, this to me is a great privilege because I came from a poverty-stricken family in a small community in Boston and here I am sitting with very, very honored men in Congress. It is a privilege. I wish I were here under different circumstances, because I know what the newspapers will probably write and do. They have a way, with all due respect to you people of the press here, of coloring these stories and making us look like vicious characters, that we have taken a gun and been a criminal and asked people to give us money to do something.

We did not ask—I say we—I won't vouch for other people. But I have not asked anybody to pay me money to expose their merchandise. I know that this will go against me in getting a job, I am sure. As a matter of fact, if any of you hear of a job, I can use one. I have not worked for awhile. Yet we were pretried by the newspapers before we even got here. And we are only here, as I understand, as witnesses. We are not being indicted on any charges. But yet if you read the newspapers, "So and so tells all to probers behind closed doors." But then the text of the story says nothing. But they flash these big headlines.

I think they have picked upon, in general, a pretty fair bunch of guys, diskjockeys, who have knocked themselves out public service-wise. I know I speak for myself. If I were to have been paid for all the public service programs I have done in my time in radio, 12 years, at the rate I would get if I did a record hop, I would be a very wealthy man.

So again I say that I do not think we have done anything wrong.

A year ago at this time I fought a two-man campaign against rock-and-roll and junk music and poorly produced records. I say a two-man campaign, because I will include a man that will probably appear here before you named Bill Marlowe. I hired him. I hired him because of his good reputation in playing good music and music he believed was good. And I was in a position a year ago to play 4 hours of rock-and-roll records a day. And if I wanted to put the wedge into somebody and say, "Look, if you think that this show is worth some money, you are going to have to pay," I could have done that. But I did not. Instead of playing these records, which probably would have been more lucrative to me, I would have received record hops by playing these records, because they appealed to the so-called teenager of our time that have a very great taste in music, which I have heard some diskjockeys say about records by Fabian—a great record, or it is a gasser, as you brought out before—we never did this. We played Frank Sinatra, who for my money is the greatest singer of all time. He represents quality in entertainment.

So I could have done these things that I am sure the newspaper may accuse me of. But I never did.

I have nothing more to say, unless you want to ask me something. It says on the subpoena I am not allowed to go unless you say it is O.K.

The CHAIRMAN. Maybe I would like to know the source of that \$10,000 for a political campaign that you were talking about.

Mr. RICHARDS. Well, I believe Life magazine once did a story on the late Governor Curley. They mentioned him in particular. I can remember reading one story, but there have been others. The names slip my mind, sir. I mean you see ads in newspapers during election time where it says "This ad was placed by John Jones," or whatever it may be, certainly Mr. Jones must have the same thing on his mind as the record distributors have on their mind when they give these gifts out. It must amount to the same thing. He may be a contractor hoping that something will come out of it. These are things that I am assuming.

The CHAIRMAN. Mr. Richards, I should think you have the reputation of being a very fine diskjockey, because certainly you have the gift that goes along with it.

Mr. RICHARDS. It was said of me once that I was vaccinated with a phonograph needle. But meanwhile I am not working, and I would love to.

The CHAIRMAN. I am sincere about that. I think——

Mr. RICHARDS. Well, thank you.

The CHAIRMAN. I think you should have been and no doubt were a very good diskjockey. I see no reason why an incident which has been unfortunate—I refer to it as pathetic—I think it is pathetic. I still think so—of some of the others involved. But I see no reason why that should in itself prevent you and a lot of other good fellows from obtaining employment in a profession in which you are most proficient. I think it is a fact that you have got to prove yourself. I do not think it is enough just to explain away that you received certain amounts of money in addition to the actual salaries you were paid, and that ultimately you did get into the jam you are in now, with your unemployment. You cannot explain that away.

Mr. RICHARDS. May I say this. It seems like I am only going by a feel that I have in the industry that people that appeared here before your committee will be frowned on.

The CHAIRMAN. This committee has received letters, innumerable letters, we get sometimes a thousand or more letters a day, from people complaining about the kind of music and the kind of broadcasting trends. Now, there is something to that.

Mr. RICHARDS. I agree with you. I am the happiest person in the world because I love music, good music, entertaining music that I can see coming back on the air now.

The CHAIRMAN. Well, our job here, we must not and will not overlook it, is for legislative purposes. And what we must do is find out: No. 1, whether the agencies involved with the regulation of this industry are doing their job; and No. 2, if they are not, is there legislation needed for them to do it.

Now, we have got to find out precisely how it is carried on. That, we are doing. In order to do that we have got to find out what has taken place. And we do know that there is apparently certain things getting within the industry that regardless of how you try to explain it away, it will lead to the hard core and it will be worse than a cancer.

This is a medium of mass communication that goes out to the American people and formulates opinion. Don't tell me it does not. I repeat what we were told—many of these records that went on the air as the top 50 had never even been played before. You know about that.

Mr. RICHARDS. Yes, sir.

The CHAIRMAN. That is true, isn't it?

Mr. RICHARDS. Not in my case, but I have heard it is true, yes, sir.

The CHAIRMAN. This is a pretty serious proposition—with the highly competitive element in this thing, where the public is involved, where they have no say about the type of programing put off on them—then I think it is the responsibility of somebody to find out what is going on.

Mr. Devine, do you have any questions?

Mr. DEVINE. Mr. Richards, at the time your contract was not renewed on WILD, was anything said to you as to why it was not?

Mr. RICHARDS. Oh, yes. The station owner has lost a lot of money. As a matter of fact, he has no more money to operate with. And it has since been sold. He was in the process of selling it then. He just did not have any more use for me, because first of all he could hire a man to do what he felt was adequate, just to stall for time until the station was sold, without having to pay this high amount of salary which I received.

Mr. DEVINE. Well, the fact that they were not making any money, did he say that was partially your fault?

Mr. RICHARDS. No. As a matter of fact, if he had to do it over again, he said he would do the same way. We were 1 year too soon. We were just before your committee. If your committee had come out when we went into business—we tried to do what you are doing—we tried to give New England good music. We did not play raucus rock and roll if they were No. 1 for 9 months; 90 percent of the music we played were major labels—I say major—like Columbia, Capitol, Decca, RCA-Victor, and 90 percent of which were albums.

Mr. DEVINE. Do you feel that this sudden righteousness on the part of a number of radio stations is a change in moral ethics, or just they feel they had better move because this committee is inquiring into this particular situation?

Mr. RICHARDS. I think it had something to do with it. But I also think that the record companies are doing something about changing the music that they have been putting out.

Mr. DEVINE. You think they would have if this committee had not been in existence?

Mr. RICHARDS. No, I do not. Not until they were forced to. Or at least until the so-called trend or popularity of this music died out.

Mr. DEVINE. Then you feel that perhaps some useful purpose may be served by this committee.

Mr. RICHARDS. Don't interpret this as I am trying to butter you up, because I am dead anyway. But there is no question in my mind. Oh, yes, I was convicted before I even came down. I said to somebody, "I am going to Washington to appear as a witness." "Gee, that's too bad."

Mr. DEVINE. You are convicted of what offense?

Mr. RICHARDS. I don't know—just a thing.

Mr. DEVINE. I am inclined to agree with you in your remarks that the mere fact that a man is in the occupation or profession as a disk-jockey, that does not necessarily mean that he is not in a very legitimate enterprise. I think you should be commended in your efforts to discourage a certain objectionable type of music and stay in that realm that you think is of a higher class. But I hope the public across the country generally does not take the attitude that just because a man is in your occupation that there is something wrong.

Mr. RICHARDS. Well, I could tell you one very fast cute story. Maybe somebody will hear me ad libbing. I have no written copy like some of the people. I just say what is on my mind. I am accused of having a big mouth all the time. By the way, I never used a script in my life, since I have been doing radio and television. Everything I do is spontaneous ad lib.

You investigated some of these long-winded commercials. Well here I am. Sometimes I get lost and I start talking. As a matter of fact, I just forgot what I was going to say to you.

Mr. DEVINE. I have no further questions.

The CHAIRMAN. That was a good story.

Mr. RICHARDS. Excuse me, I was just going to tell you a story. Yes, you did remind me.

Prior to the expiration of my contract with WILD, I did not know the financial straits of my employers, and I felt he did like us, and we were doing a good job. I felt that my contract would be renewed. So I endeavored to buy a house. I was going to get married again. I was going to buy this little house in a small community in Boston. The builder was so excited he gave me a thousand dollars off on the price of the house that he had quoted somebody else because he said as a diskjockey he figured I would probably get on the air and tell people that this was a great place to live and he would sell houses. However, shortly after this my contract was not renewed and this was in the newspaper. And then your committee started your probe and the newspapers started with their stories.

I went back to him to get my deposit back. I told him I could no longer afford to buy the house. He wouldn't give it to me back. He said, "You're a diskjockey. Who wants to move into this neighborhood now, who wants to live here." Like I had leprosy. That's the truth.

So we diskjockeys, fellow colleagues, have been sentenced.

The CHAIRMAN. Well, I cannot believe it is really that bad. I cannot share your view. I know you are discouraged. You have the right to be under the circumstances. But there are a lot of very fine outstanding diskjockeys. I think you will find there are innumerable diskjockeys that would take a different view from what you have said. However, your testimony has been very frank, open, and freely given.

Mr. MACK. I hate to interrupt the witness, but I was interested in one—I was interested in several comments you made today. I was interested in particular about the record companies being able to afford to offer gratuities or—I hesitate to refer to it as payola, but that gets the point across—that they can afford to pay for certain privileges.

Well, then, if you make such a statement, if they cannot afford to pay them, they probably would not be in the record business very long, is that correct?

Mr. RICHARDS. Well, I think what you will see happen in the very near future are these fly-by-night companies that come up with these one and two records, I think eventually you will see that they no longer will be in business after this committee is through with this investigation, because as you have heard in other testimony, there are literally hundreds of records released every week.

Now, you could spend 10 hours a day listening to them if you had to. And I know that in my case, for example, when records came into the studio, I did not have time to listen to these. As a matter of fact, I rarely ever played a record if I was not familiar with the name of the company. I looked for the established stars—Perry Como, Pat Boone, Frank Sinatra, Kay Starr, Peggy Lee—anybody that was an entertainer. When I saw their name on a label, I took time to listen to the record. I always played one side of that record, because none of these people ever made a bad record.

But when you say a record by Ookie Ook, who has got 3 minutes to listen to that, unless I suppose someone came into you and gave you a gratuity.

Mr. MACK. Without the gratuities, then, probably only the best music would get played.

Mr. RICHARDS. There is no question about it in my mind, that the country will now enjoy—it will still be popular music, which will reflect the taste of Americans, but it will be of a better quality.

Mr. MACK. Just as a matter of interest, would you mind stating what you received as a diskjockey when you were last employed—that is, from your employer?

Mr. RICHARDS. In dollars, you mean? \$450 a week. I was overpaid.

Mr. MACK. And your services were terminated when, approximately?

Mr. RICHARDS. Well, the contract was up on December 15. However, I do not remember the days now, but on December 15—I think it.

was like a Monday or Tuesday, and he said, "Just finish out the week," which would bring us up to the Saturday, which was, I think, about the 19th or 20th, and that was my last day.

Mr. MACK. And since that time you have received no gratuities?

Mr. RICHARDS. Yes, I have. As a matter of fact, this amazes me even more. I am not working and people still call me up to take me to lunch. And the only way I can give them a plug is on my hi-fi at home. But this is the truth. I have been in New York, hoping to land a job there. And many people that are friends of mine in New York see me, and as a matter of fact they even make it a point to say, "You see, just because you are not on the air I will still buy you a dinner,"—have dinner, have lunch, or something like that.

Mr. MACK. It would appear they have a lot of confidence in you, perhaps even more than you have.

Mr. RICHARDS. That is true. I do not have too much confidence left in myself, because I am having such difficulties.

Mr. MACK. I wonder if the trips to this Florida convention were paid by most of the individuals.

Mr. RICHARDS. I do not know about most of the individuals. I can answer for myself. I would say, if I had to guess, that they were paid by the individuals. I know I paid for my own plane fare.

Mr. MACK. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS. Your realism is most refreshing.

Mr. RICHARDS. Well, I swore to tell the truth, sir. And I do not want to be held for any perjury here. And your boys like Mr. Kelly have done a thorough job. He even knows the number of the room I was in, and I do not remember that.

Mr. ROGERS. You do not say you told the truth because we knew it anyway. You did it because you wanted to.

Mr. RICHARDS. I had an obligation to God. I swore that I would tell the truth.

Mr. ROGERS. Have you tried to get a job?

Mr. RICHARDS. Yes, sir. As a matter of fact, I did very well in New York at two or three stations which I would prefer to remain nameless. And I was told that if there had been a job, for example, in one station at that moment, he would have hired me. That is how good the audition was that I did for him.

Mr. ROGERS. Has anyone turned you down?

Mr. RICHARDS. No, because I just got here today. It will be interesting to see what happens now, when I go back. If you call me back here next week, I will give you a better answer.

Mr. ROGERS. After your performance here today, you will be a nationally advertised product. You will get some calls from Hollywood.

Mr. RICHARDS. I would like to. I would accept them, too. I am anxious to go back to work.

The CHAIRMAN. Mr. Moss.

Mr. MOSS. No questions.

The CHAIRMAN. You do still live in the Boston area?

Mr. RICHARDS. Yes, sir.

The CHAIRMAN. That is where you would like to work?

Mr. RICHARDS. I would like to work anywhere I can make a living, and I must work because I have two children to support.

The CHAIRMAN. You just put in a nice plug for Mr. Kelly. There are a lot of Kellys in Boston.

Mr. RICHARDS. I will say this—Mr. Hoye and Mr. Kelly and everybody else connected with this investigation have been wonderful. There has been no pressure applied. Everybody has been more than cooperative with me. It is nice to have that happen to you.

The CHAIRMAN. Well, Mr. Richards, let me, on behalf of the committee, thank you for your appearance and testimony here today.

Mr. RICHARDS. Thank you, sir.

The CHAIRMAN. I wish you good luck.

Mr. RICHARDS. Thank you very much.

The CHAIRMAN. Mr. Marlowe, since you have been very well taken care of by Mr. Richards, since your experience has already been included in the record, I think, probably, it would serve no further purpose to have your testimony, so you may be excused.

Mr. MARLOWE. Thank you, sir.

The CHAIRMAN. That will conclude the hearings for today. The committee will adjourn until 10 o'clock next Monday in this same room.

At this time we will go into executive session.

(Whereupon, at 5:30 p.m., the committee went into executive session, the open hearing to reconvene at 10 a.m., Monday, February 15, 1960.)

RESPONSIBILITIES OF BROADCASTING LICENSEES AND STATION PERSONNEL

MONDAY, FEBRUARY 15, 1960

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON LEGISLATIVE OVERSIGHT
OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The special subcommittee met, pursuant to recess, at 10 a.m., in the caucus room, Old House Office Building, Hon. Oren Harris (chairman of the special subcommittee), presiding.

Present: Representatives Harris, Mack, Moss, and Devine.

Also present: Robert W. Lishman, counsel; Beverly M. Coleman, principal attorney; Oliver Eastland, attorney; James P. Kelly, investigator; Herman Clay Beasley, clerk; and Jack Marshall Stark, minority counsel.

The CHAIRMAN. The committee will come to order.

Are you Mr. Jack Gold?

Mr. GOLD. Yes, sir.

The CHAIRMAN. Do you object to these cameras?

Mr. GOLD. No, sir.

The CHAIRMAN. Will you stand, please, sir, and be sworn. Do you solemnly swear the testimony you give to this committee to be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. GOLD. Yes, sir.

TESTIMONY OF JACK GOLD; ACCOMPANIED BY ANDREW J. FEINMAN, ATTORNEY

The CHAIRMAN. What is your name?

Mr. GOLD. Jacob Gold—Jack Gold.

The CHAIRMAN. What is your business, Mr. Gold?

Mr. GOLD. I am, I run a small record manufacturing company and music publishing company.

The CHAIRMAN. What is your address?

Mr. GOLD. 1650 Broadway, New York.

The CHAIRMAN. Is your residence in New York?

Mr. GOLD. Yes, sir. Long Island.

The CHAIRMAN. Long Island?

Mr. GOLD. Yes, sir.

The CHAIRMAN. You are then a music publisher and record manufacturer?

Mr. GOLD. Yes, sir.

The CHAIRMAN. Is your company the Jack Gold Music Co.?

Mr. GOLD. Yes, sir.

The CHAIRMAN. And Paris Records?

Mr. GOLD. Yes, sir.

The CHAIRMAN. I observe that you have a gentleman with you. I assume he is your counsel, is that right?

Mr. GOLD. Yes.

The CHAIRMAN. I think the record should show at the outset your appearance. Would you state your name, please?

Mr. FEINMAN. My name is Andrew Feinman, 10 East 40th Street, New York City.

The CHAIRMAN. You are appearing as counsel for Mr. Gold?

Mr. FEINMAN. Yes.

The CHAIRMAN. You are familiar with the rules of procedure, that you are, under the rules, to advise him of his constitutional rights?

Mr. FEINMAN. Yes, sir.

The CHAIRMAN. Mr. Lishman, you may proceed.

Mr. LISHMAN. Mr. Gold, do you recall going to Cleveland in April or May 1957?

Mr. GOLD. Yes, sir.

Mr. LISHMAN. Will you please state why you went to Cleveland at that time?

Mr. GOLD. A week or 10 days before the trip, I had released a record on my label which was then 2 or 3 months old, the label that is, and the record was doing well in the Boston area, which naturally that was my home and it had gotten to be No. 3 or No. 2 in the Boston area and in trying to spread that record, I had called a number of diskjockeys around the country and gone on a trip to try to promote the record.

Mr. LISHMAN. And prior to going to Cleveland, had you telephoned to a diskjockey who was then employed by station KYW?

Mr. GOLD. Yes, sir; I called Joe Finan.

Mr. LISHMAN. You called him. Would you please state the substance of that phone conversation?

Mr. GOLD. Well, I called him in the natural process of trying to promote this record, and when I called him, he said, "I was just going to call you. You have a record that I think will be a hit," which pleased me, naturally. He said, "The only trouble is, you are with the wrong distributor." And I didn't think that was exactly germane. I tried to pass that over and talk about the record, but I got not an implication, I was told that I wouldn't get this record played by him or the station while I was with this particular distributor, that he didn't want me to be with.

Mr. LISHMAN. What distributor did you then use in the Cleveland area?

Mr. GOLD. I had Benart Distributors; that was the distributor I was using.

Mr. LISHMAN. Did Mr. Finan suggest to you who would be the right distributor?

Mr. GOLD. Yes, he did.

Mr. LISHMAN. Who was that?

Mr. GOLD. I am sure of the man's name, it was Sandy Beck; I am almost sure of the name of the company, I think it was Custom Record Distributors.

Mr. LISHMAN. Did you gather from the conversation with Mr. Finan that if you wanted your record to be a hit through the suggested company, that he would then give it an airing over KYW?

Mr. GOLD. There wasn't any doubt about that. It would have gotten very good treatment, I would say.

Mr. LISHMAN. Then did you go to Cleveland?

Mr. GOLD. About a week later I went out on the road to try to visit a number of cities on its promotion, yes, and I went to Cleveland.

Mr. LISHMAN. At that time, when you went to Cleveland—in April or March, was it?

Mr. GOLD. I would guess it was April by then.

Mr. LISHMAN. Did you see Mr. Finan?

Mr. GOLD. Yes, sir; I went up to station KYW and I went into his office and, as I recall, he had that record right on his desk.

Mr. LISHMAN. He did. What was the substance of your discussion this time, in person, with Mr. Finan?

Mr. GOLD. Well, he definitely wanted me to leave this distributor and definitely wanted me to go to the other one. I definitely didn't want to do it and was trying to find ways to dissuade him from being as adamant as he was, and I told him that I had had other dealings with the distributor and he had done a good job; that his partner in this Cleveland distributorship was a man in Pittsburgh who had befriended me and I didn't want to leave.

I actually didn't think, frankly, that it was his business, but I didn't want to tell him that, but I finally did. But we parted and I was pretty sure that, I was relatively sure that, he meant what he said, when he said, I wasn't going to get any record played on that station. I didn't know whether he could, but I was sure he was going to try.

Mr. LISHMAN. Did you have a rather spirited conversation with him?

Mr. GOLD. I would say, it didn't reach extremes; he knew I didn't like him and I knew he didn't like me. It was a big country, and I knew even if he didn't play it, it probably would be a hit and I left.

Mr. LISHMAN. Did he eventually play the record?

Mr. GOLD. I would certainly doubt that very much.

Mr. LISHMAN. The name of that record was "Little Billy Boy"?

Mr. GOLD. Yes.

Mr. LISHMAN. And then you left Cleveland?

Mr. GOLD. That is right.

Mr. LISHMAN. Did you subsequently return to Cleveland in an attempt to have another record of your company aired over station KYW by Mr. Finan?

Mr. GOLD. Yes, sir.

Mr. LISHMAN. When was that?

Mr. GOLD. The record was a song called "Love Me Forever" which was released on October 1, so I would guess this was perhaps in mid-November.

Mr. LISHMAN. Yes, sir. When you went to Cleveland a second time, who did you see?

Mr. GOLD. I didn't see Mr. Finan. He wasn't there. I saw Chuck Young, the record librarian.

Mr. LISHMAN. What was the nature of your conversation with Mr. Chuck Young, the record librarian in KYW?

Mr. GOLD. Well, I just thought I had better go up and make friends with somebody on that station because it had become a No. 1 station in Cleveland and that was a very important area and I was trying to resolve the deadlock. I was pretty sure none of my records had been played for months and I had a song that was doing quite well, so it seemed an opportune time to try. I had two versions of the song out. One was by a very important artist, Edie Gorme, ABC-Paramount, and I went up to try to break the impasse and that is why I went up there.

Mr. LISHMAN. Did you ask Mr. Young if he would not use your record on KYW?

Mr. GOLD. It didn't come to that. I stood around and talked about the song and then he opened the subject and told me, "You know we are not playing your record."

Mr. LISHMAN. Did he give you any reason why they were not playing your record?

Mr. GOLD. Yes, sir. He told me that I hadn't been played on the station and I wasn't going to be played on the station because I wasn't by the right distributor.

Mr. LISHMAN. By "right distributor," did he mean a distributor that Mr. Finan desired?

Mr. GOLD. I don't recall that he ever told me to go to any particular one. I think he was actually more—although we are getting away from this particular one, at least his conversation tended that way. Perhaps I should have said I was with the wrong distributor rather than I wasn't with the right one.

Mr. LISHMAN. Then, Mr. Gold, after your conversation with Mr. Young apparently got you nowhere, did you then see some officials of the station KYW?

Mr. GOLD. Yes, and he—

Mr. LISHMAN. Who did you see?

Mr. GOLD. I saw Mr. — I would just like to say, if I may, that it isn't my style to run to heads of stations and it wasn't a simple thing. I had asked him even in these terms, I said, even after all this, "Just tell me you don't like the record and make it possible for me to leave the station in this city without the feeling that I am being discriminated against." And I can even go further, the artists on my label were a group called the Four Esquires who were students of mine, when I was teaching. I felt very closely with them and they were working very hard and not doing so well, but trying honestly and their fortunes were such that I was paying some of their rents. A couple of them were married and I was in no position, really, to do that. I had just a growing sense of frustration that this man should tell me he wasn't going to play the record, although he admitted it was better, because I wasn't with a particular distributor.

So I then did go and I told him, "If you will just tell me you don't like the record and make it possible for me to leave, I will leave and forget it, but if you tell me it is this reason and this reason alone, I am simply going to do something about it."

Mr. LISHMAN. Did you discuss this matter with Mr. Olds of KYW?

Mr. GOLD. Yes, sir.

Mr. LISHMAN. And with anyone else?

Mr. GOLD. Mr. Davis.

Mr. LISHMAN. Was Mr. Young present?

Mr. GOLD. He was present when I saw Mr. Davis, or I think he came in after I had spoken to Mr. Davis for a few minutes.

Mr. LISHMAN. What was Mr. Olds' reaction to the story you told?

Mr. GOLD. Well, I don't think it disturbed him unduly. I would have gotten no satisfaction from him.

Mr. LISHMAN. How about Mr. Davis? Did you get any satisfaction from him?

Mr. GOLD. Well, I told him the story, and I told—I was disturbed at this point, I must say—and I told him exactly what had happened and that I felt he would have—before Young came in, I didn't want him to think I was just—he asked me to stay over a day because he was busy the day before, and I stayed over and I told him that I simply had to have some assurance that this discrimination would end or—and I must apologize for myself in this, in the sense I don't want to be, I just don't want to give the impression that I run around threatening anybody because this is an isolated instance in my experience.

Mr. LISHMAN. I understand that, Mr. Gold.

Mr. GOLD. I told him if I didn't get some kind of satisfaction that I was going to go home and, as I said, as I put it, stay just long enough to change my shirt and go to Washington because I couldn't believe that the FCC gave them a license, Westinghouse to do business, for two people like that, to use their power to tell me where I should have to distribute my records.

Mr. LISHMAN. And then you left the station?

Mr. GOLD. No. Chuck, he called in, Mr. Young, a good friend.

Mr. LISHMAN. Yes.

Mr. GOLD. And he said everything I was saying was untrue.

Mr. LISHMAN. Mr. Young said it was untrue?

Mr. GOLD. Yes, sir, completely a lie.

Mr. LISHMAN. Did Mr. Young say at your previous visit you had attempted to bribe Mr. Finan into playing your record?

Mr. GOLD. Yes. When Mr. Davis asked him whether he was playing my record, he said, no, and he said why, and he said Joe Finan had told him that I had phoned when this record came out and in this phone call I had offered him payola and he was so shocked at the idea, that anyone would offer him payola, that he was calling a blanket ban on all my records.

At this point—I mean, I had been angry before, but I must say that at this point, I was upset, and I said to Mr. Davis that while I was in no position to make large financial payments of any kind, I would make out a check for \$5,000 to the Cleveland Red Cross as one side of the bargain, and all I wanted from him was that he fire those two idiots, as I called them then, as the other end of the bargain and let the issue be whether an analysis of all my phone calls, whether the number—CHerry 1-0492 was the number of that station—appeared at any time from the end of April until that date, and if it did, let it be presumed on that call that I had offered payola, and he could keep the money, because I had no reason to call that station at all. And I think this dismayed Mr. Young a little bit.

I don't think he realized we could make that kind of check, and he said it must have come at night. But at that point I think Mr. Davis believed me.

Mr. LISHMAN. Was the story that Mr. Young gave, to the effect that the reason they weren't playing your record was because you had attempted to bribe Mr. Finan true?

Mr. GOLD. No, sir. No, sir.

Mr. LISHMAN. Had you ever offered any payola or a bribe to Mr. Finan at any time?

Mr. GOLD. No, sir. I never offered him anything at any time. I think that was my trouble.

Mr. LISHMAN. I want to recall that Mr. Young testified to the contrary before this committee.

Mr. GOLD. I never offered Joe Finan anything. If I wanted to give him anything, he told me what he wanted.

Mr. LISHMAN. As a matter of fact, from your testimony, it appears that the shoe was on the other foot, that Mr. Finan, in effect, told you if you wished that record aired over KYW, you were dealing with the wrong distributor?

Mr. GOLD. That is completely true, and at the time I told it to a number of people. It was no secret from my point.

Mr. LISHMAN. So from your conversations with Mr. Finan and later with Mr. Young, you were distinctly impressed, or you formed the conclusion, that the only way you could get that record aired would be to use the distributor who was suggested to you by Mr. Finan?

Mr. GOLD. Yes, sir. I don't know quite why they sought me out in that fashion because I remember the last record I heard coming up the stair was a Pat Boone record which was on Dot, which is distributed by the same distributor. He said, "I have to play Pat Boone, but I don't have to play you."

Mr. LISHMAN. When you left Mr. Davis, did you make any statement to the effect that you were going to go to Washington about the matter?

Mr. GOLD. I had mentioned that to him, if I didn't get any promise of any satisfaction, I would. And he did give me such a promise before I left.

Mr. LISHMAN. And during the time of your stay in Cleveland on that occasion, and after you had had your conference with Mr. Davis and Mr. Young and Mr. Olds, is it a fact that KYW did play your record?

Mr. GOLD. Yes, sir; they played it that night.

Mr. LISHMAN. And the record was called—

Mr. GOLD. "Love Me Forever."

Mr. GOLD. "Love Me Forever"?

Mr. GOLD. Yes.

Mr. LISHMAN. They played it that night?

Mr. GOLD. Yes, sir.

Mr. LISHMAN. Did they play it more than once?

Mr. GOLD. Yes, sir. I heard it at least twice.

Mr. LISHMAN. You heard it at least twice. And is it a fact that that song "Love Me Forever" was also recorded by Edie Gorme?

Mr. GOLD. Yes, sir.

Mr. LISHMAN. Is it a fact that you had dinner with her that evening in Cleveland?

Mr. GOLD. Yes, sir.

Mr. LISHMAN. And Edie Gorme's recording was on another label than yours; is that correct?

Mr. GOLD. Yes, sir.

Mr. LISHMAN. And your was on the Paris label?

Mr. GOLD. Yes, sir.

Mr. LISHMAN. With "The Esquires" as the vocalists?

Mr. GOLD. That is right.

Mr. LISHMAN. And did Edie Gorme jokingly tell you that they seemed to be playing your record more than they were playing hers?

Mr. GOLD. Well, she knew the story and she laughed about the idea of having recorded a song for me as we were in the Hotel Statler where she was appearing. She even picked up my check for dinner and there I was as her guest and having gotten a few plays on my record and she remarked that. Although that wasn't my intention, actually, to knock her record off the air or anything like that.

Mr. LISHMAN. We understand that, Mr. Gold.

Mr. GOLD. Yes, sir.

Mr. LISHMAN. We are just trying to develop the pattern as to how records are either put on the air or kept off the air by diskjockeys.

Mr. GOLD. If that man had said to me he preferred the Edie Gorme record, that would have been fine. If he said he didn't have one, I had some there in my hand to give him. He said he wasn't playing mine for that specific reason, and that was what was impossible for me to accept.

Mr. LISHMAN. In other words, if anyone at that station had told you, Mr. Gold, "in our opinion, that record is terrible and we won't play it," that would have been their subjective judgment?

Mr. GOLD. That is right.

Mr. LISHMAN. And you would have accepted it and not made a fuss?

Mr. GOLD. I accepted that in hundreds of stations, people didn't like either record, that is all right.

Mr. LISHMAN. But the reason you made a fuss was this: that they had told you it would be a hit, and eventually it did turn out to be a hit, did it not?

Mr. GOLD. Moderately; yes.

Mr. LISHMAN. But they told you the reason they would not put it on the air was that you were not dealing with the right distributor?

Mr. GOLD. Exactly.

Mr. LISHMAN. And that is what riled you up?

Mr. GOLD. That is right.

Mr. LISHMAN. As I understand it, Mr. Gold, you are a graduate of Harvard University?

Mr. GOLD. Harvard Business School.

Mr. LISHMAN. And you have been a teacher at Tufts?

Mr. GOLD. Yes, sir.

Mr. LISHMAN. University?

Mr. GOLD. Yes, sir.

Mr. LISHMAN. What did you teach there?

Mr. GOLD. Economics.

Mr. LISHMAN. For how long did you teach there?

Mr. GOLD. Five years.

Mr. LISHMAN. And you went into the record business about 5 years ago?

Mr. GOLD. Not quite, sir.

Mr. LISHMAN. Why did you go into the record business?

Mr. GOLD. Well, I thought I had some talents for it. I went in the record business because it seemed like the best way I could get my songs recorded.

Mr. LISHMAN. Have you engaged in payola?

Mr. GOLD. No—well, I don't think so, sir. I have given bonds to the children of diskjockeys when they were born, but I time my releases with their births.

I never have paid anybody to play a record; no. Christmas presents and things like that.

Mr. LISHMAN. You still have the same distributor in Cleveland that you had in 1957?

Mr. GOLD. No, sir.

Mr. LISHMAN. Do you know whether any of your labels are now being played over KYW?

Mr. GOLD. I think they are.

Mr. LISHMAN. So you have no complaint about any current situation?

Mr. GOLD. No, sir.

Mr. LISHMAN. In that area?

Mr. GOLD. No.

Mr. LISHMAN. I think I have no further questions.

The CHAIRMAN. Mr. Moss.

Mr. Moss. Mr. Gold, you say that you have never paid payola. I have heard some stories here in the last few days which would indicate that no one has ever received payola, so would you tell me what you have paid? Have you paid anything?

Mr. GOLD. Yes. I would be happy to tell you what I have paid. In the 3½ years I have been in the record business, I think you would find in my company, checks to diskjockeys, a total amount of perhaps not more than \$400. I am a one-man company, I don't get out as much as I would like to. I would like to spend more money in entertaining and I think I should, because I take up their time. I have sent, subsequent to an act, when somebody helped me, when they would call me and would say this is something that looked good in Detroit and they have helped me, I have sent \$50 to somebody and said, "Buy your kid a bond," or I have actually bought a bond. And that is a total of perhaps \$3 a week over the 3 years. The largest check to a diskjockey is a check for \$500 which was paid to somebody after he lost his job, after he had been on the air for years and he told me that his finances were not good.

That is the extent of payola.

Mr. Moss. What is the most valuable consideration of any type you have ever given to a diskjockey or a station music librarian or personnel of any broadcasting licensee?

Mr. GOLD. I would say \$50.

Mr. Moss. \$50?

Mr. GOLD. Yes.

Mr. Moss. Now, have you ever permitted them to have a part interest in any of your records?

Mr. GOLD. No, sir.

Mr. MOSS. Or in any of the copyrights?

Mr. GOLD. No, sir.

Mr. MOSS. This would be total, all considerations, and the most valuable gift would be \$50?

Mr. GOLD. I believe so, yes, sir.

Mr. MOSS. There are all my questions, Mr. Chairman.

The CHAIRMAN. Is that all, Mr. Lishman?

Mr. LISHMAN. Yes.

The CHAIRMAN. Thank you very much for your appearance here, Mr. Gold.

The CHAIRMAN. Mr. Cecil Steen. Are you Mr. Steen?

Mr. STEEN. Yes, sir.

The CHAIRMAN. Do you object to these cameras?

Mr. STEEN. No, sir.

The CHAIRMAN. Will you be sworn?

Do you solemnly swear the testimony you give to the committee will be the truth, the whole truth and nothing but the truth, so help you God?

Mr. STEEN. I do, sir.

The CHAIRMAN. Have a seat.

TESTIMONY OF CECIL STEEN

The CHAIRMAN. Are you Mr. Cecil Steen?

Mr. STEEN. Yes, sir.

The CHAIRMAN. What is your residence, Mr. Steen?

Mr. STEEN. 106 Prospect Street, Reading, Mass.

The CHAIRMAN. Are you the president of Records, Inc.?

Mr. STEEN. I am, sir.

The CHAIRMAN. That is a distributor, is it not?

Mr. STEEN. Yes, sir.

The CHAIRMAN. Mr. Lishman, you may proceed.

Mr. LISHMAN. Mr. Steen, what labels are distributed by Records, Inc.?

Mr. STEEN. You want them all, sir.

Mr. LISHMAN. Yes.

Mr. STEEN. We distribute Chancellor, Argo, Chess, Checker, Disneyland, Imperial, Living Land, Conversaphone, Grand Award, Somerset Stereo-Fidelity, Swan, Fire, Fury. That is from memory. I think that is about all, sir. I may have left out a couple.

Mr. LISHMAN. As president of Records, Inc., are you familiar with a record promotion arrangement known as the "gold platter of the week"?

Mr. STEEN. Yes, sir.

Mr. LISHMAN. And is the gold platter or the gold platter of the week offered by station WMEX to record distributors in the Boston area?

Mr. STEEN. Yes, sir.

Mr. LISHMAN. Would you please state your understanding as to how the gold platter of the week promotion scheme operates.

Mr. STEEN. As I understand it, WMEX plays—they pick a record each week that they consider to be a future or potential hit. This

record is played at various times throughout the course of the day, with an announcement that it is their gold platter of the week.

Mr. LISHMAN. Has your company, Records, Inc., ever purchased the gold platter of the week from WMEX?

Mr. STEEN. Yes, sir.

Mr. LISHMAN. Did you, on behalf of Records, Inc., at one time enter into a contract or arrangement with WMEX through its president, Mr. Maxwell Richmond, for the purchase of the gold platter for 13 weeks in advance?

Mr. STEEN. Yes, sir.

Mr. LISHMAN. About what was the date of this contract?

Mr. STEEN. It was sometime in February 1959, sir. I believe that is correct.

Mr. LISHMAN. What were the terms of that contract?

Mr. STEEN. As I recall, sir, we were to submit to WMEX all of our new releases during the course of the week. From this list of new releases they would pick one of our records and use it as the gold platter of the week.

Mr. LISHMAN. How much did Records, Inc., agree to pay WMEX?

Mr. STEEN. \$100 a week, sir.

Mr. LISHMAN. For how long?

Mr. STEEN. Each week.

Mr. LISHMAN. For how long a period?

Mr. STEEN. I think it was for 13 weeks.

Mr. LISHMAN. Thirteen weeks. Why was the figure of \$100 fixed?

Mr. STEEN. That was the amount that Mr. Richmond asked.

Mr. LISHMAN. Did you make payments totaling approximately \$1,400 to WMEX in accordance with the terms of this contract?

Mr. STEEN. I believe that is correct, sir.

Mr. LISHMAN. Mr. Steen, I hand you a photostatic copy of a cancelled check dated July 2, 1959, drawn to the order of radio station WMEX in the amount of \$400 signed by you on behalf of Records, Inc., and ask you if this is one of the payments made pursuant to this gold platter contract you have just testified to (handing document to witness).

Mr. STEEN. Yes, sir, it is.

Mr. LISHMAN. And you made that payment to WMEX pursuant to the contract you have just mentioned?

Mr. STEEN. Yes, sir.

Mr. LISHMAN. Now, Mr. Steen, I show you another check dated March 13, 1959.

Mr. STEEN. That is correct, sir.

Mr. LISHMAN. March 13, 1959, in the amount of \$600 payable to the order of radio station WMEX and signed by Bonfilio on behalf of Records, Inc., and ask you if this also is a payment on account, of the contract?

Mr. STEEN. Yes, sir, that is correct.

Mr. LISHMAN. Did you similarly pay a check in the amount of \$400 to station WMEX which was dated March 31, 1959?

Mr. STEEN. Yes, sir.

Mr. LISHMAN. And that made a total of \$1,400 that you paid to station WMEX?

Mr. STEEN. Yes, sir.

Mr. LISHMAN. Did WMEX carry out its part of the bargain?

Mr. STEEN. To the best of my—

Mr. LISHMAN. And play as the gold platter of the week, one of the records on the labels distributed by your company?

Mr. STEEN. Yes, sir.

Mr. LISHMAN. How were they announced on WMEX at the time they were played?

Mr. STEEN. I don't recall the specific situation. It is a rather large promotional thing with WMEX. With a big fanfare they announced the gold platter of the week.

Mr. LISHMAN. Was it announced that your company had paid WMEX in order to have these records played?

Mr. STEEN. I don't think so, sir.

Mr. LISHMAN. Did they announce that the records to be played as the gold platter of the week were distributed by your company?

Mr. STEEN. No.

Mr. LISHMAN. What was the announcement made?

Mr. STEEN. That was the gold platter of the week on WMEX for this week.

Mr. LISHMAN. Would it be stated, in effect, this was the favorite record of the area for that week?

Mr. STEEN. I am sorry, sir, I don't remember exactly what terms they used in announcing this.

Mr. LISHMAN. How many times a day would the gold platter record of the week be played?

Mr. STEEN. I believe it was eight times, sir.

Mr. LISHMAN. Eight times a day. For 1 week?

Mr. STEEN. Yes, sir.

Mr. LISHMAN. In other words, for \$100 you were able to procure 56 airings of one of your labels over station WMEX pursuant to a contract you had made with the president of that licensee, is that correct?

Mr. STEEN. Yes, sir.

Mr. LISHMAN. Did there ever come a time when you paid WMEX more than \$100 in order to have one of your labels selected as the gold platter of the week?

Mr. STEEN. I believe at one time I did pay more, sir.

Mr. LISHMAN. How much did you pay?

Mr. STEEN. I believe it was \$150.

Mr. LISHMAN. And was it as a result of having to pay \$150 that you decided to enter into this contract at \$100 a week which was a little lower in rate, than for a single arrangement?

Mr. STEEN. Yes, sir.

Mr. LISHMAN. In addition to the money that you paid to WMEX, did you also have to supply that station with free records?

Mr. STEEN. Yes, sir.

Mr. LISHMAN. About how many free records a week would you supply WMEX?

Mr. STEEN. I believe it was 75 records, sir.

Mr. LISHMAN. Seventy-five. Were those long- or short-playing records?

Mr. STEEN. No, sir, there were 75 single 45 r.p.m. records.

Mr. LISHMAN. Each week?

Mr. STEEN. Each week.

Mr. LISHMAN. Did you receive invoices from WMEX billing Records, Inc., in accordance with the contract?

Mr. STEEN. Yes, sir.

Mr. LISHMAN. Do you have the invoices with you?

Mr. STEEN. No, sir, I do not.

Mr. LISHMAN. I will show you a copy of what purports to be invoice No. 3555, WMEX, dated March 10, 1959, to Records, Inc., for promotion, gold platter, and Mr. X album of the week, and showing for the week ending January 24, 1959, Records, Inc., was billed \$100; for the week ending January 31, 1959, Records, Inc., was billed \$100; and for the 4 weeks ending February 28, 1959, Records, Inc., was billed \$100 each week for a total of \$400 for the 4-week period; and a grand total of \$600 on this invoice; and ask you if this is a correct copy of such invoice.

Mr. STEEN. Yes, sir.

Mr. LISHMAN. Mr. Chairman, I would like to have this invoice introduced in the record at this point.

The CHAIRMAN. It may be received.

(The invoice referred to follows:)

No. 3555.

WMEX BUILDING,
Boston, March 10, 1959.

RECORDS, INC.,
790 Commonwealth Avenue,
Boston, Mass.

Promotion—gold platter and Mr. X album of the week:

Week ending Jan. 24, 1959-----	\$100
Week ending Jan. 31, 1959-----	100
4 weeks ending Feb. 28, 1959, at \$100-----	400
<hr/>	<hr/>
Total-----	600

Mr. LISHMAN. I have before me another copy of what purports to be Invoice No. 3605 of WMEX to Records, Inc., dated March 16, 1959, and covering promotion of the gold platter and Mr. X album of the week for the 4 weeks ending March 28, 1959, at \$100 per week, in the sum of \$400, and ask you if this is a correct copy of the invoice received by Records, Inc., from WMEX.

Mr. STEEN. Yes, sir.

The CHAIRMAN. Do you want that in the record?

Mr. LISHMAN. I would like to have a copy of that invoice in the record.

The CHAIRMAN. It will be received.

(The invoice referred to follows.)

No. 3605

WMEX BUILDING,
Boston, March 16, 1959.

RECORDS, INC.,
790 Commonwealth Avenue,
Boston, Mass.

Promotion—gold platter and Mr. X album of the week: 4 weeks ending

Mar. 28, 1959, at \$100-----	\$400
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Mr. LISHMAN. I show you another invoice from WMEX to Records, Inc., dated June 18, 1959, and which covers the period March 16, 1959, to April 30. This appears to be a past-due notice for \$800 for that period, and ask you if this is a correct copy of that invoice.

Mr. STEEN. Yes, sir.

Mr. LISHMAN. Did you pay these invoices?

Mr. STEEN. Eventually, yes, sir.

Mr. LISHMAN. Yes.

(The invoice referred to follows.)

WMEX BUILDING,
Boston, June 18, 1959.

RECORDS, INC.,
Care of Cecil Steen,
790 Commonwealth Avenue,
Boston, Mass.

From Mar. 16, 1959, Invoice No. 3605 to Mar. 1-28.....	\$400
From Apr. 30, 1959, Invoice No. 3977 to Mar. 31-Apr. 27.....	400
Total.....	800

Past due! Please!

Mr. LISHMAN. Who approached you with respect to this 13-week contract whereby one of your labels would be selected as the gold platter of the week for 56 airings over station WMEX?

Mr. STEEN. Mr. Richmond and I had a discussion.

Mr. LISHMAN. Which Mr. Richmond?

Mr. STEEN. Mr. Max Richmond.

Mr. LISHMAN. Mr. Maxwell Richmond?

Mr. STEEN. Yes, sir.

Mr. LISHMAN. And he is the president of WMEX?

Mr. STEEN. Yes, sir.

Mr. LISHMAN. Did he come to you first or did you go to him?

Mr. STEEN. It was a discussion on the telephone, sir.

Mr. LISHMAN. Who originated the telephone conversation?

Mr. STEEN. Mr. Richmond.

Mr. LISHMAN. Mr. Richmond called you. And what did he say to you?

Mr. STEEN. I believe the conversation went something like this: that he had selected, the station had selected that particular week, a record of ours to be aired as the gold platter and would I like to go along with it, and at that particular time I felt possibly that the price was a little too high, and we got into a—I said I might be willing to discuss it further if we could come to some kind of an agreement for a lower price on it, and Mr. Richmond suggested I come over to his office and discuss it with him. I did subsequently go over and discuss it with him, and I entered into the agreement you have just discussed.

Mr. LISHMAN. Do you know how the weekly gold platter selection was made by WMEX?

Mr. STEEN. To the best of my knowledge, sir, it was a group of people on the station did select it, I think Mr. Mel Miller and the librarian, Phylis Gordon, selected the record out of the group of releases that I brought over.

Mr. LISHMAN. Who is Mel Miller?

Mr. STEEN. I believe he is a diskjockey on that station.

Mr. LISHMAN. Diskjockey on WMEX?

Mr. STEEN. Yes, sir.

Mr. LISHMAN. Was the implication given by the WMEX diskjockey, Mel Miller, who played the gold platter each week, that the

record was selected by station personnel on the basis of its merit and real popularity?

Mr. STEEN. I don't know about that, sir, exactly, what they did say when they announced the record.

Mr. LISHMAN. Did you not listen to this airing of the record for which you paid?

Mr. STEEN. It is practically impossible for me to listen. I am in my office during the course of most normal working hours.

Mr. LISHMAN. Well, this record was played 56 times a week, so you would have plenty of opportunity for hearing it. You never heard it played?

Mr. STEEN. I know it sounds like a terrible thing, but I don't really like listening to the radio.

Mr. LISHMAN. And you never—

Mr. STEEN. I am sure I did hear it at one time.

Mr. LISHMAN. And you never heard the diskjockey make an announcement to the effect that this gold platter record of the week has been selected on the basis of its real merit and real popularity in this area?

Mr. STEEN. I don't believe they used—I am not sure exactly. I have heard the announcement, of course, but I can't remember it exactly.

Mr. LISHMAN. But do you recall that at no time did they make an announcement that they had received \$100 a week for making that selection?

Mr. STEEN. That I do, sir.

Mr. LISHMAN. Did you consider this 13-week gold platter contract with WMEX a normal method of promoting the sale of records distributed by Records, Inc.?

Mr. STEEN. Yes, sir.

Mr. LISHMAN. Why did you consider this a normal method?

Mr. STEEN. Well, our responsibility as a distributor to our manufacturers is to get promotion for the record. We have a rather unique situation in our business where we are directly responsible for promoting the product of the manufacturers we distribute for, and this is a normal situation: to try to get our records aired on the radio.

Mr. LISHMAN. Has Records, Inc., purchased the gold platter at any time since the end of the 13-week period provided for in its contract with WMEX?

Mr. STEEN. I believe we have on a couple of occasions, sir.

Mr. LISHMAN. How much have you paid on these subsequent occasions?

Mr. STEEN. Either \$10 or \$25.

Mr. LISHMAN. Why did you have such a wide drop from \$100 to \$10?

Mr. STEEN. Well, I believe that the situation came about that it just didn't prove to be worthwhile promotion to us; that was our particular reason for it.

Mr. LISHMAN. Have you or Records, Inc., ever made payments in cash or by check or given any other form of consideration to disk-jockeys?

Mr. STEEN. I didn't know you were through.

Mr. LISHMAN. Do you want the question read?

Mr. Reporter.

(The pending question was read.)

Mr. STEEN. Yes, sir.

Mr. LISHMAN. Have you given this money either in cash or by check or other forms of consideration to diskjockeys in the Boston area?

Mr. STEEN. Yes, sir.

Mr. LISHMAN. Will you name the diskjockeys involved?

Mr. STEEN. Shall I specify what they were for, sir?

Mr. LISHMAN. Yes, sir.

Mr. STEEN. I have given a check in the amount of \$200 to Mr. Dave Maynard. This is over in the course of 3 years, sir, that I am giving you this.

Mr. LISHMAN. Would you mind giving us the date? Is this from 1957?

Mr. STEEN. 1957. March 22, 1957, Mr. Dave Maynard.

The CHAIRMAN. I did not understand.

Mr. STEEN. March 22, 1957, a check in the amount of \$200 was given to Mr. Dave Maynard.

The CHAIRMAN. Dave who?

Mr. STEEN. Maynard.

The CHAIRMAN. Who is he?

Mr. STEEN. He is a diskjockey on WBZ.

Mr. LISHMAN. What was the purpose of making that payment?

Mr. STEEN. To the best of my knowledge, this was a gratuity that I had given to Dave Maynard for whatever he had been able to do for me or whatever he could do for me.

Mr. LISHMAN. Did that include playing your labels over the air?

Mr. STEEN. Not for any specific record, sir.

Mr. LISHMAN. Was it for record hops?

Mr. STEEN. I suppose it would cover record hops and records to be played on the air, sir.

Mr. LISHMAN. Did you voluntarily make this payment of \$200 to Mr. Maynard?

Mr. STEEN. Yes, sir.

Mr. LISHMAN. Did you indicate to him what you expected as a result of making this payment?

Mr. STEEN. No, sir; I did not.

Mr. LISHMAN. Was it necessary to formalize this thing very much?

Mr. STEEN. No, sir; this was a gratuity.

Mr. LISHMAN. He understood what you wanted to obtain, did he not?

Mr. STEEN. Yes, sir.

Mr. LISHMAN. You wanted to obtain what you have obtained already as normal promotion methods, a payment to a diskjockey or a station licensee in order to obtain airing on one of your labels?

Mr. STEEN. Yes, sir.

Mr. LISHMAN. This was a normal record promotion payment similar to the one you made to WMEX?

Mr. STEEN. This was the only payment I had made to Mr. Maynard in the 3 years.

Mr. LISHMAN. I am trying to find out whether this is a normal method of promotion or whether this is abnormal. You have described

the payments to WMEX as normal methods of promotion. I am trying to find out whether this falls within that class or not.

Mr. STEEN. In the promotion of records, sir, it is rather normal to get them played on the air and in any way that we possibly can, within the bounds of business ethics. We certainly undertook to do that for our manufacturers.

Mr. LISHMAN. Did Mr. Maynard play your records on the air?

Mr. STEEN. Many times, sir.

Mr. LISHMAN. Yes. What is the next diskjockey that you paid in the Boston area?

Mr. STEEN. On October 18, 1957, Joseph Smith, in the amount of \$500. This was a wedding gift.

Mr. LISHMAN. And what station was Mr. Joseph Smith with?

Mr. STEEN. I believe at this particular time he was with WBZ. I can't remember the name of the station now. He has been on several stations, and was out of radio for some time.

Mr. LISHMAN. Did you also give Mr. Smith others sums of money besides this \$500?

Mr. STEEN. A belated Christmas present in 1958, on January 27, in the amount of \$100.

Mr. LISHMAN. Did you charge that off on the books of Records, Inc., as promotion?

Mr. STEEN. All charges were charged off as publicity promotion.

Mr. LISHMAN. Including the wedding present?

Mr. STEEN. Yes, sir.

Mr. LISHMAN. The wedding present of \$500 then was accounted for as record promotion?

Mr. STEEN. Yes, sir.

Mr. LISHMAN. It is a fact that you also gave Mr. Maynard another check in January 1958; is it not?

Mr. STEEN. Yes, sir.

Mr. LISHMAN. Is that not true?

Mr. STEEN. That is correct, sir.

Mr. LISHMAN. Was that check in the amount of \$50?

Mr. STEEN. Yes, sir.

Mr. LISHMAN. And that was also charged to record promotion?

Mr. STEEN. Yes, sir.

Mr. LISHMAN. Did you not also give him a check in March 1959?

Mr. STEEN. This begins another series of checks that I had given to Mr. Maynard in connection with a television show of which I was the producer and hired Dave Maynard as an independent contractor to act as a diskjockey on the show.

Mr. LISHMAN. Did Records, Inc., not put Mr. Maynard on its payroll for 13 weeks?

Mr. STEEN. Yes, sir.

Mr. LISHMAN. And that was in connection with the "Record Hop" show on WBZ-TV?

Mr. STEEN. That is correct, sir.

Mr. LISHMAN. Now, getting back to other diskjockeys to whom you made payments, would you continue with your statement?

Mr. STEEN. On December 18, 1957, we gave the following Christmas presents to the following diskjockey, Mr. Lou Goldberg, in the amount of \$50.

Mr. LISHMAN. Just a minute. What station was Mr. Lou Goldberg with?

Mr. STEEN. WCOP.

Mr. LISHMAN. Yes. Was he a diskjockey?

Mr. STEEN. He was record librarian and music director.

Mr. LISHMAN. Next one.

Mr. STEEN. Mr. Alan Dary, in the amount of \$100.

Mr. LISHMAN. Who is he?

Mr. STEEN. He is a diskjockey on radio station WBZ.

Mr. Dave Maynard, in the amount of \$100, on radio station WBZ;

Mr. Stan Richards, in the amount of \$100, radio station WILD; Mr.

Norman Prescott, in the amount of \$100, formerly of WBZ.

Mr. LISHMAN. Did you mention Mr. Stan Richards?

Mr. STEEN. Yes, sir.

Mr. LISHMAN. You gave him a check in January for \$50?

Mr. STEEN. Yes, sir.

Mr. LISHMAN. And he was at that time in what position?

Mr. STEEN. I believe he was a program director of WILD, or WORL, I am not sure which one.

Mr. LISHMAN. Is it true that Mr. Maynard was not employed by WBZ, on March 22, 1957?

Mr. STEEN. That is correct, sir, he was employed at WORL.

Mr. LISHMAN. What station?

Mr. STEEN. WORL, yes.

Mr. LISHMAN. Will you continue with the names of other recipients of cash or checks from Records, Inc.

Mr. STEEN. The payments to "Record Hop," we covered that situation.

Mr. LISHMAN. I will ask you this question: Have we gone over the fact that you made a payment of \$300 in November 1958 to Norman Prescott?

Mr. STEEN. No, sir; we haven't gotten that far yet.

Mr. LISHMAN. I will ask you the question: Did you make a payment—

Mr. STEEN. Yes, sir; I did.

Mr. LISHMAN. What position did Mr. Prescott hold at that time?

Mr. STEEN. He was a diskjockey at WBZ.

Mr. LISHMAN. And did you make a payment on \$100 in March 1959 to Mel Miller?

Mr. STEEN. Yes, sir.

Mr. LISHMAN. What position did he hold?

Mr. STEEN. Diskjockey at WMEX.

Mr. LISHMAN. Again in March 1959, did you make another payment of \$150 to Norman Prescott?

Mr. STEEN. That is correct, sir.

Mr. LISHMAN. Is it correct that all these amounts we have just read are charged on the books of Records, Inc., as record promotion?

Mr. STEEN. They are charged to an account called publicity and promotion, sir.

Mr. LISHMAN. Would you continue with the other payments that were made by Records, Inc.?

Mr. STEEN. I have March 31, 1959, to Edward Penny, \$50.

Mr. LISHMAN. Who was Mr. Penny?

Mr. STEEN. Mr. Penny, formerly a diskjockey, formerly at WTAO in Cambridge.

Mr. LISHMAN. Was this charged—

Mr. STEEN. All of the charges were charged to publicity and promotion, sir.

Mr. LISHMAN. Yes, sir.

Mr. STEEN. We have covered—I see I have another payment on January 28, 1958, to Mr. Penny of \$50. One payment to WHIL in the amount of \$100. I have a payment on February 10, 1959 to Kenneth Mayer in the amount of \$50. I have a payment on January 10, 1958, to Edward Penny in the amount of \$50.

I believe those are all the payment that I show, sir.

Mr. LISHMAN. Is Penny still a diskjockey?

Mr. STEEN. No, sir; he is doing independent record promotion.

Mr. LISHMAN. During the time you had your arrangement with WMEX concerning the gold platter of the week, on any occasion did Mr. Richmond or a representative of the station call you and ask you if you wanted to have one of your labels as the gold platter record?

Mr. STEEN. During the time I was paying him, sir?

Mr. LISHMAN. Yes.

Mr. STEEN. During the week I took all new releases over and let them select the gold platter.

Mr. LISHMAN. After you had that arrangement, were you contacted by WMEX as to whether you wished to have a record chosen as the gold platter of the week?

Mr. STEEN. You mean subsequent to the time of the promotion?

Mr. LISHMAN. Yes.

Mr. STEEN. We have been on occasion approached by WMEX; yes, sir.

Mr. LISHMAN. What would they say to you?

Mr. STEEN. We would like such and such a record that you have, and we would like to use it as a gold platter.

Mr. LISHMAN. Has that not been going on until fairly recently?

Mr. STEEN. I think it is still going on, sir.

Mr. LISHMAN. If you told them that you did wish to have your label selected as the gold platter of the week, would you then have to make a payment of money to WMEX?

Mr. STEEN. Yes, sir.

Mr. LISHMAN. About how much?

Mr. STEEN. It has varied so much. I think at the particular time it is either \$10 for a service job for mailing out the records.

Mr. LISHMAN. Have you at any time called WMEX and told them you would like to have a certain record played as the gold platter of the week?

Mr. STEEN. We try to get every record we have, to get the gold platter, if we think we have some merit.

Mr. LISHMAN. I am asking whether you did it with regard to any particular matter?

Mr. STEEN. I don't think I have done it myself. I have a promotion man who has these particular duties and is extremely anxious to get every record that we have—

Mr. LISHMAN. Do you know whether he has called with regard to any particular record and asked the station, WMEX, to make it the gold platter of the week?

Mr. STEEN. I am sure he has.

Mr. LISHMAN. You are sure he has?

Mr. STEEN. Yes, sir.

Mr. LISHMAN. And would he report back to you the results of his success in that direction?

Mr. STEEN. Yes, sir.

Mr. LISHMAN. Did he ever tell you that WMEX had sometimes refused to accept your label as the gold platter of the week?

Mr. STEEN. Inasmuch as they only take one record of the week, I am sure they have refused many times, sir.

Mr. LISHMAN. At any time has it been indicated to you that one of the reasons for the refusal was that you would not meet the price demanded?

Mr. STEEN. I don't recall this, sir. We have had our little differences as far as the amount of money we wanted to pay, because I don't want to pay any more than we absolutely have to.

Mr. LISHMAN. Do you recall the name of the record that you were discussing on the telephone with WMEX, while investigators for the subcommittee were in your office?

Mr. STEEN. Oh, I don't recall the name of it. It happened to be one that they liked that particular time.

Mr. LISHMAN. Did you select that as being your gold record of the week?

Mr. STEEN. I did not, at that particular time, select that record.

Mr. LISHMAN. I understand that record was "Don't Talk, Just Kiss." Do you recall that record?

Mr. STEEN. It subsequently happened that we didn't distribute this particular record.

Mr. LISHMAN. Was that record, with that wonderful title, selected as having real popularity, real merit, and just such a hundering of a record that it ought to be made the gold platter of the week?

Mr. STEEN. Since I didn't sell the record, sir, I don't know how far it pertains.

Mr. LISHMAN. Did you listen to it?

Mr. STEEN. Yes, sir; I listened to it.

Mr. LISHMAN. Apparently you listen to competitive records but not your own.

Mr. STEEN. This was supposed to be my own record but it just did not turn out that way.

Mr. LISHMAN. I have no further questions of this witness, Mr. Chairman.

The CHAIRMAN. Mr. Moss.

Mr. MOSS. Mr. Steen, you indicated that these checks you made out, paid, were for payments, gratuities; is that the way you characterize it?

Mr. STEEN. We charge them to an account called publicity and promotion. It was not charged to a gratuity account, if that is what you mean.

Mr. MOSS. What were you buying? Were you buying advice?

Mr. STEEN. No, sir; I was buying promotion for my records.

Mr. Moss. What type of promotion?

Mr. STEEN. In the hopes that—in the normal course of our business we need promotion on our records from people we deal with, the radio stations and television stations in our area, of which there are almost 100 in our particular area.

Mr. Moss. Well, what did you actually feel that you were getting, when you paid out this money?

Mr. STEEN. Well, we felt possibly that in going over the new records, if we had a record of merit, that diskjockeys would use our particular record.

Mr. Moss. Did you find that when you made payments you had more attention than when you did not make payments?

Mr. STEEN. This is pretty hard to say, sir. We have been fairly successful record distributors with lots and lots of national hits that have been on the top hit parade for a number of years now.

Mr. Moss. Mr. Steen, did you pay every diskjockey on every station with whom you—

Mr. STEEN. No, sir; we did not.

Mr. Moss. You did not?

Mr. STEEN. No, sir.

Mr. Moss. Therefore, you only paid some diskjockeys?

Mr. STEEN. That is right, sir.

Mr. Moss. Why did you pay some and not others?

Mr. STEEN. In the hopes that we would receive favoritism from those diskjockeys.

Mr. Moss. Did you receive favored treatment?

Mr. STEEN. In some cases we felt we got special consideration for what we had paid.

Mr. Moss. Did you feel you wasted any of your money?

Mr. STEEN. I sure did, sir.

Mr. Moss. All right. Why did you feel that you wasted it?

Mr. STEEN. If you have a good record, Mr. Moss, that record is going to be a hit no matter what you pay out.

Mr. Moss. Well, the hit is the exception among this great mass of records that come out each week.

Mr. STEEN. Well, yes, sir; the hit is the exception.

Mr. Moss. The natural hit, the one that you cannot suppress. You can also create an atmosphere, at least, of success without actually having a hit, can you not?

Mr. STEEN. Well, the only success that we obtain is in the actual record sales.

Mr. Moss. Well, exposures on radio stations have an impact on sales, do they not?

Mr. STEEN. Where the record has the merit to sell, sir, it does.

Mr. Moss. Oh, yes, that is a conclusion about which we will disagree very shortly.

Generally, when you made a second payment to the same diskjockey, did you make it because you felt you had not wasted your money?

Mr. STEEN. Well, I don't believe you will find but a couple of instances of second payments here. Most of the payments were in the form of Christmas times and things that we paid.

Mr. Moss. You never had to put on your payroll that—

Mr. STEEN. Absolutely not.

Mr. MOSS. Or that you regularly paid for promotional activity?

Mr. STEEN. No, sir; we didn't feel we had to do that, no.

Mr. MOSS. And you had no advisers on your payroll?

Mr. STEEN. No, sir; I do not.

Mr. MOSS. In addition to the direct payment by check or cash, did you make any sizable gifts to any diskjockey?

Mr. STEEN. We gave—

Mr. MOSS. Or station personnel of any type?

Mr. STEEN. No sizable gifts of any kind, sir.

Mr. MOSS. What is the most sizable?

Mr. STEEN. I would say on a couple of occasions a phonograph with a wholesale value of \$50 or \$60, something of that sort.

Mr. MOSS. Wholesale value of \$60. That would be more or less a table model?

Mr. STEEN. Pardon me?

Mr. MOSS. It would be a small phonograph, portable?

Mr. STEEN. You can get a rather large one, wholesale, for \$50 or \$60.

Mr. MOSS. Distributors at wholesale. I think those are all the questions I have, sir.

The CHAIRMAN. What area do you operate in, Mr. Steen?

Mr. STEEN. We cover eastern Massachusetts, Maine, New Hampshire, and Rhode Island, sir.

The CHAIRMAN. You operate only in the New England area?

Mr. STEEN. That is right, sir.

The CHAIRMAN. The part that you have just mentioned?

Mr. STEEN. Yes, sir.

The CHAIRMAN. Your home, though, is in Reading, Pa.

Mr. STEEN. No. Reading, Mass.

The CHAIRMAN. Reading, Mass.

Mr. STEEN. That is right, sir; it is a small suburban area.

The CHAIRMAN. You do not operate out of this general area?

Mr. STEEN. No, sir.

The CHAIRMAN. Is this area in which you operate covered by stations out of Boston altogether?

Mr. STEEN. No, sir. We have something like 100 stations in our territory that we service with promotional records.

The CHAIRMAN. Why? How did you happen to have this territory and not others?

Mr. STEEN. How do I happen to just have this? This is the normal distribution pattern in the record business, and most all distributors cover that particular territory.

The CHAIRMAN. Is that by general understanding?

Mr. STEEN. I think it is by general understanding in most cases, yes.

The CHAIRMAN. Just by usual attrition that you happen to get into these areas?

Mr. STEEN. Well, it has been a longstanding situation; Boston is a distribution center for these particular areas, not only for the phonograph business but most of the distributors that have business there.

The CHAIRMAN. Why did you not happen to go to New York?

Mr. STEEN. Well, I happen to live in Boston, sir, and this is the normal area in which I feel, not only feel, but I am capable of handling the particular lines that I have. We could, there is nothing to keep us from selling in New York if we wanted to sell in New York.

The CHAIRMAN. But you just do not expand to that degree. You do not feel like that to be successful—

Mr. STEEN. I do not think it would be profitable, sir.

The CHAIRMAN. I guess perhaps you do not feel you know the diskjockeys in those areas as well as you know them there, in the New England area; is that correct?

Mr. STEEN. Diskjockeys and dealers in that particular market. There is much more to our business than diskjockeys. We have a tremendous number of retail dealers. As a salesman I covered them, and they are very, very important to us. They are the actual outlet for our records.

The CHAIRMAN. Yes, I know. But you have got to have some way of promotion and getting the particular records in the homes or before the public.

Mr. STEEN. That is true, sir.

The CHAIRMAN. And there is no better way to do that than to have it played, say, eight times a day or six times, whatever it is, over these stations?

Mr. STEEN. That is right, sir.

The CHAIRMAN. One witness said you could always tell when there was payola in connection with a particular record and that was when it was played three or four times during the course of one program. Would you say that is true?

Mr. STEEN. I don't think it is essentially true, sir.

The CHAIRMAN. But generally speaking, it is?

Mr. STEEN. I don't really believe so. I know of genuine enthusiasm on many occasions by diskjockeys and station promotions that generally felt they had an item—

The CHAIRMAN. Is it generally accepted among the record distributing companies such as yours that the one way to get a tune, a record, to the top is to contact certain people who have the authority and opportunity to broadcast it to the American people so they can become familiar with the tune?

Mr. STEEN. Our whole method of promotion in this business is normally through radio stations and television stations, sir.

The CHAIRMAN. Is that the way they become among the top?

Mr. STEEN. Until the public—

The CHAIRMAN. Top 10 or top 50?

Mr. STEEN. Until the public actually hears your product, you can't tell whether you have a hit or not.

The CHAIRMAN. How do you get a record established in the top 50?

Mr. STEEN. How do you get it to become a record in the top 50?

The CHAIRMAN. Yes.

Mr. STEEN. According to the sales of the actual record.

The CHAIRMAN. Well, we had more than one witness who testified that some of the records were in the top 50 and that they had never even been played.

Mr. STEEN. I don't know what the top 50 you are referring to, sir. If they are the top 50, top 40, top 60, everybody has something that they call the top something. In our business, the accepted—

The CHAIRMAN. What does that mean, when they are the top something? Does that mean they are designated by the distributors or

the particular diskjockey, or does it not at least infer that the public accepts it as such?

Mr. STEEN. It could mean any one of those things that you have just mentioned, sir. It depends on who is putting out the list.

The CHAIRMAN. Well, is it not generally accepted by everyone that when a record is advertised as being in the top 10 or the top 50 or whatever the top it might be, that it is the record which the general public has placed in the top 10 or 50, as the case may be?

Mr. STEEN. Yes, sir.

The CHAIRMAN. Is that not the basis for the record distributors and all the publicity: that the public says these records are the most popular?

Mr. STEEN. Well, yes, sir; the public decides this factor of what they want to buy. In order for a record to be successful, it must be bought.

The CHAIRMAN. But you just said that a lot of times a record is advertised as being in the top 10 or 50 as the case may be, where the public had nothing to do with it.

Mr. STEEN. I think—

The CHAIRMAN. That is where the deception comes in. That is where commercial bribery is involved in this case, it seems to me. That is where, it seems to me, we are demoralizing the public by deceiving them in the use of a broadcasting facility which has been licensed by the Federal Communications Commission, a Government agency, for that purpose.

Apparently the business that you are in accepts that kind of practice for the commercial value that you can get out of it.

Mr. LISHMAN. Do you have anything else?

Mr. LISHMAN. No, sir.

The CHAIRMAN. Thank you very much for your appearance here, Mr. Steen.

Mr. MAXWELL RICHMOND. Are you Mr. Richmond?

Mr. RICHMOND. Yes, sir.

The CHAIRMAN. Do you object to these cameras?

Mr. RICHMOND. No, sir.

TESTIMONY OF MAXWELL RICHMOND

The CHAIRMAN. Will you be sworn, please, sir.

Mr. RICHMOND. Yes, sir.

The CHAIRMAN. Do you solemnly swear the testimony you give to this committee to be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. RICHMOND. I do.

The CHAIRMAN. Your name is Mr. Maxwell Richmond?

Mr. RICHMOND. Yes, sir.

The CHAIRMAN. Are you the president of Boston radio station WMEX?

Mr. RICHMOND. I am, sir.

The CHAIRMAN. Licensed as Richmond Bros., Inc.?

Mr. RICHMOND. Yes, sir.

The CHAIRMAN. I assume your residence is Boston?

Mr. RICHMOND. It is at present, sir.

The CHAIRMAN. Mr. Lishman, you may proceed.

Mr. LISHMAN. Now, Mr. Richmond, what is your stock interest in station WMEX?

Mr. RICHMOND. I have a majority interest, sir.

Mr. LISHMAN. You have the entire stock?

Mr. RICHMOND. No; I have the majority stock interest.

Mr. LISHMAN. You have 85 percent?

Mr. RICHMOND. Yes, sir.

Mr. LISHMAN. Who owns the balance of the stock?

Mr. RICHMOND. The balance of the stock is owned by my brother, Robert S. Richmond.

Mr. LISHMAN. When did you acquire this 85 percent stock interest in WMEX?

Mr. RICHMOND. I believe it was sometime in August of 1957.

Mr. LISHMAN. August of 1957?

Mr. RICHMOND. Yes, sir.

Mr. LISHMAN. Have you an interest in other radio or TV stations?

Mr. RICHMOND. In other radio stations.

Mr. LISHMAN. In other radio stations. Do you have the controlling stock interests in other radio stations?

Mr. RICHMOND. Yes, sir.

Mr. LISHMAN. And they are not located in the New England area, I understand.

Mr. RICHMOND. No, sir.

Mr. LISHMAN. Are you active in the management of station WMEX?

Mr. RICHMOND. Yes, sir; I am responsible for the overall planning and production of the station.

Mr. LISHMAN. Does your brother Robert participate in the management of the station?

Mr. RICHMOND. He is the commercial manager, sir.

Mr. LISHMAN. And WMEX carries a diskjockey program, is that correct?

Mr. RICHMOND. Yes, sir. It carries diskjockey, news, discussion programs.

Mr. LISHMAN. Could you identify some of the diskjockey programs that are carried on WMEX?

Mr. RICHMOND. Yes, sir. We have "Wake-up" show with Fenway; and we have a "Dan Donovan" show; we have the "Gold Platter" show with Mel Miller; we have a show with Arnie Ginsburg; and one with Don Parker; and then there is a discussion program at night with Jerry Williams.

Mr. LISHMAN. Will you name the diskjockeys who are employed on those programs? Or have you named them all?

Mr. RICHMOND. Yes, sir; I believe most of them I have named.

Mr. LISHMAN. In other words, Mel Miller and Mr. Arnie Ginsburg. Did you name any other diskjockey?

Mr. RICHMOND. Yes. Dan Donovan, Don Parker, Fenway.

Mr. LISHMAN. Who, at WMEX, selects the records to be played?

Mr. RICHMOND. All the records are selected by our program director.

Mr. LISHMAN. Selected by whom?

Mr. RICHMOND. The program director.

Mr. LISHMAN. Who is that?

Mr. RICHMOND. That is Mel Miller.

Mr. LISHMAN. Mel Miller?

Mr. RICHMOND. Yes, sir.

Mr. LISHMAN. Do you permit any of these diskjockeys to accept payments or gifts to influence their selection of records that should be played over the air?

Mr. RICHMOND. No, sir.

Mr. LISHMAN. Do you know whether any of these diskjockeys have received checks, cash, or other valuable consideration from record distributing companies?

Mr. RICHMOND. At the recent subcommittee hearings this whole matter was brought very violently to our attention and we requested affidavits from every member of our staff.

Mr. LISHMAN. And did you receive these affidavits?

Mr. RICHMOND. Yes, sir.

Mr. LISHMAN. Do these affidavits contain details that these diskjockeys received either cash, check, or other considerations from record distributing companies?

Mr. RICHMOND. Some of them contained denials and some of them contained reference to accepting of gifts.

Mr. LISHMAN. When was the first time that you, as president of WMEX, had any knowledge that a diskjockey on that station had received cash or checks or gifts from a record distributor?

Mr. RICHMOND. The first knowledge we had of this was when we circulated this request for information.

Mr. LISHMAN. What date was that?

Mr. RICHMOND. Well, I am not positive of the date. I believe it was sometime in January.

Mr. LISHMAN. Of 1959?

Mr. RICHMOND. 1960, sir.

Mr. LISHMAN. January of 1960?

Mr. RICHMOND. Yes, sir.

Mr. LISHMAN. So that prior to January 1960, you, as president of WMEX, had no knowledge whatsoever that any diskjockey on that station was accepting payola?

Mr. RICHMOND. That is correct, sir.

Mr. LISHMAN. That is correct. And you had no discussion with any diskjockey, librarian, or program manager of that station in connection with the subject matter of payola?

Mr. RICHMOND. That is correct, sir.

Mr. LISHMAN. Your station at no time prior to January 1960 made any investigation to ascertain whether any diskjockey had been receiving payola, is that correct?

Mr. RICHMOND. Well, there might have been jokes passed back and forth.

Mr. LISHMAN. I am asking whether you had ever caused any investigation to be made to ascertain whether payola existed at that station?

Mr. RICHMOND. We had meetings, also in December 1959, right after the subcommittee brought this whole matter to our attention, and we presented complete FCC material on the matter, and also requested all of our diskjockeys to examine it very carefully.

Mr. LISHMAN. Did any of the diskjockeys report back to you, that they had received payola?

Mr. RICHMOND. Yes, sir; they did.

Mr. LISHMAN. And are the diskjockeys who admitted receiving such payola still employed by station WMEX?

Mr. RICHMOND. Yes, sir.

Mr. LISHMAN. What investigation did you make when you received the news for the first time, in December, as I understand it, that some of the diskjockeys had been receiving payola?

Mr. RICHMOND. Well, I didn't receive it in 1959, in December, that exact information. At that time I merely presented them with the FCC material about the subject, and we held a meeting regarding the whole thing, and then later on we asked them to fill out this form.

Mr. LISHMAN. At any time did you, as president of WMEX, cause an independent investigation to be made as to whether payola had been received by diskjockeys employed by WMEX?

Mr. RICHMOND. Yes, sir; we made this sometime in January 1960.

Mr. LISHMAN. You caused an independent investigation to be made. What was the nature of that investigation?

Mr. RICHMOND. Well, we had a regular form printed which——

Mr. LISHMAN. You had a regular form printed?

Mr. RICHMOND. Yes, sir. And in this form it stated, if any consideration was paid for the playing of any records or any type of consideration, gifts, or what have you, and it was requested that each member notarize this form.

Mr. LISHMAN. After you got the answers back on this printed form, signed by the employees of the station, did you cause any check to be made as to the completeness or accuracy of the statements that were given?

Mr. RICHMOND. We didn't go into it any further.

Mr. LISHMAN. In other words, is it correct that you accepted whatever the diskjockey or other employee put down in answer to the printed form?

Mr. RICHMOND. We accepted a notarized affidavit, sir.

Mr. LISHMAN. Prior to receiving these written answers from the employees, had you ever questioned any of your employees about this matter?

Mr. RICHMOND. Not that I recall, sir.

Mr. LISHMAN. Do you know whether your brother had ever questioned any of the station employees about this matter?

Mr. RICHMOND. Well, sir; I couldn't answer for him.

Mr. LISHMAN. Did you and your brother have a conversation about this matter?

Mr. RICHMOND. No, sir.

Mr. LISHMAN. Does station WMEX select and play a record called the gold platter of the week?

Mr. RICHMOND. Yes, sir.

Mr. LISHMAN. How is this record selected?

Mr. RICHMOND. This record is always selected by the program director.

Mr. LISHMAN. By Mel Miller?

Mr. RICHMOND. Back in 1957, on August 31, 1957, gold platter first appeared, and Mel Miller was not our program director at that time. He was not employed by our company then.

Mr. LISHMAN. Well, originally, then, the gold platter was not selected by Mel Miller, but was selected by another individual?

Mr. RICHMOND. Selected by the program director at that time.

Mr. LISHMAN. Who was the program director at that time?

Mr. RICHMOND. I don't have my records with me, but it could have been either Gene Edwards or Bart Melton.

Mr. LISHMAN. When did Mr. Mel Miller become program director?

Mr. RICHMOND. I am not certain of that exact date, sir, but I believe he joined us in 1958, sometime in February of 1958.

Mr. LISHMAN. When he joined WMEX did he immediately become program manager as well as disk jockey?

Mr. RICHMOND. No, sir. He was a disk jockey, but I believe he was not the program director immediately.

Mr. LISHMAN. When did Mr. Mel Miller first begin to select the gold platter of the week?

Mr. RICHMOND. When he first became program director, sir.

Mr. LISHMAN. When was that?

Mr. RICHMOND. I am not positive of the date, but I believe it was sometime in 1958.

Mr. LISHMAN. Sometime in the early part of 1958?

Mr. RICHMOND. Well, I am not certain of that date, sir.

Mr. LISHMAN. Could you give us the approximate date?

Mr. RICHMOND. Well, I believe he joined us in February of 1958, but how long thereafter he became program director, I am not certain.

Mr. LISHMAN. You are the active head of the management of this station and it seems to me we are getting a good many answers that indicate you have very little information as to what is going on.

Mr. RICHMOND. Well, I know he joined us in February 1958, but I don't have any records with me and I didn't happen to look the matter up. I can report back to the committee on exactly what day he was appointed program director.

Mr. LISHMAN. Well now, let us take Mel Miller and assume that he has reached the position where he selects the gold platter of the week. What instructions do you or your brother, as owners of this station, give to Mel Miller in that regard?

Mr. RICHMOND. In reference to gold platter, sir?

Mr. LISHMAN. Yes, sir.

Mr. RICHMOND. The gold platter of the week is a promotional record that we use to attract listeners. It is a future hit that we deem might be a future hit. Mel Miller reviews many records, and he selects one record to be used during that whole course of the week.

Mr. LISHMAN. What instructions do you give Mr. Miller with reference to selecting the gold platter record?

Mr. RICHMOND. Well, we don't give him any definite instructions as to the selection. The components, you mean, that would make up the gold platter, why he would select the gold platter?

Mr. LISHMAN. Well, does WMEX receive compensation from any distributor or other person for playing the gold platter of the week?

Mr. RICHMOND. Sir, I would like to answer that by stating that on August 31, 1957, through November 1958, the gold platter of the week was on WMEX, and no payment, no money was received for what we call costs of mailing and handling of the gold platter during that whole period, and the reason for that was that the gold platter of the week did not pose a problem. The correspondence, the mailing and the handling and the costs involved were negligible at that time.

Mr. LISHMAN. Well, in order to get some clarity in the situation, Mr. Richmond, I am going to show you a computation made by an auditor on loan to the subcommittee from the General Accounting Office. I am going to ask you to look at this, and to state whether or not it correctly reflects the amount of billings for the sponsorship of the gold platter of radio station WMEX for the period November 26, 1958, to December 6, 1959?

Mr. RICHMOND. Yes, sir; Mr. Lishman.

Mr. LISHMAN. Does this correctly reflect billings of WMEX for sponsorship of gold platter during the periods indicated?

Mr. RICHMOND. This correctly reflects charges made to these companies.

Mr. LISHMAN. And payments received by WMEX, with the exception of the last figure on the list?

Mr. RICHMOND. I believe that is true, sir.

Mr. LISHMAN. It would be with the note, \$150.

With the exception of the one item of \$150, the last on the list, is it correct?

Mr. RICHMOND. Yes, sir.

Mr. LISHMAN. That this sheet reflects actual billings and payments made to WMEX for sponsorship of the gold platter during the period covered?

Mr. RICHMOND. It reflects billings, but I couldn't accurately state whether it reflects payments. I assume it does.

Mr. LISHMAN. Mr. Chairman, at this point, I would like to have in the record this sheet prepared by Mr. Keelan, on loan from the GAO to the subcommittee, which shows the amount of billings of WMEX for sponsorship of the gold platter for the period November 26, 1958, to December 6, 1959.

The CHAIRMAN. You have identified this information, have you not, Mr. Richmond?

Mr. RICHMOND. Yes, sir.

The CHAIRMAN. And that is correct?

Mr. RICHMOND. To the best of my knowledge, it is correct. I don't have any of my own records with me, sir.

The CHAIRMAN. Let it be received for the record.

(The list of billings referred to follows:)

RADIO STATION WMEX

Amount of billings for sponsorship of gold platter

Date	Record title	Gold platter sponsor	Billed amount
Nov. 26, 1958.....	Chipmunk Song.....	Mutual Distributing, Inc.....	\$50
Dec. 10, 1958.....	Drummer Boy.....	Records, Inc.....	50
Jan. 20-31, 1959.....	{Gold Platter and Mr. X	do.....	600
Feb. 1-23, 1959.....	{ Album.....	do.....	
Mar. 1-23, 1959.....	do.....	do.....	400
Mar. 31 to Apr. 27, 1959.....	do.....	do.....	400
May 11-17, 1959.....	To A Soldier Boy.....	Dumont Record Distributing Corp.....	75
May 25-31, 1959.....	Now and Once Again.....	do.....	75
June 22-28, 1959.....	Ragtime Cowboy Joe.....	Mutual Distributing, Inc.....	50
June 29 to July 5, 1959.....	Baby Talk.....	do.....	10
July 13-19, 1959.....	Katy Loo.....	Music Suppliers, Inc.....	10
July 20-26, 1959.....	Sleep Walk.....	Dumont Record Distributing Corp.....	10
July 26-31, 1959.....	I'm Gonna Get Married.....	Music Suppliers, Inc.....	10
Aug. 10-16, 1959.....	Roco Loco.....	do.....	10
Aug. 10-16, 1959.....	Oke Pheemoke.....	Records, Inc.....	10
Aug. 17-23, 1959.....	Teen Beat.....	Mutual Distributing, Inc.....	10
Aug. 24-30, 1959.....	Ask Your Heart.....	Records, Inc.....	10
Aug. 31 to Sept. 6, 1959.....	Love Potion Number 9.....	Mutual Distributing, Inc.....	10
Sept. 7-13, 1959.....	Something Else.....	do.....	10
Sept. 14-20, 1959.....	Woo Hoo.....	Dumont Record Distributing Corp.....	25
Sept. 21-27, 1959.....	Boys Do Cry.....	Music Suppliers, Inc.....	25
Oct. 5-11, 1959.....	There Comes a Time.....	Records, Inc.....	25
Oct. 12-18, 1959.....	In the Mood.....	Mutual Distributing, Inc.....	25
Oct. 19-25, 1959.....	Over the Rainbow.....	Music Suppliers, Inc.....	25
Oct. 26-31, 1959.....	Tear Drops.....	Dumont Record Distributing Corp.....	25
Nov. 1-8, 1959.....	Lovers Plea.....	do.....	25
Nov. 9-15, 1959.....	Sandy.....	do.....	25
Nov. 16-22, 1959.....	Autumn Leaves.....	Mutual Distributing, Inc.....	25
Nov. 23-29, 1959.....	Rock'n J. Bells.....	do.....	25
Nov. 30 to Dec. 6, 1959.....	Golden Rule.....	do.....	25
Nov. 7, 1958 ¹	Pat O'Day (artist).....	Ace Recording Studios, Inc.....	150
Total.....			2,225

¹ Mr. Richmond stated that there was a misunderstanding about the billing of this amount, and although a bill was rendered to Ace Recording Studios, Inc., the \$150 was never paid.

Source: Station WMEX record of billing.

Mr. LISHMAN. I would like Mr. Richmond to know; we will give you a copy of this. You may copy that and if there is anything incorrect in it, you may cause it to be corrected. But these figures were taken directly from the books of WMEX.

Mr. RICHMOND. Yes, sir.

Mr. LISHMAN. By an accountant assigned to the subcommittee for duty and I do not think it will be necessary to put him on the stand to testify that he truthfully and correctly and completely took this material out of your books. You do not challenge the accuracy of this in any substantial way; do you?

Mr. RICHMOND. No, sir. I might point out, however, that there were a number of records played on the gold platter—first of all, as I explained, from August 31, 1957, through this date here, November 1958. There was no charge made for costs of distribution and mailing and handling of the gold platter, and in, somewhere in these periods, records were mailed by these companies for which no charge was made because they handled the mailing.

Mr. LISHMAN. Mr. Richmond, were you here during the testimony of Mr. Cecil Steen, of Records, Inc., this morning?

Mr. RICHMOND. Yes, sir.

Mr. LISHMAN. Do you agree with him that he paid your company \$1,400 for selecting one of his record labels as the gold platter of the week over a 13-week period?

Mr. RICHMOND. Well, sir, there are two matters involved there. One is the gold platter of the week, and the other is the Mr. X Album, and the gold platter was charged at \$50 a week, and the album at another \$50.

Mr. LISHMAN. Now, coming to this sheet which has just been introduced into the record, showing the amount of billings for sponsorship of the gold platter. As I understand it, you say that the charges involved were intended to cover what you call mailing and handling charges?

Mr. RICHMOND. Yes, sir.

Mr. LISHMAN. Well, I call your attention to the fact, the extreme fluctuations in the amounts billed. I notice the first entry for the "Chipmunk Song" by Mutual Distributing, Inc., you billed \$50.

Mr. RICHMOND. Yes, sir.

Mr. LISHMAN. Is this correct?

Mr. RICHMOND. Yes, sir.

Mr. LISHMAN. Did you also receive free records from Mutual Distributing Co.?

Mr. RICHMOND. Yes, sir; and they were mailed.

Mr. LISHMAN. How much did you receive by way of free records in that week?

Mr. RICHMOND. Well, to the best of my knowledge, there were a total of 75 records received.

Mr. LISHMAN. Well now, did it cost you \$75 to mail and handle this one record, "Chipmunk Song," or rather \$50?

Mr. RICHMOND. Sir, our method of handling the, all of these records and the computations upon which they are based is as follows: There were truly an approximation of what the cost might be. As I say, from September 30, 1957, to November 1958, no charge was made because it did not produce a burden upon our staff to handle the gold platter of the week. Then it started becoming burdensome, and there is filing—first of all, the distribution of the records, in the beginning sometimes we sent out cards during 1957 and asked people to come in. We found that didn't work. Other times we sent out letters thanking them for their entry into gold platter of the week. There were other times when the records were mailed special delivery. We found a lot of people didn't get their records on time.

Then there were occasions when record companies mailed them themselves, and when they handled them and mailed them, there was no charge whatsoever made.

Mr. LISHMAN. Do you know a Mr. Yacus of Ace Recording Studios, Inc.?

Mr. RICHMOND. Yes, sir.

Mr. LISHMAN. Do you recall a telephone conversation with him in November 1958 concerning a record with Pat O'Day as the artist?

Mr. RICHMOND. I don't recall the conversation, but I recall the record, sir.

Mr. LISHMAN. Did you inform Mr. Yacus that if he wanted to have that record played as the gold platter of the week it would cost him \$150?

Mr. RICHMOND. No, sir; I did not.

Mr. LISHMAN. You don't recall saying that?

Mr. RICHMOND. No, sir; I do not.

Mr. LISHMAN. Do you recall billing him for \$150?

Mr. RICHMOND. When this whole matter came up on the records of WMEX, there was a bill made to this particular company, but it was never paid.

Mr. LISHMAN. You billed them \$150, though?

Mr. RICHMOND. According to the records, that was billed.

Mr. LISHMAN. And that was an unknown record, was it not?

Mr. RICHMOND. I don't know whether it was——

Mr. LISHMAN. Was it a new record, and didn't Mr. Yacus think \$150 was an outrageous price to pay?

Mr. RICHMOND. No, sir. Pat O'Day is the star on WEEI radio and has been for many years. He is not an unknown personality in Boston.

Mr. LISHMAN. What was the label of that record, do you recall?

Mr. RICHMOND. I don't recall.

Mr. LISHMAN. Have you ever dunned Ace Recording Studios for the payment of \$150, which is still outstanding?

Mr. RICHMOND. I wouldn't have anything to do with that, sir. I think it was a complete error in that Ace never paid anything for it, and very often Ace would joke with the members of the staff about many things, and I think the whole thing was a complete error.

Mr. LISHMAN. Mr. Richmond, isn't it correct from the period November 26, 1958, to December 6, 1959 that WMEX, according to its own books, had total billings of \$2,225 for various record distributors for sponsorship of the gold platter record?

Mr. RICHMOND. It is true that these charges were made to these record companies.

Mr. LISHMAN. You received \$1,400 from Records, Inc., from January 20, 1959, to April 27, 1959?

Mr. RICHMOND. I know they were billed, sir, but I am not certain of the amount.

Mr. LISHMAN. I have your invoices, if that will help your recollection, sir (showing document to witness).

Mr. Richmond, you have just examined a photostatic copy of invoices on WMEX letterheads, three of them; is that correct?

Mr. RICHMOND. Yes, sir.

Mr. LISHMAN. And they purport to show invoices of WMEX to Records, Inc., for promotion of the gold platter and the Mr. X album of the week; is that correct?

Mr. RICHMOND. Yes, sir.

Mr. LISHMAN. Do those invoices show that you billed Records, Inc., for a total sum of \$1,400?

Mr. RICHMOND. Yes, sir.

Mr. LISHMAN. What was the purpose of billing Records, Inc., in these sums?

Mr. RICHMOND. Well, this is to defray the costs of handling, mailing, filing, and all the other matters that go along with the gold platter and the Mr. X album.

It is necessary that copies of every one be kept, and it is also necessary that the following week there are no duplications of winners.

And it is necessary that many cities and many towns get an equal chance to win the gold platter and the big X album.

Mr. LISHMAN. Isn't it also a fact that in addition to the payment of \$1,400, Records, Inc., gave you 75 free records each week?

Mr. RICHMOND. Yes, sir; and those records were distributed free to the listeners.

Mr. LISHMAN. At any time when the gold platter of the week was played over WMEX was there any announcement that the station had already been paid money and free records in connection with the airing of the gold platter involved?

Mr. RICHMOND. Well, the gold platter was always aired in a commercially sponsored segment.

Mr. LISHMAN. Was any announcement made at the time of its airing that the station had received money?

Mr. RICHMOND. No, sir.

Mr. LISHMAN. Was any announcement made to the public that the record itself had been selected solely on the basis of its individual merit?

Mr. RICHMOND. Well, there was an announcement, a jingle that always preceded the record.

Mr. LISHMAN. What was the jingle?

Mr. RICHMOND. Well, the jingle explained how you could win this record. It did not say it was a top record; it did not say that it was a popular record. It merely stated that it could be a future hit.

Mr. LISHMAN. The jingle didn't announce that the record had been paid for by the record distributor?

Mr. RICHMOND. No, sir.

Mr. LISHMAN. Was there any announcement made to the listening public that the records which were going to be given as prizes had also been donated to the station by record distributors?

Mr. RICHMOND. No, sir.

Mr. LISHMAN. Mr. Richmond, do you know that in December 1959 Mr. Miller told your brother Robert that he had received two checks from the Crests, a singing group?

Mr. RICHMOND. No, sir; I am not familiar with that. Mr. Miller reported, however, I believe, those items in his affidavit.

Mr. LISHMAN. What is it? I did not hear you.

Mr. RICHMOND. Mr. Miller reported, I believe, some items in his affidavit.

Mr. LISHMAN. In December 1959? I am referring to——

Mr. RICHMOND. No, I wasn't there.

Mr. LISHMAN. Did your brother ever have any conversation with you about the fact that Mr. Miller had admitted to him that he had received payola?

Mr. RICHMOND. My brother discussed this whole matter of payola and its ramifications with me, and as I stated, we issued memoranda and placed them on the bulletin boards, and subsequently requested every member of the organization to fill this notarized statement out.

Mr. LISHMAN. Well, the question I asked was whether you ever had discussions with your brother in which he advised you that Mr. Miller had admitted receiving two checks from the Crests?

Mr. RICHMOND. I don't recall that conversation, sir.

Mr. LISHMAN. Did you have standing instructions that each disk-jockey should play the gold platter at least once during his time on the air?

Mr. RICHMOND. No, sir.

Mr. LISHMAN. Did you ever issue any instructions to the diskjockeys concerning the airing of the gold platter of the week?

Mr. RICHMOND. No, sir. That was all handled by the program director.

Mr. LISHMAN. Handled by whom?

Mr. RICHMOND. The program director, sir.

Mr. LISHMAN. Do you know whether he ever gave such instructions?

Mr. RICHMOND. No, sir.

Mr. LISHMAN. Have you ever seen the bulletin announcement board at the station?

Mr. RICHMOND. I have looked at it quite frequently.

Mr. LISHMAN. Do you ever recall seeing a written instruction there to the effect that they should lay on the gold platter of the week?

Mr. RICHMOND. No, sir.

Mr. LISHMAN. Did you or your brother attend, or any of the WMEX diskjockeys attend, the diskjockey convention?

Mr. RICHMOND. Yes, sir.

Mr. LISHMAN. In 1959?

Mr. RICHMOND. That is correct, sir.

Mr. LISHMAN. Whose guest were you?

Mr. RICHMOND. We were no one's guest, sir. I paid by check for all WMEX's hotel rooms, also the transportation and everything else.

Mr. LISHMAN. And you paid for all the diskjockeys of the station who attended?

Mr. RICHMOND. I was only accompanied by one diskjockey, the program director, Mr. Mel Miller.

Mr. LISHMAN. Was that Mr. Mel Miller?

Mr. RICHMOND. Yes, sir.

Mr. LISHMAN. Did you pay Mr. Miller's bill?

Mr. RICHMOND. Yes, sir.

Mr. LISHMAN. In what hotel did you stay?

Mr. RICHMOND. We stayed at the—well, the first day we couldn't get into the Americana, and we stayed at another hotel prior to that. I can't recall the name of it at the moment.

Mr. LISHMAN. Did any record company or record distributor reimburse you for the amount of your costs for attending this convention?

Mr. RICHMOND. No, sir; absolutely not, sir.

Mr. LISHMAN. Either in cash or in the form of free records?

Mr. RICHMOND. No, sir.

Mr. LISHMAN. I have no further questions.

The CHAIRMAN. Mr. Mack?

Mr. MACK. Mr. Richmond, the other day we had a representative here from the Americana Hotel who indicated they weren't at all crowded.

Mr. RICHMOND. It was impossible for us to get in the first day, sir. We came in, however, at 2 or 3 o'clock in the morning. We took a coach flight; and I forget the name of this other hotel, but I can furnish it to the committee, sir, the first day.

Mr. MACK. You called the Americana and there were no rooms available; is that correct?

Mr. RICHMOND. Yes, sir.

Mr. MACK. Were you supposed to have had reservations at the Americana.

Mr. RICHMOND. No, we never had reservations, sir. We decided at the last moment to go.

Mr. MACK. But you did stay at the Americana the following day?

Mr. RICHMOND. I believe the following day we stayed there.

Mr. MACK. When did you have this discussion with your brother concerning payola?

Mr. RICHMOND. Right after the Harris subcommittee had brought it to the attention of everyone, and when we received information from our attorneys regarding it.

Mr. MACK. Would you say that was in December of 1959, November of 1959?

Mr. RICHMOND. I believe it first started around December the 1st. We had some conversations on it; I am not exactly sure.

Mr. MACK. Is that the same time that you had the affidavits printed?

Mr. RICHMOND. No, sir; no. The affidavits were printed later.

Mr. MACK. Sometime in February or January?

Mr. RICHMOND. Oh, no; no. The affidavits were printed sometime in, I would say, the latter part of December, and distributed in January 1960.

Mr. MACK. But in December your brother told you that Mel Miller had received payola.

Mr. RICHMOND. No. My brother, as I recall, to the best of my knowledge, never told me about anyone receiving any payola at the station.

Mr. MACK. Well, I wasn't quite clear. What was the conversation about?

Mr. RICHMOND. I am sorry, sir; I am not following you.

Mr. MACK. I heard you testify a few minutes ago that you had a conversation with your brother in December concerning payola.

Mr. RICHMOND. Yes, we were very much concerned about the whole matter, and naturally we discussed the matter.

Mr. MACK. I understood in response to a question by Mr. Lishman that you indicated your brother had said that Mr. Miller had received a check from someone.

Mr. RICHMOND. No, sir. I never had any discussion with my brother about anyone at the station saying that.

Mr. MACK. Then I misunderstood you. But you discussed the matter with him at that time in December because you had heard from people testifying before this committee and in the industry generally, that this was a common practice. Is that correct?

Mr. RICHMOND. Yes, sir.

Mr. MACK. Did you think that it would involve your station at the time?

Mr. RICHMOND. No, sir; not actively. But, as a businessman and as a licensee, we wanted to take every step that was necessary to get to the facts.

Mr. MACK. Did you ask Mr. Miller at that time, following the conversation with your brother, if he had received payola?

Mr. RICHMOND. No, sir; I did not ask him. I did not ask any of the members. I was waiting for attorneys to give us a form and complete information about it so we could determine this very accurately and very correctly.

Mr. MACK. How many diskjockeys are employed by your station?

Mr. RICHMOND. I believe there are seven or eight, sir. We have some part-time men.

Mr. MACK. Five regular diskjockeys and two part-time men?

Mr. RICHMOND. I can count them up for you, sir. There are six full-time men and there is one part-time man.

Mr. MACK. You have one or two part-time men?

Mr. RICHMOND. Yes, sir.

Mr. MACK. And this is at station WMEX?

Mr. RICHMOND. Yes, sir.

Mr. MACK. And you are, I understand from your testimony, actively engaged as the manager of the station?

Mr. RICHMOND. Yes, I am the directing head and responsible for the overall planning of the station.

Mr. MACK. Yes.

Now, one thing is confusing to me. Since you are the managing head of a medium-sized radio station, where you have direct contact with the employees, why was it necessary for you to go to a lawyer and draw up an affidavit and have it printed?

Wouldn't it have been simpler for you to have walked in or to have called these diskjockeys into your office and ask them if they had been participating in payola?

Mr. RICHMOND. We wanted to have them on file in a written form and notarized form, the information. And——

Mr. MACK. Why?

Mr. RICHMOND. We felt it would be to the best interests of the public and to the best interests of this whole matter.

Mr. MACK. If I understood your testimony correctly, you haven't discharged any of them yet; is that correct?

Mr. RICHMOND. There are two men, sir, who signified that they had received considerations, of a total employment of 35 people.

We had many conversations with these men after filling out the notarization of this paper.

Mr. MACK. But of 35, only 6 of them are diskjockeys?

Mr. RICHMOND. Seven, sir.

Mr. MACK. Seven. Six full time.

Mr. RICHMOND. Yes. There is also a librarian and——

Mr. MACK. Have you discharged either of the two who have been——

Mr. RICHMOND. No, sir.

Mr. MACK (continuing). Who have admitted they had taken payola?

Mr. RICHMOND. No, sir.

Mr. MACK. This has been going on since last December. Instead of calling the diskjockeys into your office, you get in touch with an attorney. Then you have special, elaborate forms printed, and you have them fill in the forms and give you certain information. Then, as a result of this complicated procedure, you find two of your employees are guilty of taking payola. I presume that happened sometime in January, but they are still in your employ?

Mr. RICHMOND. Yes, sir.

Mr. MACK. What I can't understand is why you went to all the trouble of getting the forms and going through this complicated procedure, if your purpose was to determine the fitness of these diskjockeys to remain with your station.

Mr. RICHMOND. We worried about the matter considerably, sir, and we searched our conscience and thought it over very carefully, and we talked to the men, and we felt these men were decent, honest men, but they had been misled; that the whole thing was a complete mistake on their part, and these men offered to return this money to the companies involved, and we thought it over very carefully and we decided that if any damage had been done, it had been done so WMEX and the public interest, and it would serve no purpose to return this money.

Then the men suggested that if we felt it would serve any purpose they would be happy to return this money to their favorite charities.

Mr. MACK. Do you plan to discharge the two diskjockeys who admitted taking payola?

Mr. RICHMOND. Frankly, sir, we don't, because we feel this is an honest mistake on these two men's part.

Mr. MACK. Thank you.

Well, then, I still can't understand a responsible person, a station manager of one of the principal radio stations in the Boston area, going through all this complicated procedure. All you need have done if you were concerned was to call in a diskjockey way back in December and have a heart to heart talk with him. Then if, in your judgment, you believed he should be fired, you could fire him on the spot.

If you decided to keep him, as you have, you could decide to keep him at that time.

I just can't see the justification for all of the complicated procedure involving statements and all that you went through.

Mr. RICHMOND. We were very worried about it, sir, because, in, well, the insinuations and the complete conversation in the industry on the whole matter, we felt it would be best to have it in complete written form, because there seems to be some question in some people's mind as to whether Christmas gifts are allowable, or whether the amount is so paltry, whether it should not be specified.

We wanted each and every item so that nothing could be left unreturned so that we would have a complete appraisal of it.

Mr. MACK. You were worried about this prior to the time our investigators came up to Boston, weren't you?

Mr. RICHMOND. Well, it's always our concern, any matter that is not according to Hoyle.

Mr. MACK. Were you shocked to find that two of your diskjockeys had received payola?

Mr. RICHMOND. Yes, sir; I was.

Mr. MACK. You didn't think it would be possible for anyone in the employ of your company to have been participating in this type of operation?

Mr. RICHMOND. That is correct, sir.

Mr. MACK. But yet you took no affirmative action in either case, even though you were shocked?

Mr. RICHMOND. Yes, sir. We took affirmative action in this matter. We notified both of these men that if this ever happened again they would be fired without notice, and they promised that never—they would never do it again.

Mr. MACK. Did you adjust their salaries after you discovered that they were receiving payola?

Mr. RICHMOND. No, sir.

Mr. MACK. You own another station, I believe; don't you?

Mr. RICHMOND. Yes, sir.

Mr. MACK. Where is that station located?

Mr. RICHMOND. We own two other stations.

Mr. MACK. Two other stations?

Where are those stations located?

Mr. RICHMOND. One station is in Henderson, Nev., and the other station is in Morningside, Md.

The CHAIRMAN. Where?

Mr. MACK. Morningside, Md.

Do you also have a controlling interest in these two stations?

Mr. RICHMOND. Yes, sir.

Mr. MACK. When did you acquire your controlling interest in the three stations?

Mr. RICHMOND. I am not positive of the exact date, sir, of the Henderson, Nev., station which has been operating since October 12, I believe, of last year; and Morningside, Md., has been operating since, I think it is sometime in 1955, sir.

Mr. MACK. Were you the original licensee in each of these cases?

Mr. RICHMOND. No, sir.

Mr. MACK. How about the Boston station, WMEX?

Mr. RICHMOND. No, sir. That station was acquired from the New England Radio Corp.

Mr. MACK. When did you acquire that station?

Mr. RICHMOND. I believe we acquired it sometime in August of 1957, sir.

Mr. MACK. Was there a public hearing held at the time you acquired WMEX?

Mr. RICHMOND. Public hearing?

Mr. MACK. Yes.

Mr. RICHMOND. No, sir.

Mr. MACK. To determine the fitness of the people operating the station and whether it would be operated in the public interest?

Mr. RICHMOND. The New England Radio Corp. license had been rescinded, and I believe there was a hearing held to determine whether the station should be transferred.

Mr. MACK. Was this a public hearing?

Mr. RICHMOND. I am not certain about that, sir.

Mr. MACK. Did you acquire the Boston station before the Morningside, Md., station?

Mr. RICHMOND. No, sir; Morningside was our first station.

Mr. MACK. You acquired it originally?

Mr. RICHMOND. Yes, sir.

Mr. MACK. Was there a public hearing in this instance?

Mr. RICHMOND. No, sir. Originally I was a 50 percent owner of that station, and then I purchased the balance of the 50 percent.

Mr. MACK. Originally you held a 50 percent interest with someone else, and then you purchased the balance of the interest in this station?

Mr. RICHMOND. Yes, sir.

Mr. MACK. Then you acquired the controlling interest in the Boston station?

Mr. RICHMOND. Yes, sir.

Mr. MACK. And then you acquired the Nevada station; is that correct?

Mr. RICHMOND. Yes, sir.

Mr. MACK. This must have been a new station in Nevada, and there must have been a public hearing held in this case.

Mr. RICHMOND. This station was on the air since 1954 and it changed hands several times, and for economic reasons it was off the air when it was purchased.

Mr. MACK. It was off the air?

Mr. RICHMOND. Yes, sir.

Mr. MACK. Did you acquire the interest from someone else and then automatically begin to broadcast, or did you have to go through a public hearing of some kind?

Mr. RICHMOND. Well, we made the application to the FCC for acquiring this particular station.

Mr. MACK. And, therefore, they had to grant the permit, they had to approve your application before you could go on the air?

Mr. RICHMOND. Yes, sir.

Mr. MACK. And there was no public hearing held in this case either?

Mr. RICHMOND. Not that I know of, sir.

Mr. MACK. Mr. Chairman, those are all the questions I have.

The CHAIRMAN. Mr. Moss?

Mr. Moss. Mr. Richmond, on this affidavit you had prepared, was it prepared on the advice of your attorney, not as to form, but as to the desirability of having such an instrument in your files?

Mr. RICHMOND. No. I suggested that I would like to have it in some written form.

Mr. Moss. What good was it as an affidavit, notarizing it? It didn't have any effect at all, did it? Why not just get a written statement from your employees, explaining what they had done? What good did the notarizing accomplish?

Mr. RICHMOND. Well, in our opinion, swearing under oath is a rather important thing.

Mr. Moss. They could just take an oath in front of you to swear it is true. You cannot take any action against them if they have told something that is not true, can you? The oath isn't required by law; what good is it?

Mr. RICHMOND. No; but our company felt that it would be—

Mr. Moss. Did the attorney advise you that it would be—

Mr. RICHMOND. Yes, sir.

Mr. Moss. I just can't see any use for it at all.

How long have you been in broadcasting? How long have you been connected with broadcasting in any capacity?

Mr. RICHMOND. Well, prior to the broadcasting business I was in 1936 with an advertising agency.

Mr. Moss. I say how long have you been connected with broadcasting in any capacity?

Mr. RICHMOND. Actual stations since 1955.

Mr. Moss. In any capacity, how long? When did you first become connected with broadcasting in any capacity whatsoever?

Mr. RICHMOND. Well, this advertising business that I alluded to, we specialized in radio.

Mr. Moss. Did you have an agency—

Mr. RICHMOND. Yes, sir.

Mr. Moss (continuing). Or did you work for an agency?

Mr. RICHMOND. No, I had an advertising agency.

Mr. Moss. Yes.

Mr. RICHMOND. Yes, sir.

Mr. Moss. Specializing in radio accounts?

Mr. RICHMOND. Yes, sir.

Mr. Moss. Did you go directly from the advertising agency into station ownership?

Mr. RICHMOND. Yes, sir.

Mr. Moss. So your first actual active role in broadcasting was as an owner and a licensee?

Mr. RICHMOND. That is correct, sir.

Mr. Moss. And that was in connection with the Boston station?

Mr. RICHMOND. No, sir; that was in connection with the Morningside, Md., station.

Mr. Moss. Morningside, Md. That was the first to be acquired by you?

Mr. RICHMOND. Yes, sir.

Mr. Moss. And you have the interest now in three stations, a majority interest in three stations?

Mr. RICHMOND. Yes, sir.

Mr. Moss. Have you a minority interest in any station?

Mr. RICHMOND. No, sir.

Mr. Moss. This represents your total interests in radio?

Mr. RICHMOND. Yes, sir.

Mr. Moss. Having been in advertising work, and working closely with broadcasting, had you ever heard of payola prior to last November?

Mr. RICHMOND. Yes, sir; I had heard of it. I don't know whether it was called payola.

Mr. Moss. You heard of these side payments for promotion?

Mr. RICHMOND. Yes, sir.

Mr. Moss. Had you ever participated in any of them?

Mr. RICHMOND. Pardon?

Mr. Moss. Had you ever participated in any manner in this practice—

Mr. RICHMOND. No, sir.

Mr. Moss (continuing). Of promotional payment?

Mr. RICHMOND. No, sir.

Mr. Moss. You never made any payments on behalf of any of your clients?

Mr. RICHMOND. No, sir; absolutely not, sir.

Mr. Moss. When you had your advertising business?

Then, having had a knowledge of it when you became an owner, did you formulate any policy for your station as to the code of conduct expected of your employees?

Mr. RICHMOND. We have a very rigid manner of playing records on our stations.

A lot of stations' practices allow the DJ to pick any record that he wishes. We do not allow that on our stations.

Mr. Moss. Who picks the recordings at your station?

Mr. RICHMOND. The program director picks the recordings. These recordings then are made up in a play sheet for the week and then these recordings are played into a revolving file like, and they are done by numbers, so that no diskjockey can pick any records that he wishes.

Mr. Moss. Then the program director has considerable latitude of judgment in the selection of recordings?

Mr. RICHMOND. Yes, sir.

Mr. Moss. And one of your diskjockeys is the program director?

Mr. RICHMOND. Of WMEX; yes, sir.

Mr. Moss. WMEX.

But you had no policy adopted, with which your employees were acquainted, as to the acceptance of payments for any purpose from outside sources?

Mr. RICHMOND. I don't think any particular policy was ever clearly stated.

Mr. Moss. Has any policy been stated subsequent to the disclosures occurring last fall?

Mr. RICHMOND. Yes, sir; very definitely, sir.

Mr. Moss. What is that policy now?

Mr. RICHMOND. The policy is that any diskjockey or any member of the organization connected with any of our stations who, in any manner, receive any consideration, money or otherwise, will be discharged immediately.

Mr. Moss. That is not tied to payment for influence, but is for any purpose or for any reason, without your knowledge?

Mr. RICHMOND. It is tied to any type of consideration, influence, implied, express, gifts, goodwill, any manner of payment.

Mr. Moss. Who started the gold platter promotion on your station?

Mr. RICHMOND. I started the gold platter, sir.

Mr. Moss. Do you have the gold platter on your other stations?

Mr. RICHMOND. No, sir.

Mr. Moss. Do you have a similar promotion on your other stations?

Mr. RICHMOND. We play many records.

Mr. Moss. You really haven't, in either Morningside, Md., or out in Nevada. You do not have a market comparable to the one in Boston, so that it would be rather difficult to undertake this promotion?

Mr. RICHMOND. I am sorry; I didn't hear your statement.

Mr. Moss. I say, in Maryland, your station in Maryland and your station in Nevada, do not have the market area that is comparable to Boston. Therefore it might be difficult to undertake this promotion. Is that why you do not have one there?

Mr. RICHMOND. Well, there is a lot of work involved in this gold platter. It just isn't that simple.

Mr. Moss. But it was your idea. You auditioned it in your station?

Mr. RICHMOND. Yes, sir.

I instituted the platter.

Mr. Moss. In 1957?

Mr. RICHMOND. Yes, sir.

Mr. Moss. You carried it until November 1958, when I think, you characterized it as becoming burdensome from the standpoint of handling it as a public promotion; is that correct?

Mr. RICHMOND. There are many steps involved in that.

Mr. Moss. I just want to know if that is correct. You characterized it as becoming burdensome at that point in November 1958.

Mr. RICHMOND. I wouldn't say it is burdensome. I would say, sir, that there were many costs involved in the thing.

Mr. Moss. I was trying to use your own characterization.

Now, 1958, in November, November 7, apparently, it was determined to adopt a different policy. Was this a formal determination? Who determined that a payment should be accepted?

Mr. RICHMOND. I did, sir.

Mr. Moss. In connection with—you did?

Mr. RICHMOND. Yes, sir.

Mr. Moss. Did you undertake a solicitation of recording companies. How did you determine the amount of the charge and with whom you would do business?

Mr. RICHMOND. Well, at best, the charge was an approximate guess based upon previous experience with gold platter.

Mr. Moss. The charge then was a guess, a guess at that point of \$150 a week?

Mr. RICHMOND. According to our records, sir, we never received \$150 a week at any time.

Mr. Moss. Mr. Richmond, I am inclined, on the basis of your own books, not to regard that charge as an error, because I am informed by our accountant here that you have never issued a credit memorandum canceling that charge. If you carry it forward on a normal basis and write them off as bad debts, then you recognized that as a valid charge, and you are utilizing the writeoff for tax advantage. I cannot go along with the idea that it is an error at all.

Your own books at this point support the conclusion that the charge was a valid one, and so regarded by you.

Now, am I correct?

Mr. RICHMOND. No, sir.

Mr. Moss. Why haven't you caused a proper credit to be issued canceling the charge?

Mr. RICHMOND. Well, frankly, the first time we noticed, at least that I noticed, this whole thing was when it was brought to our attention by the—

Mr. Moss. On whose orders was the charge, or the invoice, originally made?

Mr. RICHMOND. Well, this is the mysterious part about this particular invoice.

Mr. Moss. It just popped up?

Mr. RICHMOND. No. I mean the girl, the bookkeeper, makes out the invoices, but frankly we couldn't trace it down.

Mr. Moss. Well, the figure of \$150, you say you determined by a sort of an estimate, based on past experience with the program; is that correct?

Mr. RICHMOND. I didn't say the \$150 was based on past experience.

Mr. Moss. Well, what was the amount that you—

Mr. RICHMOND. Well, our charges here vary from \$50 to \$10 to \$25 and \$75.

Mr. Moss. We will deal with that later. I am just asking at this point, about the first charge for the gold platter, November 7, 1958.

The next one was November 26, 1958, on the "Chipmunk Song."

Did you contact Ace Recording Studios on this instance?

Mr. RICHMOND. No, I don't recall contacting Ace.

Mr. Moss. Who did you contact?

Mr. RICHMOND. It is quite possible that Ace came into the—it is so long ago, naturally, but it is possible that they came into the studios and talked to our program director.

Mr. Moss. Well, now, from its inception, in 1957 until November of 1958, the program apparently had been operated on a noncharge basis?

Mr. RICHMOND. Yes, sir.

Mr. Moss. Then you made the determination of charging for the program?

Mr. RICHMOND. Yes, sir.

Mr. Moss. Now, we will deal with the nature of the charge later. At least there was a consideration involved in the program. How did the record distributors then have knowledge; was it for sale?

Mr. RICHMOND. No, sir.

Mr. Moss. How did you know with whom you were then going to do business?

Mr. RICHMOND. Well, Ace Recording has been—

Mr. Moss. Did they come in and offer to pay you some money?

Mr. RICHMOND. No, sir.

Mr. Moss. Did you call them and say, "We have picked one of your records; will you pay for it?"

Mr. RICHMOND. No, sir; I never did.

Mr. Moss. What was the policy you then decided upon?

Mr. RICHMOND. Well, our program director—

Mr. Moss. No, this is your policy now. You said you had inaugurated the policy, so I imagine you must have given orders to somebody.

What was the nature of the policy arrived at, when it was determined to start having a charge in connection with the gold platter?

Mr. RICHMOND. The policy, as far as picking the gold platter, was to pick the record which could be a future hit, which might be a future hit, out of the many records the program director would survey, and pick one that he would think—

Mr. Moss. That was the policy?

Mr. RICHMOND. Yes, sir.

Mr. Moss. And that was to take into consideration all records received by the station, all current releases?

Mr. RICHMOND. Yes, sir.

Mr. Moss. Was this to be the independent judgment of the program director, or was he to make a survey of record sales to determine the success of these recordings?

Mr. RICHMOND. Well, the program director has many ways to determine that. I don't think he sticks to one—

Mr. Moss. You merely told him to determine which record was the hit?

Mr. RICHMOND. Yes, sir.

Mr. Moss. Was it to be a hit of the week?

Mr. RICHMOND. No, not to be a hit of the week. It was to be a future hit.

Mr. Moss. Was it to be your guess or the station's guess as to the type of music which would be a hit of the future?

Mr. RICHMOND. Yes, sir; could possibly be a hit of the future.

Mr. Moss. All right. Then the program director is told to select a recording. How did you get the charge, now, with respect to the recording? What was the policy with respect to that?

Mr. RICHMOND. We found after a year, or some months, that the mail was mounting. We were getting mail from six States and the Provinces of Canada regarding this gold platter and, as I said, we have many policies, because in handling this mail, because it was an experiment—there was no previous experience with this particular type of thing.

Mr. Moss. Did you set up a cost accounting on this particular program, so that you could determine the costs of handling the mail?

Mr. RICHMOND. No, sir. That is pretty impossible to do with our type of organization.

Mr. Moss. All right. You are the boss; you are the judge on that. I am not. I think it would be quite reasonable to do it.

Mr. RICHMOND. We all knew from time to time; the girl might spend 3 days, sometimes a week, in handling the mail; other times it would be knocked down to 2 days, and other times it would be a dud, and it would take very little time at all.

Mr. Moss. All right. The mail was heavy, and a charge was decided upon. Was this charge to completely reimburse the station for the expenses in connection with the gold platter program?

Mr. RICHMOND. Well, I don't think any charge that was ever made here, could completely reimburse Station WMEX.

Mr. Moss. That is not what I asked you. I asked you what the determination was.

Mr. RICHMOND. Well, it was to defray partial costs.

Mr. Moss. Was the gold platter program a commercially sponsored program?

Mr. RICHMOND. It was always placed in a commercially participating segment.

Mr. Moss. In other words, your disc jockeys for their entire time on the air were sponsored, at least they played a recording, and had a little chatter, and then some advertisements or announcements, commercials; was that the format?

Mr. RICHMOND. Well, we have sustaining time, and we have public service sustaining time.

Mr. Moss. I am talking about when you played recordings. Did you play recordings on sustaining time?

Mr. RICHMOND. No, sir. We didn't play this on sustaining time.

Mr. Moss. We are not talking of public service. We are talking about commercial sponsorship, or the sale of commercials, within a period of time, and within your format, was the disc jockey's time, time for sale?

Mr. RICHMOND. Yes, sir.

Mr. Moss. So that the gold platter, which was a device to draw and hold listener interest, was produced for the purpose of producing commercial revenue in connection with the disc jockey's activities?

Mr. RICHMOND. Gold platter—I am sorry I didn't follow you there.

Mr. Moss. It was producing commercial revenue, was it not? It was part of a program that was being sponsored by commercial spots?

Mr. RICHMOND. Well, there is no difference between the gold platter and, in my opinion, any other record that is played on the station.

Mr. Moss. Except it originated mailings.

Mr. RICHMOND. Except what, sir?

Mr. Moss. It developed mail which you had to handle?

Mr. RICHMOND. Yes, sir.

Mr. Moss. You hoped to get mail on other programs, too, did you not?

Mr. RICHMOND. Yes, sir.

Mr. Moss. Then you decided to charge. We still haven't developed the means, whereby you determined who was going to make the payment, and who was going to pay for this part of the program, underwriting this portion of the costs, and it is that part of the policy I would like to deal with now.

Mr. RICHMOND. Well, the program director would review all these records and he would decide which one he felt would be the gold platter. Then he would call the distributor and say, "I want to make this the gold platter." It had been on the air a year and a half, so they were all familiar with it.

Mr. Moss. All right. You then had, as a policy, that your program director, having selected the record which would be the gold platter, was to contact the record distributor and ask that he make the payment to underwrite a portion of the costs of the extra demands on your staff entailed in the promotion; is that correct?

Mr. RICHMOND. That is correct.

Mr. Moss. Did you leave it then to the discretion of the program director as to how much of a charge would be made in connection with the promotion?

Mr. RICHMOND. No, sir.

Mr. Moss. You never had a rate card?

Mr. RICHMOND. No, sir.

Mr. Moss. It varied. Now we come to the end of your second month's operation in this, and you made an arrangement with Records, Inc. Who negotiated that arrangement?

Mr. RICHMOND. I did, sir.

Mr. Moss. What was the basis there of the charge?

Mr. RICHMOND. We charged \$50 a week to defray partial costs of handling for the gold platter, \$50 a week to defray partial handling of the Big X Album.

Mr. Moss. Was the Big X Album always an album distributed by Records, Inc.?

Mr. RICHMOND. Yes, sir.

Mr. Moss. Well, now, when you made the arrangements with Records, Inc., you changed your policy, didn't you?

Mr. RICHMOND. No, sir.

Mr. Moss. Now, let's go back. The policy is to establish, as we did a few moments ago—the policy is to leave to the independent discretion of your program director the selection of recordings from the whole field received at the station, and we have now, by agreement, limited that selection only to those labels carried by Records, Inc. Isn't that a change in policy?

Mr. RICHMOND. No, sir.

Mr. Moss. What?

Mr. RICHMOND. No, sir.

Mr. Moss. Did they handle all the labels?

Mr. RICHMOND. Well, Records, Inc., at the time, sir, had as I understood from the program director, which he explained to me very carefully, had 60 to 80 or 90 different labels that they were handling.

Mr. Moss. Did they handle all of the labels played on your station, that came to your station?

Mr. RICHMOND. No, sir.

Mr. Moss. Then you restricted the area of your choice for your program director, when you made an agreement with Records, Inc.?

Mr. RICHMOND. No, I didn't. He came to me and explained to me he had looked over many, many records.

Mr. Moss. I am not interested in his reasons, but in facts. The fact is that Records, Inc., did not distribute all labels; is that correct?

Mr. RICHMOND. That is correct, sir.

Mr. Moss. Up to the arrangement with Records, Inc., you had left to the unbridled discretion of your program director the selection of a record from all of the labels available; and when you made your agreement with Records, Inc., you confined him to whatever labels were distributed by Records, Inc.; is that correct?

Mr. RICHMOND. He just decided to use one source of supply.

Mr. Moss. Is that correct?

Mr. RICHMOND. We used the Records, Inc., during that period.

Mr. Moss. And you limited him to the labels distributed by Records, Inc., didn't you?

Mr. RICHMOND. During this particular period; yes, sir.

Mr. Moss. During this period of 13 weeks?

Mr. RICHMOND. Yes, sir.

Mr. Moss. Then you changed the policy, did you not?

Mr. RICHMOND. I don't think so, sir.

Mr. Moss. All right.

Mr. RICHMOND. Because I think there is a variety of—

Mr. Moss. Now you are giving me justification. The fact is, the policy was changed. It went from one of complete freedom of choice to one of a narrow area of choice.

Mr. RICHMOND. I don't think 60 to 90 labels—

Mr. Moss. I am not interested in your opinion at this point. I am interested only in what the facts are.

Now, you went from \$50 to \$100.

Mr. RICHMOND. No, sir; that is not correct.

Mr. Moss. Well, you had been charging for the gold platter promotion \$50 to Mutual Distributing, Inc., on the Chipmunk Song, and Records, Inc., on Drummer Boy.

Then you made the agreement, and the agreement went to \$100 a week.

Mr. RICHMOND. There are two separate things involved.

Mr. Moss. The Mr. X Album was thrown in?

Mr. RICHMOND. An album is a separate thing. A lot of our listeners in their mail had suggested that they would like to receive albums, and they felt that albums, you know, is what they would like to receive.

Mr. Moss. Did you continue this Mr. X Album beyond the life of the agreement with Records, Inc.?

Mr. RICHMOND. Mr. X Album was discontinued at the end of whatever that period was.

Mr. Moss. What was the form of the agreement with Records, Inc.?

Mr. RICHMOND. We had no formal agreement, sir.

Mr. Moss. You had no formal agreement?

Mr. RICHMOND. No, sir; we had a conversation about it.

Mr. Moss. It was entirely verbal?

Mr. RICHMOND. To the best of my knowledge, sir.

Mr. Moss. You never signed anything?

Mr. RICHMOND. To the best of my knowledge, it was all verbal.

Mr. Moss. And you never announced in connection with this program any commercial sponsorship by Records, Inc., of the gold platter selection?

Mr. RICHMOND. I don't think we used the distributor's name in there. We did announce the name of the record and the artist.

Mr. Moss. Well, of course you did. Did you announce that Records, Inc., were permitted to pay you \$100 a week?

Mr. RICHMOND. No, sir.

Mr. Moss. In connection with the playing of the gold platter selection and the Mr. X Album?

Mr. RICHMOND. No, sir.

Mr. Moss. Aren't you required, as a licensee of the Federal Communications Commission, to announce when you pay for anything of that type?

Mr. RICHMOND. Well, sir, we didn't consider at the time, as I stated previously, the gold platter to be any different from any other record that we were receiving free on the station to be played.

The only difference between the gold platter and any other record that we had is our costs of handling and mailing, the correspondence and filing, and all the other things that go with it. Apart from that it is no different from any other record that you play.

Mr. Moss. Well, I think you had it different, certainly from the point of income for your station. You set up an account against which you charged these payments for the cost of handling, if that was to be a reimbursement for expense of handling only—you didn't reflect it in your account setup.

Mr. RICHMOND. It is in our books, sir.

Mr. Moss. Oh, yes; it is in your books as income. There is no separate accounting of the expenses of the gold platter promotion.

Mr. RICHMOND. No, sir.

Mr. Moss. Did you ever have any other similar agreement for a number of weeks with any other supplier?

Mr. RICHMOND. No, sir.

Mr. Moss. So while you considered it as being usual, it was, in fact, most unusual. It was an exception, in handling that particular program.

Mr. RICHMOND. Well, to the best of my knowledge, Records, Inc., is the only organization which had so many records, so many different labels in that particular area at that time.

Mr. Moss. After Records, Inc., you went to \$75 for the gold platter promotion for 2 weeks?

Mr. RICHMOND. Yes, sir.

Mr. Moss. Was that reflecting again just an estimate of cost?

Mr. RICHMOND. Yes, sir.

Mr. Moss. Who arrived at that figure?

Mr. RICHMOND. I did, sir.

Mr. Moss. You said to your program director, "When you contact the distributors this week, tell them it is to be \$75"?

Mr. RICHMOND. Yes, sir.

Mr. Moss. And then the following week you dropped it to \$50. Was there some decrease in the volume of mail?

Mr. RICHMOND. Yes.

Mr. Moss. There was; and so the \$50 was felt to be ample? Then we drop to \$10.

Mr. RICHMOND. Yes.

Mr. Moss. Is that all it costs you to handle those records? Were you giving out the same number of records each week?

Mr. RICHMOND. Yes, sir.

Mr. Moss. And \$10 handled the same number adequately one week, whereas \$75 was required three weeks earlier.

Mr. RICHMOND. We felt at that time, I believe, that the mail had dropped down, and there were other improvements in the system made, and we felt that it would be adequate to defray partial costs.

Mr. Moss. You are telling me then, that the volume of mail dictated the amount you would request of a distributor?

Mr. RICHMOND. Well, that isn't the entire story, sir.

Mr. Moss. Or was it the amount you could get from a distributor?

Mr. RICHMOND. No, sir; because—

Mr. Moss. Was the distributor contacted in advance of the selection of the record, or after the selection?

Mr. RICHMOND. It was always in advance.

Mr. Moss. Always in advance?

Mr. RICHMOND. Yes, sir; after the program director's—

Mr. Moss. Excepting, of course, in connection with the—it was always in advance of the record?

Mr. RICHMOND. Pardon?

Mr. Moss. Always in advance of the record that he was contacted?

Mr. RICHMOND. No, he would pick the record, and it was always in advance of playing it.

Mr. Moss. If the distributor said, "Oh, I don't think it is worth while; I am not going to pay anything," did you change the selection?

Mr. RICHMOND. I don't think that ever came up, sir.

Mr. Moss. They were always willing to pay?

Mr. RICHMOND. The program director never signified anyone—

Mr. Moss. Did you ever have to do any bargaining to determine how much they would pay?

Mr. RICHMOND. No, sir.

Mr. Moss. Do you feel that this is a proper policy for a broadcaster, a policy which is tied to your gold platter promotion?

Mr. RICHMOND. Well, sir, we feel it is quite obvious that this is above and beyond playing records; that there are other factors involved in this whole thing.

If Jimmie Jones wins a record one week, obviously it doesn't serve the public interest to have him win again the next week, and the following week, and again the next week and, therefore, a list has to be kept of winners. And then—

Mr. Moss. But this is a promotion to build interest in your station; isn't it?

Mr. RICHMOND. Yes, sir.

Mr. Moss. Because, after all, you had something to sell just as well as the record distributors. As long as you had a good listening audience you had an attractive package to sell, and when it started to drop you didn't.

Mr. RICHMOND. That is true.

Mr. Moss. And so you have to engage in promotion regularly to try to maintain listener interest; isn't that true?

Mr. RICHMOND. Correct, sir.

Mr. Moss. And that is a part of your promotional costs. It shouldn't be a part of the cost of the record distributors. He shouldn't even have to pay for part of the handling costs to have you air good music.

Mr. RICHMOND. Well, sir, the amounts that have been charged here have been so paltry and so piddling, and if we were to—

Mr. Moss. I think it is just as wrong at \$10 a week as it would be at \$10,000 a week.

Mr. RICHMOND. I agree with you, sir.

Mr. Moss. And I think it is the policy with which we are concerned and not the dollars.

Clearly, when you made the agreement with Records, Inc., you limited the availability of certain music, at least to your listening audience.

It seems to me the way it has been done here you would have been much more ethical had you placed this on your rate card and instructed your salesmen to go out and sell it, because that is, as nearly as I can determine, what you were doing.

I notice that you always contacted the distributor in advance of announcing the selection. Apparently at that point a price was arrived at.

You didn't wait to find out how much mail, how much work was entailed, and then agree to have him pick up a portion of the tab. That is another point that makes—

Mr. RICHMOND. Sir, if this record was not available for mailing that particular week we would be in a very bad position.

Mr. Moss. If you are giving prizes, why didn't you go out on the market and buy the record?

Were you ever turned down by any of these record companies when you called?

Mr. RICHMOND. Not to the best of my knowledge. I don't think anyone would refuse—

Mr. Moss. I thought I heard Mr. Steen indicate—I would have to check the record to be certain—but it seemed to me that I recollect his indicating that sometimes they weren't interested.

You have no knowledge of ever having to go back and call a second supplier in order to get the gold platter of the week?

Mr. RICHMOND. No, sir.

Mr. Moss. Mr. Chairman, those are all the questions I have at the moment.

The CHAIRMAN. Mr. Richmond, back to the questions of Mr. Mack a moment ago, regarding the printed affidavit which you required of your employees.

Did you require it of all your employees—

Mr. RICHMOND. Yes, sir.

The CHAIRMAN (continuing). Or just the diskjockeys?

Mr. RICHMOND. No, sir; distributed to all of the employees except engineers.

The CHAIRMAN. Except engineers?

Mr. RICHMOND. Who were at the transmitter.

The CHAIRMAN. Was that to your WMEX station?

Mr. RICHMOND. Yes, sir; to all our stations.

The CHAIRMAN. What about the other two stations, the one in Nevada and the one in Maryland?

Mr. RICHMOND. Yes, sir.

The CHAIRMAN. You did the same thing there?

Mr. RICHMOND. Yes, sir.

The CHAIRMAN. Did you have any such type of operation or practice in either of the other two stations?

Mr. RICHMOND. No, sir. It was all negligible.

The CHAIRMAN. All negligible?

Mr. RICHMOND. Yes. There was one man in Maryland signifying that he had received, over a period of 4 years of employment, something like \$35 or \$40 in Christmas gifts.

The CHAIRMAN. Well, you wouldn't consider that necessarily as a general practice—

Mr. RICHMOND. No, sir.

The CHAIRMAN (continuing). In connection with this whole problem?

I am talking about the purpose and intent behind it, as it has been discussed here.

Mr. RICHMOND. Yes, sir.

The CHAIRMAN. It was not then recognized as a general practice within the industry?

Mr. RICHMOND. I am sorry, sir, I am not following you.

The CHAIRMAN. Was this type of operation referred to as payola for the promotion of records, as it has been discussed here; was that

considered by you or others as being a general practice within the industry?

Mr. RICHMOND. Well, I had heard many rumors over the years that some form of gift or value or consideration, dinners or what have you, had been given, but I had no indication in our organization that such a thing was going on.

The CHAIRMAN. In other words, it was then considered just part of the business and accepted as a general practice in the industry, even though you had heard about it?

Mr. RICHMOND. It was rumored, as I say, I had no basis of fact.

The CHAIRMAN. In other words, there were rumors over the years that such a practice was general throughout?

Mr. RICHMOND. That is right.

The CHAIRMAN. And it was accepted as such; is that right?

Mr. RICHMOND. Well, I can only say that I would never accept it as such.

The CHAIRMAN. Well, you never would accept it as such, but you didn't do anything about it until this committee started exposing it last November, did you?

Mr. RICHMOND. That is correct, sir.

The CHAIRMAN. You had heard all about it and you heard it was the general practice and all, but you didn't take any action or didn't even pay any attention to it until this investigation began, did you?

Mr. RICHMOND. That is correct, sir. I feel this committee has exceptionally—has done exceptionally wonderful work in connection with this whole thing, and I feel very strongly against the whole payola situation.

The CHAIRMAN. Well, I didn't ask that for any particular accolade of the committee. I simply was trying to bring out the fact that the industry is rather consistent in saying "Don't do anything about this. Let us clean our own house and it will be all right," when, from what you say here, you started cleaning house only when something started to develop that forced the issue. That is quite a different thing; isn't it?

Mr. RICHMOND. Yes, sir.

The CHAIRMAN. Anything else? Anything else, Mr. Lishman?

Mr. LISHMAN. No, sir.

The CHAIRMAN. Thank you very much for your appearance here. You may be excused.

The committee will adjourn until 2:15.

(Whereupon, at 1:10 p.m., the subcommittee recessed to reconvene at 2:15 p.m., of the same day.)

AFTERNOON SESSION

The CHAIRMAN. The committee will come to order.

Mr. Robert S. Richmond is the next witness. Will you be sworn.

Do you solemnly swear that the testimony you are about to give to this subcommittee will be the truth, the whole truth and nothing but the truth, so help you God?

Mr. RICHMOND. I do.

TESTIMONY OF ROBERT S. RICHMOND

The CHAIRMAN. Have a seat, sir. You are Robert S. Richmond?

Mr. RICHMOND. Yes, sir.

The CHAIRMAN. You are general manager of WMEX?

Mr. RICHMOND. No, I am commercial manager of WMEX.

The CHAIRMAN. That station is licensed as Richmond Bros., Inc.?

Mr. RICHMOND. Yes, sir.

The CHAIRMAN. In Boston?

Mr. RICHMOND. Yes, sir.

The CHAIRMAN. Is your residence in Boston?

Mr. RICHMOND. Yes, sir.

The CHAIRMAN. Mr. Lishman, you may proceed.

Mr. LISHMAN. Mr. Richmond, for how long have you been commercial manager of WMEX?

Mr. RICHMOND. Well, since the inception of the station.

Mr. LISHMAN. What date was that?

Mr. RICHMOND. I think that was August 21, 1957.

Mr. LISHMAN. Previous to that time, had you been in the radio business?

Mr. RICHMOND. No. I was in the advertising business.

Mr. LISHMAN. What are your duties as commercial manager of WMEX?

Mr. RICHMOND. The sale of commercial time to advertisers.

Mr. LISHMAN. Do you also undertake to sell commercial time to record distributors?

Mr. RICHMOND. No, sir.

Mr. LISHMAN. Do you also undertake to solicit record distributors for the purpose of having them have their records aired on Station WMEX?

Mr. RICHMOND. No, sir.

Mr. LISHMAN. Does anyone employed by the station undertake to do that?

Mr. RICHMOND. No, sir.

Mr. LISHMAN. Are you familiar with the program, "Gold Platter of the Week"?

Mr. RICHMOND. Yes, sir.

Mr. LISHMAN. Is it not a fact that WMEX solicits record distributors in connection with airing their records on that program?

Mr. RICHMOND. Not to my knowledge, sir.

Mr. LISHMAN. Who would know about that?

Mr. RICHMOND. Well, that is part of the program promotion of WMEX, and as such, would not fall into my bailiwick. That would be the province of my brother, Maxwell.

Mr. LISHMAN. You own 15 percent stock interest in WMEX?

Mr. RICHMOND. Yes, sir, I do.

Mr. LISHMAN. Do you recall being questioned by investigators for the subcommittee in December 1959?

Mr. RICHMOND. I recall being visited by Mr. Eastland and Mr. Kelly.

Mr. LISHMAN. Do you recall the conversation you had with them at that time?

Mr. RICHMOND. No, I cannot recall the conversation.

Mr. LISHMAN. Do you recall discussing the gold platter of the week program with these two men?

Mr. RICHMOND. Yes, sir. They asked me some questions about it.

Mr. LISHMAN. You do not remember exactly what that discussion was?

Mr. RICHMOND. No, sir, I do not.

Mr. LISHMAN. Did you ever call any record distributors in Boston in connection with the gold platter selection?

Mr. RICHMOND. I do not recall talking to them.

Mr. LISHMAN. Prior to the visit on December 9 by Mr. Kelly and Mr. Eastland, did you have any discussions with Mel Miller and Mr. Ginsburg or any of the other disc jockeys of WMEX with respect to payola?

Mr. RICHMOND. I cannot recall all of the disc jockeys. I had—I know I had a discussion with Mel Miller and I asked him a question on payola, I remember, because I was going out of the door at the time. I do not recall exactly if I had discussions with the others. I may have.

Mr. LISHMAN. What was the nature of the discussions with Mr. Miller?

Mr. RICHMOND. Well, I asked Mr. Miller if he had received any so-called payola.

Mr. LISHMAN. What did he answer?

Mr. RICHMOND. Well, he mentioned that he had received some checks.

Mr. LISHMAN. From whom?

Mr. RICHMOND. I think he said some singing group.

Mr. LISHMAN. Were the Crests the singing group you refer to?

Mr. RICHMOND. Yes.

Mr. LISHMAN. Will you state whether he said he had received these checks from the Crests in return for airing records over Station WMEX?

Mr. RICHMOND. No, sir, I do not recall him saying that.

Mr. LISHMAN. What did he say in regard to the Crests?

Mr. RICHMOND. I think he received them as gifts, but I cannot be certain.

Mr. LISHMAN. Have you ever made an estimate as to the cost of handling and mailing of records in connection with the gold platter?

Mr. RICHMOND. No, sir.

Mr. LISHMAN. Have you ever made an estimate that it would cost about 5 cents to mail out each record?

Mr. RICHMOND. No, sir.

Mr. LISHMAN. About how many records would be mailed out in connection with the gold platter?

Mr. RICHMOND. I am not certain, because I do not take care of that end of it, but I think, probably around 50—I think it is around 50.

Mr. LISHMAN. Around 50?

Mr. RICHMOND. Yes.

Mr. LISHMAN. To whom were these 50 records mailed?

Mr. RICHMOND. Well, they are selected by people in the office, those people select them. As I said, I do not actually handle that phase of it—I do not handle that phase of it at all.

Mr. LISHMAN. Well, as commercial manager, do you not know whether or not copies of records are mailed to selected listeners?

Mr. RICHMOND. No, sir; that phase—

Mr. LISHMAN. Did you not tell Mr. Kelley and Mr. Eastland that you knew about this?

Mr. RICHMOND. Oh, yes; yes, sir. They asked me questions about it. And I talked to them and gave them the information as best as I could. That particular phase of the business is not my province.

Mr. LISHMAN. Did you not tell Mr. Eastland and Mr. Kelly that WMEX mailed out approximately 75 records a week to selected listeners who wrote in to station WMEX in connection with those records?

Mr. RICHMOND. No; I do not recall saying that.

Mr. LISHMAN. Do you recall telling these gentlemen that it would cost about a nickel apiece to mail out each record?

Mr. RICHMOND. Yes, sir; I recall saying that; yes, sir.

Mr. LISHMAN. In connection with your discussion of the payola situation, am I correct in understanding your testimony to be, that prior to December 9, 1959, you had discussed the payola matter with disk-jockey Mel Miller of WMEX?

Mr. RICHMOND. Yes. It was not really a discussion.

Mr. LISHMAN. And at that time, he admitted he had received two checks from a singing group called the Crests; is that correct?

Mr. RICHMOND. That is right.

Mr. LISHMAN. Did he disclose to you that he had received payola from any other source?

Mr. RICHMOND. I do not recall if he said anything. I do not think he did. When I asked him the question I was flying out the door—actually, that is the case, I was flying out of the door there when I asked him the question.

Mr. LISHMAN. Did you discuss this payola situation with Mr. Ginsburg, diskjockey employed by station WMEX?

Mr. RICHMOND. I thought I had, sir. I think I did. I am not certain.

Mr. LISHMAN. Did you not inform our investigators that you had discussed payola with Mr. Ginsburg?

Mr. RICHMOND. Yes, I may have—I may have said that.

Mr. LISHMAN. That was prior to December 9, 1959?

Mr. RICHMOND. I cannot be certain of the exact date. I do not recall.

Mr. LISHMAN. Well, December 9, 1959, was the date you had with our investigators; is that correct?

Mr. RICHMOND. If you say so, sir—I do not remember the date.

Mr. LISHMAN. When you discussed payola with Mr. Ginsburg did he admit to you that he, too, had been the recipient of payola from record distributors?

Mr. RICHMOND. Well, if I recall, he said something to me about he had received money from another station.

Mr. LISHMAN. From another station?

Mr. RICHMOND. Yes, sir.

Mr. LISHMAN. But not from a record distributor?

Mr. RICHMOND. Well, I did not ask him, since it was not a formal conversation. As I recall, I asked him, "Did you receive any payola?" Well, he said he had received some money from another station.

Mr. LISHMAN. After your discussion about payola, even in the limited sense that you have just given, did you have any conversation with your brother Maxwell, who is the 85-percent owner of the station, with respect to this payola situation?

Mr. RICHMOND. I cannot recall the exact time that I did have the discussion with him, but he had indicated to me that he was taking it up with his attorney and there would have to be some sort of written form whereby all diskjockeys would sign just what had transpired, insofar as gifts or anything else.

Mr. LISHMAN. Do you recall the call letters of the station owned by the Richmond brothers at Morningside, Md.?

Mr. RICHMOND. Yes.

Mr. LISHMAN. What is it?

Mr. RICHMOND. WPGC.

Mr. LISHMAN. What are the call letters of the station in Henderson, Nev.?

Mr. RICHMOND. KBMI.

Mr. LISHMAN. Are you familiar with the contract between WMEX and Records, Inc., covering payments for the selection of the gold platter labels of Records, Inc.?

Mr. RICHMOND. I am not certain if there was ever any contract or anything on that.

Mr. LISHMAN. Well, are you familiar with the fact that WMEX received \$1,400 from Records, Inc.?

Mr. RICHMOND. I could not be certain as to the exact amount, sir.

Mr. LISHMAN. For what purpose did WMEX receive that money?

Mr. RICHMOND. I did not handle that phase of the business, sir. That is not my province.

Mr. LISHMAN. This is a rather closely held corporation—you own 15 percent of the stock, and your brother owns 85 percent?

Mr. RICHMOND. Yes, sir.

Mr. LISHMAN. Do you not follow the financial transactions of the company fairly closely?

Mr. RICHMOND. Fairly closely.

Mr. LISHMAN. Who spends more time at WMEX, you or your brother?

Mr. RICHMOND. Sometimes he is there considerably; sometimes he is not. I, probably, spend more time than he does.

Mr. LISHMAN. Did you ever have the title of vice president and sales manager of WMEX?

Mr. RICHMOND. Yes, sir.

Mr. LISHMAN. When was the title changed to commercial manager?

Mr. RICHMOND. Well, in my estimation commercial manager and sales manager is one and the same, sir.

Mr. LISHMAN. But you have no familiarity with this arrangement that was made with Records, Inc., for the payment of \$100 a week for, approximately, 13 weeks?

Mr. RICHMOND. Well, I am not—I know that Records, Inc., has some gold platters, but I could not be certain of how many they have—how long it was on.

Mr. LISHMAN. Did you and your brother ever have a discussion as to whether two diskjockeys, who admittedly took payola, should be fired from the station?

Mr. RICHMOND. No. I left that up to my brother. He would take care of the diskjockey phase of it.

Mr. LISHMAN. Do you feel that WMEX has such a substantial investment in these two diskjockeys, who admittedly took payola, that you prefer to keep them on and save your so-called investment in these personalities?

Mr. RICHMOND. Well, I would rather let the majority stockholders decide that phase of the business.

Mr. LISHMAN. Do you not feel that the public interest has a duty to be served, where diskjockeys, who admittedly took payola, are continued on the payroll, and for all we know are still taking payola?

Mr. RICHMOND. That is a difficult question to answer.

Mr. LISHMAN. You and your brother are the licensees of the station, are you not?

Mr. RICHMOND. I know these two people personally—I think they are honest, upright people. I know Mel Miller and I know Mr. Ginsberg, and I think they are quite honest people.

Mr. LISHMAN. Well, you understand you have an obligation under your license to have the facilities of the station used in the public interest, do you not?

Mr. RICHMOND. Yes, sir.

Mr. LISHMAN. And do you consider it in the public interest to continue to employ diskjockeys who have admittedly received payola?

Mr. RICHMOND. That is up to my brother to decide, sir.

Mr. LISHMAN. Well, just what do you consider to be your duties in the public interest in running a licensed radio station?

Mr. RICHMOND. I think to serve the most people with what they like to hear the most, approximately, and to render service to the community and the public at large.

Mr. LISHMAN. About how many sustaining programs are carried each week on WMEX?

Mr. RICHMOND. I could not answer that, sir, without checking through the records.

Mr. LISHMAN. How often would the gold platter of the week selection be broadcast each week?

Mr. RICHMOND. I am not certain about that, sir, because that does not fall within my province. That falls in the programing.

Mr. LISHMAN. We have heard testimony that it was played 6 times a day, approximately 56 times a week. Would you disagree with that?

Mr. RICHMOND. Well, I would say there were no set times. I would think there were no set times when it would be played.

Mr. LISHMAN. Do you think it is in the public interest for records, for which this licensee received payments from the distributor, to be played 56 times a week to the audience in the Boston area?

Mr. RICHMOND. Just what is the question?

Mr. LISHMAN. Do you think it is in the public interest not to tell the audience, for whom this record was beamed 56 times a week, that the licensee had received payment of money for playing this record?

Mr. RICHMOND. I think that payment is for reimbursement of expenses, those payments were.

Mr. LISHMAN. Is it not true, that since the subcommittee started this investigation, you have made just such announcements?

Mr. RICHMOND. Well, that was on the advice of the attorney, sir.

Mr. LISHMAN. Did your attorney advise you that you had been violating the law prior to that time?

Mr. RICHMOND. I do not speak for the attorneys, sir. That is handled by my brother.

Mr. LISHMAN. What is the attorney's name?

Mr. RICHMOND. The attorneys are Cottone & Scheiner.

Mr. LISHMAN. I have no further questions.

The CHAIRMAN. Did you say that this money, received by one of your employees was received from the Crests or the press?

Mr. RICHMOND. No. I am not familiar, Mr. Chairman with the names of these record people, but I think it was the Crests. And I think it is a musical group, evidently—not the press.

The CHAIRMAN. Mr. Mack.

Mr. MACK. In your statement you indicated that the attorneys had advised you not to make these types of payments, was that the question?

Mr. RICHMOND. No, sir—no, I was not advised.

Mr. MACK. I did not get the question then.

Mr. LISHMAN. Apparently, as I understand the testimony, Mr. Mack, prior to the publicity pending the subcommittee's investigation WMEX did not announce to the listening public that the gold platter of the week had been paid for by record distributors, but apparently, if I understand the testimony, since the publicity attending our investigation the attorneys for the station have advised them that they should make an announcement in general terms to the effect that the station had received payment for the playing of the gold platter records.

Mr. MACK. Thank you very much.

Mr. Richmond, in testimony last week we had quite a few disk-jockeys before us. And they indicated that it was very disheartening not to have exposure on any one record. Of course, the testimony indicated that a considerable part of the time they played a particular record once each day. And whenever a record is played 56 times in a single week, it certainly gets tremendous exposure. In your opinion, would it not assist the record in becoming a hit? Are you familiar with the payola promotion operation in Boston and do you not think that it would help or to promote records in the Boston area?

Mr. RICHMOND. Well, sir, I do not wish to say, but the program end of the business I try to stay away from as far as possible. I concern myself with the commercial end of the business. I am having enough of a difficult time of it now, as it is now. I do not go into the programming end of it. In my opinion it would, probably, not be an expert opinion—not even a qualified opinion, I should say.

Mr. MACK. What is a commercial manager?

Mr. RICHMOND. A commercial manager sells time to sponsors. He sometimes may write the commercial. His primary job is to sell time to sponsors and help the salesmen sell time to sponsors, too.

Mr. MACK. You mentioned you were sales manager, did you not?

Mr. RICHMOND. Radio sales and commercial manager in radio are pretty much synonymous.

Mr. MACK. Do you also own part of the Maryland and Nevada stations?

Mr. RICHMOND. No, sir, I do not.

Mr. MACK. Is this 15 percent interest that you have in the form of a partnership or a corporate setup?

Mr. RICHMOND. It is a corporate setup.

Mr. MACK. You have so many shares of stock?

Mr. RICHMOND. Yes.

Mr. MACK. How many shares?

Mr. RICHMOND. I do not recall off-hand, sir. I will have to check that. I will be glad to make it available to the committee.

Mr. MACK. Do you have any voice in the operation of the corporation, or do you leave that all to your brother?

Mr. RICHMOND. I have a certain voice in the operation of the station, but I try—

Mr. MACK. You have indicated this afternoon that you took a hands-off policy.

Mr. RICHMOND. That is not true, sir. I try to leave the programing and promotion to him, and I take care of the commercial aspects of the business; that is, the sale of time to sponsors.

Mr. MACK. Tell us about the gold platter program. Were you responsible for selling that?

Mr. RICHMOND. No, sir.

Mr. MACK. I thought that was within the definition of your responsibilities as commercial manager.

Mr. RICHMOND. That is on the programing—the promotion of the station itself. I do not sell the gold platter.

Mr. MACK. There is a difference between promotion and sales, then—there is a difference?

Mr. RICHMOND. Yes.

Mr. MACK. And promoting is by your brother?

Mr. RICHMOND. By promotion, do you mean in your term promotion of the station, that is, the station itself?

Mr. MACK. I am not quite sure I understand you. I think by the definition you have given of your position, that the gold platter program would come under your jurisdiction, that the responsibility of promotion in selling time would be yours.

Mr. RICHMOND. The word "promotion" is a little bit maybe vague and ambiguous. When we say "promotion," we mean promotion of the station itself.

Mr. MACK. Do you know any reason why your brother required a written statement?

Mr. RICHMOND. Personally, I think it is a good idea. No one asked me.

Mr. MACK. Your brother thought it was a good idea, but I could not find out why he thought it was a good idea.

Mr. RICHMOND. I think if one has a written statement, I think they are more careful of what they tell than if we asked them—as to what they wrote down, they would be—than if we just said or just called somebody in and asked him to say something off the top of his head, than to just write something down.

I know, for example, in advertising, we ask a client to put his okay on this particular thing, and he used to stop. He would pause right then and there, because he would have to sign his initials. If I showed him that, he says, OK did not have to sign his initials—he did it very rapidly.

Mr. MACK. That is what I cannot understand. If I had someone call me on the telephone and ask me if it was all right, I would say OK. If he came into my office to have me put my initials on the same thing, OK. I cannot see any difference between them. Why the written statement, when there is something questionable? I would think that you would want to get to it immediately, and straighten the matter up, rather than to postpone it by going to an attorney to draw up a formal statement, as though you were going to frame it and hang it on the wall or put it in the file.

Even in this instance two of the diskjockeys admitted, as I understand it, that they were taking payola and you kept them on.

It seems to me that in this station operation you could have saved money by not having this paper and just have the boys in for a conference. I just cannot see what you accomplished by that.

Mr. RICHMOND. I did not take care of that particular phase of it. I think it is a good idea to have the men sign. I really think so, sir—better to have the man sign it. I think it is better for him to swear to it.

Mr. MACK. I thought that by having you on the stand this afternoon, since we did not get a satisfactory answer from your brother this morning, you might be able to give us some reason why you used this written instrument.

Everyone was very careful during the TV Quiz Show scandals and went about collecting a bunch of signed statements.

I do not know, but is this a special case where you and your brother felt it would be better to take signed statements from these people?

It would seem to me that you lost the initiative. You should have investigated it and made a decision within just a few hours after it came to your attention.

I would like to ask: When did you first find out that Mr. Miller was involved in the receiving of payola?

Mr. RICHMOND. I cannot recall the exact date. I would say either in November, or probably in November—it could have been the early part of December—I cannot recall the exact date, sir.

Mr. MACK. This was before you had your conference with your brother, right?

Mr. RICHMOND. No, I had spoken to my brother very briefly and he had said to me, "I am going to take care of this matter. It has to be in written form."

Mr. MACK. This was in the period when you were in the process of—

Mr. RICHMOND. Yes, I think he was getting the statements made up.

Mr. MACK. And you were, if I understand, rushing out of the studio?

Mr. RICHMOND. I recall the instance when I spoke to Mr. Miller—I was rushing out for an appointment, a conference, when I had the conversation with Miller.

Mr. MACK. You casually asked him or was this a serious question?

Mr. RICHMOND. Well, I was not—well, I was concerned, but, actually, my brother indicated he was going to take care of it, and you might say, to a certain extent it was curiosity on my part, because my

brother indicated that he was going to take care of it—it had to be in writing.

Mr. MACK. Did your brother know at the time that payola was being paid?

Mr. RICHMOND. No, sir.

Mr. MACK. Did you?

Mr. RICHMOND. No, sir.

Mr. MACK. Were you shocked when you found out that Mr. Miller was receiving checks?

Mr. RICHMOND. Yes, sir; I was very surprised.

Mr. MACK. What did you do?

Mr. RICHMOND. Well, I indicated surprise.

Mr. MACK. How did you indicate surprise?

Mr. RICHMOND. I was on my way out. I had a client appointment at the time, and when he told me about it I raised my eyebrows, I am sure, and made a mental note of it. I had to be on my way to the appointment.

Mr. MACK. It did not make a nervous wreck out of you—you were still able to conduct your business?

Mr. RICHMOND. It did not make a nervous wreck out of me.

Mr. MACK. You said your reaction was that you were surprised—expressed surprise at the time?

Mr. RICHMOND. Yes, sir; I was surprised.

Mr. MACK. Did you inquire of Mr. Miller whether or not he had been involved in payola prior to his working for your station?

Mr. RICHMOND. I am sorry, I did not hear.

Mr. MACK. Did you indicate that one of your diskjockeys was involved in payola at another radio station besides yours?

Mr. RICHMOND. Oh, you are referring to Mr. Ginsburg.

Mr. MACK. That was Mr. Ginsburg?

Mr. RICHMOND. Yes.

Mr. MACK. You had more than one diskjockey who was involved in payola at some other radio station before he went to work for you?

Mr. RICHMOND. I do not know, sir.

Mr. MACK. Mr. Ginsburg is the only one?

Mr. RICHMOND. The only one that I know of, sir.

Mr. MACK. Is that why you hesitated?

Mr. RICHMOND. I did not understand the question too well, sir.

Mr. MACK. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Devine?

Mr. DEVINE. No questions.

The CHAIRMAN. Do you have anything further, Mr. Lishman?

Mr. LISHMAN. No.

The CHAIRMAN. Mr. Richmond, thank you very much for your appearance here. You are excused.

Mr. RICHMOND. Thank you.

The CHAIRMAN. Mr. Mel Miller: Will you stand and be sworn?

Do you solemnly swear that the testimony you are about to give to this subcommittee will be the truth, the whole truth and nothing but the truth?

Mr. MILLER. I do.

TESTIMONY OF MELVIN MILLER

The CHAIRMAN. Your full name, Mr. Miller?

Mr. MILLER. Melvin Miller.

The CHAIRMAN. Melvin?

Mr. MILLER. M-e-l-v-i-n.

The CHAIRMAN. What is your address, Mr. Miller?

Mr. MILLER. 8 Brockville Terrace, Framingham, Mass.

The CHAIRMAN. Your business or profession?

Mr. MILLER. Program director, WMEX.

The CHAIRMAN. You may proceed, Mr. Lishman.

Mr. LISHMAN. You have been program director of that station since February 1958?

Mr. MILLER. Diskjockey, but program director since, I think April—I am not sure.

Mr. LISHMAN. With WMEX?

Mr. MILLER. Yes, sir.

Mr. LISHMAN. What are your duties as program director?

Mr. MILLER. Scheduling the time of the diskjockeys, making out the payroll—not the payroll; the timesheets for their pay—going over all records to be played, particularly those by the station and about everything else.

Mr. LISHMAN. As a diskjockey, did you have a program on WMEX?

Mr. MILLER. Yes, I did.

Mr. LISHMAN. And is that program broadcast Monday through Saturday from 2 to 6 p.m.?

Mr. MILLER. Just recently from 2 until 6. It was from 2 to 5 before.

Mr. LISHMAN. Before January 1, 1960, it was from 2 to 5, is that correct?

Mr. MILLER. Right.

Mr. LISHMAN. When did you begin working in the radio business?

Mr. MILLER. 1950.

Mr. LISHMAN. Was that when you were an engineer for station WNEB at Worcester, Mass.?

Mr. MILLER. Right.

Mr. LISHMAN. And just prior to coming with WMEX you served for about 3 years as a diskjockey at station WPOW?

Mr. MILLER. No, sir—10 months.

Mr. LISHMAN. Ten months?

Mr. MILLER. Yes.

Mr. LISHMAN. On WPOW radio in New York?

Mr. MILLER. Right.

Mr. LISHMAN. Is that the extent of your experience before coming with WMEX in radio?

Mr. MILLER. No. I had a little more.

Mr. LISHMAN. What other stations have you worked for?

Mr. MILLER. WAAB, Worcester, Mass.; WNAB in Bridgeport.

Mr. LISHMAN. What were your duties at those stations?

Mr. MILLER. Engineer. At WORC in Worcester, three times—once as engineer and twice as a combo engineer and announcer, assistant program director, I guess you call it, at WORC.

Do you want the rest?

Mr. LISHMAN. Yes, sir. I would like to have it.

Mr. MILLER. WBGR in Worcester as a combination announcer-engineer.

I worked part time after I was called back into the service in 1951. I worked as engineer for WSPR in Springfield, and WMAS in Springfield.

Then I returned to WBGR. I went from there to WHOD in Gardner, Mass., and then back to WORC in Worcester.

From there I went to WARE, and then back to WORC in Worcester. I worked at WAAB in Worcester, also, and then to WPOW in New York.

Mr. LISHMAN. From there you went to WMEX?

Mr. MILLER. Right.

Mr. LISHMAN. In your program on WMEX, who selects the records?

Mr. MILLER. I select the overall records for the entire station. However, for each individual program the record librarian schedules all—balances and schedules.

Mr. LISHMAN. Did you play on your program, and do you still play records designated as the gold platter of the week?

Mr. MILLER. Yes, I do.

Mr. LISHMAN. Who selects that record?

Mr. MILLER. I do.

Mr. LISHMAN. How do you select it?

Mr. MILLER. The same way that all of our music is selected on the entire station, except that it might be something that is a little hotter and a little hotter market not being played as much in the Boston market.

Mr. LISHMAN. Is there another diskjockey at WMEX named Arnie Ginsburg?

Mr. MILLER. Yes, sir.

Mr. LISHMAN. Does he program his own records?

Mr. MILLER. Not to my knowledge, sir. I give him my list each and every week. In fact, I know I have held him up on taping weekend shows because I did not have it ready at the time.

Mr. LISHMAN. Does station WMEX receive compensation from any distributor or any other persons for playing the gold platter of the week?

Mr. MILLER. Not for playing the gold platter, as I understand it, sir.

Mr. LISHMAN. Were you here during the testimony of Mr. Cecil Steen of Records, Inc.?

Mr. MILLER. Yes, sir, I was.

Mr. LISHMAN. Did you hear him testify that over a 13-week period Records, Inc., paid WMEX approximately \$1,400?

Mr. MILLER. Yes, sir.

Mr. LISHMAN. Did you hear him testify that the \$1,400 was paid for the purpose of having one of its labels elected as the gold platter of the week and played as such on WMEX?

Mr. MILLER. I do not recall the testimony as to that. Apparently, it was for mailing and expenses for the thing—that was for that. I do not know if it was received or not.

Mr. LISHMAN. Well, do you know who makes the arrangements for payment by record distributors, whose records are played as the gold platter of the week?

Mr. MILLER. Yes, sir.

Mr. LISHMAN. Who makes those.

Mr. MILLER. Mr. Maxwell Richmond.

Mr. LISHMAN. If a distributor—

Mr. MILLER. May I add this or amplify on that, if there is a change—otherwise, when I call the distributor, I call him at the current time.

Mr. LISHMAN. Did you hear the testimony of Mr. Robert Richmond a moment ago, that the cost of mailing for approximately 50 to 75 records was something like 5 cents each?

Mr. MILLER. No, I did not hear that.

Mr. LISHMAN. Well, do you know that the amount paid by Mr. Steen was, approximately, \$100 a week for having his labels elected as the gold platter of the week?

Mr. MILLER. I did not know what the price was at that time, no. I know now due to the testimony here. And he has two records each week.

Mr. LISHMAN. Do you believe that \$100 a week represented the cost of mailing the records only, the 50 to 75 records mailed to members of the interested public?

Mr. MILLER. What is that?

Mr. LISHMAN. These free records—do you really believe that the \$100 a week represented the cost to WMEX of mailing out 50 records to people who wrote in to the station?

Mr. MILLER. I do not know, sir. I do not handle the money end of the thing. I do not know. I have orders to follow, that is all.

Mr. LISHMAN. Did you ever enter into any advance arrangements with a distributor to play his record as the gold platter of the week for a stated period of time?

Mr. MILLER. Not a definite agreement. I think I was free to go anywhere I wished.

Mr. LISHMAN. Have you ever called up a record distributor and asked him if he would like to have one of his labels designated as a gold platter of the week?

Mr. MILLER. Yes, sir.

Mr. LISHMAN. Have you called up Music Suppliers, Inc., and stated that proposition to them?

Mr. MILLER. I do not believe I ever talked to them on the phone. I would ask their promotion man if I was interested in one of their records.

Mr. LISHMAN. What is the name of that promotion man?

Mr. MILLER. Harry Rice or Sol Cohen.

Mr. LISHMAN. Did you call up Dumont Distributors, Inc., and make a similar proposition?

Mr. MILLER. Yes, I have called them.

Mr. LISHMAN. And have you ever called up Records, Inc., and more specifically Mr. Cecil Steen, to find out if he would want to have one of his labels designated as the gold platter of the week?

Mr. MILLER. I do not believe I have ever called him myself. I might have had my record librarian call him for me. I, also, consult the promotion man. I have also consulted his promotion man.

Mr. LISHMAN. Do you know that from January 20, 1959, to April 27, 1959, the records selected by WMEX as the gold platter of the week were all records distributed by Records, Inc.?

Mr. MILLER. I am not sure of the dates, sir, but I imagine you are right.

Mr. LISHMAN. As program director did you understand that for this period of time the golden platter of the week would always be a label of Records, Inc.—did you have any question about how this happened?

Mr. MILLER. At the time I was mainly interested in albums. This was incorporating something I thought was a good station promotion. And to my knowledge, Records, Inc. have the largest available collection of albums that fit our programing, and, also, at that time the records handled by Records, Inc., had a majority, I should say, of the commercial tunes available for stations.

Mr. LISHMAN. Did you ever have the golden platter of the week from Capitol or Columbia Records?

Mr. MILLER. I think so. I do not have—I cannot recall them, but I imagine so.

Mr. LISHMAN. When the golden platter of the week was played, what announcement was made to the listening public concerning the method of selecting them?

Mr. MILLER. No one announcement was made to the public on how they were selected.

Mr. LISHMAN. Was the listening public told that you had an advance arrangement with Records, Inc., to play records distributed by that company for more than 3 months in consideration of the payment to WMEX of \$1,400?

Mr. MILLER. No, sir; because I believe I was under the understanding that I could go to any distributor.

Mr. LISHMAN. Do you know if any contract such as that with Records, Inc., has been offered to any other distributor in the Boston area?

Mr. MILLER. I have no knowledge of it, sir.

Mr. LISHMAN. Have you ever received, in the mail, an envelope addressed to you which contained records with an attached note addressed to other persons?

Mr. MILLER. Yes, sir; I have.

Mr. LISHMAN. To whom were such notes addressed?

Mr. MILLER. I could not say for sure, sir, but they were addressed to Bob and Norm, as you know.

Mr. LISHMAN. To whom did you understand Bob and Norm to refer?

Mr. MILLER. I understood that Norm was Norm Prescott and Bob was Bob Clayton.

Mr. LISHMAN. From whom did these notes come?

Mr. MILLER. From London Records, I imagine.

Mr. LISHMAN. What did the notes say?

Mr. MILLER. Something to the effect that these were advance copies of records being released, that would be out in about 3 days.

Mr. LISHMAN. Did the note indicate that this was an exclusive release?

Mr. MILLER. No, sir; just that it was an advance copy, so far as I know. I do not recall offhand every particular word.

Mr. LISHMAN. Have you ever received any money or other considerations from any person to influence the selection of records on your program?

Mr. MILLER. No, sir; not to my knowledge. I have received money—

Mr. LISHMAN. Yes, sir.

Mr. MILLER (continuing). But I deemed it good will. And perhaps influence—I do not know what their motives were.

Mr. LISHMAN. Did you receive this money from Music Suppliers, Inc., and Records Inc.?

Mr. MILLER. Yes, sir; I have received checks from both of those.

Mr. LISHMAN. Did that total approximately \$180?

Mr. MILLER. No, sir.

Mr. LISHMAN. How much did it total?

Mr. MILLER. \$25 from Music Suppliers and \$100 from Records, Inc.

Mr. LISHMAN. Have you ever received payments of money from any other records distributor?

Mr. MILLER. Not from the distributors, sir, I do not—

Mr. LISHMAN. From record companies?

Mr. MILLER. Record companies—I received three checks from Coed Records signed by Marvin Cane.

Mr. LISHMAN. Were these payments generally in the form of a \$25 check attached to a record with some kind of a message to you: "Hope you can find this useful"?

Mr. MILLER. Yes, sir. That is the standard guideline. The promotion letter would say: "Thank you for your cooperation. I hope you can buy something for your house," something to that effect—I am not sure.

Mr. LISHMAN. Do you not feel that these payments were made to influence you in playing that particular record?

Mr. MILLER. I do not; no.

Mr. LISHMAN. Did you play the record?

Mr. MILLER. I played any record that came in.

Mr. LISHMAN. Did you play the record that accompanied the check?

Mr. MILLER. What is that?

Mr. LISHMAN. Did you play any of the records on which checks were attached drawn to your order?

Mr. MILLER. Yes, sir. The checks were not attached to the records. They came in with it.

Mr. LISHMAN. They accompanied it?

Mr. MILLER. Accompanied the records; yes, sir.

Mr. LISHMAN. I would like to show you a schedule of payments made to you, as taken from the books of Music Suppliers, Inc., and Records, Inc., and ask you if this is not in accord with the facts.

I just call your attention to the last few lines on this schedule.

Mr. MILLER. Yes, sir. I do not agree with this. I received one check—I am sorry, two checks; one at Christmastime, just before Christmas in 1958, and one other check.

Mr. LISHMAN. The notation in these books, then, is not accurate?

Mr. MILLER. To my knowledge it is not, sir.

I do not recall ever receiving any more than \$25 at Christmas and \$25 one other time.

Mr. LISHMAN. Did you ever receive a check for \$25 on which the word "Scope" was written?

Mr. MILLER. I received a check that I believe was promotion money from Scope Recording.

Mr. LISHMAN. Who sent that to you?

Mr. MILLER. This was from the suppliers.

Mr. LISHMAN. What was the meaning of the word "Scope" on that check?

Mr. MILLER. This was the label name, from that company.

Mr. LISHMAN. Did you understand that that \$25 was for the purpose of inducing you to play a particular Scope label?

Mr. MILLER. I understood that it might, maybe to take a look at this record line more than some other line. Whether it did, I do not know.

Mr. LISHMAN. Did you program any Scope records?

Mr. MILLER. Offhand, I cannot recall, because I do not have that record here.

Mr. LISHMAN. Did you also receive payments from Madison Records?

Mr. MILLER. I received a \$50 bond from Madison Record Co., a savings bond.

Mr. LISHMAN. Did you receive money from Conley Music Co.?

Mr. MILLER. I received three checks from them totaling \$150.

Mr. LISHMAN. For what purpose were those checks made payable?

Mr. MILLER. I do not know, sir. One was on just leaving for vacation, and they happened to be in town and said, "Buy yourself a raincoat." I was going to California.

May I break in here?

Mr. LISHMAN. Yes, sir.

Mr. MILLER. I see a \$30 check. I do acknowledge this. This was—I did a record hop for them at a local theater. However, I did not do it. I gave it to somebody else, because I could not take it at that time, and I just—I took their check when they paid me and I turned it over to the person who did it for me.

Mr. LISHMAN. Did you ever receive any payments from Coed Records?

Mr. MILLER. Yes, three checks.

Mr. LISHMAN. How much were they?

Mr. MILLER. For \$25 apiece.

Mr. LISHMAN. For what purpose were those payments made?

Mr. MILLER. Good will, I hope, sir.

Mr. LISHMAN. Did you play any Coed Records on the program?

Mr. MILLER. Yes, I have before and after.

Mr. LISHMAN. Did you have correspondence with Marvin Cane of Coed Records?

Mr. MILLER. No, sir, I did not.

Mr. LISHMAN. Did he send you letters?

Mr. MILLER. Yes, regularly, standard letters, promotion letters.

Mr. LISHMAN. What were the contents of his notes to you?

Mr. MILLER. Just pointing out new releases, what was doing here and there. I cannot recall offhand what they were. The same as I get tons of them through the mail each and every day.

Mr. LISHMAN. He would occasionally enclose checks?

Mr. MILLER. Three times he would.

Mr. LISHMAN. As program director of the station, when you placed a record on the list, that meant not only you would play the record when you were on the air, but other diskjockeys similarly would play those records, is that correct?

Mr. MILLER. That is correct.

Mr. LISHMAN. Did you admit to the investigators of this subcommittee when they questioned you that you received these payments from Coed, Scope, and Conley, in order to induce you to play some of their records on the list so that their records could be aired over station WMEX?

Mr. MILLER. Well, I cannot speak for their intentions, sir, but I imagine that is what it was for, but it did not influence me.

I had too much at stake with the station to jeopardize for a couple of dollars, let alone my own income, but the station popularity.

Mr. LISHMAN. Did you sign a statement in accordance with the request of Mr. Maxwell Richmond?

Mr. MILLER. Yes.

Mr. LISHMAN. As to participation in so-called payola?

Mr. MILLER. Yes, I did.

Mr. LISHMAN. When were you first questioned by Mr. Maxwell Richmond concerning payola?

Mr. MILLER. The dates I cannot recall, sir. I know that he issued a statement to all of the diskjockeys about receiving this money consideration or anything, and it was after I filled out this other one that I mentioned.

Mr. LISHMAN. Prior to December 9, 1959, did anyone, any officer of WMEX talk to you about payola?

Mr. MILLER. Prior to what?

Mr. LISHMAN. December 9, 1959.

Mr. MILLER. No, sir, not to my knowledge.

Mr. LISHMAN. Did you tell Mr. Robert Richmond that you received payola?

Mr. MILLER. I mentioned it to him when this thing came up. As I say, I was—it was not a meeting or anything like that—it was just general discussion.

Mr. LISHMAN. Was that in connection with two checks received from the Crests?

Mr. MILLER. Yes, I believe there was a misstatement here or something. These Crests are from Coed Records.

That is the checks.

Mr. LISHMAN. Did you tell about receiving those checks?

Mr. MILLER. I remember asking him—I said, "What is this, a gift permissible—I am going to be in trouble if they are not. I have received a couple of checks from" I called it Coed.

Mr. LISHMAN. What did Mr. Richmond say to you?

Mr. MILLER. I do not recall what he said. It was just a conversation.

Mr. LISHMAN. Did you tell Mr. Richmond about these other checks that you had received?

Mr. MILLER. No, sir, I had not spoken of those others to which you refer.

Mr. LISHMAN. Either one?

Mr. MILLER. No, sir, not until, did I mention any other checks until the form was given to us.

Mr. LISHMAN. I have no other questions.

The CHAIRMAN. Mr. Mack.

Mr. MILLER. Could I correct my error on this thing?

Mr. MACK. Did Mr. Maxwell Richmond ever talk to you about receiving checks?

Mr. MILLER. Immediately after we filled out our forms. I assured him that although I had accepted these gifts, I did not believe I was doing anything wrong. And, also, that I had not been influenced by this money. I figured that it was only a token, and there was too much at stake with the station just beginning to climb when these things came in. I could not afford to go wrong in my programing.

Mr. MACK. When did this conversation take place?

Mr. MILLER. I cannot recall. I do not know when that was.

Mr. MACK. Was it in January?

Mr. MILLER. I think, I am not sure.

Mr. MACK. When did you receive the statement—was that, also, in January?

Mr. MILLER. I believe it was, sir. I believe it was January.

Mr. MACK. In other words, the statement was not made available to you until sometime in January?

Mr. MILLER. To my knowledge—I am not—

Mr. MACK. Sometime in December you had indicated to Mr. Robert Richmond that you had received these checks; is that correct?

Mr. MILLER. Yes, sir.

Mr. MACK. So, probably, it was a month later before you had any statement from Mr. Maxwell Richmond?

Mr. MILLER. It could be, sir. As I say, I do not recall the date too well.

Mr. MACK. You mentioned some promotion money. Is that common in station work, from the diskjockey end?

Mr. MILLER. This is the first time I had run into it, although I have been in it 10 years. I would assume that it has been around for quite some time as other companies have promotion or advertising money.

Mr. MACK. But you did not know that it was available until the time you received your checks, is that correct?

Mr. MILLER. I do not know as I have ever thought of it to that extent.

Mr. MACK. I have no further questions.

The CHAIRMAN. Mr. Devine.

Mr. DEVINE. I have no questions.

The CHAIRMAN. You knew all of this was an effort to promote the records which were brought to your attention by these people, did you not, Mr. Miller?

Mr. MILLER. I think I could have assumed it, yes, sir.

The CHAIRMAN. And if that had not been the intent, not by any stretch of the imagination do you think you would have received the checks, do you?

Mr. MILLER. Yes, sir.

The CHAIRMAN. Do you doubt that they would?

The WITNESS. I would not say. I think that they like me as a person, let alone having control of the music policy of the station. I hope they do.

The CHAIRMAN. Do you think they like you that well?

Mr. MILLER. I get some pretty good gifts, too, from my family.

The CHAIRMAN. That is very different from these that we are speaking about. If they were given with the same spirit and with the same love and friendship, why it would be a different situation, would it not?

Mr. MILLER. Yes, sir.

The CHAIRMAN. Thank you very much for your presence here. You may be excused.

Mr. MILLER. Yes, sir, thank you.

The CHAIRMAN. Mr. Arnold Ginsburg. Raise your right hand, please. Do you solemnly swear that the testimony you will give to this committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. GINSBURG. I do.

TESTIMONY OF ARNOLD GINSBURG

The CHAIRMAN. Your name is Arnold Ginsburg?

Mr. GINSBURG. Yes, sir.

The CHAIRMAN. What is your address?

Mr. GINSBURG. 20 Elliston Place, Brookline, Mass.

The CHAIRMAN. What is your occupation of profession?

Mr. GINSBURG. I am a radio diskjockey.

The CHAIRMAN. For what station?

Mr. GINSBURG. WMEX.

The CHAIRMAN. How long have you been a diskjockey?

Mr. GINSBURG. Four years.

The CHAIRMAN. All with the same station?

Mr. GINSBURG. No, sir. One year with WMEX and 3 years with WBOS in Boston.

The CHAIRMAN. Mr. Lishman, you may proceed.

Mr. LISHMAN. Mr. Ginsburg, on what date did you enter employment with station WMEX?

Mr. GINSBURG. On December 15, 1958.

Mr. LISHMAN. Prior to that time, by whom had you been employed?

Mr. GINSBURG. WBOS.

Mr. LISHMAN. What did you do at WBOS?

Mr. GINSBURG. Diskjockey.

Mr. LISHMAN. Prior to that, had you been with another station?

Mr. GINSBURG. As an engineer, yes.

Mr. LISHMAN. What station was that?

Mr. GINSBURG. WORL.

Mr. LISHMAN. Had you been with any other station prior to that?

Mr. GINSBURG. Yes, WNAC and WMEX originally.

Mr. LISHMAN. What are your duties in Station WMEX?

Mr. GINSBURG. I announce the programs on the station.

Mr. LISHMAN. And do you know Music Suppliers, Inc.?

Mr. GINSBURG. Yes; I do.

Mr. LISHMAN. What business are they in?

Mr. GINSBURG. They are record distributors.

Mr. LISHMAN. Are you familiar with Dumont Distributors?

Mr. GINSBURG. Yes; I am.

Mr. LISHMAN. Is that also a record distributing company?

Mr. GINSBURG. Yes, sir.

Mr. LISHMAN. During the time that you were employed as a disk-jockey in WMEX, did you receive payment by cash or check or other valuable consideration?

Mr. GINSBURG. Yes.

Mr. LISHMAN. From record distributors?

Mr. GINSBURG. Yes.

Mr. LISHMAN. And did these payments in part come from Music Suppliers and Dumont Distributors?

Mr. GINSBURG. Yes, sir.

Mr. LISHMAN. Would it be correct to say that during the year 1957 you received from Trans Disc, Savoy, Dumont Distributors and Mutual Distributing the sum of \$175?

Mr. GINSBURG. That is correct.

Mr. LISHMAN. That covered a period of September 16 to December 26, 1957?

Mr. GINSBURG. Yes, sir.

Mr. LISHMAN. And would it be correct to say that in 1958 you received the sum of \$1,450 which is comprised in varying amounts ranging from \$25 to \$200 from Music Suppliers, Dumont Distributors, Spier and Shad?

Mr. GINSBURG. Yes, sir.

Mr. LISHMAN. And would it be correct to say that in 1959 you received the sum of \$2,775 in amounts varying from \$50 to \$300 from Music Suppliers, Dumont, Conley Music, Atlantic, Mutual Distributors?

Mr. GINSBURG. Yes, sir.

Mr. LISHMAN. And would it be correct to say that in the 2½-year period, while you were a diskjockey at WMEX, you received approximately \$4,400 in payments from record distributing companies?

Mr. GINSBURG. No, sir.

Mr. LISHMAN. What would be correct?

Mr. GINSBURG. The 2½-year period. It was a 1-year period at WMEX.

Mr. LISHMAN. Well, put it this way: Is it correct that in 1957, from September to December, you received \$175?

Mr. GINSBURG. Yes, sir.

Mr. LISHMAN. By whom were you employed then?

Mr. GINSBURG. WBOS.

Mr. LISHMAN. And were you a diskjockey at that station?

Mr. GINSBURG. Yes, sir.

Mr. LISHMAN. And in 1958 you received \$1,450, and by whom were you employed then?

Mr. GINSBURG. WBOS, except for the last 2 weeks of that year.

Mr. LISHMAN. In 1958 you received \$2,775?

Mr. GINSBURG. Yes, sir.

Mr. LISHMAN. By whom were you employed?

Mr. GINSBURG. WMEX.

Mr. LISHMAN. So the total for the 2½-year period, approximately, you received from record distributors \$4,400 and 1 year of that time you were employed by WMEX?

Mr. GINSBURG. That is correct.

Mr. LISHMAN. I would like to have incorporated in the record at this point a computation made by Mr. Keelan, the accountant on loan to the committee from the General Accounting Office, which shows the schedule of payments received by Mr. Ginsburg, for the periods indicated. The witness has already authenticated that these figures are approximately correct.

The CHAIRMAN. Let it be received into the record at this point. (The computation is as follows:)

ARNOLD W. GINSBURG, DOING BUSINESS AS BROADCAST SERVICES CO.

Schedule of payments received

Date	Source	Amount	Explanation
<i>1957</i>			
Sept. 16	Trans Disc	\$50	Unknown 14 business? Gifts.
Oct. 24	Savoy Records.....	25	
Dec. 26	Dumont Distributors.....	50	
26	Mutual Distributing.....	50	
	Total	175	
<i>1958</i>			
Jan. 22	Music Supplies, Inc	50	Do.
Mar. 19	Dumont Distributors.....	50	Do.
28	Music Supplies, Inc	100	Do.
Apr. 30	Spier	50	Do.
May 16	Dumont Distributors.....	50	Do.
16	Music Supplies, Inc	100	Do.
June 26	Dumont Distributors.....	150	Do.
July 23	do	50	Do.
Aug. 12	Music Supplies, Inc	100	Do.
Sept. 3	Dumont Distributors.....	100	Do.
Oct. 2	do	100	Do.
Nov. 4	do	100	Do.
7	Music Supplies, Inc.....	200	Do.
17	Shad Co	25	Do.
28	do	25	Do.
Dec. 3	do	25	Do.
12	do	25	Do.
29	Dumont Distributors.....	50	Do.
29	Music Supplies, Inc.....	100	Gifts (100 figures supplied by D. Keelan, GAO).
	Total	1,450	

To the best of my knowledge the above amounts represent the amounts of money received during the years 1957 and 1958.

ARNOLD GINSBURG.

The above list was supplied by Mr. Ginsburg. 1957 and 1958 records were at Mr. Ginsburg's residence February 2, 1960, and not examined.

Music suppliers issued two checks in 1957 and 1958 for advertising announcements for jazz at the Philharmonic Concert series. The checks were made payable to A. Ginsburg and deposited to his account. A. Ginsburg then made a check payable to the radio station for which he was working, for this amount, less his commission. These announcements were scheduled and logged as regular announcements.

Schedule of payments received—Continued

Date	Source	Amount	Explanation
<i>1959</i>			
Jan. 13	Music Suppliers, Inc.	1 200	Gifts.
19	Dumont Distributors.....	1 100	Do.
Mar. 20	do.....	1 200	Do.
24	Conley Music.....	1 50	Do.
27	Music Suppliers, Inc.	1 300	Do.
May 7	Dumont Distributors.....	1 100	Do.
June 16	Music Suppliers, Inc.	1 200	Do.
July 5	Atlantic.....	1 100	Do.
17	Conley Music.....	1 50	Do.
14	Dumont Distributors.....	1 100	Do.
23	Music Suppliers, Inc.	1 200	Do.
Aug. 13	Atlantic.....	1 100	Do.
13	Dumont Distributors.....	1 75	Do.
13	Music Suppliers, Inc.	1 50	Do.
27	Dumont Distributors.....	1 100	Do.
Sept. 8	Atlantic.....	1 100	Do.
8	Dumont Distributors.....	1 100	Do.
Oct. 13	Atlantic.....	1 100	Do.
13	Mutual.....	1 100	Do.
21	Dumont Distributors.....	1 100	Do.
21	Music Suppliers, Inc.	1 200	Do.
27	Conley Music.....	1 50	Do.
Nov. 12	Atlantic.....	1 100	Do.
	Total.....	2,775	

SUMMARY

	Year	Amount	Explanation
Payments received.....	1957	\$175	\$876 loan, record companies. \$3,525, Record distributors.
Do.....	1958	1,450	
Do.....	1959	2,775	
Total.....		4,400	

¹ Verified to records of Broadcast Services Co., by D. Keelan, GAO, Feb. 2, 1960.

Source: List of payments supplied by Mr. Ginsburg, Feb. 2, 1960.

BOSTON RECORD DISTRIBUTING COS.

Schedule of payments to Arnold Ginsburg for 3-year period, 1957-59

Date	Check No.	Source	Account	Amount	Total
1957					
Sept. 3	14030	Music Supplies, Inc.....	Advertising.....	\$150	\$150
1958					
Mar. 27	14975	do.....	do.....	100	100
May 16	15209	do.....	do.....	100	100
Aug. 7	15530	do.....	do.....	100	100
Sept. 18	15716	do.....	do.....	75	75
Nov. 5	15892	do.....	do.....	200	200
Dec. 17	16089	do.....	do.....	100	100
		Total.....		675	675
1959					
Jan. 7	16177	Music Supplies, Inc.....	Advertising.....	200	200
Mar. 26	16522	do.....	do.....	300	300
June 5	16814	do.....	do.....	200	200
July 23	17002	do.....	do.....	200	200
Oct. 14	17307	do.....	do.....	200	200
		Total.....		1,100	1,100
1959					
Aug. 7	17043	Music Supplies, Inc.....	Promotions.....	50	50
1958					
Mar. 12	Not given.	Dumont Record Distributing.....	Unknown.....	50	50
May 14		do.....	do.....	50	50
June 18		do.....	do.....	150	150
July 18		do.....	do.....	50	50
Sept. 26		do.....	do.....	100	100
Oct. 31		do.....	do.....	100	100
Dec. 19		do.....	do.....	50	50
		Total.....		550	550
1959					
Jan. 16	Not given.	Dumont Record Distributing.....		100	100
Mar. 13		do.....		200	200
May 1		do.....		100	100
July 6		do.....		100	100
Aug. 7		do.....		75	75
Sept. 4		do.....		100	100
Oct. 15		do.....		100	100
		Total.....		775	775

SUMMARY

Source	Account	1957	1958	1959	Total
Music Supplies, Inc.....	Advertising.....	\$150	\$675	\$1,100	\$1,925
Do.....	Promotion.....	None	None	50	50
Dumont Record Distributors.....	Not stated.....	None	550	775	1,325
Total.....		150	1,225	1,925	3,300

Source: Audit of Music Supplies, Inc., and Mutual Distributors, Inc.; audit working papers.

Mr. LISHMAN. In 1957, Mr. Ginsburg, when you received these payments, for what purpose were they made to you?

Mr. GINSBURG. Well, sir, I have them listed.

The first item is unknown; might have been for some other business purpose. I have an entry of that amount, and I told Mr. Keelan of the General Accounting Office that I was not quite sure.

Two of the items in 1957—I will read the dates—Christmas gifts, and the third item during that year was the Savoy Record Co. I do not know for what purpose it was received. Obviously given to me and entered in my book, and I assumed that it was to create some feeling of good will between me and Savoy Records.

The CHAIRMAN. Did it?

Mr. GINSBURG. Did? I think not.

The CHAIRMAN. How did it?

Mr. GINSBURG. Did it? I do not know the answer to that.

The CHAIRMAN. You do not know whether it created good will or not?

Mr. GINSBURG. I assumed that is why it was given to me.

The CHAIRMAN. Yes; you assumed that is why it was given to you, but the question is: Did it create the good will that you assumed was the purpose for which it was given?

Mr. GINSBURG. I do not know the answer to that, because I do not even remember the conditions of the gift, very frankly.

The CHAIRMAN. You may proceed, Mr. Lishman.

Mr. LISHMAN. Is it a fact that while you were a disk jockey in 1957 at Station WBOS—was it?

Mr. GINSBURG. Yes.

Mr. LISHMAN. That you played records distributed by Dumont?

Mr. GINSBURG. Yes; I did.

Mr. LISHMAN. And distributed by Mutual?

Mr. GINSBURG. Yes, sir.

Mr. LISHMAN. And you played records with the Savoy label?

Mr. GINSBURG. I do not remember whether I did or not. The Savoy item just does not ring any bell with me.

Mr. LISHMAN. In 1958 you were a diskjockey where?

Mr. GINSBURG. WBOS.

Mr. LISHMAN. And is it correct that during that year you received payments on several occasions from Music Suppliers, Inc.?

Mr. GINSBURG. Yes, sir.

Mr. LISHMAN. For what purpose were these payments made to you?

Mr. GINSBURG. I assume these payments were made to me to establish what I call a feeling of good will between me and Music Suppliers, because of my position as a diskjockey.

Mr. LISHMAN. Do you know Mr. Harry Carter?

Mr. GINSBURG. Yes, sir.

Mr. LISHMAN. Have you ever gone into his office?

Mr. GINSBURG. Yes; I have.

Mr. LISHMAN. On going into his office has he on occasion presented you with a check?

Mr. GINSBURG. Yes, sir.

Mr. LISHMAN. And when he presented you with such a check, did he say something to the effect, "Thank you for what you are doing. We have had a good month"?

Mr. GINSBURG. He said, "Thank you." And he has said—either words to that effect, spoken of his appreciation.

Mr. LISHMAN. Did he indicate in that way, that he was pleased with the fact that you had been airing records which were distributed by Music Suppliers?

Mr. GINSBURG. I do not know whether he mentioned—I had been playing records by Music Suppliers—but he did not ask me to play any special records. I had not agreed to play any special records.

Mr. LISHMAN. From time to time in 1958, did Dumont Distributors give you checks in various amounts of \$50 and \$100?

Mr. GINSBURG. Yes, sir.

Mr. LISHMAN. And did this likewise indicate to you that it was a form or a token of thanks for the fact that you had been airing their records?

Mr. GINSBURG. I assumed that was what it was.

Mr. LISHMAN. Is it a fact that you did air records distributed by Dumont?

Mr. GINSBURG. Yes, sir.

Mr. LISHMAN. In 1959 did you go into business with Dumont?

Mr. GINSBURG. No; I did not.

Mr. LISHMAN. Did you agree to make recordings with Donald Dumont?

Mr. GINSBURG. I did not agree to make records. We discussed auditions of local talent, to see if there was anything available in the greater Boston area, talent that would be useful for recording purposes.

We had no formal agreement, and we actually did not.

Mr. LISHMAN. Now, how did you treat these sums received by you in 1958? Did you treat them as gifts or business income?

Mr. GINSBURG. I considered them gifts from the company, at least tokens of good will, for lack of any other reason; from an accounting standpoint, they were, I considered, as regular income.

Mr. LISHMAN. You understand that the amounts paid you by Music Suppliers were charged on their books to advertising?

Mr. GINSBURG. I do not know that, how it was charged on their books.

Mr. LISHMAN. Some of the money was charged to promotion?

Mr. GINSBURG. I do not know how they charged it on their books. I have no familiarity with their accounting treatment.

Mr. LISHMAN. Did you ever receive cash or any other thing of value from Music Suppliers in addition to these checks?

Mr. GINSBURG. I assume you mean outside——

Mr. LISHMAN. Outside of these checks.

Mr. GINSBURG. I received a Christmas present, a razor, which I guessed had a value, I would say, of about \$7 or \$8.

Mr. LISHMAN. Were the sums you received from Music Suppliers paid to you under an agreement you had with that company?

Mr. GINSBURG. No, sir.

Mr. LISHMAN. Were you not paid these sums for the purpose of playing specific records of Music Suppliers?

Mr. GINSBURG. No, sir.

Mr. LISHMAN. What individuals of Music Suppliers first contacted you with respect to your playing labels distributed by Music Suppliers?

Mr. GINSBURG. Well, I had been in contact with Music Suppliers for a period of 2 years before I ever received any gifts from them.

Mr. LISHMAN. Mr. Ginsburg, did you play gold platter records on your program?

Mr. GINSBURG. I played them sometimes.

Mr. LISHMAN. Did you play them pursuant to the programming of Mr. Mel Miller?

Mr. GINSBURG. I was not told to play the gold platters. The gold platter was part of a station promotion or contest in my opinion and

sometimes I used it and I would say it was more often than not played on my program.

Mr. LISHMAN. When you played the gold platter of the week, did you make an announcement to the effect that the station had received payment from a record distributor for selecting that record as the gold platter of the week?

Mr. GINSBURG. No, sir.

Mr. LISHMAN. Did you have any discussions with Mr. Maxwell Richmond concerning the approximately \$400 or the approximately \$2,775 that you received from record distributors and record companies during the period of your employment with WMEX?

Mr. GINSBURG. Yes, I did.

Mr. LISHMAN. When did you first have that discussion with Mr. Maxwell Richmond?

Mr. GINSBURG. I don't remember the dates, but it was sometime in December, I think it was December, and certainly January.

Mr. LISHMAN. Did you tell him that you had received this \$2,775 during the time you have been a diskjockey on WMEX?

Mr. GINSBURG. In January, I believe I returned an affidavit which he wanted signed.

Mr. LISHMAN. Well, in December did you tell him the amount that you received?

Mr. GINSBURG. I don't remember.

Mr. LISHMAN. What did you tell him in December, that you remember?

Mr. GINSBURG. I don't know whether this was December or January. I told him that I had received gifts from record companies, and that was it.

Mr. LISHMAN. What did he answer to that?

Mr. GINSBURG. He thought this was quite serious, and he stated in no uncertain terms that I would be fired immediately if this practice continued, and I would have to file a complete statement on this matter.

Mr. LISHMAN. Did you file such a statement?

Mr. GINSBURG. Yes, sir.

Mr. LISHMAN. In that statement did you reveal the payments that we have just totaled here?

Mr. GINSBURG. Yes, sir.

Mr. LISHMAN. And following the filing of your statement to that effect, did Mr. Richmond have further conversation with you about the matter?

Mr. GINSBURG. We had more conversation. We discussed the matter of returning the gifts to the companies who gave them, and weren't quite sure just what this would prove.

Mr. LISHMAN. Did Mr. Richmond undertake to take any independent investigation to ascertain whether you had given correct and truthful answers in the required written statement?

Mr. GINSBURG. I do not know that.

Mr. LISHMAN. Were you ever interrogated by any outside investigator other than the investigators of this committee?

Mr. GINSBURG. By outside investigators—

Mr. LISHMAN. Yes, sir. Concerning these payments, whether they represent the full amounts that you received.

Mr. GINSBURG. No, sir.

Mr. LISHMAN. I have no further questions.

The CHAIRMAN. Mr. Mack,

Mr. MACK. Did Mr. Robert Richmond ever talk to you about this matter of promotion money?

Mr. GINSBURG. Sometime in—I just don't remember dates or anything like that. But he started to ask me about it, I mentioned something to him about the previous station I had worked at, and then he decided that, or he said that, it was really his brother's department to look into this further, and his brother is the one with whom I had the discussions after that.

Mr. MACK. Would you say it was a casual conversation?

Mr. GINSBURG. Well, he did not assume an investigative attitude. He felt it was his brother's department.

Mr. MACK. He didn't express any further interest in it?

Mr. GINSBURG. Well, I think he certainly did, because he made the statement that it would have to be looked into further.

Mr. MACK. By his brother?

Mr. GINSBURG. Yes. You are talking about Robert Richmond?

Mr. MACK. Yes; I ask you that.

Mr. GINSBURG. Robert Richmond is commercial manager of the station which is actually a separate division of operations.

Mr. MACK. And he told you his brother would look into it?

Mr. GINSBURG. Yes.

Mr. MACK. Was it immediately after you talked about it?

Mr. GINSBURG. He entered into discussions about the matter, and—

Mr. MACK. Was it immediately after you talked about it?

Mr. GINSBURG. I don't remember the time element. I know that a formal notification was issued by the station to all employees.

Mr. MACK. Did you—

Mr. GINSBURG. About the matter.

Mr. MACK. Did you have any conversation with anyone prior to the time that you received this formal statement?

Mr. GINSBURG. Conversation with whom?

Mr. MACK. I would think with Mr. Maxwell or Robert Richmond.

Mr. GINSBURG. I just don't remember the sequence of the issuance of the notification, the issuance of the paper, which we had to execute, and everything else. I just don't remember which sequence followed which. I know we received—

Mr. MACK. You diskjockeys normally have very good memories; do you not?

Mr. GINSBURG. I don't know. I hope we do.

Mr. MACK. Were you in the same salary bracket as some of the other Boston diskjockeys who have testified down here?

Mr. GINSBURG. No, sir.

Mr. MACK. You are not?

Mr. GINSBURG. No.

Mr. MACK. Well, it is not because you do not have as good a memory as they have?

Mr. GINSBURG. I don't know the reason why.

Mr. MACK. The reason I asked the question is because it seems quite obvious to me that you and Mr. Miller cannot seem to remember

when these incidents occurred which could have cost you your job and, as a matter of fact, did cost the jobs of several of your colleagues, and I presume good friends, in the Boston area.

Mr. GINSBURG. I believe—if they did, I don't know of any in Boston.

Mr. MACK. I understand some diskjockeys in Boston were fired for participating in payola or accepting promotion or goodwill payments of some kind.

Mr. GINSBURG. I do not know of any in Boston who were fired.

Mr. MACK. Do you think then that—well, as a matter of fact, there have been quite a few fired all over the country.

Mr. GINSBURG. That is right. In Boston, I believe—

Mr. MACK. But in Boston their policy is to keep them on after their participation; is that correct?

Mr. GINSBURG. I don't know.

Mr. MACK. There was one Boston diskjockey who testified before this committee who did not have his contract renewed.

Mr. GINSBURG. That is correct. The station was sold.

Mr. MACK. And so I did not want to say fired. Do you not feel rather fortunate that you have not been requested to resign, and that your contract was renewed, if it has been renewed, or that you were not fired?

Mr. GINSBURG. I feel that Mr. Richmond did an individual appraisal of his men, and arrived at his own decision. Certainly—

Mr. MACK. It seems to me he went out of his way and made some very elaborate preparations for this thorough investigation which he conducted, in printing statements, and consulting lawyers and things of that nature. And it seems that under the circumstances, since he did make such a thorough investigation and did not reveal that you had accepted some promotion pay that—

Mr. GINSBURG. I understand—

Mr. MACK. That you should feel very fortunate and very lucky that he didn't request your resignation.

Did Mr. Richmond ever indicate to you in any way that he ever considered it?

Mr. GINSBURG. That he was considering what?

Mr. MACK. Well, I do not know, whether he might be considering a request for your resignation, firing you, or a refusal to renew your contract, if you have such an arrangement.

Mr. GINSBURG. He stated in no uncertain terms we were subject to dismissal if we ever did this again.

Mr. MACK. If you continued to do this in the future; is that not the way he put it?

Mr. GINSBURG. Not if we continued to, but if we ever did it again.

Mr. MACK. Did he indicate you would be on probation for any length of time?

Mr. GINSBURG. No. I think he was more firm than that. By stating his position. There was no question in my mind that I was subject to dismissal.

Mr. MACK. Did he make any salary adjustment of any kind at the time he discussed this with you?

Mr. GINSBURG. No, sir.

Mr. MACK. What date did this occur?

Mr. GINSBURG. I just don't remember dates. It was sometime in December when we had the discussions.

Mr. MACK. It was in December?

Mr. GINSBURG. I think it was in December or the early part of January. I just don't—

Mr. MACK. He talked to you about it on one occasion?

Mr. GINSBURG. Talked to me about which?

Mr. MACK. The question is: Did Mr. Maxwell Richmond talk to you about this matter on only one occasion?

Mr. GINSBURG. No, sir. He talked about it on several occasions, certainly after the filing of my statement.

Mr. MACK. Several occasions after the filing of your statement?

Mr. GINSBURG. Yes, sir.

Mr. MACK. And he never talked to you before you filed your statement?

Mr. GINSBURG. Yes, we discussed it before I filed the statement. I told him that I had facts and figures to file with him.

Mr. MACK. You told Mr. Maxwell Richmond that you had participated in this promotional pay or goodwill pay before you filed your statement; is that correct?

Mr. GINSBURG. He gave out statements to be filed, that is, form sheets, which I assumed every radio station did. And I told him that I would prepare a statement for him.

Mr. MACK. Perhaps I have not understood you. I thought you indicated that you discussed this matter with Mr. Maxwell Richmond prior to the time that you filed a formal statement, that you indicated that you had certain figures you were going to make available to him.

Mr. GINSBURG. I told him I had a statement to file.

Mr. MACK. Well, did you tell him prior to the time that you filed the statement that you had been participating in this business?

Mr. GINSBURG. I do not remember whether it was before or with the statement.

Mr. MACK. Well, I do not know. What kind of salary do you command in your position?

Mr. GINSBURG. It figures out to about \$10,000 a year.

Mr. MACK. Well, I would think that under the circumstances, you would have a better memory than that if you could command a salary like that.

Mr. GINSBURG. Sir, there was a sequence—

Mr. MACK. And with the reputation that you had in this area, and with these record companies being somewhat interested in your welfare.

Mr. GINSBURG. There were a sequence of events; namely, the issuance of the general statement by the station, the issuance of a document to be completed by all employees, I assume all employees got them, the preparation and presentation of the document, and I just do not remember the dates, and I don't remember the sequence of events, either.

Mr. MACK. Mr. Chairman, under the circumstances, I have no further questions.

The CHAIRMAN. Mr. Devine.

Mr. DEVINE. No questions.

The CHAIRMAN. Mr. Ginsburg, is it usually considered the general practice around the area where you operate, to receive such goodwill payments, tokens, and expressions as made by record suppliers and record companies, and so forth, as you have explained?

Mr. GINSBURG. I would say that, certainly there have been indications here that it has been going on, and certainly the other matters that go with it, that is, the matter of someone taking you for lunch or something in that area.

The CHAIRMAN. I am not talking about going out to lunch with somebody or going to a movie and things of that kind or a \$10 Christmas gift or something like that. I am talking about the actual payment of money each month, insofar as you have related here, for a particular purpose. If you and the other recipients think we are going to swallow this thing of coming in here and turning it over to us as though it were just another incident of no particular significance, then you must think we are pretty naive, too. You know, as a matter of fact, as the others who have testified here know, if only they would come in and admit it, that all of this is done with the knowledge that they could very well have their license taken away from them overnight. Is that not correct?

Mr. GINSBURG. Yes, sir.

The CHAIRMAN. And you know that, do you not? And is that not the reason, as a matter of fact, for all this reluctance and squirming back from the actual facts and the truth here today?

Mr. GINSBURG. Sir, in answer to your question, as far as others are concerned, other diskjockeys in the area, only the evidence presented at these hearings that I have been here, I was here last week and this week, are the first time I know of any other actual gifts, that is, to other diskjockeys.

The CHAIRMAN. Other gifts?

Mr. GINSBURG. I said the evidence, what I have heard here in testimony, are what I know about other diskjockeys, that is what I heard here.

The CHAIRMAN. That is all you know about it?

Mr. GINSBURG. That is correct.

The CHAIRMAN. You never heard it discussed generally, that this was going on throughout the area?

Mr. GINSBURG. Yes, I did, but I did not know of any specific instances with others.

The CHAIRMAN. Well, it is just a sort of something that permeated the business you were in, was it not?

Mr. GINSBURG. Yes, sir.

The CHAIRMAN. It appears to me that the people who are largely responsible are not only those of you who have been persuaded or enticed into this kind of business, but those who would use this kind of practice to promote the record business on the basis that it was the American people making the decision on the popularity. It seems to me great damage has been done and those are the people, primarily, who should bear the responsibility together with the operating licensees who also knew about it, and turned their heads to it. It also seems to me some action was needed from the regulatory agencies involved here. If there had been a ruling to cut down on something like that, and everyone involved knew it was going to be strictly

enforced, we would have a different situation facing the country today. We probably would not have had a lot of the stuff that the American people have had to listen to.

Do you have anything further, Mr. Lishman?

Mr. LISHMAN. I have one or two questions, Mr. Chairman.

The CHAIRMAN. Yes, all right.

Mr. LISHMAN. Now, Mr. Ginsburg, as I understand it, your testimony is that you received sporadic gifts of appreciation from Music Suppliers, Inc., and that is the reason why you got such payments, gifts in appreciation.

Mr. GINSBURG. Yes, sir.

Mr. LISHMAN. And you took care of Music Suppliers, Inc., and treated the payments as gifts, whereas you do not know that Music Suppliers treated them as business expenses?

Mr. GINSBURG. I had no idea what their bookkeeping was.

Mr. LISHMAN. I would like to ask you about two specific checks that you received from Music Suppliers. One was dated October 15, 1959, in the amount of \$200.

Do you say that was received by you as a gift from Music Suppliers?

Mr. GINSBURG. I said that I assumed Music Suppliers gave me that money as a goodwill token.

Mr. LISHMAN. Well, do you know that on the books of Music Suppliers they have a notation that this was a payment to you through the month of September?

Mr. GINSBURG. I do not know what notation they make.

Mr. LISHMAN. Well, I will show you a photostatic copy of a canceled check from Music Suppliers dated October 15, 1959, drawn to your order in the amount of \$200, and containing your endorsement, photostatically copied on the back thereof, and I call your attention to the stub of this check, which you received, and which you have endorsed which says, "through September."

I ask you to look at this photostatic copy and I ask you if it is a correct representation of the check you actually received?

Mr. GINSBURG. Yes, sir.

Mr. LISHMAN. And you received the \$200?

Mr. GINSBURG. Yes, sir.

Mr. LISHMAN. Turning the page you will see a photostatic copy of the endorsement.

Mr. GINSBURG. Yes, sir.

Mr. LISHMAN. Is that your signature?

Mr. GINSBURG. Yes, sir.

Mr. LISHMAN. What do the words on that check "through September" mean to you?

Mr. GINSBURG. Apparently in their books they had some reason for keeping a—

Mr. LISHMAN. It does not say "gift" on there.

Mr. GINSBURG. Chronologically it obviously meant something to them.

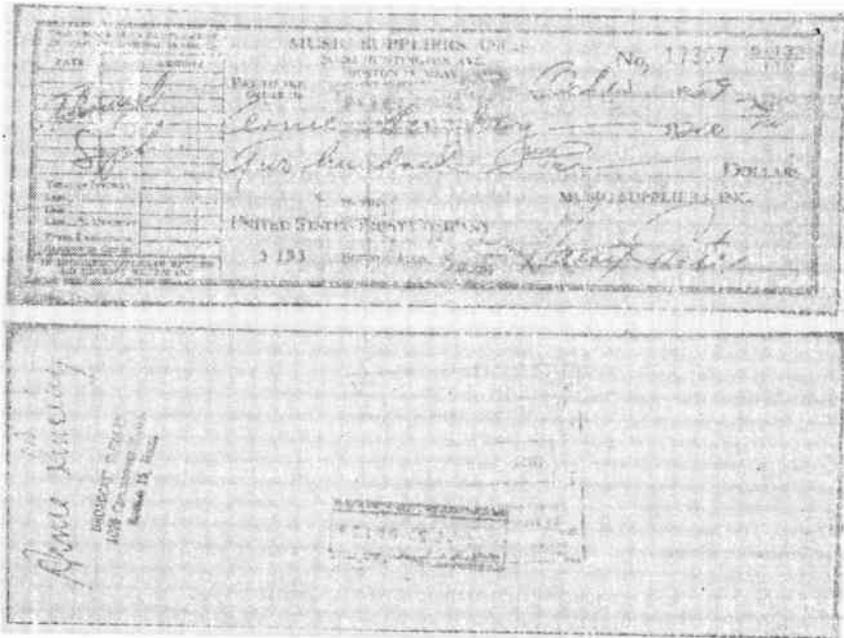
Mr. LISHMAN. It meant they were paying you for some services; does it not?

Mr. GINSBURG. Yes.

Mr. LISHMAN. Well, what services were they paying you for, through the month of September?

Mr. GINSBURG. Let me say this: Music Suppliers and I never entered into any agreement, nor did they ever ask me to do anything, nor did I promise to do anything. Apparently on the basis of that, they had gifts in some chronological sequence.

(The check referred to follows:)



Mr. LISHMAN. I will show you another photostatic copy of a canceled check of Music Suppliers, Inc., dated July 23, 1959, and again this is in the amount of \$200, to your order. I will show you a photostatic copy of your endorsement on the back, and ask you if this is a true representation of a check actually received by you and cashed or deposited by you from Music Suppliers?

Mr. GINSBURG. Yes, sir.

Mr. LISHMAN. Now, Mr. Ginsburg, for what purpose was this check of \$200 given to you in July of 1959?

Mr. GINSBURG. As I said, apparently Music Suppliers had some chronological sequence of these gifts.

Mr. LISHMAN. Well, is it true that this check states on its face opposite your name "through July"?

Mr. GINSBURG. Yes.

Mr. LISHMAN. Now, does that not indicate to you that Music Suppliers was paying you for services which had been rendered through the month of July?

Mr. GINSBURG. Apparently it does.

Mr. LISHMAN. What services did you render that would call for this payment of \$200?

Mr. GINSBURG. We had no agreement on it.

Mr. LISHMAN. I am not asking you whether you had an agreement. What services did you render which would command the price of \$200 through the month of July?

Mr. GINSBURG. Obviously it was because they wanted me to listen to their records.

Mr. LISHMAN. Well, I do not agree with that "obviously." Obviously to me, you were playing their records over the air.

Mr. GINSBURG. I have always—

Mr. LISHMAN. That is what would be obvious to me. But I am asking you if you can't tell us straightforwardly just why they should pay you \$200 for your services through July. What did you do to earn that money?

Mr. GINSBURG. I did play their records. And I played their records, as I said before, 2 years prior to their giving me anything. They never asked me to do anything during the period that I did play the records.

Mr. LISHMAN. Did you ever ask Mr. Carter of Music Suppliers what the notations on these checks meant?

Mr. GINSBURG. No, sir.

Mr. LISHMAN. Well, I call your attention again, Mr. Ginsburg, to the fact that you seemingly were receiving fairly regular payments from Music Suppliers in 1959.

(The check dated July 23, 1959, follows:)

MUSIC SUPPLIERS, INC.
100 STATE STREET
BOSTON 11, MASS.

No. 17702

July 23 1959

PAID TO THE ORDER OF
Arnie Ginsburg

Two hundred and 00/100

MUSIC SUPPLIERS, INC.

UNITED STATES TRUST COMPANY

5-133 BOSTON, MASS.

Howard Carter

PAID TO THE ORDER OF
ARNE GINSBURG
17702

Mr. LISHMAN. I call your attention to the fact that on June 9, 1959, you received another check for \$200 from Music Suppliers. Now, what services did you render for that check?

Mr. GINSBURG. I didn't render any services. It would appear that they were giving a certain amount, judging by the space intervals, a certain amount of moneys. As far as services rendered—

Mr. LISHMAN. On March 26, 1959, Music Suppliers paid you \$300. For what purpose was that money paid to you?

Mr. GINSBURG. Since there were no other entries until that period, it looks like it was 3 months.

Mr. LISHMAN. At \$100 a month?

Mr. GINSBURG. Yes; I would say that, based on that.

Mr. LISHMAN. On January 7, 1959, Music Suppliers gave you another check for \$200. Is that correct?

Mr. GINSBURG. Yes, sir.

Mr. LISHMAN. For what purpose did they pay you that check in the amount of \$200?

Mr. GINSBURG. I don't know unless it was around Christmas time.

Mr. LISHMAN. Is it not a fact that all of these checks and the others we have listed here were really paid to you for the purpose of influencing you as a diskjockey to play certain records which were distributed by Music Suppliers, Inc.?

Mr. GINSBURG. Certainly would put me in a position of listening to the records.

Mr. LISHMAN. How many records do you listen to every week?

Mr. GINSBURG. Oh, at least a hundred.

Mr. LISHMAN. Would you listen to these records while they were being spun off on the air over the facilities of WMEX?

Mr. GINSBURG. We listen to every record before we play it.

Mr. LISHMAN. Do you recall when you took your vacation in 1959?

Mr. GINSBURG. No, sir. I took no vacation in 1959.

Mr. LISHMAN. Did you continue as a diskjockey on duty throughout the summer of 1959?

Mr. GINSBURG. Yes, sir.

Mr. LISHMAN. I was wondering why in August, on August 7, 1959, the checks which had been, either in the amounts of \$200 or \$300, suddenly dropped to \$50. Is it correct that by a check of August 7, 1959, you were paid \$50 by Music Suppliers, Inc.?

Mr. GINSBURG. Yes, sir.

Mr. LISHMAN. Was that attributable to the fact that you had not aired as many of their records in that particular period as you did in the other period when you received more money?

Mr. GINSBURG. I don't know the reason for it, and I did not take a vacation during the year in question.

Mr. LISHMAN. For what purpose did you receive that \$50?

Mr. GINSBURG. I assume it was for the same purpose as the other gifts.

Mr. LISHMAN. Did you ever influence any of the selections on the gold platter?

Mr. GINSBURG. No, sir.

Mr. LISHMAN. Did you ever discuss them with Mr. Miller? The selections?

Mr. GINSBURG. No, sir.

Mr. LISHMAN. Did you ever discuss it with Mr. Maxwell Richmond?

Mr. GINSBURG. No, sir.

Mr. LISHMAN. What is your nickname?

Mr. GINSBURG. Well, Arnie Ginsburg.

Mr. LISHMAN. Are you also sometimes called Woo Woo?

Mr. GINSBURG. Yes, sir.

Mr. LISHMAN. Is it not a fact that one of the gold platters one week was Woo Hoo?

Mr. GINSBURG. I don't know about that.

Mr. LISHMAN. Is that not a fact?

Mr. GINSBURG. I don't know. I really don't.

Mr. LISHMAN. Did you discuss having Woo Hoo featured as a gold platter of the week with Mr. Richmond or Mr. Miller?

Mr. GINSBURG. Absolutely not.

Mr. LISHMAN. When did you first acquire this nickname?

Mr. GINSBURG. Well, my program is called the night train, and night trains before diesel locomotives used to go "woo woo." [Laughter.] Unfortunately, the railroads seem to be going "whoa whoa" instead of "woo woo."

Mr. LISHMAN. I cannot understand, Mr. Ginsburg, unless you had an important part in selecting a record of the week, why you received payola in such substantial amounts in comparison with the small amounts received by your contemporary, Mel Miller. As I understand it, I just cannot understand. Could you shed some light on that situation?

Mr. GINSBURG. No, sir, I have absolutely no control over the station programing, and—

Mr. LISHMAN. Mr. Miller, as I understand it, according to his testimony and according to the testimony of Mr. Maxwell Richmond, did the actual programing of records. Is that correct?

Mr. GINSBURG. That is correct.

Mr. LISHMAN. And then unlike you, he received a measly \$200 or so, whereas you received amounts running up into nearly \$3,000 in the form of payola. Yet you seem to have a much less influential position in the company than did Mr. Miller. That is the phase of the situation that I cannot quite understand.

Mr. GINSBURG. Well, obviously, I received gifts from companies before I worked at that station.

Mr. LISHMAN. I am just taking \$2,775 that you received from record companies while you were with WMEX. I am discounting the balance of the \$4,400.

Mr. GINSBURG. I had absolutely no say on the gold platter.

Mr. LISHMAN. Why is it that you should be singled out for all this particular appreciation in the form of gifts of substantial amounts and you did not, according to your own testimony, have anything to do with programing the record?

Mr. GINSBURG. I don't know.

Mr. LISHMAN. What service did you perform that would create such good will among these record companies as to cause you to be the recipient of their favors in the amounts shown?

Mr. GINSBURG. Well, I can repeat again that I had no bearing on the overall station programing.

Mr. LISHMAN. Did you ever split any of this money with Mr. Miller?

Mr. GINSBURG. No, sir.

Mr. LISHMAN. Did you ever split it with anyone else?

Mr. GINSBURG. No, sir.

Mr. LISHMAN. I have no further questions.

The CHAIRMAN. Did you say your name was Woo Hoo or Woo Woo?

Mr. GINSBURG. Woo Woo.

The CHAIRMAN. Well, Woo Woo, I noticed you played "Woo Hoo" some; is that right?

Mr. GINSBURG. I can tell you this, and usually the gold platter of the week is a surprise to me, that is, at the beginning of the week when it starts again. I do not even know what the gold platter is. For example, my show is frequently on tape over the weekend and when I take a show, I have absolutely no idea what the gold platter is. It is selected near the end of the week, and I can assure you there is no intent, as I remember, what was the name of the record, Woo what?

The CHAIRMAN. Well, on here it says July 20, 1959, "Woo Hoo," Dumont Record Distributing Corp.

Mr. GINSBURG. As I remember, the record was instrumental, now that I think of it, and I can assure you there was no subliminal advertising involved for me in it, and my name is Woo Woo, my nickname, and not Woo Hoo.

The CHAIRMAN. I am glad to get that straight.

Mr. GINSBURG. I must say, you men have been very acute on this, but I can assure you there was no intent to promote me on the record.

The CHAIRMAN. Well, I certainly would not criticize you for doing it, because that was your job.

Do you own any interest in any recording or distributing company?

Mr. GINSBURG. Any recording or distributing company?

The CHAIRMAN. Yes.

Mr. GINSBURG. No, sir.

The CHAIRMAN. Do you own any interest in any radio station?

Mr. GINSBURG. Yes, sir.

The CHAIRMAN. Where?

Mr. GINSBURG. In Maine.

The CHAIRMAN. What is the name of the station?

Mr. GINSBURG. WSME.

The CHAIRMAN. Where in Maine?

Mr. GINSBURG. Sanford, Maine.

The CHAIRMAN. How much interest do you own in that?

Mr. GINSBURG. I am a minority stockholder of 33 $\frac{1}{3}$ percent.

The CHAIRMAN. Well, thank you very much for your testimony.

Mr. LISHMAN. Can I ask one more question?

Mr. GINSBURG, do you know a Frank Holland?

Mr. GINSBURG. Yes, sir.

Mr. LISHMAN. Who is he?

Mr. GINSBURG. He works for Mutual Distributors, Boston. I am not sure of his position, but I know he is—

Mr. LISHMAN. Does Mutual Distributors sell Atlantic records?

Mr. GINSBURG. Yes, sir.

Mr. LISHMAN. And did Mr. Holland call on you in the spring of 1959?

Mr. GINSBURG. Yes, he did.

Mr. LISHMAN. Did Mr. Holland say that the Atlantic Record Co. had earmarked a certain amount of promotion money for the Boston area and he would like to have you get some of it?

Mr. GINSBURG. Yes, sir.

Mr. LISHMAN. What did you tell him?

Mr. GINSBURG. I told him that I thought it was rather absurd because I played Atlantic records anyway. There was certainly no reason for them to want to give me anything, and—

Mr. LISHMAN. Well, subsequently is it a fact that you received from Atlantic Records six or seven checks for \$100 each?

Mr. GINSBURG. Yes, sir.

Mr. LISHMAN. And was that for your services in having played some of their records subsequent to Mr. Holland's visit?

Mr. GINSBURG. Certainly to the best of my knowledge I never had any contact with Mr. Holland after that time, nor did I speak to anyone from Atlantic Records. This was—

Mr. LISHMAN. It is a fact that after the spring of 1959 you did play some Atlantic records while you were diskjockey at WMEX?

Mr. GINSBURG. Yes; I did.

Mr. LISHMAN. It is a fact that you did receive six or seven checks of \$100 each from Atlantic?

Mr. GINSBURG. That is correct.

Mr. LISHMAN. When Mr. Holland told you that Atlantic Record Co. had this slush fund for promotion in the Boston area, that he would like to have you get some of it, did that not indicate to you that other diskjockeys in the area were participating in this slush fund?

Mr. GINSBURG. I didn't know whether the money referred to was for other diskjockeys or for his own promotion department.

Mr. LISHMAN. I have no other questions, Mr. Chairman.

The CHAIRMAN. Mr. Ginsburg, thank you very much for your appearance here.

Mr. GINSBURG. Thank you, sir.

The CHAIRMAN. You may be excused.

It is now 4:30, and I am advised that the weather is still a bit rough, and I imagine a lot of people will want to be getting home.

Tomorrow the hearing will continue, but it will be in the regular committee room in 1334 of the New House Office Building. The witnesses tomorrow will be, principally, from Music Suppliers, Inc., a record distributor.

The committee will recess until tomorrow morning at 10 o'clock in 1334, New House Office Building.

(Whereupon, at 4:30 p.m., the hearing was recessed, to resume at 10 a.m., Tuesday, February 16, 1960.)

RESPONSIBILITIES OF BROADCASTING LICENSEES AND STATION PERSONNEL

TUESDAY, FEBRUARY 16, 1960

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON LEGISLATIVE OVERSIGHT
OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The special subcommittee met, pursuant to recess, at 10 a.m., in room 1334, New House Office Building, Hon. Oren Harris (chairman of the special subcommittee) presiding.

Present: Representatives Harris, Mack, Flynt, Moss, Springer, Derounian, and Devine.

Also present: Robert W. Lishman, counsel; Beverly M. Coleman, principal attorney; Oliver Eastland, attorney; James P. Kelly, investigator; Herman Clay Beasley, chief clerk; and Jack Marshall Stark, minority counsel.

The CHAIRMAN. The committee will come to order.

The first witness this morning will be Mr. Donald R. Keelan. Mr. Keelan is an accountant on loan to the subcommittee from the General Accounting Office.

Are you gentleman interested in taking his picture?

TESTIMONY OF DONALD R. KEELAN

The CHAIRMAN. Mr. Keelan, I suppose you might as well be sworn again. The third time will not hurt.

Do you solemnly swear that the testimony you give to this committee to be the truth, the whole truth and nothing but the truth, so help you God?

Mr. KEELAN. I do.

The CHAIRMAN. You may proceed.

State your name and place of employment for the record.

Mr. KEELAN. My name is Donald R. Keelan. I am on loan to this subcommittee from the U.S. General Accounting Office in Boston.

The CHAIRMAN. Mr. Lishman, you may proceed.

Mr. LISHMAN. Mr. Keelan, pursuant to your duties with the subcommittee, did you make an examination of some of the records of Music Suppliers, Inc.?

Mr. KEELAN. Yes, sir, I did.

Mr. LISHMAN. Will you please describe the records that you examined.

Mr. KEELAN. According to the instructions received by members of the subcommittee, a review of the books and records of Music Suppliers, Inc., was started sometime around the 6th of January. Of these

records, special emphasis was placed on certain accounts, which were the loans receivable account, the exchange account, the advertising expense account, the promotion account, and the selling expenses.

Mr. LISHMAN. What period of time was covered by your examination?

Mr. KEELAN. This review covered a period from January of 1957 through November of 1959.

Mr. LISHMAN. And as a result of this examination, did you make a schedule?

Mr. KEELAN. After analyzing and summarizing these several accounts, I prepared a schedule of amounts owing from and paying to diskjockeys for the 3-year period 1957, 1958, and 1959, which is included as schedule A-1 in the report that I submitted to the subcommittee.

Mr. LISHMAN. Yes, sir.

Now, you have before you a Thermo-Fax copy of this schedule A-1 prepared by you from the books and records of Music Suppliers, Inc.

Mr. KEELAN. I have the original schedule, Mr. Lishman.

Mr. LISHMAN. You have the original.

I will ask you if you will identify this Thermo-Fax copy as a true copy of your schedule A-1 (counsel handing document to the witness).

Mr. KEELAN. Yes, sir; it is.

Mr. LISHMAN. I would like to have this schedule A-1, identified by the witness, introduced into the record, Mr. Chairman.

The CHAIRMAN. Let it be received.

(The schedule referred to follows:)

MUSIC SUPPLIERS, INC.

Schedule of amounts owing from and paid to diskjockeys for 3 years. 1957, 1958, and 1959

Name	Loans receivable as of January 18, 1960 w P B 1 of 2	Exchange as of January 18, 1960 w P C 1 of 3	Advertising (3 years) w P D-1 2 of 2	Promotion w P F-1 1 of 2	Selling expense w P F-1 2 of 2	Total
Ken Malden.....	\$360		\$75.00			\$375.00
Stan Richards.....	2,000	\$1,150	2,850.80	\$25		6,025.00
Sherm Feller.....	500	750			\$178	1,426.00
Norm Prescott.....		100	5,415.08			5,515.08
Ed Penney.....			1,100.10			1,100.00
Joe Smith.....			2,330.00			2,330.00
Dave Maynard.....			4,092.16	175		4,267.16
Louis Goldberg.....		100	560.00	25		585.00
Arnie Ginsburg.....			1,925.00	50		1,975.00
Roy Leonard.....			50.00			50.00
Fred Cole.....			25.00			25.00
Jay McMasters.....			25.00			25.00
Gregg Flinn.....			200.00			200.00
Alan Dary.....			50.00			50.00
Bill Marlowe.....			960.00	25		985.00
Ken Mayer.....			55.00	25		80.00
Mel Miller.....			30.00			30.00
Dan Donovan.....			354.56			354.56
Jack McDermott.....			290.00	86		286.00
Bob Clayton.....			25.00			25.00
Ted Zorilla.....			887.74			887.74
Newton Waltham Bank			400.00			400.00
Universal C.I.T.....						
Total.....	2,800	2,100	21,634.54	411	176	27,121.54

Mr. LISHMAN. Mr. Keelan, what is the total amount of payments to diskjockeys by Music Suppliers, Inc.?

Mr. KEELAN. The total amount of payments to diskjockeys included in this schedule is \$27,121.54.

Mr. LISHMAN. For what period is that?

Mr. KEELAN. For 1957, 1958, and 1959. These were made primarily by checks. And if I may, I would like to read the balances of the accounts that make up this \$27,000.

Mr. LISHMAN. I wish you would.

Mr. KEELAN. The total amount of loans receivable from diskjockeys to Music Suppliers, as of the date of this review, was \$2,800. The amount that was owing to Music Suppliers, Inc., was \$2,100 and entered in the exchange account.

Mr. LISHMAN. What is the exchange account?

Mr. KEELAN. The exchange account is an account whereby business associates, employees, and friends of Music Suppliers are issued company checks or Music Suppliers checks, at times in exchange for personal checks.

An example of this would be if a person known to the business was short of funds, and had a bill that was pressing. Upon request they could obtain certain amounts of money from Music Suppliers, which would be given to them in the form of a Music Suppliers check. They would, in turn, give to Music Suppliers a personal check, which might be cashed at a later date. This is a pure exchange. However, in our review, we found that this was not always the case. In several instances Music Suppliers either got the personal check in exchange for their check at a later date, or they got none at all.

In the company records they had no substantiation or personal checks of people amounting to \$2,100 that was in the balance of the exchange account.

Mr. LISHMAN. Yes, sir.

Mr. KEELAN. In the advertising account for the 3-year period, they had paid to diskjockeys or for diskjockeys by check, \$21,634.54. They had paid for promotional purposes \$411; they had paid for selling expenses \$176. The total amount being \$27,121.54.

However, these payments were only those payments in this 3-year period that we could definitely attribute as paid to or for diskjockeys. I say to or for, because the diskjockeys that were actually paid by check. As we heard prior to today, there were certain payments for automobiles, credit companies, banks, and there were one or two payments to a golf professional for golf lessons for a dickjockey.

Mr. LISHMAN. So this figure of \$27,121.54 does not represent the complete amount expended for the benefit of diskjockeys by Music Suppliers?

Mr. KEELAN. This amount only pertains to those that we could definitely identify as diskjockeys. However, during our review we found that there were payments made to organizations such as the Commonwealth Country Club, the Colonial at Linnfield, Haymarket Clothing Co., Jack Lane, Inc. It was explained by an officer of the corporation that these payments, although not all for diskjockeys, were for both diskjockeys and distributors.

Mr. LISHMAN. What officer of that corporation told you that, Mr. Keelan?

Mr. KEELAN. Mr. Gordon Dinerstein, the vice president of the corporation.

Mr. LISHMAN. Yes. Proceed.

Mr. KEELAN. So the amounts to these other organizations or other businesses, although they are partially for diskjockeys, are not included in this schedule because we could not definitely identify them.

Mr. LISHMAN. Could the company itself definitely identify them?

Mr. KEELAN. Mr. Dinerstein, when he was asked about these various payments and the purpose for these payments, could not definitely identify them. No, sir.

Mr. LISHMAN. Did you have difficulty in ascertaining these amounts that are shown in this schedule A-1?

Mr. KEELAN. In the review of the corporation, it was quite difficult to go through the books and to arrive at a balance as shown in their general ledger. Because of this, it was necessary to analyze in detail by year, by check and by amount, month to month, for the 3 years, for the loans receivable, for the exchange, for the advertising, for the promotion, and for the selling expenses. It took quite a bit of time to do this, because of the detail which we had to go through to trace each individual check.

Mr. LISHMAN. In your opinion, as an experienced accountant, do you think the books of Music Suppliers were kept in accordance with generally accepted accounting procedures and practices?

Mr. KEELAN. Mr. Lishman, I can only answer that by stating the things that I have found in the records of Music Suppliers and of some of the questions that I have asked Mr. Dinerstein.

I would rather not express a personal opinion but state what I have found.

Mr. LISHMAN. Did you find any irregularities in the records examined by you?

Mr. KEELAN. Yes, sir, I did.

Mr. LISHMAN. What were those irregularities?

Mr. KEELAN. It was noted from the very start of our examination that the accounts payable account, which ordinarily is a trade account, was used for such purposes as entering insurance payments and loans to the company. It was also noted that an item of \$777.77 was entered in the purchase account. When Mr. Dinerstein was requested to explain this, it was determined that this was an interest payment, not a purchase.

There were minor irregularities in posting and in summarization. The use of the accounts payable account for several reasons, and this item of purchases and insurance could be called irregularities.

Mr. LISHMAN. Mr. Keelan, did you ascertain that the payments on some of these insurance policies by Music Suppliers were on the lives of persons who are not officers or directors of the corporation or employees of the corporation?

Mr. KEELAN. Mr. Harry Carter, president of Music Suppliers, was asked this very question, and it was determined that the company was paying insurance premiums on the life of a person—who is not associated with the company, and that these amounts were being entered in accounts payable.

It seemed irregular insofar as the company was not a beneficiary of the life insurance policy.

Mr. LISHMAN. By not being associated, you mean not associated with the company?

Mr. KEELAN. That is correct, not associated directly with the company as I found it in my review.

Mr. LISHMAN. Were these premium payments, on the life insurance policy of this other person listed as business expenses of Music Suppliers?

Mr. KEELAN. They were entered in the accounts payable account. By just examining this account it would appear that the person was either carrying on trade with Music Suppliers or that Music Suppliers was indebted to them and this was a repayment of some sort.

Mr. LISHMAN. Did you find any evidence in the records of Music Suppliers indicating that this same person had engaged in some kind of transaction with that company?

Mr. KEELAN. Yes, sir. During our review from 1957 through 1959, the records of Music Suppliers disclosed that there were three checks issued to this other person. Then there were two checks received from this person, which were marked as loans.

Mr. LISHMAN. Marked as loans?

Mr. KEELAN. Yes, sir.

Mr. LISHMAN. What was the amount of these checks?

Mr. KEELAN. The amounts received were in January of 1957, \$5,000; and in February 1958 in the amount of \$8,000. The cash disbursements in December, 1957 were \$1,666.67; in May, 1959 there were \$8,000; and in March, 1959 there were \$2,000.

It was also noted during March 1959, that a check was made out to this person in the amount of \$2,777.77. After it was made, it was marked "void" and then one check was made payable for \$2,000 and another check for \$777.77, which were entered in the purchase account.

Mr. LISHMAN. Is this other person you referred to, Mr. Sam Clark?

Mr. KEELAN. It is.

Mr. LISHMAN. Will you identify him, please.

Mr. KEELAN. At the time of my association with the subcommittee, I had no knowledge of Sam Clark. But after I had asked several questions in Music Suppliers, Sam Clark was described as a former owner of Music Suppliers, Inc., until some period in 1955. At that time he became employed by ABC-Paramount, the Am-Par Record Co. of New York, which is a record manufacturer.

I also learned that as a condition of his employment with Am-Par, he was supposed to divest himself at that time of any ownership or dealings in the record distributing business.

Mr. LISHMAN. Now, returning to schedule A-1, Mr. Keelan, would you read into the record the names of the diskjockeys and the total amount they received for the period covered as shown in the extreme right-hand column.

Mr. KEELAN. Schedule A-1, as I said, is the final schedule from analysis and summaries, and it includes five accounts which were examined. The loan receivable and exchange accounts are, in fact,

receivables on the company's books, and the other three are the advertising, promotion, and selling expenses accounts.

The amounts of money received by and for diskjockeys from 1957 to 1959 were:

Ken Malden, diskjockey, \$375.
 Stan Richards, diskjockey, \$6,025.
 Sherm Feller, diskjockey, \$1,426.
 Norm Prescott, diskjockey, \$5,515.08.
 Ed Penny, diskjockey, \$1,100.
 Joe Smith, diskjockey, \$2,330.
 Dave Maynard, diskjockey, \$4,267.16.
 Louis Goldberg, whom I understand is a record librarian, \$685.
 Arnold Ginsburg, diskjockey, \$1,975.
 Roy Leonard, \$50.
 Fred Cole, \$25.
 Jay McMasters, \$25.
 Gregg Finn, \$25.
 Alan Davy, \$200.
 Bill Marlowe, \$50.
 Ken Mayer, \$985.
 Mel Miller, \$80.
 Dan Donovan, \$30.
 Jack McDermott, \$354.56.
 Bob Clayton, \$286.
 Ted Zorilla, \$25.

Newton-Waltham Bank, \$887.74, which was for payments of an automobile, I believe, to Dave Maynard.

Universal C.I.T. Corp., \$400, which was in payment for an automobile of an undisclosed diskjockey.

The total amount is \$27,121.54.

Mr. Lishman, this again is only for Music Suppliers, Inc. It does not include the other distributors.

Mr. LISHMAN. Yes, sir. I understand, and we are going to come to the books of the other distributors that were examined by you in just a moment.

Mr. Keelan, what was the transaction in February 1958, which was reflected by the \$8,000 check received from Sam Clark as you have previously testified?

Mr. KEELAN. During 1958, it was noted that the company received \$8,000 from Sam Clark. This item was marked Verve. It was also noted in January of 1958 that the company received \$8,333.33 from Mr. Harry Clark who was the president of Music—

Mr. LISHMAN. Harry Carter.

Mr. KEELAN. Harry Carter, who was president of Music Suppliers, Inc., and \$8,333 from Mr. Gordon Dinerstein, who is the vice president of Music Suppliers, Inc. Both of these receipts were marked "Verve."

Mr. LISHMAN. Is Verve a record company?

Mr. KEELAN. It is my understanding that Verve is a record company in California.

Mr. LISHMAN. Do you know the principal in the Verve Record Co.?

Mr. KEELAN. Yes, sir. When Mr. Dinerstein, was questioned about these payments, he informed us that a Mr. Norman Granz, who was a principal in the Verve Record Co., approached him in Las Vegas and discussed the possibility of making a loan.

It was told to us that Music Suppliers had made four loans to the Verve Record Co., and this was one of the large loans that they made from Mr. Carter, Mr. Dinerstein, and Mr. Sam Clark.

Mr. LISHMAN. Would you mind stating the amount of the first of these four loans?

Mr. KEELAN. Mr. Lishman, I can't tell you the full amounts of the loans because I was not present when these were disclosed. I do know that there was a subsequent loan to this which amounts to—

Mr. LISHMAN. Subsequent loan to whom?

Mr. KEELAN. Subsequent to this loan which I am speaking about from Mr. Carter, Mr. Dinerstein, and Mr. Sam Clark which totals 24,600-and-some-odd dollars. I do know of another loan of \$31,600 that was made to the Verve Record Co. at a later date in 1958. I do not know the full amounts of all four loans. These were two of the four.

Mr. LISHMAN. These are the two that you do know about.

Mr. KEELAN. Two that I do know about.

Mr. LISHMAN. What was the rate of interest on these loans?

Mr. KEELAN. If I may read from my notes here on the Verve Record Co. On January 20, 1960, Mr. Gordon Dinerstein was requested to explain the amounts of \$8,000. He stated that the money was one of four loans that had been made since 1957 to Mr. Norman Granz of the Verve Record Co. He stated that at a record distributors' meeting which was held in Las Vegas, Nev., in the fall of 1957, Mr. Granz approached him and discussed the possibilities of obtaining money on a loan basis.

Mr. Dinerstein did not know why Mr. Granz needed the money. Mr. Dinerstein stated in regard to the money loaned by himself, by Mr. Carter and by Mr. Clark, Mr. Granz offered an interest rate of approximately 25 percent for the use of the money for a 3-month period.

Mr. LISHMAN. That would mean 100 percent interest on an annual basis.

Mr. KEELAN. Yes; it would mean 100 percent on a yearly basis, or receipt of \$2,000 for a loan of \$8,000 over a period of 3 months.

Mr. LISHMAN. Does the record of Music Suppliers indicate the purpose of these loans to Verve?

Mr. KEELAN. No, sir; it did not.

Mr. LISHMAN. Where were these loans carried on the books of Music Suppliers?

Mr. KEELAN. These loans were carried in the accounts payable account of Music Suppliers. It is my understanding from Mr. Dinerstein that repayments of these loans are made through a reduction in the accounts payable account which is owed to Verve from Music Suppliers, Inc.

Mr. LISHMAN. Is that good accounting procedure?

Mr. KEELAN. Mr. Lishman, a loan from an officer of a corporation is usually carried in a loan account. As I said before, it is my understanding that an accounts payable account, is primarily for trade, not for loans.

Mr. LISHMAN. Now, Mr. Keelan, did you also make an examination of the books of Dumont Record Distributing Co.?

Mr. KEELAN. If I may answer that question by stating that on January 22, 1960, a visit was made to the law offices of Louis Winer, who is the attorney for the Dumont Record Distributing Corp. This visit was made primarily to arrange for a review of the Dumont Record Distributing Corp.'s books.

On the day of our visit, Mr. Winer was not there, but his secretary informed us that Mr. Dumont had prepared a certified copy of payments of money to diskjockeys from the Dumont Record Distributing Corp., and that this was supplied to the Federal Trade Commission. We were asked if a photostat of this original certified copy would be adequate for our purposes.

We did obtain an unsigned copy of this purported certified copy. The schedule only shows amounts of money paid by Dumont to diskjockeys and five payments in the amount of \$185 which were paid to radio station WMEX for the gold platter. Because of the time spent in Music Suppliers, Inc., in analyzing their books, it was decided that we would accept this photostatic copy of payments made in lieu of examining the records of Dumont Distributing Corp.

Mr. LISHMAN. Do you have that document before you?

Mr. KEELAN. I do have the document before me.

Mr. LISHMAN. Was this supplied to you by Dumont?

Mr. KEELAN. This photostat is headed:

The Dumont Record Distributing Corp., 1290 Tremont Street, Roxbury, Mass.

It gives a list of diskjockeys by dates and amounts, and it states on the bottom:

This is to certify the books and records of Dumont Distributing Corp. discloses the above payments made to the above persons by Dumont Record Distributing Corp. on or about the dates set forth. These payments are charged in the books of the company as promotional expense.

There was a line for a signature and underneath that line is "Donald E. Dumont," which is in type.

Mr. LISHMAN. Would you read that list showing the payments made by Dumont according to the document submitted to you into the record, please?

Mr. KEELAN. The document supplied to us discloses the first item is Norman Prescott, WBZ, January 9, 1958, \$200; February 12, 1959, \$200; February 21, 1958, \$105; March 7, 1958, \$350; April 9, 1958, \$200; June 18, 1958, \$300; July 18, 1958, \$200; August 16, 1958, \$200; September 26, 1958, \$335; October 31, 1958, \$200; December 19, 1958, \$200; January 16, 1959, \$200; March 12, 1959, \$400; May 15, 1959, \$400; July 6, 1959, \$200.

The next is Dave Maynard, August 7, 1959, \$250; August 24, 1959, \$300; September 4, 1959, \$300; October 15, 1959, \$400.

Bill Marlowe, July 24, 1959, \$150; Ed Penny, July 18, 1958, \$50.

The next person is Arnie Ginsburg, March 12, 1958, \$50; May 14, 1958, \$50; June 18, 1958, \$150; July 18, 1958, \$50; September 26, 1958, \$100; October 31, 1958, \$100; December 19, 1958, \$50; January 16, 1959, \$100; March 13, 1959, \$200; May 1, 1959, \$100; July 6, 1959, \$100; August 7, 1959, \$75; September 4, 1959, \$100; October 15, 1959, \$100.

The next is Lou Goldberg, December 19, 1958, \$100; March 19, 1959, \$55.

The next item is Joe Smith, June 16, 1958, \$100; November 19, 1958, \$100; January 16, 1959, \$50; July 6, 1959, \$175; August 7, 1959, \$125; September 4, 1959, \$100; October 15, 1959, \$100.

Next person is Arnold Rosen which is marked WBZ librarian, March 4, 1958, \$60.

The next is WMEX gold platter payments, June 5, 1959, \$75; July 15, 1959, \$10; October 2, 1959, \$25; November 2, 1959, \$50; November 19, 1959, \$25.

The next is Ken Mayer, March 13, 1959, \$50; May 1, 1959, \$50; July 6, 1959, \$50; August 7, 1959, \$75; September 4, 1959, \$100; and October 15, 1959, \$50.

The next item is Bob Clayton on December 19, 1958, it appears to be 1958, \$100.

The next item is Jay McDermott on October 31, 1958, \$100; December 19, 1958, \$50.

From this schedule I have resummarized it and have prepared a schedule showing the amounts of money by person, by year, and by total.

Would you like me to read that out?

Mr. LISIMAN. The total for each individual.

Mr. KEELAN. The total for each individual, this covers the period—

Mr. LISIMAN. Two years.

Mr. KEELAN. Two-year period 1958-59, for Norman Prescott, \$3,690.

Arnold Rosen, \$60.

Dave Maynard, \$1,250.

Bill Marlowe, \$150.

Joe Smith, \$750.

Ed Penny, \$50.

Arnie Ginsburg, \$1,325.

Lou Goldberg, \$155.

Don Masters, \$325.

Jay McDermott, \$150.

Gold Platter, \$185.

Ken Mayer, \$475.

Bob Clayton, \$100.

And the total of this schedule amounts to \$8,565, of which \$8,380 was paid to the diskjockeys and librarians and \$185 was paid for the gold platter.

So the total amount paid to diskjockeys was \$8,380.

Mr. LISHMAN. But you have not had an opportunity of verifying from the books of Dumont that that is the accurate total?

Mr. KEELAN. No, sir; I could not state that this is all that Dumont has paid. As I said, I just have this list which was supplied and purported to be a certified copy of payments made for the 2-year period. We did not examine Dumont Record Distributing Corp.'s books.

Mr. LISHMAN. Mr. Keelan, did you also examine the books of Mutual Distributors, Inc.?

Mr. KEELAN. Yes, sir.

Mr. LISHMAN. For the period 1957 to 1959?

Mr. KEELAN. Yes, sir. On January 26, 1960, I visited Mutual Distributors, Inc., 1241 Columbus Avenue, Boston, Mass. In the presence of Irwin B. Goldstein, who is the general manager, and Joseph M. Koufman, who is the attorney for Mutual Distributors, I examined the books from 1957 through 1959.

The total payments made to and for diskjockeys were entered in the promotion and advertising accounts, plus two items which were entered in the selling expense and one item which was entered in their exchange account amounted to \$2,120. These items were paid to and for diskjockeys.

Mr. LISHMAN. Could you read the totals received by each disk-jockey making up this amount of \$2,120?

Mr. KEELAN. Mr. Lishman, of all the schedules I prepared, that is the one schedule I did not. I did not take these items by disk-jockey and summarize it. I just have the several entries.

Mr. LISHMAN. Do you have the details of the amounts received by diskjockeys?

Mr. KEELAN. I have the details of the amounts received by disk-jockeys. Would you like me to read them?

Mr. LISHMAN. To save time at this point, Mr. Chairman, I would like to have inserted in the record the schedule prepared by Mr. Keelan which gives a breakdown of the payments to various disk-jockeys. Unfortunately, we do not have extra copies.

The CHAIRMAN. Could I see that, please, sir? This is a Thermo-Fax copy of the original of the statement of Mutual Distributors, Inc., of 1241 Columbus Avenue, Roxbury, Mass., schedule of payments to diskjockeys, with the dates and the check number paid, amount, and explanation.

Is that the document that you have just identified?

Mr. KEELAN. Yes, sir. My name appears in the right-hand corner and is dated January 26, 1960.

The CHAIRMAN. Yes.

Mr. KEELAN. That would be a Thermo-Fax of this original schedule.

The CHAIRMAN. And you made this up from their records?

Mr. KEELAN. Yes, sir.

The CHAIRMAN. Let it be received for the record.

(The schedule referred to follows:)

MUTUAL DISTRIBUTORS, INC.
 1241 COLUMBUS AVE., ROXBURY, MASS.
 SCHEDULE OF PAYMENTS TO DISKJOCKEYS

Date	Check No.	Payee	Amount	Explanation
1957				
Apr. 1	4793	Joe Smith.....	\$25	Promotion.
Dec. 17	5443	do.....	100	Advertising: Christmas gifts.
	4	Norman Prescott.....	100	Do.
	5	Robert Clayton.....	100	Do.
	6	Alan Dary.....	100	Do.
18	7	Gene Edwards.....	50	Do.
	8	Lou Goldberg.....	50	Do.
	9	Ed Penney.....	50	Do.
	50	Robert Mehrman.....	50	Do.
	2	Arnold Ginsburg.....	50	Do.
	3	William Marlowe.....	50	Do.
	4	Fred B. Cole.....	50	Do.
	5	David Maynard.....	50	Do.
	6	Stan Richards.....	50	Do.
	7	Arnold Rosen.....	50	Do.
	9	Paul Flanagan.....	50	Do.
	60	Emil Anderson.....	50	Do.
20	7	Roy Leonard.....	50	Do.
23	71	Joe Smith.....	50	Promotion.
Sept. 25	5246	Oceana Import Co.....	396	Gifts of radios and cigarette lighters to dealers and disc jockeys.
1958				
Dec. 21	6380	Norman Prescott.....	100	Selling expense.
19	6378	Louis of Boylston Street.....	400	Selling expense: Gift certificates for disc jockeys.
1959				
Oct. 2	7135	Arnold Ginsburg.....	100	Exchange: Reimbursement was made to Mutual Distributors from United Artists.
		Total disc-jockey payments..	2,121	

SCHEDULE OF MISCELLANEOUS PAYMENTS

1959				
May 19	6800	Ruth Shapiro.....	\$250	Radio promotion: Contract.
Aug. 21	7031	Bernie Stone.....	350	Advertisement: Associated Record Dealers.
18	7118	Romance Watson.....	40	Exchange: Personal appearance on Bob Clayton TV Show.

Source: Cash Disbursements Book.

Check endorsed by Romance Watson and signed by what looked to be John Gregory, Mgr.

Mutual Distributors was reimbursed by a credit memo from Coral Records on September 28, 1959, in the amount of \$40, marked "Promotional credit for Romance Watson.

Mr. LISIMAN. Now, Mr. Keelan, in the course of your examination of the books of Mutual Distributors, Inc., did you ascertain the amounts that they had paid station WMEX for the purpose of having one of its records selected as the gold platter of the week, commencing May 19, 1959?

Mr. KEELAN. Sir, this is Mutual Distributors?

Mr. LISIMAN. Yes, sir. Made in November 1959.

Mr. KEELAN. Yes, sir, I have a schedule of payments to radio stations from Mutual Distributors, Inc.

Mr. LISHMAN. I do not want anything except the payments to WMEX. Is it a fact that payments from May 19, 1959, to November 27, 1959, made by Mutual Distributors, Inc., to station WMEX for the Gold Platter amounted to \$170?

Mr. KEELAN. Yes, sir.

Mr. LISHMAN. And that reflects what was shown on the books of Mutual Distributors?

Mr. KEELAN. Yes, sir.

Mr. LISHMAN. In addition to examining the books of the three record distributing companies you have just mentioned, or seeking to obtain access to them, did you also examine the books of Records, Inc.?

Mr. KEELAN. No, sir, I did not examine the books of Records, Inc. However, the subcommittee did obtain photostatic copies of certain checks issued by Records, Inc. It was from this source that inclusions and schedules which have been presented prior to today have included the amounts as shown by those canceled checks as Records, Inc.

I have not done any examination of the Records, Inc., books of account.

Mr. LISHMAN. But is it correct that the sum of the canceled checks in other records that have already been introduced into the record show, for the period 1957 to 1959, that Records, Inc., paid approximately \$2,850 to diskjockeys and station librarians?

Mr. KEELAN. To my knowledge, Records, Inc., from this period from 1957 to 1959, paid at least \$2,850, if not more.

Mr. LISHMAN. Now, with respect to the four record distributing companies concerning whom you have given testimony, is it correct that the total amount which you have been able to ascertain as having been paid by these companies to diskjockeys and station librarians amounted, over a 3-year period, to \$40,472.54?

Mr. KEELAN. The original schedule that I prepared from these records and from the canceled checks show payments made over that period of time did amount to \$40,472.54.

Mr. LISHMAN. I have no other questions, Mr. Chairman.

The CHAIRMAN. Mr. Flynt, any questions?

Mr. FLYNT. No questions.

The CHAIRMAN. Mr. Derounian.

Mr. DEROUNIAN. No questions.

The CHAIRMAN. Mr. Moss.

Mr. MOSS. No questions.

The CHAIRMAN. You may step aside, Mr. Keelan.

Mr. KEELAN. Yes, sir.

The CHAIRMAN. Mr. Grimaudo, will you be sworn?

Do you solemnly swear the testimony you give to this committee to be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. GRIMAUDO. I do.

TESTIMONY OF VINCENT GRIMAUDO

The CHAIRMAN. Have a seat. Your name is Mr. Vincent Grimaudo?

Mr. GRIMAUDO. Yes, sir.

The CHAIRMAN. You are an auditor, are you?

Mr. GRIMAUDO. Yes, sir.

The CHAIRMAN. Do you have a supervisory position with the General Accounting Office?

Mr. GRIMAUDO. Yes, sir, the New York office.

The CHAIRMAN. Mr. Grimaudo, are you on loan from the General Accounting Office, New York office, to this Special Subcommittee on Legislative Oversight?

Mr. GRIMAUDO. Yes, I have been since November 18, 1959.

The CHAIRMAN. In the course of your work for the subcommittee, have you had occasion to go over the records of various recording companies?

Mr. GRIMAUDO. Yes, I have.

The CHAIRMAN. Mr. Lishman, you may proceed.

Mr. LISHMAN. Mr. Grimaudo, did you in pursuance of your assignment with the subcommittee conduct a study of the books of accounts of a clothing store in New York City?

Mr. GRIMAUDO. Well, not so much the books, as much as Sam Clark's specific account with Shaw-Ross, Inc., a New York City retail clothier.

Mr. LISHMAN. Where are they located?

Mr. GRIMAUDO. They are located at 1411 Broadway.

Mr. LISHMAN. What did you ascertain with respect to Mr. Clark's account at Shaw-Ross?

Mr. GRIMAUDO. Well, I examined his account from February 19, 1958, through August 17, 1959, and determined that he had made purchases totaling \$2,250.50 during that period.

Mr. LISHMAN. Yes, sir.

Mr. GRIMAUDO. And that on March 9 his account was credited for \$777.77, which was received from Music Suppliers, Inc.

Mr. LISHMAN. By check?

Mr. GRIMAUDO. Yes, by check.

Mr. LISHMAN. Now, was there any breakdown of this amount of \$777.77?

Mr. GRIMAUDO. No, there wasn't, because at that time his balance didn't amount to \$777.77, so actually he made subsequent purchases—

Mr. LISHMAN. This entry, in effect, was a credit to his account?

Mr. GRIMAUDO. Right.

Mr. LISHMAN. In effect, what you found out indicates that Music Suppliers, Inc., was subsidizing Mr. Sam Clark's purchases at this store?

Mr. GRIMAUDO. For that amount, yes, sir.

Mr. LISHMAN. Over a period of time?

Mr. GRIMAUDO. Yes, sir.

Mr. LISHMAN. In the amount of \$777.77?

Mr. GRIMAUDO. Yes, sir.

Mr. LISHMAN. Did you examine the books of Am-Par?

Mr. GRIMAUDO. No, sir.

Mr. LISHMAN. Well, did you examine at Shaw-Ross the Am-Par account that was maintained there?

Mr. GRIMAUDO. Yes, sir.

Mr. LISHMAN. For what period did your examination of the Am-Par account at Shaw-Ross cover?

Mr. GRIMAUDO. December 26, 1958, to October 6, 1959.

Mr. LISHMAN. And during that period did you come across payments for Ronnie Granger made by Am-Par to Shaw-Ross?

Mr. GRIMAUDO. Yes, sir.

Mr. LISHMAN. Would you give us the details of what you found with respect to these payments?

Mr. GRIMAUDO. Well, on December 29, 1958, Shaw-Ross received \$309 from American-Paramount Records of which \$103 was for a suit for Ronnie Granger.

Mr. LISHMAN. Did you find any other payments made on behalf of Ronnie Granger by Am-Par?

Mr. GRIMAUDO. Not by American; no.

Mr. LISHMAN. Did you find that there were three other purchases of \$103 for suits paid for by Am-Par included in that amount you just mentioned?

Mr. GRIMAUDO. Yes, sir; there were three.

Mr. LISHMAN. Can you identify by whom those suits were purchased?

Mr. GRIMAUDO. No, sir. It just says American-Paramount Records; one, just the name Willard—

Mr. LISHMAN. Willard?

Mr. GRIMAUDO. There was no first name. I questioned Mr. Shaw, a partner, and he stated he didn't know who the individual was.

Mr. LISHMAN. Do you know who Ronnie Granger is?

Mr. GRIMAUDO. I believe the Federal Communications Commission issued a list of diskjockeys who have received payola, and there is a Ronnie Granger mentioned on that list.

Mr. LISHMAN. Was he not Mel Leeds' record librarian?

Mr. GRIMAUDO. This I don't know, sir.

Mr. LISHMAN. I have no further questions.

The CHAIRMAN. Any questions by any members of the committee?

You may stand aside.

Mr. GRIMAUDO. Thank you.

The CHAIRMAN. The next witness who was to be called is Mr. Harry Carter, the president and treasurer of Music Suppliers, Inc.

The subcommittee has a letter which has been handed to the chairman by Dr. Elliot L. Sagall. Is Dr. Sagall here?

Mr. SMITH. That refers to Dr. Elliot L. Sagall.

The CHAIRMAN. Is Mr. Smith here? You have a letter which you have submitted to me addressed to you from Dr. Sagall, do you not?

Mr. SMITH. Yes, Mr. Chairman.

The CHAIRMAN. Do you know that Dr. Sagall is the personal physician of Mr. Harry Carter?

Mr. SMITH. I know that of my own knowledge, sir.

The CHAIRMAN. And this letter addressed to you submits a letter for the subcommittee or "To whom it may concern," regarding the condition of Mr. Carter.

Mr. SMITH. Yes, Mr. Chairman.

The CHAIRMAN. And requesting that he be heard in executive session?

Mr. SMITH. Very definitely, sir, for the reasons stated in that letter.

The CHAIRMAN. For the reasons stated in this letter.

Mr. SMITH. Yes, Mr. Chairman.

The CHAIRMAN. The letter will be included in the record at this point.

(The letter referred to follows.) (720a.)

BOSTON, MASS., February 13, 1960.

Re Mr. Harry Carter.

EDWARD F. SMITH, Esq.,
Boston, Mass.

DEAR MR. SMITH: I am writing to you because, as Mr. Carter's personal physician, I am quite concerned about his present mental state. As you well know he is at the present time involved with an impending appearance before a congressional committee in Washington, D.C. It is my opinion based upon my personal observations of Mr. Carter since he has been a patient of mine since January 2, 1958, and the present medical sequence of events that the resultant emotional impact of his testifying before the public in an open hearing may very well lead to an acute serious mental breakdown. Accordingly, from the medical standpoint it is imperative every step be taken in order to prevent this and, if he is to be questioned, attempt to have such questioning done in a closed session.

I am enclosing for your use, if necessary, a confidential medical report describing in some detail his past and recent medical history.

Very truly yours,

ELLIOT L. SAGALL, M.D.

Mr. Moss. Mr. Chairman, can we have extra copies?

The CHAIRMAN. No. But I want to pass it over for the moment for consideration. The committee will consider the request just as soon as we can conveniently do so during the course of the hearings.

In view of the request, the subcommittee will take it under consideration. We will now call Mr. Gordon J. Dinerstein. Are you Mr. Dinerstein?

Mr. DINERSTEIN. Yes, sir.

The CHAIRMAN. Do you object to the cameras?

Mr. DINERSTEIN. No, sir.

The CHAIRMAN. Will you be sworn, sir?

Do you solemnly swear that the testimony you give to this subcommittee to be the truth, the whole truth and nothing but the truth, so help you God?

Mr. DINERSTEIN. I do.

The CHAIRMAN. Will you have a seat.

TESTIMONY OF GORDON J. DINERSTEIN

The CHAIRMAN. You are Mr. Gordon J. Dinerstein?

Mr. DINERSTEIN. That is correct, sir.

The CHAIRMAN. You are the vice president and general manager of Music Suppliers, Inc.?

Mr. DINERSTEIN. I am the vice president, sir. I do not have the title of general manager, although my activities with the company might designate me as such.

The CHAIRMAN. You are familiar with the problems and the business of the company, are you not?

Mr. DINERSTEIN. Yes, sir, I am.

The CHAIRMAN. That Music Suppliers, Inc., is a record distributing company?

Mr. DINERSTEIN. That is correct, sir.

The CHAIRMAN. Mr. Lishman, you may proceed.

Mr. LISHMAN. Mr. Dinerstein, when did you first become associated with Music Suppliers?

Mr. DINERSTEIN. I first became associated with Music Suppliers in late 1947 or early 1948.

Mr. LISHMAN. What position did you have then?

Mr. DINERSTEIN. I was an employee.

Mr. LISHMAN. What was the nature of your duties?

Mr. DINERSTEIN. I worked as an inside salesman, in the shipping room. It was a very small corporation at that time.

Mr. LISHMAN. Who were the principal owners of Music Suppliers, Inc., in 1947?

Mr. DINERSTEIN. Mr. Sam Clark and Mr. Harry Carter.

Mr. LISHMAN. When did you become vice president?

Mr. DINERSTEIN. During the year 1955, sir.

Mr. LISHMAN. Do you have a stock ownership interest in Music Suppliers, Inc.?

Mr. DINERSTEIN. Yes, sir, I do.

Mr. LISHMAN. Would it be correct to say that ostensibly 75 percent of the stock of Music Suppliers, Inc., is owned by Mr. Harry Carter, and 25 percent is owned by you?

Mr. DINERSTEIN. Yes, sir, outside of hypothecation of my stock against the performance of an employment contract.

Mr. LISHMAN. Will you explain this hypothecation.

Mr. DINERSTEIN. Certain of the stock is held in escrow as security for my remaining with the company over a period of years.

Mr. LISHMAN. Who holds the stock in escrow?

Mr. DINERSTEIN. Mr. Edward F. Smith, attorney for the company.

Mr. LISHMAN. Is Mr. Smith also an officer in Dumont Distributing?

Mr. DINERSTEIN. No, sir, he is not.

Mr. LISHMAN. Has he been?

Mr. DINERSTEIN. No, sir, he has not.

Mr. LISHMAN. Was he a director of Dumont Distributing?

Mr. DINERSTEIN. I believe he was and is a nominal director.

Mr. LISHMAN. Do you know whether he was an attorney for Dave Maynard?

Mr. LISHMAN. Yes, sir, he was.

Mr. LISHMAN. Do you know whether he represented the estate of Nathaniel Clark, who was Mr. Sam Clark's father?

Mr. DINERSTEIN. I believe he did, sir.

Mr. LISHMAN. How many shares of stock do you actually own in Music Suppliers, Inc.?

Mr. DINERSTEIN. To the best of my recollection, I believe the capitalization is 100 shares, of which I own 25.

Mr. LISHMAN. Of which you own 25.

Mr. DINERSTEIN. Yes; subject, of course, to the hypothecation which I mentioned earlier.

Mr. LISHMAN. Is that 100 shares composed of 50 shares of class A stock and 50 shares of class B stock?

Mr. DINERSTEIN. Yes, sir; I believe it is.

Mr. LISHMAN. And both classes of stock have voting rights?

Mr. DINERSTEIN. Yes, sir; they do.

Mr. LISHMAN. So that 37½ shares of class A stock and 37½ shares of class B stock are in the name of Harry Carter?

Mr. DINERSTEIN. Yes, sir.

Mr. LISHMAN. And 12½ shares of class A stock and 12½ shares of class B stock are owned of record by you?

Mr. DINERSTEIN. I believe that is so.

Mr. LISHMAN. Of the shares owned by you, approximately one-half are now held in escrow?

Mr. DINERSTEIN. If my recollection as to the number of shares is correct, sir, I believe that 15 of the 25 shares are held in escrow.

Mr. LISHMAN. What are your duties as vice president of Music Suppliers, Inc.?

Mr. DINERSTEIN. Generally I am responsible for sales in the company, and anything else that I think will further the company interests.

Mr. LISHMAN. Were you here during the testimony just received from the witness, Mr. Keelan?

Mr. DINERSTEIN. Yes, sir; I was.

Mr. LISHMAN. Did you hear him testify that over a 3-year period, approximately, Music Suppliers, Inc., paid in one form or another at least \$27,121.54?

Mr. DINERSTEIN. Yes, sir; I did.

Mr. LISHMAN. To diskjockeys and station librarians?

Mr. DINERSTEIN. Yes, sir; I did hear that testimony.

Mr. LISHMAN. Do you deny that the records of your company show these payments?

Mr. DINERSTEIN. I believe that they are substantially correct, Mr. Lishman. However, I think included there are certain loans from certain diskjockeys that are due the company and these were lumped into this figure.

Mr. LISHMAN. Were these loans evidenced by notes?

Mr. DINERSTEIN. No, sir; they were not.

Mr. LISHMAN. Was interest required on the notes?

Mr. DINERSTEIN. No, sir; it was not.

Mr. LISHMAN. Would these be under the category of accounts known as exchanges?

Mr. DINERSTEIN. I believe, sir, that inadvertently a couple of these items might have gotten into the exchange account. To clarify that, Mr. Keelan earlier explained one of the purposes of the exchange account. I think that on a couple of occasions we accepted checks from an individual to be covered at a later date. When we deposited these in our bank account, they were returned marked "insufficient funds." The individual could not and still has not covered those checks, so that they were later, I believe, transferred to the loan account, where they are still outstanding.

Mr. LISHMAN. Well, Mr. Dinerstein, why did Music Suppliers, Inc., make payments to these diskjockeys and station librarians?

Mr. DINERSTEIN. We made these payments sir, in order to create and maintain goodwill for testing and promoting our records at record

hops. Also, for these people who gave us their time and attention in listening and helping us evaluate our new releases.

Mr. LISHMAN. About how much of this \$27,121.54 was paid for services in testing record hops?

Mr. DINERSTEIN. I don't think that I could give you an accurate breakdown on that, Mr. Lishman.

Mr. LISHMAN. Would it be a substantial amount of the \$27,000?

Mr. DINERSTEIN. We felt that this performance was important to us.

Mr. LISHMAN. Which of the diskjockeys did you make these payments to for record hops?

Mr. DINERSTEIN. As I stated before, sir, I cannot specifically say that a particular payment was made for a record hop. Many of the diskjockeys did many, many record hops. During the course of these hops, they tested new records for us and reported the reaction to these.

Mr. LISHMAN. Well, Mr. Dinerstein, do you remember having a conversation on December 1, 1959, with Dave Maynard?

Mr. DINERSTEIN. I have many, many conversations with Mr. Maynard, Mr. Lishman. He is a neighbor and a personal friend. I could very well have had a conversation with him on December 1.

Mr. LISHMAN. Do you remember a time when Mr. Maynard had been called on the carpet by the officials at WBZ, following which he made a call on you?

Mr. DINERSTEIN. I don't remember whether he made a call on me, sir. He did contact me.

Mr. LISHMAN. Does he not live nearby you on the same street?

Mr. DINERSTEIN. Yes; he does.

Mr. LISHMAN. Did you not have a conversation with Mr. Maynard concerning the fact that he had been called to account by WBZ?

Mr. DINERSTEIN. Yes, sir; I did. He informed me of that fact.

Mr. LISHMAN. What was the substance of that conversation you had with Mr. Maynard?

Mr. DINERSTEIN. As best as I can recollect, he told me what his problem was—

Mr. LISHMAN. What did he say his problem was?

Mr. DINERSTEIN. I believe, that he was under suspicion, so to speak, of so-called payola, and that the station would investigate the matter.

Mr. LISHMAN. Did Mr. Maynard tell you that he had already told the officials at WBZ that the money he had received from you was for his services at record hops?

Mr. DINERSTEIN. I don't recall whether he did or not, sir.

Mr. LISHMAN. Later on did you not go to WBZ and corroborate that story?

Mr. DINERSTEIN. No, sir; I did not go to WBZ.

Mr. LISHMAN. Well, we will give it the way it did happen. Is it a fact that you met with officials at WBZ at the Somerset Hotel?

Mr. DINERSTEIN. That is correct, sir.

Mr. LISHMAN. And you had a discussion there again about Mr. Maynard's problem?

Mr. DINERSTEIN. Yes, sir, we did.

Mr. LISHMAN. At that meeting did you not corroborate to the officials of WBZ that the money you had paid Maynard was for his services at record hops?

Mr. DINERSTEIN. I believe I told the officials at WBZ that we did not pay Mr. Maynard to play records on the air, which was one of their questions, and I did tell them that he did perform very valuable services for us in testing and exposing records at record hops.

Mr. LISHMAN. Did you have a discussion with Mr. Paul O'Friel at the Somerset about this matter?

Mr. DINERSTEIN. Yes, sir.

Mr. LISHMAN. What did you tell Mr. O'Friel?

Mr. DINERSTEIN. Exactly what I have told you here.

Mr. LISHMAN. This conversation you had with Mr. O'Friel was subsequent to your original talk with Mr. Maynard where he told you the story that he had already given to WBZ; is that correct?

Mr. DINERSTEIN. The conversation with Mr. O'Friel was subsequent to many, many conversations I had with Mr. Maynard as a close friend and neighbor.

Mr. LISHMAN. Is it not true that prior to your meeting with Mr. O'Friel, you and Mr. Maynard had gotten together and had agreed, that you were in a situation where substantial payments had been made by your company to Maynard and that the best way of getting out of the situation was to state that those payments were made, not for airing records, but for some innocent purpose such as for promoting record hops?

Mr. DINERSTEIN. No, sir; that is not true. As a matter of fact, if I may continue.

Mr. LISHMAN. Yes, sir.

Mr. DINERSTEIN. I believe that Mr. Maynard in a declaration of the sums he received on filing of income tax, long prior to this question, listed these amounts as having been received for that purpose.

Mr. LISHMAN. Did you ever tell the investigators of this subcommittee that the payments made by Music Suppliers to Mr. Maynard were for both purposes: for airing records and also in appreciation for record hops?

Mr. DINERSTEIN. No, sir, I did not.

Mr. LISHMAN. What relationship do you and Mr. Carter have with Dumont Record Distributing Corp.?

Mr. DINERSTEIN. We have made an investment in Dumont Record Distributing Corp., Mr. Lishman.

Mr. LISHMAN. What capital investment in Dumont have you made, Mr. Dinerstein?

Mr. DINERSTEIN. Myself personally?

Mr. LISHMAN. Yes, sir.

Mr. DINERSTEIN. Actually to this date, sir, I have made none.

Mr. LISHMAN. When did you enter into this relationship with Dumont Record Distributing Corp.?

Mr. DINERSTEIN. Late May or early June of 1958.

Mr. LISHMAN. Did you have a written understanding with Dumont?

Mr. DINERSTEIN. Yes; there is an agreement.

Mr. LISHMAN. What is the substance of that agreement?

Mr. DINERSTEIN. The substance of the agreement was that Mr. Carter received 50 percent of the capital stock of Dumont; Mr. Dumont, in turn, has an option to buy back this capital stock. I believe the option takes effect late May or early June of this year. It will be

2 days from the date that the agreement was entered into and runs for 90 days.

Mr. Dumont has indicated that he desires to avail himself of that option.

Mr. LISHMAN. Well, is Dumont Record Distributing Corp. not theoretically a competitor of Music Suppliers, Inc.?

Mr. DINERSTEIN. Yes, sir; theoretically, it is.

Mr. LISHMAN. And yet Mr. Harry Carter has a 50 percent interest in Dumont, is that correct?

Mr. DINERSTEIN. That is correct.

Mr. LISHMAN. Is it a fact also that he is an officer of Dumont?

Mr. DINERSTEIN. Yes, sir.

Mr. LISHMAN. What position does he hold?

Mr. DINERSTEIN. I believe it is treasurer.

Mr. LISHMAN. And is it not also a fact that under corporate authorization, he has just as much authority in running the corporation as does Mr. Donald Dumont?

Mr. DINERSTEIN. Under corporate authority, he does, sir. Mr. Dumont, however, runs the corporation, and is responsible for the business. This is an understanding that was reached at the time the agreement was executed.

Mr. LISHMAN. What labels are distributed by Dumont?

Mr. DINERSTEIN. I can give you a partial list, Mr. Lishman: Epic Records, Roulette Records, Riverside Records, Gone Records, previously Blue Note Records, and a number of other independent labels.

Mr. LISHMAN. Do you know the circumstances under which Dumont got the franchise for Epic Records?

Mr. DINERSTEIN. I do, sir.

Mr. LISHMAN. Would you please state what they were?

Mr. DINERSTEIN. I went to New York City and spoke with the then general manager or president, I am not sure what the title was, of Epic Records, a Mr. Bill Nielsen.

Mr. LISHMAN. What did you do when you went to New York?

Mr. DINERSTEIN. I went to New York and spoke with Mr. Bill Nielsen of Epic Records. Mr. Nielsen is no longer with the company. We had been approached at Music Suppliers prior to this about taking over the distribution of Epic Records. Because of the large number of labels that we distributed, we did not feel that we could do a competent job for them.

This happened at about the same time that we were talking with Mr. Dumont about making an arrangement which was subsequently made.

On another occasion, two representatives of Epic Records came to my office, and again I believe it was maybe for the third or fourth time, discussed the possibility of changing to Music Suppliers.

I told them that I didn't think we could do the job for them but would they be interested in changing to Dumont Record Distributors, if they wanted better distribution. They said that they would. I asked them to arrange a meeting for me with Mr. Nielsen in New York.

Mr. LISHMAN. And did you then assist Dumont in getting the distribution rights for Epic Records?

Mr. DINERSTEIN. Yes, sir.

Mr. LISHMAN. Was it at or about that time that you and Mr. Carter became interested in Dumont personally?

Mr. DINERSTEIN. I believe that the two situations came about concurrently.

Mr. LISHMAN. In effect, is it a fact that Mr. Harry Carter, president of Music Suppliers, was able to get a 50-percent interest in Dumont for \$5,600, and the guarantee of bringing in a new line of labels for distribution by Dumont?

Mr. DINERSTEIN. I would not state it that way, sir, that it was a guarantee. We certainly indicated to Mr. Dumont that we would help him build up this business by acquiring additional lines, if we could in any way be of assistance.

Mr. LISHMAN. Well, Mr. Dinerstein, are you a stockholder in Dumont?

Mr. DINERSTEIN. Yes, I am.

Mr. LISHMAN. How did that come about?

Mr. DINERSTEIN. Mr. Carter and I agreed that we would maintain the same interests that we have proportionately in Music Suppliers in the Dumont investment.

Mr. LISHMAN. Did you put any capital into Dumont?

Mr. DINERSTEIN. No, sir, I did not.

Mr. LISHMAN. Do you receive payments of money from Dumont?

Mr. DINERSTEIN. Yes, sir, I have.

Mr. LISHMAN. For what purpose?

Mr. DINERSTEIN. For the services that I have rendered to the company.

Mr. LISHMAN. What services have you rendered to the company?

Mr. DINERSTEIN. I have acquired one or two lines for Mr. Dumont, among them Epic Records. He has called on me from time to time to advise him in the formative stages of the business, as to how to organize his sales force and other matters of that nature.

Mr. LISHMAN. About how much have you received from Dumont Record Distributing Co.?

Mr. DINERSTEIN. As your Mr. Kelly showed an interest in this, I wrote it down here some place.

In 1958 I received \$3,000 from Dumont Record Distributing Corp., and in 1959 I received \$2,500 from Dumont Record Distributing Corp.

Mr. LISHMAN. Was this a salary?

Mr. DINERSTEIN. Yes, sir.

Mr. LISHMAN. At the same time you were receiving a salary from Music Suppliers?

Mr. DINERSTEIN. That is correct.

Mr. LISHMAN. And these companies are competing with each other?

Mr. DINERSTEIN. Yes, sir.

Mr. LISHMAN. And you were a vice president of Music Suppliers?

Mr. DINERSTEIN. That is correct.

Mr. LISHMAN. Is it a fact, Mr. Dinerstein, that some of the Am-Par labels were also arranged to be distributed by Dumont after you and Mr. Harry Carter had obtained this interest in Dumont?

Mr. DINERSTEIN. I would not say that some of the Am-Par labels were arranged. Am-Par had a subsidiary company, Apt Records, which was distributed by Dumont Distributing Corp.

Mr. MOSS. Mr. Chairman, I wonder if we might have the witness speak up. I want to hear what he is saying.

Mr. DINERSTEIN. Yes.

Mr. LISHMAN. Is it not true that Am-Par Records had been the distributor for Apt Records?

Mr. DINERSTEIN. No, sir; that is not true.

Mr. LISHMAN. Is it true that Music Suppliers, Inc., had been the distributor for Am-Par record labels?

Mr. DINERSTEIN. Nor, sir; it is not true. We are the distributor for their line which is called ABC-Paramount Records. They do have other lines which they distribute, of which they are not for our purposes the manufacturer. They were the manufacturer, I believe, in the case of Apt Records.

Mr. LISHMAN. Why did you give the distribution of a subsidiary line to a competitor if it was not for the fact that you had a financial interest in the competitor?

Mr. DINERSTEIN. Well, that certainly was some consideration, Mr. Lishman. However, as I stated before, we had just about as much as we felt that we could handle.

Mr. LISHMAN. You do not know whether Mr. Carter has received any sums of money from Dumont?

Mr. DINERSTEIN. I believe he has.

Mr. LISHMAN. Do you know how much?

Mr. DINERSTEIN. I do not know exactly. I believe they are approximately the same amounts that I have received.

Mr. LISHMAN. Did he receive that as compensation for services?

Mr. DINERSTEIN. Yes, sir.

Mr. LISHMAN. Well, are you familiar with the fact that Dumont Record Co. specifically prohibits Mr. Carter from receiving any compensation for services?

Mr. DINERSTEIN. No, sir, I am not.

Mr. LISHMAN. Well, I will read to you that portion of the document. This is a corporate resolution to the effect that Mr. Carter not be paid any amount for his services. And that corporate resolution was adopted May 28, 1958, which appears to be the time that Mr. Carter took over his interests in the company.

And the second last paragraph of the concluding resolution adopted at that meeting of the board of directors reads as follows:

That Harry Carter, as treasurer and general manager, shall not be entitled to any compensation for his services in the absence of any vote of the board of directors authorizing a salary or payment, with the exception that he shall be entitled to expenses necessarily incurred by him in behalf of the corporation, which expenses shall be approved or ratified by the president.

Do you know whether or not the board of directors ever gave special authorization to Mr. Carter?

Mr. DINERSTEIN. No, sir, I do not—I am sorry.

Mr. LISHMAN. To receive a salary.

Mr. DINERSTEIN. No, sir, I do not.

Mr. LISHMAN. But it is a fact that he did receive compensation for his services, as you have previously testified?

Mr. DINERSTEIN. That is correct.

Mr. LISHMAN. In approximately the same amount that you received for your services?

Mr. DINERSTEIN. That is correct.

Mr. LISHMAN. While he was receiving this compensation is it a fact that Mr. Carter was president and treasurer and 75 percent stockholder of Music Suppliers?

Mr. DINERSTEIN. Yes, sir.

Mr. LISHMAN. Do you have any interest in a company known as Music Distributors, Inc.?

Mr. DINERSTEIN. Yes, sir; I do.

Mr. LISHMAN. What interest do you have in that company?

Mr. DINERSTEIN. I am the owner of 10 percent of the outstanding capital stock.

Mr. LISHMAN. When did you acquire that ownership?

Mr. DINERSTEIN. This corporation was formed after my acquisition of stock in Music Suppliers. I do not know the exact date, sir, that I acquired this interest, but I am sure we can supply you that from the corporate records.

Mr. LISHMAN. Is it correct that Music Distributors, Inc., was formed in July 1956?

Mr. DINERSTEIN. I will accept that, sir.

Mr. LISHMAN. And that originally it had 100 shares of class A common and 100 shares of class B common?

Mr. DINERSTEIN. I don't recall what the organization was, but I assume that you are reading from copies made from the corporate records, and I accept them as being correct.

Mr. LISHMAN. Were all shares of both classes originally issued to Mr. Harry Carter?

Mr. DINERSTEIN. That I do not recall. It is quite possible that they were.

Mr. LISHMAN. When were you first told about Music Distributors, Inc.?

Mr. DINERSTEIN. I had knowledge of the corporation before it was formed.

Mr. LISHMAN. Did you invest any money in it?

Mr. DINERSTEIN. We made a capital investment; I don't recall what it was.

Mr. LISHMAN. By "we," did you personally?

Mr. DINERSTEIN. Yes, sir; I believe I did.

Mr. LISHMAN. How much?

Mr. DINERSTEIN. I am sorry, sir; I do not recall what that figure was.

Mr. LISHMAN. Did Mr. Sam Clark have an interest in Music Distributors, Inc.?

Mr. DINERSTEIN. No, sir.

Mr. LISHMAN. Did he have an indirect interest in it with Mr. Harry Carter?

Mr. DINERSTEIN. No, sir, pardon—

Mr. LISHMAN. To your knowledge, did he have an indirect interest in it?

Mr. DINERSTEIN. Mr. Clark, sir?

Mr. LISHMAN. Yes.

Mr. DINERSTEIN. No; he did not—not to my knowledge.

Mr. LISHMAN. At no time?

Mr. DINERSTEIN. Not to my knowledge.

Mr. LISHMAN. I would like you to read a letter dated August 2, 1956, addressed to Mr. Samuel H. Clark from Mr. Edward F. Smith, whom you have already identified, and see if this will refresh your recollection in any way [handing document to witness].

Mr. DINERSTEIN. Mr. Lishman, sir—

Mr. LISHMAN. Yes, sir.

Mr. DINERSTEIN. May I read into the record part of the second last paragraph here which says:

Incidentally, in order that Gordon—
meaning myself—

should have no knowledge of the existing agreements between you and Harry—
and it goes on.

Mr. LISHMAN. What is meant by that, Mr. Dinerstein?

Mr. DINERSTEIN. I have subsequently been informed, at least in part, of an agreement executed between Mr. Clark and Mr. Carter at the time Mr. Clark divested himself of his stock in Music Suppliers.

The business carried on by Music Distributors was actually an outgrowth of Music Suppliers. Through the insistence of a line of records which we distributed as a sales agent, we formed a separate corporation with some separate personnel to handle this line.

It was a property previously held by Music Suppliers and was therefore an outgrowth of Music Suppliers. As I stated before, I have been subsequently informed of some of the details of Mr. Clark's divestiture in which, I believe, the stock which Mr. Carter owned in Music Suppliers, was security for a long-term payout at some agreed-upon price for the stock which Mr. Clark originally owned in Music Suppliers.

It appears to me that this letter refers to some method of placing this stock as additional security because it was, in fact, an outgrowth of the Music Suppliers stock.

Mr. LISHMAN. Mr. Dinerstein, what line is handled by Music Distributors, Inc.?

Mr. DINERSTEIN. Music Distributors, Inc., handle as a sales agent Angel Records.

Mr. LISHMAN. Had that previously been handled by Music Suppliers?

Mr. DINERSTEIN. Yes, sir, it had.

Mr. LISHMAN. Have you received any compensation or payments from Music Distributors, Inc.?

Mr. DINERSTEIN. Yes, sir, I did receive some compensation. I do not have any of that detail with me.

Mr. LISHMAN. Could you give us an approximate total of what you have received?

Mr. DINERSTEIN. Mr. Lishman, it would be very approximate. I would say I received a few thousand dollars.

Mr. LISHMAN. Did Mr. Harry Carter receive any payments from Music Distributors, Inc.?

Mr. DINERSTEIN. Yes, sir, he did.

Mr. LISHMAN. Do you know approximately how much he received?

Mr. DINERSTEIN. No, sir, I do not.

Mr. LISHMAN. Who are the principal owners of Music Distributors, Inc.?

Mr. DINERSTEIN. Mr. Carter and myself.

Mr. LISHMAN. Do you own it on a 50-50 basis?

Mr. DINERSTEIN. No, sir. As I stated before, at the time the corporation was formed I owned 10 percent of the stock of Music Suppliers, and as this was an outgrowth of that company, I became owner of 10 percent of the stock of Music Distributors. Mr. Carter owned the other 90 percent.

Mr. LISHMAN. Well, by "outgrowth of the company," you mean that it split off and became a competitor of Music Suppliers?

Mr. DINERSTEIN. Not in that sense of the word. Music Distributors distributed only one line, Angel Records, a classical record line, and this division was made at the request of Angel Records in order that they should have what would be substantially their own representation in the area that we were servicing for them.

Mr. LISHMAN. Is Music Distributors, Inc., in any sense, a subsidiary of Music Suppliers?

Mr. DINERSTEIN. No, sir; it was not a subsidiary.

Mr. LISHMAN. So that we have a situation where, in effect, you and Mr. Carter ostensibly as the principal owners and operators of Music Suppliers, Inc., also have interests in two competing companies in the same field?

Mr. DINERSTEIN. I don't think it would be quite accurate to call Music Distributors a competing company, sir. In the strict sense of the word, you would call it that, yes, but for practical purposes, its activities were confined to selling one particular line and type of record.

Mr. LISHMAN. Mr. Dinerstein, when the investigators of this subcommittee interviewed you, did you tell them about your interests in companies other than Music Suppliers, Inc.?

Mr. DINERSTEIN. Yes, sir, they asked some questions about these other companies and I did tell them.

Mr. LISHMAN. Did you tell them about Music Distributors, Inc.?

Mr. DINERSTEIN. I believe I did, yes. I believe they asked me about that.

Mr. LISHMAN. What did they ask you about it?

Mr. DINERSTEIN. If anything was asked about it, Mr. Lishman, I did tell them.

Mr. LISHMAN. What did they ask you? You say they asked you some questions. I am informed by these investigators that you concealed the interest that you had in that company you had from them. I want to find out what they asked you. You said they asked you something.

Mr. DINERSTEIN. I do not recall the exact question, but I am under the impression that they did ask me about the Music Distributors situation.

Mr. LISHMAN. Well, did they ask you some questions about Du Mont?

Mr. DINERSTEIN. I believe that they did.

Mr. LISHMAN. Do you have an interest in any other record distributing company besides the ones mentioned?

Mr. DINERSTEIN. Yes, sir.

Mr. LISHMAN. Will you name those companies?

Mr. DINERSTEIN. We have an interest in a company called Circle Distributors.

Mr. LISHMAN. By "we," who is we?

Mr. DINERSTEIN. Mr. Carter and myself.

Mr. LISHMAN. Yes, sir.

Mr. DINERSTEIN. It is not in the sense that Music Suppliers or Du Mont is a record distributing corporation. It is what is known in the business as a graveyard operation. That is where the dead records go. We deal in obsolete merchandise.

Mr. LISHMAN. Do you have an interest in any other record business?

Mr. DINERSTEIN. Record distributing company?

Mr. LISHMAN. Well, any kind of record company, manufacturing, or distributing.

Mr. DINERSTEIN. I have an interest in a record company called Monitor Records which is a manufacturing company, and I believe that that is the extent of it.

Mr. LISHMAN. What interest do you have in Monitor Records?

Mr. DINERSTEIN. I have a one-third interest.

Mr. LISHMAN. Who owns the other two-thirds?

Mr. DINERSTEIN. Mr. Carter owns one-third and a Mr. Jerry Flatto owns the other third.

Mr. LISHMAN. Do you know of a defunct company known as the Music Suppliers of Ohio?

Mr. DINERSTEIN. Yes, sir.

Mr. LISHMAN. Did you have an interest in that?

Mr. DINERSTEIN. Yes, sir, I did.

If you are interested in companies which we might have had an interest in at one time which are now defunct, we also or I also had an interest in a company called Act Sales Corp., which has been liquidated.

Mr. LISHMAN. Who else besides you had an interest in the Music Suppliers of Ohio?

Mr. DINERSTEIN. Mr. Harry Carter and Mr. Sam Clark.

Mr. LISHMAN. About when—

Mr. Moss. Will you hold for just a moment? Harry Carter and who?

Mr. DINERSTEIN. Mr. Sam Clark.

Mr. LISHMAN. About when did you three men have this interest in that company?

Mr. DINERSTEIN. I believe the corporation was formed sometime in the fall of 1957.

Mr. LISHMAN. Do you know a Mr. Norman Granz?

Mr. DINERSTEIN. Yes, sir; I do.

Mr. LISHMAN. Would you identify him, please.

Mr. DINERSTEIN. He is the president of Verve Records, Inc.

Mr. LISHMAN. Did you have a meeting with him concerning loans that should be made to him by Music Suppliers, Inc.?

Mr. DINERSTEIN. I had a meeting with him in which he asked me to advance him some money. He did not specify that it should come from Music Suppliers, Inc.

He was interested in getting this money, and I don't think he much cared where it came from.

Mr. LISHMAN. How much did he want?

Mr. DINERSTEIN. I have attempted to reconstruct the situation in its entirety, which I could not do, so to speak, off the cuff for your investigators when they questioned me about it.

It appears that the first loan that was made to Verve Records was in October 1956 in the amount of \$15,000.

Mr. LISHMAN. Who made that loan?

Mr. DINERSTEIN. The actual check was sent from Music Suppliers; the money for the advance was supplied by Mr. Sam Clark, Mr. Harry Carter, and myself.

Mr. LISHMAN. How much did you each put into the kitty?

Mr. DINERSTEIN. Mr. Clark contributed \$7,000, Mr. Carter contributed \$5,000, and I contributed \$3,000.

Mr. LISHMAN. How much interest did you get on this \$15,000 loan?

Mr. DINERSTEIN. Mr. Granz had offered to give me interest that would amount to a 10-percent discount on merchandise which, in terms of interest, would probably be about 11 percent or a fraction more.

Mr. LISHMAN. For what purpose did Mr. Granz want this loan?

Mr. DINERSTEIN. Mr. Lishman, I don't believe that he told me exactly why he wanted this money. I will speculate if you wish.

Mr. LISHMAN. Speculate.

Mr. DINERSTEIN. I believe that he was short of funds, that his company had bills to meet, and that he wanted some money in advance for that purpose.

Mr. LISHMAN. When was the second loan made to Verve?

Mr. DINERSTEIN. According to my records, the second loan was made in January of 1958.

Mr. LISHMAN. How much was that?

Mr. DINERSTEIN. In the amount of \$25,000.

Mr. LISHMAN. Who supplied the money for that?

Mr. DINERSTEIN. In that instance, Mr. Clark, Mr. Carter, and myself each supplied one-third.

Mr. LISHMAN. Is it more accurate to say that Mr. Clark supplied \$8,000?

Mr. DINERSTEIN. For purposes of strict accuracy, sir, it would. We considered instead of the \$8,333 that would be involved, that for practical purposes \$8,000 constituted one-third.

Mr. LISHMAN. Is it a fact that Music Suppliers itself supplied that amount, that fraction of Mr. Clark's investment?

Mr. DINERSTEIN. Inadvertently it might be so. I suppose this could be turned around to be seen in almost any light.

Mr. LISHMAN. How do you look at it as the vice president of Music Suppliers, Inc.?

Mr. DINERSTEIN. If Mr. Clark had asked me to supply the \$333 for him, I am sure that I would have been happy to do so. If the company, in actuality, did supply it, it was done, not really as corporate business but as a personal thing.

Mr. LISHMAN. What interest did you charge on this second loan of \$25,000?

Mr. DINERSTEIN. We did not charge any interest. Mr. Granz asked me once again to advance him money and agreed that in terms of return on the investment that he would give us 25 percent discount on merchandise.

Mr. Moss. Mr. Lishman?

Mr. LISHMAN. Yes, sir.

Mr. MOSS. When you say 25 percent discount on merchandise, you mean 25 percent beyond normal discounts?

Mr. DINERSTEIN. 25 percent below the usual distributor's price, sir.

Mr. LISHMAN. For what period of time was this loan?

Mr. DINERSTEIN. Did you say for what period of time, sir?

Mr. LISHMAN. Yes. How long was this loan carried?

Mr. DINERSTEIN. I believe it was carried for 3 or 4 months. I did not take those figures down.

Mr. LISHMAN. I am coming to the third loan. How much was that, and when was that made?

Mr. DINERSTEIN. In March of 1958 we sent Mr. Granz or Verve Records, rather, a check for \$18,750.

Mr. LISHMAN. Who put the \$18,750 up on this loan?

Mr. DINERSTEIN. Mr. Carter and myself.

Mr. LISHMAN. Was that 50-50?

Mr. DINERSTEIN. That is right.

Mr. LISHMAN. Was this loan made before the other one was repaid?

Mr. DINERSTEIN. It is quite possible that a small amount was still outstanding on the prior loan, sir. I would have to check our records and give you that information.

Mr. LISHMAN. What discount or interest rate was applicable to this \$18,750?

Mr. DINERSTEIN. The same rate as the previous.

Mr. LISHMAN. Who got the benefit of these discounts?

Mr. DINERSTEIN. Mr. Carter and myself, sir.

Mr. LISHMAN. Benefits did not go to Music Suppliers, Inc.?

Mr. DINERSTEIN. No, sir; they did not.

Mr. LISHMAN. Did Mr. Clark get the benefit of any of these discounts?

Mr. DINERSTEIN. Where he made an investment he did get the benefit.

Mr. LISHMAN. How did he get that benefit, in what form?

Mr. DINERSTEIN. The money, as you can see, was recovered through Music Suppliers.

We, therefore, in order to keep our bookkeeping records straight, issued—and to keep the Verve account in balance—issued a check to Mr. Clark for the amount of compensation. As Mr. Keelan previously noted, we charged it off to accounts payable through the Verve account in order to keep that account in balance.

Mr. LISHMAN. Well, is it a fact that on the \$8,000 participation of Mr. Clark, and the loan of January 1958 he received a \$2,000 interest payment or what would be attributable to interest?

Mr. DINERSTEIN. Technically, sir, I do not know whether that would be attributable to interest or not.

Mr. LISHMAN. What would you call that?

Mr. DINERSTEIN. It definitely was a return on his investment. There was no question about that.

Mr. LISHMAN. Did he also receive \$777.73 return in a clothing credit at the store in New York which he directed Music Suppliers to pay?

Mr. DINERSTEIN. Yes, he did.

Mr. LISHMAN. So he received \$2,000, plus the \$777?

Mr. DINERSTEIN. That is correct.

Mr. LISHMAN. As compensation for his few months' loan or participation amounting to \$8,000, in a loan made by Music Suppliers to Verve Records.

Mr. DINERSTEIN. The loan was made through Music Suppliers, Mr. Lishman. Our personal funds were provided for that loan.

Mr. LISHMAN. Were you in any sense of the word a partner of or were any of the principals behind these loans partners with Mr. Granz in his enterprises?

Mr. DINERSTEIN. Would you state that again, sir?

Mr. LISHMAN. Were you or Mr. Carter or Mr. Clark in any sense a partner of Mr. Norman Granz in Verve Records or any of his other record enterprises?

Mr. DINERSTEIN. No, sir; in no sense whatsoever.

Mr. LISHMAN. Well, is it a fact that Verve is a competitor of Am-Par?

Mr. DINERSTEIN. Only in the broadest sense of the word, sir. Verve is a competitor. They are in the record business. Verve makes primarily jazz records. Am-Par makes primarily what are known as popular records.

Mr. LISHMAN. Now, coming to the fourth loan, when was that made?

Mr. DINERSTEIN. In October 22, 1958.

Mr. LISHMAN. How much was that?

Mr. DINERSTEIN. \$15,000.

Mr. LISHMAN. Who participated in putting the money up for this loan?

Mr. DINERSTEIN. Mr. Carter and myself.

Mr. LISHMAN. Did you each put up part of it? Did you each put up half of it?

Mr. DINERSTEIN. In this case I don't believe that we did, Mr. Lishman. I made some personal loans at the First National Bank of Boston in order to supply this money.

Mr. LISHMAN. How much did you borrow?

Mr. DINERSTEIN. I borrowed varying amounts. I don't believe at this time we had entirely recovered the previous loan, and I made personal 90-day loans from time to time in order to not deprive Music Suppliers of any money which they might need.

Mr. LISHMAN. What discount or interest rate was involved in this \$15,000 loan?

Mr. DINERSTEIN. I believe it was 20 percent in this case.

Mr. LISHMAN. Twenty percent.

Mr. MOSS. I wonder if we could go back. There is an interesting statement by Mr. Dinerstein made to the effect that he borrowed for short periods from a bank in order not to deprive Music Suppliers of money it might need.

He had testified earlier that all of these funds were the personal funds of himself, Mr. Carter in the case of the first two loans, and Mr. Clark.

Why wouldn't it be well to have him explain his statement in light of the fact that he testified there was no Music Suppliers' money in these loans?

Mr. LISHMAN. We were coming to a breakdown as to how this money was supplied when we finished with all four loans.

Mr. MOSS. All right.

Mr. LISHMAN. I will just ask a few more general questions.

For how long a term was this October 22, 1958 loan?

Mr. DINERSTEIN. Are you referring to the one that—

Mr. LISHMAN. \$15,000 loan of October 22. You have just stated that you raised the money by small borrowings from the bank.

Mr. DINERSTEIN. I would have to check our records, sir, to tell you accurately when we had recovered all of that money. I do not remember just how long it took.

Mr. LISHMAN. Is it not a fact the four loans you testified to total approximately \$75,000?

Mr. DINERSTEIN. The figure I have here, sir, is \$73,750.

Mr. LISHMAN. \$73,750.

Did you also borrow approximately \$31,000 from the bank for the purpose of making another loan to Verve?

Mr. DINERSTEIN. No, sir; I did not.

As accurately as I have been able to check my records, and I have gone through them thoroughly, these four loans constitute all of the moneys which we sent to Verve Records.

As I stated before, I believe that there was something still outstanding from the March 1958 loan when we made an additional loan in October of that same year.

In my personal borrowings from the bank, I borrowed enough money to loan to Music Suppliers to cover whatever Music Suppliers, in turn, might have sent to Verve.

As a matter of fact, I believe that we were at one time there a little bit short of corporate funds, and I borrowed maybe \$8,000 or \$10,000 additional which the corporation used.

Mr. MACK. Could I ask a question at this point?

Did you charge the corporation interest for this money?

Mr. DINERSTEIN. In actuality; no, sir. In order to—

Mr. MACK. Did you get a discount on the records in addition to the normal price?

Mr. DINERSTEIN. Yes, sir; we did.

Mr. MACK. From your own company?

Mr. DINERSTEIN. I don't quite understand the question, sir.

Mr. MACK. What I wanted to know is how you went about getting reimbursed or paid the interest on this money borrowed for Music Suppliers.

Mr. DINERSTEIN. I think at one time I borrowed \$32,000 which, after the interest, I believe, came to approximately \$31,600.

In returning that money to the bank when the note was due Music Suppliers repaid the note with interest; in other words, Music Suppliers returned the total of \$32,000.

Subsequently, in withdrawing whatever funds had accrued to us personally we deducted the interest which Music Suppliers had temporarily prepaid but which was not actually Music Suppliers' obligation.

Mr. MACK. Then in the case of Music Suppliers you did collect the interest as such. This is a personal note that you had?

Mr. DINERSTEIN. Yes.

Mr. MACK. Then you loaned the money to Music Suppliers?

Mr. DINERSTEIN. That is right.

Mr. MACK. And did you get a note from them?

Mr. DINERSTEIN. No, I did not.

Mr. MACK. Then they paid the money back to you?

Mr. DINERSTEIN. That is right.

Mr. MACK. You owe the money to the bank rather than Music Suppliers, is that correct?

Mr. DINERSTEIN. That is correct, sir.

If I may explain that again, sir—

Mr. MACK. Well, I want to say you did collect the interest from the loan in that case.

Mr. DINERSTEIN. I personally? No, the bank was paid the interest on the loan from Music Suppliers, and Music Suppliers was later reimbursed for that payment, so that—

Mr. MACK. Well, go ahead and explain it.

Mr. DINERSTEIN. If I may try to clarify that for you, sir.

The ultimate result was that Music Suppliers did not pay the interest on the personal loan that I made. The interest was ultimately paid from the personal proceeds which we received on account of this loan.

Mr. MACK. Are you speaking now of the money that you borrowed, in addition to the amount that you were going to loan Verve, which went into the general and operating funds of Music Suppliers? I can see this is very complicated.

Mr. DINERSTEIN. Yes, sir.

Mr. MACK. But you just stated you borrowed \$10,000 to put into the corporate funds of Music Suppliers.

Mr. DINERSTEIN. Do I understand your question to be, did I personally charge Music Suppliers for the use of these funds?

Mr. MACK. Yes.

Mr. DINERSTEIN. No; I did not.

Mr. MACK. Well, then, I am confused, because—

Mr. MOSS. Will you yield there?

Mr. MACK. I yield to my colleague because he might be able to understand it.

Mr. MOSS. Didn't you have Music Suppliers pay the interest on the entire borrowing?

Mr. DINERSTEIN. No, sir.

Mr. MOSS. Didn't you say they reimbursed the bank?

Mr. DINERSTEIN. On one occasion they reimbursed the bank temporarily. They recovered the interest again, because in recovering from Music Suppliers the proceeds of the transaction which had accrued to us personally, we deducted the amount of interest that Music Suppliers had prepaid. In other words, if it was roughly \$400, we left the \$400 with Music Suppliers.

The CHAIRMAN. Since it is all cleared up now [laughter], we will—

Mr. LISHMAN. I just have one or two more questions, Mr. Chairman.

The CHAIRMAN. All right, Mr. Lishman.

Mr. LISHMAN. Mr. Dinerstein, in connection with these four loans which total \$73,733, did Verve give any note to Music Suppliers?

Mr. DINERSTEIN. No, sir.

Mr. LISHMAN. Did Verve enter into any written agreement with Music Suppliers as to how these loans would be repaid?

Mr. DINERSTEIN. No, sir.

Mr. LISHMAN. Were all these loans handled on a solely oral basis with Verve?

Mr. DINERSTEIN. Yes, sir.

Mr. LISHMAN. Who handled all these negotiations for these oral loans?

Mr. DINERSTEIN. For Verve Records?

Mr. LISHMAN. Yes.

Mr. DINERSTEIN. Mr. Norman Granz.

Mr. LISHMAN. Who handled it for Music Suppliers?

Mr. DINERSTEIN. I did.

Mr. LISHMAN. When the time came for you to get the money on the first loan, did you go to Mr. Sam Clark and tell him that he could make a little extra money if he would put up \$7,000 to make a combined loan of \$15,000 to Verve?

Mr. DINERSTEIN. Yes, sir; I did.

Mr. LISHMAN. Did you telephone to him?

Mr. DINERSTEIN. This is back in 1956, Mr. Lishman. I don't recall whether it was a telephone or a personal conversation.

Mr. LISHMAN. Did you indicate to him what his rate of return would be?

Mr. DINERSTEIN. Yes, sir.

Mr. LISHMAN. Well, did he discuss with you how he would obtain this discount?

Mr. DINERSTEIN. No, sir; I don't believe that he did.

Mr. LISHMAN. Well, at that time ostensibly he was no longer with Music Suppliers; isn't that correct?

Mr. DINERSTEIN. He was not with Music Suppliers at that time.

Mr. LISHMAN. Didn't you discuss with Mr. Clark as to how you would translate the discount in terms of dollars as far as he was concerned?

Mr. DINERSTEIN. Do I understand your question correctly, sir, to mean was he aware what his return would be on his investment?

Mr. LISHMAN. Yes, sir.

Mr. DINERSTEIN. Yes, sir; he was aware.

Mr. LISHMAN. Didn't you reduce it to dollars rather than merchandise discount with Mr. Clark?

Mr. DINERSTEIN. I don't recall the substance of the conversation. He knew what his return would be.

Mr. LISHMAN. Did he ultimately get paid a return amounting to at least 10 percent of \$7,000, if not more?

Mr. DINERSTEIN. As I stated previously, the 10-percent discount on merchandise in terms of interest would reflect itself, I believe, as slightly over 11 percent. I believe that he was repaid his \$7,000, plus \$777.77.

Mr. LISHMAN. For how long a period?

Mr. DINERSTEIN. I would have to check our records and see when we recovered this. I would estimate that it might have been 3 or 4 months before the entire amount was recovered. We began to recover some of it immediately.

Mr. LISHMAN. When it came to the \$25,000 loan, was it you who called upon Mr. Clark and told him that he could put in the \$8,000 on this loan and make himself a 25-percent discount equivalent in cash?

Mr. DINERSTEIN. It would have either been myself or Mr. Carter. I don't recall exactly, but I would speculate that it was me.

Mr. LISHMAN. Where did you first have your discussions with Mr. Norman Granz about these loans?

Mr. DINERSTEIN. Again, going back to 1956 I cannot recall where we had this discussion. As I told your investigators originally, my best recollection was that originally we had discussed this matter in Las Vegas, Nev., at a distributors' meeting.

Mr. LISHMAN. In the fall of 1957?

Mr. DINERSTEIN. Yes, sir.

Mr. LISHMAN. I have no further questions along this line at this time.

The CHAIRMAN. Do you have any other statement you wanted to make, Mr. Dinerstein?

Mr. DINERSTEIN. I just wanted to clear up this point for Mr. Lishman, sir.

The earliest recollection I have of one of these transactions would be in Las Vegas. I don't recall, actually, whether that was the first one or not.

The CHAIRMAN. The subcommittee will recess until 2 o'clock this afternoon.

(Whereupon, at 12:30 p.m., the subcommittee recessed to reconvene at 2 p.m., of the same day.)

AFTERNOON SESSION

The CHAIRMAN. The committee will come to order.

Will you resume the witness stand, Mr. Dinerstein?

Mr. Lishman, you may proceed with your questioning.

TESTIMONY OF GORDON J. DINERSTEIN—Resumed

Mr. LISHMAN. Mr. Dinerstein, how long did this arrangement for receiving 25-percent discount on Verve merchandise go on?

Mr. DINERSTEIN. Over the course of the period that these loans were outstanding, Mr. Lishman. Where you refer to the 25-percent discount, I believe it started in January of 1958, and it would have run until we had received all of the merchandise that would have represented having been sent to Verve, \$43,750. Just how long it took us to absorb this merchandise, I cannot tell you exactly without referring to some of our records.

Mr. LISHMAN. Were you taking the amount of the principal and interest in merchandise?

Mr. DINERSTEIN. Yes, we were.

Mr. LISHMAN. Why were personal funds of individuals, such as yourself and Mr. Clark and Mr. Carter, used for what, in effect, was the purchase of merchandise at an unusually low discount rate from Verve Records?

Mr. DINERSTEIN. Would you repeat the last part of that question—I do not understand the implication.

Mr. LISHMAN. Would you read the question?

(The pending question was read by the reporter.)

Mr. DINERSTEIN. Mr. Lishman, I still do not understand the implication or exactly what you mean by that unusually low discount rate.

Mr. LISHMAN. High discount rates. Did you not testify that this 25-percent discount rate was lower than the usual wholesale discount rate?

Mr. DINERSTEIN. Yes, sir. It was 25-percent lower than that which we normally paid for records. Our personal funds were used because we did not know how long this amount of money might be outstanding. We could not spare it from the corporation. And it was our desire to make this investment and make this profit personally.

Mr. LISHMAN. Well, in effect, was it not a loan from Music Suppliers, Inc.?

Mr. DINERSTEIN. Well, in effect, it was not, Mr. Lishman. In effect, it was a loan from, as the case was, either the three of us or the two of us personally.

Mr. LISHMAN. So that it was only, in effect, a loan made by Music Suppliers?

Mr. DINERSTEIN. I did not consider it at any time to be a loan made by Music Suppliers. We advanced the funds personally.

Mr. LISHMAN. Why was it channeled through Music Suppliers?

Mr. DINERSTEIN. It was channeled through Music Suppliers for the sake of convenience, because we knew the recovery would be in the merchandise billed to Music Suppliers.

Mr. LISHMAN. Do you know, Mr. Dinerstein, whether Verve Records had entered into similar arrangements with other record distributors?

Mr. DINERSTEIN. Mr. Lishman, I do not know whether they did or not.

Mr. LISHMAN. What is the usual wholesale discount on records?

Mr. DINERSTEIN. The usual wholesale discount, not considering the excise tax, is 55 percent off list price.

Mr. LISHMAN. In other words, you were able to get merchandise from Verve with 80 percent off list price through the arrangement you have described?

Mr. DINERSTEIN. For bookkeeping accuracy, I do not think that 55 percent plus 25 percent comes to 80 percent.

Perhaps this will help clarify the matter. The usual price for Verve records, I believe, is \$2.36 or \$2.15, plus 10 percent excise tax—that is how they arrive at that figure, because it is \$2.36 or \$2.37—it would be 25 percent less than that price.

Mr. LISHMAN. Do you know what kind of merchandise that you got from Verve?

Mr. DINERSTEIN. Anything that we choose to take from their catalogues.

Mr. LISHMAN. What were in those?

Mr. DINERSTEIN. Only Verve records.

Mr. LISHMAN. What were those in the catalog, I mean?

Mr. DINERSTEIN. Only Verve records.

Mr. LISHMAN. Does not Mr. Granz have other labels?

Mr. DINERSTEIN. Not to my knowledge.

Mr. LISHMAN. Does he not have Norgren?

Mr. DINERSTEIN. That was discontinued a number of years ago.

Mr. LISHMAN. You never received any of those?

Mr. DINERSTEIN. Under this arrangement we were a Norgran distributor while the label was in existence.

Mr. LISHMAN. We have evidence that in October 1959, one of these Norgran labels was played on the Dick Clark show 16 times. When did this Norgran label go out of existence?

Mr. DINERSTEIN. I believe it went out of existence, at least, 3 years ago.

Perhaps, I can add something to this. Will you tell me the name of this record?

Mr. LISHMAN. We can supply you with the name of the record.

Does Music Suppliers carry any Norgran?

Mr. DINERSTEIN. Yes, sir, we did up to that time.

Mr. LISHMAN. Three years ago?

Mr. DINERSTEIN. Mr. Granz discontinued the use of that name.

Mr. LISHMAN. Does not Mr. Granz have another label, I cannot recall the exact name, which has something to do with Philharmonic Jazz?

Mr. DINERSTEIN. Perhaps, I can clarify that for you. Mr. Granz did have two labels. One was called Cleft, and one was called Norgran. Both of these were combined into Verve Records.

Mr. LISHMAN. Mr. Dinerstein, does Mr. Edward F. Smith hold your undesignated resignation in Music Suppliers?

Mr. DINERSTEIN. Yes, he does.

Mr. LISHMAN. When did you give him that undated resignation?

Mr. DINERSTEIN. I believe, sir, that I gave him that undated resignation at the time that Mr. Carter and myself executed employment contracts, on or about January 1 of 1959.

Mr. LISHMAN. What is the purpose of this resignation as vice president?

Mr. DINERSTEIN. The purpose of that resignation, sir, ties in with the hypothecation of stock and the performance of my employment contract which I mentioned earlier this morning. I understand that from a legal point of view, if I should decide to break my employment contract, and so to speak, skip to California, that I would be removed as an officer of the corporation. I would have broken the contract. The hypothecated stock would have returned to Mr. Carter, and he would have me out of the way as an officer of the corporation.

Mr. LISHMAN. Well, is this not, also, a means of keeping you in line, to be certain that you do Mr. Carter's bidding?

Mr. DINERSTEIN. No, sir, I would not say that.

Mr. LISHMAN. In what capacity does Mr. Edward F. Smith hold this undated resignation?

Mr. DINERSTEIN. Mr. Smith is our corporation counsel. I personally have certain papers that repose in his vault. And as far as this resignation goes, I have no control over where it is.

Mr. LISHMAN. Is Mr. Smith the attorney for Mr. Harry Carter?

Mr. DINERSTEIN. Mr. Smith, in addition to being our corporation counsel, I believe, has acted for Mr. Carter personally.

Mr. LISHMAN. He is counsel for Music Supplier, Inc.?

Mr. DINERSTEIN. That is correct.

Mr. LISHMAN. Is he your counsel?

Mr. DINERSTEIN. He has acted for me personally.

Mr. LISHMAN. Has he, also, acted as counsel for Mr. Sam Clark?

Mr. DINERSTEIN. I believe that he has.

Mr. LISHMAN. Does he act as trustee and escrow agent?

Mr. DINERSTEIN. In what respect?

Mr. LISHMAN. With respect to the stock which is being held as security for the purchase price by Mr. Carter in Music Suppliers, Inc.?

Mr. DINERSTEIN. I believe that he does. That is speculation. He has never told me that he does, but I believe that he does.

Mr. LISHMAN. Is your stock in escrow to Mr. Smith?

Mr. DINERSTEIN. To Mr. Smith?

Mr. LISHMAN. Yes.

Mr. DINERSTEIN. Mr. Smith holds it, Mr. Lishman.

Mr. LISHMAN. And does he hold that because of some agreement that you have entered into?

Mr. DINERSTEIN. Yes. He holds it in connection with the employment contract which I have. I believe that you may have copies of that or your investigators have seen these papers.

Mr. LISHMAN. I noticed that in your employment contract of January 1, with Music Suppliers, there is a provision that in the event of any dispute between the company and you, as to whether there has been any breach by either party, the dispute is to be referred to and be determined solely by Harry Carter as arbitrator. His determination is to be conclusive and binding. Is that correct?

Mr. DINERSTEIN. That is correct.

Mr. LISHMAN. Is it not rather unusual to have as the sole arbitrator of a dispute between you, as vice president and the company, the president of that same company?

Mr. DINERSTEIN. I do not know exactly what the connection was when that came up in the negotiating of the contracts. We spent many, many months talking about the various provisions. As best I can remember that, Mr. Lishman, I think that Mr. Smith had originally stated that it was the board of directors, which to me was rather a vague term. I know who the board of directors are now. But whatever changes may take place in the future, while I am still under this employment contract could constitute changes in these people. I may not know these people. I did know Harry Carter. I did feel that he would deal with me fairly. And I did not like the term in that instance, "Board of Directors." I asked him if he would specifically, so to speak, throw this in Mr. Carter's lap.

Mr. LISHMAN. Mr. Dinerstein, in what capacity is Mr. Harry Weiss employed by Music Suppliers?

Mr. DINERSTEIN. Mr. Weiss is in our promotion department.

Mr. LISHMAN. What is his salary?

Mr. DINERSTEIN. His salary is approximately \$200 a week.

Mr. LISHMAN. Does that include expenses?

Mr. DINERSTEIN. Without checking our records accurately, sir, I could not say. I think that from time to time he does get additional expenses.

Mr. LISHMAN. Is his mission that of record promotion?

Mr. DINERSTEIN. Yes, sir, it is.

Mr. LISHMAN. Of this \$200 weekly salary, is any part of it reimbursed or paid for by other companies?

Mr. DINERSTEIN. It is partly subsidized by Am-Par Record Corp.

Mr. LISHMAN. Is that pursuant to an agreement that Music Suppliers has with Mr. Sam Clark or with Am-Par Records?

Mr. DINERSTEIN. I would not say it was pursuant to an agreement, but I think that this is a situation which if investigated may turn up to be fairly general. We have had from time to time subsidization of promotion men from other labels. And as a direct answer to your question, I believe that any arrangement that had been made would be made with Mr. Clark as president of Am-Par.

Mr. LISHMAN. How much does Am-Par pay, then, of Mr. Weiss' weekly salary?

Mr. DINERSTEIN. They contribute \$50 a week.

Mr. LISHMAN. Do they contribute anything toward the expenses?

Mr. DINERSTEIN. They contribute a flat sum of \$60 a week. It is not paid directly to Mr. Weiss. As a matter of fact, we never told Mr. Weiss that he was partly paid or partly subsidized by Am-Par.

Mr. LISHMAN. Does not Mr. Weiss make reports to Mr. Sam Clark from time to time?

Mr. DINERSTEIN. I believe that he has made reports to Mr. Sam Clark from time to time, and that he has also made reports to other record manufacturers whom we represent as distributor.

Mr. LISHMAN. Does he report to Mr. Clark about how Am-Par records are being sold?

Mr. DINERSTEIN. If he made a report, Mr. Lishman, I assume that would be the gist of it.

Mr. LISHMAN. Does he also make reports to Mr. Clark concerning the sales of records by Music Suppliers, Inc.?

Mr. DINERSTEIN. I would not say that he makes reports concerning the sales of records, Mr. Lishman. I do not think that Mr. Weiss has a great deal of knowledge as to exactly what our sales are.

Mr. LISHMAN. Did he make reports to Mr. Sam Clark concerning the promotional activities on behalf of Music Suppliers, Inc.?

Mr. DINERSTEIN. It is quite possible that he would, sir.

Mr. LISHMAN. Mr. Dinerstein, I would like to show you a report for the month of October 1959 by Broadcast Advertisers Reports, Inc., referring to page 5, for the month of October 1959. Referring to the American Bandstand and the Dick Clark show, it states that a Norgran record entitled, "Midnight Stroll" by the Revells, was played 16 times. I ask you if that refreshes your recollection that that label was still being used?

Mr. DINERSTEIN. That is what it says here, Mr. Lishman, but I can assure you as I did before that to my knowledge no Norgran record as a label record has been. It has been defunct for a number of years. As a distributor for Mr. Norman Granz, I have never seen this record, nor have I ever heard of it before. And I respectfully submit that possibly somebody made a mistake in the name of this company or, perhaps, somebody else is using this name.

To my knowledge, Mr. Granz has no connection with this record. As a distributor for Mr. Granz, again I repeat I have never seen or heard of this record.

Mr. LISHMAN. You understand that that list was not prepared by the subcommittee. It was prepared by an outside company which is engaged in the business of monitoring certain programs. According to their monitoring tape this is what happened in October 1959, with respect to this record.

Mr. DINERSTEIN. Mr. Lishman, I do not deny that the name may be correct, but I, certainly, know nothing about this record—never saw it; never heard it.

Mr. LISHMAN. At the time in October 1959, did Music Suppliers have money outstanding on loan to Verve Records?

Mr. DINERSTEIN. What is that date again?

Mr. LISHMAN. In October 1959?

Mr. DINERSTEIN. No, sir.

Mr. LISHMAN. By that time the loan had been cleaned up?

Mr. DINERSTEIN. Yes, sir. I believe that these matters were concluded a long time before that.

Mr. LISHMAN. I have no further questions, Mr. Chairman.

The CHAIRMAN. Mr. Flynt?

Mr. FLYNT. Mr. Dinerstein, as to the discount prices that you stated awhile ago, did I understand you to say 55 percent on the list price or off the list price?

Mr. DINERSTEIN. Fifty-five percent off list price.

Mr. FLYNT. That is all.

The CHAIRMAN. Mr. Springer?

Mr. SPRINGER. No questions.

The CHAIRMAN. Mr. Moss.

Mr. MOSS. Mr. Dinerstein, I hope that you will be able to clarify for me some of the facts regarding these loans. I find them most intriguing.

Mr. DINERSTEIN. I will do my best, sir.

Mr. MOSS. I want to go first to your statement made at the time I interrupted. You said that you did not want to deprive Music Suppliers of funds in making certain loans. This seems to be a contradiction to your statement made in describing loans Nos. 1 and 2. It might be helpful to tell us about No. 1 and No. 2, and right on through.

In October of 1956, a loan was made by Music Suppliers, Inc., of \$15,000 to Mr. Norman Granz of Verve Records, is that correct?

Mr. DINERSTEIN. It was made directly to Verve Records.

Mr. MOSS. It was made by Music Suppliers, Inc.?

Mr. DINERSTEIN. No, sir. The funds were channeled through Music Suppliers.

Mr. MOSS. Will you answer this question: On which set of books did the loan appear as a record? On Music Suppliers?

Mr. DINERSTEIN. Yes, sir, it did appear there.

Mr. MOSS. As a loan?

Mr. DINERSTEIN. That is correct.

Mr. MOSS. Is it your contention that the loan was actually made from funds advanced by yourself, Mr. Clark, and Mr. Carter?

Mr. DINERSTEIN. That is correct.

Mr. MOSS. Loans in the amount of \$7,000, \$5,000, and \$3,000?

Mr. DINERSTEIN. Yes, sir.

Mr. Moss. This loan was for a fixed term?

Mr. DINERSTEIN. No, sir. As I explained previously we were to recover the amount of the loan in merchandise.

Mr. Moss. All right.

Mr. DINERSTEIN. At a 10 percent discount. We could recover this as we needed the merchandise.

Mr. Moss. You made substantial purchases from Verve Records?

Mr. DINERSTEIN. Our purchases have been generally substantial.

Mr. Moss. And thereby in making this loan you established on their books a credit for \$15,000, and the interest was to be paid by an additional discount on these purchases, of 10 percent on loan No. 1?

Mr. DINERSTEIN. If I may clarify that, sir. I think on their books they would have set this up in terms of their regular prices to us as \$16,666.66 due us in merchandise. Then a 10-percent discount from that would bring us back to the \$15,000 figure which we had actually paid them.

Mr. Moss. They, in effect, gave you a preferential price of 10 percent below—

Mr. DINERSTEIN. I do not know whether the price was preferential.

Mr. Moss. It was discount?

Mr. DINERSTEIN. I do not know whether the price was preferential or not.

Mr. Moss. They gave an additional discount?

Mr. DINERSTEIN. They did give us a price that was 10 percent below that which we normally paid.

Mr. Moss. Then you were getting a 10-percent preference over the normal prices offered to your competition?

Mr. DINERSTEIN. I do not know about the competitive situation. This may have been.

Mr. Moss. It was not the same price to everyone.

Mr. DINERSTEIN. It may have been.

Mr. Moss. The only difference being those which were brought about by volume purchases?

Mr. DINERSTEIN. That could have been the situation, sir.

Mr. Moss. Assuming it was, then you were given the additional 10 percent, and you were then given a preferential price?

Mr. DINERSTEIN. If we were the only distributors to whom that was given, yes, sir.

Mr. Moss. You were the only distributor, or were you one of a few?

Mr. DINERSTEIN. In that instance, yes, sir.

Mr. Moss. You were getting a preferential price?

Mr. DINERSTEIN. That would be the case, sir.

Mr. Moss. This discount was given to Music Suppliers, Inc., and as they increased their purchases they undertook to offset the purchases against the balance outstanding on the books for Verve Records?

Mr. DINERSTEIN. That is correct, yes.

Mr. Moss. How did you get your money, and how did Music Suppliers handle this \$15,000 that it received from you, Mr. Carter, and Mr. Clark?

Mr. DINERSTEIN. The \$15,000 that was received from the three of us was entered on the books of Music Suppliers as a loan payable to us.

Mr. MOSS. And did you have a loan payable account?

Mr. DINERSTEIN. Yes, sir, we did.

Mr. MOSS. And did you have a loans receivable account?

Mr. DINERSTEIN. Yes, we did.

Mr. MOSS. But you did not set up the amount of the loan to Verve as a loan receivable. You set it up as an account receivable?

Mr. DINERSTEIN. We did, sir. We set it up as a credit balance.

Mr. MOSS. Is this a customary manner of designating a loan on your books?

Mr. DINERSTEIN. In this case we handled it that way.

Mr. MOSS. I know that. I did not ask you that. I asked if it was the normal routine for handling it?

Mr. DINERSTEIN. This was not exactly a routine matter—I am sorry, Mr. MOSS.

Mr. MOSS. While we are on that, have you had any other transactions of this type involving any other record companies?

Mr. DINERSTEIN. Not exactly of this type. We have from time to time—

Mr. MOSS. With some interesting variations?

Mr. DINERSTEIN. Yes, sir. We have from time to time advanced moneys to other suppliers. The usual routine there has been to give them trade acceptance notes which they discount, using our credit, because, obviously, if they had use for this money, they would go to a bank and borrow it, if they could.

Mr. MOSS. At what rate of interest?

Mr. DINERSTEIN. In an instance like that it was not a question of the rate of interest. We were offered an additional discount.

Mr. MOSS. What yield did you get?

Mr. DINERSTEIN. We were offered an additional discount on merchandise.

Mr. MOSS. Characterize it any any way you want. What was the yield?

Mr. DINERSTEIN. It might run anywhere from 10 to 25 percent.

Mr. MOSS. What did it run to?

Mr. DINERSTEIN. I cannot say specifically. Recently, I can recall an instance where it ran to 20 percent below that price which they would normally charge.

Mr. MOSS. Will you supply to this committee a list of such transactions and the rate of yield on them?

Mr. DINERSTEIN. I will be happy to do that, sir.

Mr. MOSS. Mr. Chairman, I ask unanimous consent for the record to be held open at this point for such inclusion.

The CHAIRMAN. How long will it take you to file this information?

Mr. DINERSTEIN. Mr. Chairman, as soon as we can get back to Boston and get this for you, within a couple of days, we will do it.

The CHAIRMAN. You may supply it for the record at this point.

(The information to be supplied is as follows:)

FEBRUARY 25, 1960.

Re prepayments made by Music Suppliers, Inc., to Polyvox Records, 236 West 55th Street, New York City

Oct. 27, 1958, trade acceptances issued totaling \$9,000:

Maturing Dec. 30, 1958.....	\$3,000
Maturing Jan. 30, 1959.....	3,000
Maturing Feb. 27, 1959.....	3,000

Credit balance established was exhausted by merchandise received through February 20, 1959.

Aug. 4, 1959, trade acceptances issued totaling \$7,500 (of which amount \$5,005.40 represented advance payment and \$2,494.60 represented payment of a balance then due for merchandise purchased on open account):

Maturing Oct. 23, 1959.....	\$2,500
Maturing Nov. 23, 1959.....	2,500
Maturing Dec. 23, 1959.....	2,500

Credit balance established was exhausted by merchandise received through October 16, 1959.

Oct. 27, 1959, trade acceptances issued totaling \$5,100:

Maturing Dec. 27, 1959.....	\$1,700
Maturing Jan. 29, 1960.....	1,700
Maturing Feb. 29, 1960.....	1,700

Credit balance outstanding February 25, 1960, \$421.91.

Record series	Usual distributor cost	Distributor cost prepaid
VL.....		
PL.....	\$1.89	\$1.35
Stereo.....	2.25	1.35
MM.....	2.82	1.70
VBX.....	2.25	2.25
	3.47	3.47

Mr. Moss. Then you undertook a substantial amount of financing in connection with your record business?

Mr. DINERSTEIN. No, sir, I would not say it would be termed a substantial amount of financing. It did occur from time to time.

Mr. Moss. Well, we have about 40-odd-thousand dollars, \$23,000 to Verve Records. Have you loaned that much or financed that much for others?

Mr. DINERSTEIN. No, sir. In proportion to that figure they would be relatively small amounts.

Mr. Moss. This would be large?

Mr. DINERSTEIN. Yes.

Mr. Moss. When Music Suppliers undertook to repay the amount set up by loans payable to Mr. Carter, Mr. Clark and yourself, did the corporation receive any signed paper indicating that the loan had been made?

Mr. DINERSTEIN. No, it did not.

Mr. Moss. Was there any record of any agreement as to what the rate of interest on these loans would be that would appear on the corporate books?

Mr. DINERSTEIN. No, sir, there was not.

Mr. Moss. Any kind of agreement, any record of any kind on the books or the minutes of the corporation?

Mr. DINERSTEIN. No, sir.

Mr. Moss. Just a gentleman's agreement that it would be paid, or the \$15,000 plus an additional 10 percent on all of this?

Mr. DINERSTEIN. Yes, sir, that is correct.

Mr. Moss. Was the same method used in the second transaction of \$25,000?

Mr. DINERSTEIN. Yes, sir, it was.

Mr. Moss. Only in this the yield on the transaction was increased from 10 percent to 25 percent?

Mr. DINERSTEIN. That is correct.

Mr. Moss. And again this was a loan made by the corporation, by Music Suppliers, Inc., to Verve Records?

Mr. DINERSTEIN. The inference of the transaction was the same as the previous one, sir.

Mr. Moss. Was the loan then made by Music Suppliers to Verve Records?

Mr. DINERSTEIN. The money was sent in the form of a company check.

Mr. Moss. Is it not a fact that your books would show that the loan was a loan by Music Suppliers, Inc., to Verve Records? Would your books show that?

Mr. DINERSTEIN. No, sir, as I stated before it showed as a credit to accounts payable.

Mr. Moss. All right. You set up an advance payment then?

Mr. DINERSTEIN. That is correct, a credit balance.

Mr. Moss. Prepaid?

Mr. DINERSTEIN. Yes, sir.

Mr. Moss. To the extent of \$25,000 to Verve Records?

Mr. DINERSTEIN. That is correct, sir.

Mr. Moss. Did the corporation receive any portion of the additional 25 percent discount?

Mr. DINERSTEIN. No, sir, it did not.

Mr. Moss. That went to you, Mr. Clark and Mr. Carter?

Mr. DINERSTEIN. That is correct.

Mr. Moss. A very handsome return that you gentlemen made.

Mr. DINERSTEIN. It was.

Mr. Moss. Is it likely that Clark would have gotten into this sort of transaction if he had not been intimately acquainted with and enjoying this unique relationship with Music Suppliers, Inc.?

Mr. DINERSTEIN. He, certainly, got in on the transaction, sir, because he was a personal friend. I would not call him a stranger.

Mr. Moss. Just a friend, or was he enjoying a rather unusual relationship with Music Suppliers, Inc.?

Mr. DINERSTEIN. I know nothing about any unusual relationships, sir. It was just like a tip on the stock market that might be a good one.

Mr. Moss. Were there any rumors around that he might still be boss in fact?

Mr. DINERSTEIN. I think that these rumors have been in circulation. I have heard them.

Mr. Moss. Even though one of the letters indicated that he did not want you to know about the agreement?

Mr. DINERSTEIN. Yes, sir.

Mr. Moss. You suspected it?

Mr. DINERSTEIN. I did not suspect that he was boss. What I agreed to was the fact that I had heard rumors, or people would make reference to Mr. Clark having a connection with Music Suppliers, Inc.

Mr. Moss. Did he participate in these very lucrative connections, Nos. 3 and 4, the loans of \$15,000 and of \$18,750?

Mr. DINERSTEIN. Very frankly, you may hate me for this, we just did not need him at that time.

Mr. Moss. You underwrote it yourself?

Mr. DINERSTEIN. That is correct.

Mr. Moss. An unusually good return.

Mr. DINERSTEIN. A very substantial return.

Mr. Moss. This 25 percent is for what, the use for 90 days?

Mr. DINERSTEIN. These bids in some instances drag on much longer. As I told you before, we recovered this merchandise as we needed it. The tenor of general business is what controlled the period of time over which we would be covered.

Mr. Moss. You actually received not a rate of 25 percent, but 100 percent if it were paid in 90 days.

Mr. DINERSTEIN. In terms—

Mr. Moss. Earnings or yield?

Mr. DINERSTEIN. In those terms that would be correct.

Mr. Moss. It would be. This was better than anything I have heard of. This was a pure success.

Mr. DINERSTEIN. If I may—

Mr. Moss. Who was responsible for the arrangement?

Mr. DINERSTEIN. Mr. Granz put forward this proposition. It did not seem like one that I could turn down.

Mr. Moss. No; I do not blame you.

Mr. DINERSTEIN. Thank you.

Mr. Moss. Now then, loans have been made out of funds advanced, or the prepayment account of Verve was made out of funds advanced. Would you explain your statement that you did that because you did not want to deprive Music Suppliers, Inc., of funds?

Mr. DINERSTEIN. Perhaps, deprived was an ill-chosen word. What I meant by that statement was we advanced this money personally for two reasons. We did not know how long this might be outstanding. And very frankly—

Mr. Moss. In advance you had an obligation. I asked you in what manner this could affect Music Suppliers, Inc., because you very carefully explained both to me and to our counsel, Mr. Lishman, that these funds were always underwritten by personal loans made by you and Mr. Carter, and on two occasions by either Mr. Carter or Mr. Clark.

Mr. DINERSTEIN. Yes, sir.

Mr. Moss. But I am not at all familiar with why these loans should in any way disturb the funds of Music Suppliers, Inc., if they were not made by them.

Mr. DINERSTEIN. I believe I can explain that to you. As I stated previously on a couple of occasions, in order to provide the funds per-

sonally to make these advance payments to Verve Records I personally went to my bank and negotiated a personal loan as I believe is usual in these cases. The term of the personal loan by my bank to me was 90 or 91 days, however it is they write them. I then loaned these funds to Music Suppliers who, in turn, sent them to Verve Records.

We did reach a point where we had not been able to sell and collect for all of the merchandise that was represented by one of these loans when my loan was due, so that I did at that time take from Music Suppliers the money to cover my personal loan at the bank, repay the bank, and immediately renegotiate a new loan and replace the money at Music Suppliers. It is in connection with that, sir, that I used the term or the word "deprive." In other words, if I had not replaced it, then Music Suppliers would not have had these funds which the company should have had.

Mr. Moss. You were loaning money to Music Suppliers?

Mr. DINERSTEIN. For the purpose of advancing it to Verve.

Mr. Moss. Then in all of these transactions, actually, the only party concerned in them, the one who technically makes the loan or the advances or prepayment of the accounts, was Music Suppliers, and they never received a dime?

Mr. DINERSTEIN. The direct connection, certainly, was between Music Suppliers and Verve. However, the moneys were supplied personally, either through our own funds or through funds that I supplied by borrowing money personally.

Mr. Moss. I just want to clear up some facts here. What about Music Suppliers of Ohio?

Mr. DINERSTEIN. So to speak went down the drain. We were unsuccessful in this business venture. We incurred a loss. I do not know whether—I think there are still some accounts receivable there outstanding, and I do not think the corporation has been liquidated, but it has been inactive for about a year and a half.

Mr. Moss. Where were you incorporated?

Mr. DINERSTEIN. Cincinnati, Ohio.

Mr. Moss. What was your difficulty, getting promotion or what?

Mr. DINERSTEIN. I think that our major difficulty was that we did not have the proper management and personnel. We had inexperienced personnel.

Mr. Moss. Did you have any advisers, any diskjockeys, knowledgeable diskjockeys?

Mr. DINERSTEIN. No, sir, we did not.

Mr. Moss. You did not undertake to employ any to advise you on how and where to distribute?

Mr. DINERSTEIN. We did not.

Mr. Moss. Did you ever get off the ground?

Mr. DINERSTEIN. No, sir, we did not.

Mr. Moss. However, you did undertake certain distributions which are indicated as still outstanding?

Mr. DINERSTEIN. We were in business there for about a year.

Mr. Moss. About a year. Then you just dissolved the corporation?

Mr. DINERSTEIN. We sold—turned over the premises to another distributor—sold him whatever part of the inventory we could. Some of the manufacturers were very helpful in taking back some of the

merchandise. We did not dissolve or sell the corporate name. They set up with approximately the same line on the same premises.

Mr. Moss. What was there? Did you have Monitor?

Mr. DINERSTEIN. That is the name of the label.

Mr. Moss. Does it have current sales?

Mr. DINERSTEIN. No, sir; it does not.

Mr. Moss. Did it record occasionally?

Mr. DINERSTEIN. Very occasionally.

Mr. Moss. Does Music Distributors or Suppliers distribute?

Mr. DINERSTEIN. If there was anything to distribute, sir, we would.

We have put out maybe four or five releases in a period of, perhaps, 3 years.

Mr. Moss. Have they been successes?

Mr. DINERSTEIN. No, sir; we have had no successes.

Mr. Moss. I am interested in a list of payments made to diskjockeys by Music Suppliers. Who determines which diskjockey is going to receive—what do you call such pay?

Mr. DINERSTEIN. For purposes of good will.

The CHAIRMAN. For purposes of what?

Mr. DINERSTEIN. Good will, as I stated before, for exposing records at record hops and giving us their time and listening to our releases, considering them.

Mr. Moss. Do you pay them for advice and distribution problems?

Mr. DINERSTEIN. No, sir; I do not believe so.

Mr. Moss. Never have?

Mr. DINERSTEIN. No, sir.

Mr. Moss. Did you ever pay them for advice? What is it they call it?

The CHAIRMAN. Consultation.

Mr. Moss. On the commercial characteristics of the recording?

Mr. DINERSTEIN. If I interpret that correctly we were extremely interested in what their opinion was.

Mr. Moss. I did not ask you that. I asked you if you paid them for advice.

Mr. DINERSTEIN. I would say, yes, sir; we did.

Mr. Moss. You did pay them for advice. All right, did you arrive at an agreement as to how much and when to pay?

Mr. DINERSTEIN. There was no agreement made, Mr. Moss.

Mr. Moss. You have to have some agreement before or after as to what you are going to pay? How much would you pay him?

Mr. DINERSTEIN. Mr. Moss, I can only state again—

Mr. Moss. No agreement?

Mr. DINERSTEIN. No.

Mr. Moss. No understanding?

Mr. DINERSTEIN. No, sir.

Mr. Moss. You just went and asked for the advice, and he gave it to you, and you gave him some money?

Mr. DINERSTEIN. It was not as cold as that. We see most of these people very regularly.

Mr. Moss. Did you give them money regularly?

Mr. DINERSTEIN. As our records indicate, sir, in some instances we did.

Mr. Moss. Did you ever regard them as employees of the firm?

Mr. DINERSTEIN. No, sir; I did not.

Mr. MOSS. Did you ever undertake to arrive at an agreement, whether pay would be made regularly at specified times?

Mr. DINERSTEIN. No, sir.

Mr. MOSS. Over a given period of time?

Mr. DINERSTEIN. No, sir.

Mr. MOSS. Well, I have here a check dated October 15, 1959, made payable to Arnie Ginsburg for \$200, and over on the receipt portion of it there is a notation, "through September."

Mr. DINERSTEIN. That was not put on there through any agreement, Mr. MOSS. We had decided ourselves that for these services we would give Mr. Ginsburg, approximately, \$100 a month. We never discussed this with him. There was no arrangement.

Mr. MOSS. Did you ever try to skip a month?

[Laughter.]

Mr. DINERSTEIN. As a matter of fact, sir, I think that our records indicate that we did from time to time skip a month, if my recollection of them is correct, and we cut it out at a later date.

Mr. MOSS. How did you decide as to how much good will one of these gentlemen would be able to give you? How did you decide that?

Mr. DINERSTEIN. We did not have a yardstick for that, Mr. MOSS. I think it was in direct proportion to how much interest they showed in the record business, how much interest they showed in us as individuals, how much interest they showed in the music suppliers, how often they would give us their time.

Mr. MOSS. And how often they would play one of your labels?

Mr. DINERSTEIN. No, sir.

Mr. MOSS. That never entered into it?

Mr. DINERSTEIN. No, sir.

Mr. MOSS. In the merchandising of records you were paying them for good will. The contrast is rather amazing, as to the good will that you were buying. It runs from \$25 to some of these poor disk-jockeys, up to \$6,000 for others.

Mr. DINERSTEIN. As I said, sir, I think we dealt in proportion to how often we saw them, how much of their time they gave to us, how interested they were in the record business.

Mr. MOSS. When you say how often you saw them, you mean on your initiating the contact or their initiating it?

Mr. DINERSTEIN. Either way, sir. We would see them frequently.

Mr. MOSS. You would give them a check when you saw them?

Mr. DINERSTEIN. No, sir. Some of these people we would have drop by the office two or three times a week, maybe for a couple of hours on a visit.

Mr. MOSS. Mr. Dinerstein, let us have a very definite understanding. Do you want to believe that the number of times that your labels were aired had no bearing on the amount that you paid, despite the fact that you paid some of them as little as \$25 and others in excess of \$6,000 over a 3-year period? Is that what you want me to believe?

Mr. DINERSTEIN. That is the fact of the matter, sir.

Mr. MOSS. Let me be perfectly candid with you. I do not believe that. You impress me as far too practical and capable to pass out

funds willy-nilly. Do you want me to believe that you just pass out funds willy-nilly?

Mr. DINERSTEIN. Mr. Moss, I feel by saying that there was no yardstick I would have to fall back on a musical expression, that this situation was, so to speak, played by ear.

Mr. Moss. It really was. Only I do not think that it works by ear as indicated. I think that the score, perhaps, was a little difficult to turn, but I think it is there someplace.

Mr. DINERSTEIN. The only thing that I can state with regard to that, sir, is that I believe that most of these station people log what they play.

Mr. Moss. They keep logs. That has been referred to by the disk-jockeys, but they do not seem to be available to the subcommittee. We have had some interesting experiences on logs. When we want to refer to them we cannot find them. We hired the private service of a monitoring broadcasting company on behalf of the advertisers, as to the commercials that are aired, when they are supposed to be aired, and we get construction of logs and programs. Did you keep a log?

Mr. DINERSTEIN. No, sir; none whatsoever; no, sir.

Mr. Moss. Did your promotion man maintain logs?

Mr. DINERSTEIN. No, sir; not to my knowledge.

Mr. Moss. Did the promotion men ever consult with you as to when you could spend your dollars?

Mr. DINERSTEIN. No, sir; they did not.

Mr. Moss. Who made the decision as to how much Mr. "X" or Mr. "Y" would get?

Mr. DINERSTEIN. It would be decided by Mr. Carter or myself, or perhaps—

Mr. Moss. By Mr. Carter or yourself or, perhaps, it was discussed?

Mr. DINERSTEIN. Yes.

Mr. Moss. A very informal arrangement?

Mr. DINERSTEIN. Actually, sir, it was.

Mr. Moss. Very informal?

Mr. DINERSTEIN. I do not know if it was informal to that extreme—it was an informal thing.

Mr. Moss. You are giving me the impression, Mr. Dinerstein, that there was no set pattern, that people were just getting money whenever you met them, and that it had no relationship to your sales or what they did for you. It was just because they were friendly, and you were going to pay them. I get a picture of something that is extremely informal.

Mr. DINERSTEIN. I agree, sir, that it was informal.

Mr. Moss. Why did you limit it then to giving it to the diskjockeys and not the dealers?

Mr. DINERSTEIN. I do not think that we limited the good will of it to diskjockeys.

Mr. Moss. Were the dealers not doing an exceptionally fine job of promoting the records?

Mr. DINERSTEIN. We certainly did entertain our dealers from time to time.

Mr. Moss. Did you ever give them anything that approached that which Stan Richards got? He got \$6,025; did you ever give any of the dealers anything like that?

Mr. DINERSTEIN. I would not say that it would approach that figure, sir.

Mr. MOSS. What would you say it would approach?

Mr. DINERSTEIN. I could not offhand make an estimate. We spent quite a bit of money generally entertaining dealers. We did give them gifts from time to time.

Mr. MOSS. Did you give them cash or otherwise?

Mr. DINERSTEIN. Yes, in some cases we did.

Mr. MOSS. Did you give them any discounts or anything extra?

Mr. DINERSTEIN. No, sir; we did not.

Mr. MOSS. Never?

Mr. DINERSTEIN. Gifts on a personal basis.

Mr. MOSS. You never gave them extra discounts, never gave them any additional recordings above what they were billed for, because they were doing a good job?

Mr. DINERSTEIN. No, sir; not for that reason. We did have many sales programs for all dealers.

Mr. MOSS. When you offered inducements to one dealer you offered them to all dealers?

Mr. DINERSTEIN. That is correct. It was a general sales program. It worked for each and every dealer.

Mr. MOSS. But you were impartial when it came to the diskjockeys.

Mr. DINERSTEIN. I guess that is true, sir.

Mr. MOSS. You talked about loans receivable to diskjockeys. What is that?

Mr. DINERSTEIN. From time to time, in order to help somebody who was in financial difficulty, we did make a loan to a diskjockey.

Mr. MOSS. Did they give it back?

Mr. DINERSTEIN. In many instances they did. In some they did not.

Mr. MOSS. Well now, how many did you make?

Mr. DINERSTEIN. I do not know offhand. We might have made—this is purely speculation—over the 2- or 3-year period, perhaps, 8 or 10.

Mr. MOSS. Do you think that you would estimate 8 or 10?

Mr. DINERSTEIN. Yes.

Mr. MOSS. Were these loans evidenced by some note?

Mr. DINERSTEIN. No, sir; they were not.

Mr. MOSS. Were they interest bearing?

Mr. DINERSTEIN. No, sir; they were not.

Mr. MOSS. Were they loans for a fixed time?

Mr. DINERSTEIN. In a couple of cases, sir, as I explained this morning what originally started out as an exchange check, which would in essence be a loan for a fixed time, went into a very long-term loan, which is still outstanding.

Mr. MOSS. You have a number of exchange checks that are outstanding?

Mr. DINERSTEIN. Yes, sir.

Mr. MOSS. Did you ever take any steps to try to enforce collection?

Mr. DINERSTEIN. With the individual who was principally involved, I must acknowledge that it would be poor collection, and would not bring us anything.

Mr. Moss. Well, how about loans receivable. Have you ever taken any steps to enforce collection of those?

Mr. DINERSTEIN. Our loans receivable? I thought that is what we were referring to, sir.

Mr. Moss. I was talking about both.

Mr. DINERSTEIN. Well, an exchange check, as I explained this morning, there were a couple of those that bounced.

Mr. Moss. Did you ever take steps to collect?

Mr. DINERSTEIN. No, sir, we did not.

Mr. Moss. Well now, let us go over this in loans receivable. Did you ever take any steps to collect those?

Mr. DINERSTEIN. No, sir.

Mr. Moss. Now, they were not evidenced by any written instrument, they were non-interest-bearing, they were not for a fixed time, and you do not try to collect them.

Mr. DINERSTEIN. As I previously stated—

Mr. Moss. Would you say those transactions have all the elements of an orthodox loan?

Mr. DINERSTEIN. I would agree that they are not entirely orthodox, sir.

Mr. Moss. And you are sort of reinforced in that, if they finally do not pay, you still have their good will and ultimately you can write them off.

Mr. DINERSTEIN. That is not my attitude. We have with one individual.

Mr. Moss. It is a fact, though, is it not?

Mr. DINERSTEIN. Pardon?

Mr. Moss. It is the fact, though, is it not?

Mr. DINERSTEIN. It could be stated that way. The primary individual here, we certainly hope and trust that we will collect this money from him.

Mr. Moss. How many automobiles did you buy?

Mr. DINERSTEIN. I believe that there were three involved, sir.

Mr. Moss. And was this just as a result of casual meeting with them or was there some guideline used in determining who would receive an automobile?

Mr. DINERSTEIN. We knew these people well. The circumstances were such that they just came up in the normal course of a conversation, and—

Mr. Moss. Have you ever bought automobiles for anyone other than diskjockeys?

Mr. DINERSTEIN. Only for ourselves.

Mr. Moss. I would expect you to buy your own automobiles. But you did buy them for diskjockeys?

Mr. DINERSTEIN. Yes, sir.

Mr. Moss. You did not buy them for record store owners, but just for diskjockeys?

Mr. DINERSTEIN. Yes, sir, that is correct.

Mr. Moss. Certainly you had access to money in ledger costs, and ordinarily obtainable through one of the automobile finance agencies. Why did you finance these through commercial financing?

Mr. DINERSTEIN. That was strictly an oversight. At the time that the financing took place, I did not think of that matter. By the time

it occurred to me that this might be an expensive rate, the financing was already completed and we let it go at that.

Mr. Moss. Why finance them at all? They were small amounts in a business of your size.

Mr. DINERSTEIN. The business is sizable, sir. The history of a record distributor is long on accounts receivable, and not very long on cash. We just discussed that we did not want to lay out the money, and that we would handle it that way.

Mr. Moss. Of course, you paid another penalty when you—

Mr. DINERSTEIN. Excuse me.

Mr. Moss. I say, you paid another penalty when you went to an 18-month contract.

Mr. DINERSTEIN. Yes, sir.

Mr. Moss. Was it not really that the payments on these contracts were the amounts agreed upon as payment to a diskjockey?

Mr. DINERSTEIN. No, sir, it was not.

Mr. Moss. You committed yourself for 18 months to pay for a man's car and there was no sort of an agreement at all.

Mr. DINERSTEIN. That is true.

Mr. Moss. It is interesting, you certainly are a kind and generous man.

Mr. DINERSTEIN. It appears, sir, that I am overly generous.

Mr. Moss. I would say very selective in your generosity, though.

Mr. DINERSTEIN. Yes, sir.

Mr. Moss. Well, just to keep the record straight, let me state very clearly that I just cannot accept your version of how you deal with diskjockeys.

Mr. Chairman, those are all the questions I have. Thank you.

Mr. FLYNT (presiding). Mr. Devine.

Mr. DEVINE. No questions.

The CHAIRMAN (presiding). Mr. Dinerstein, do you own any interest in record companies?

Mr. DINERSTEIN. Record manufacturing companies, sir?

The CHAIRMAN. Yes.

Mr. DINERSTEIN. Yes, sir.

The CHAIRMAN. Which ones?

Mr. DINERSTEIN. A company called Monitor Records, sir.

The CHAIRMAN. Do you own a small interest or a substantial one?

Mr. DINERSTEIN. I own a one-third interest in the company.

The CHAIRMAN. I do not see on this list, looking over it hurriedly, that you participated in the convention at Miami.

Mr. DINERSTEIN. No, sir, I did not.

The CHAIRMAN. You did not attend?

Mr. DINERSTEIN. I did not.

The CHAIRMAN. How did you miss that?

Mr. DINERSTEIN. I have never attended diskjockey conventions as a manufacturer, and it should be an italicized word in this case. Monitor Records in the course of 3 years has put out perhaps five records, and none of them have been successful.

The CHAIRMAN. You mean a company in which you own 33 $\frac{1}{3}$ percent has put out only five records?

Mr. DINERSTEIN. About that. That is all.

The CHAIRMAN. In the last—

Mr. DINERSTEIN. In about three, I think it is about in existence about 3 years. It is what you might refer to—

The CHAIRMAN. And not one of them has been successful?

Mr. DINERSTEIN. No, sir. It is an operation, Mr. Chairman, that has no employees, no overhead, and so forth.

The CHAIRMAN. No employees, no overhead, and no business.

Mr. DINERSTEIN. Exactly. [Laughter.]

The CHAIRMAN. Well, at least it is not losing anything, is it?

Mr. DINERSTEIN. I think there are charges for keeping the corporation alive.

The CHAIRMAN. I want to get a little more information about Verve. Is that the name of the company?

Mr. DINERSTEIN. Yes, sir.

The CHAIRMAN. V-e-r-v-e?

Mr. DINERSTEIN. That is correct.

The CHAIRMAN. That is a California company?

Mr. DINERSTEIN. Yes, sir.

The CHAIRMAN. Who owns it?

Mr. DINERSTEIN. The president of the company is Mr. Norman Granz.

The CHAIRMAN. Does he own the company?

Mr. DINERSTEIN. I do not know whether he owns all of the outstanding stock or not.

The CHAIRMAN. Is it a pretty big company?

Mr. DINERSTEIN. In terms of record companies, it would fall into the category, sir, of a fair-sized company.

The CHAIRMAN. Now, Music Suppliers, when did it become Music Distributors?

Mr. DINERSTEIN. It did not.

The CHAIRMAN. It just entered into a franchise agreement with Music Suppliers?

Mr. DINERSTEIN. Music Distributors, sir?

The CHAIRMAN. Yes.

Mr. DINERSTEIN. No. That was a separate corporate entity that was set up at the request of a manufacturer for whom we acted as sales agent.

The CHAIRMAN. What was the name of the manufacturer?

Mr. DINERSTEIN. The name of the label was Angel Records manufactured by Electric & Musical Industries.

The CHAIRMAN. Well, Music Suppliers then got \$73,500 worth of records in this proceeding that you have outlined here from Verve.

Mr. DINERSTEIN. That is correct—no, sir, that is not correct. We—

The CHAIRMAN. Now, is it correct or is it not correct?

Mr. DINERSTEIN. Well

The CHAIRMAN. You just said both.

Mr. DINERSTEIN. We received \$73,750 worth of records, plus that which, for these purposes, we will term interest. In other words, we received more than—

The CHAIRMAN. Now, you got \$73,500 worth of records from Verve without going through these unusual gyrations to get around to it.

Mr. DINERSTEIN. I may not be following your question correctly, sir.

The CHAIRMAN. Maybe I used the wrong term. The method which you explained, and you can apply your own term to it——

Mr. DINERSTEIN. \$73,750 worth of records were left with the company, yes, sir, at usual distributors' costs.

The CHAIRMAN. In addition to that, these loans in varying denominations were obtained?

Mr. DINERSTEIN. No, sir. That is, the \$73,750 figure is representative of the loans or the money in advance that we sent to Verve Records.

The CHAIRMAN. Well then, they are not in addition to them, are they, as you said a moment ago?

Mr. DINERSTEIN. If I said that, I did not mean to phrase it that way.

The CHAIRMAN. Mr. Moss and Mr. Lishman asked you about these several diskjockeys who were paid \$27,000 during 1957, 1958 and 1959.

Mr. DINERSTEIN. Yes, sir.

The CHAIRMAN. Are you still paying the diskjockeys this good will?

Mr. DINERSTEIN. No, sir, we are not.

The CHAIRMAN. Why?

Mr. DINERSTEIN. The very fact that a committee of Congress has chosen to look into this matter indicates that we may have done something wrong. We certainly would not, under those circumstances, continue to do this.

The CHAIRMAN. Well, the very fact that a congressional committee looks into something does not necessarily mean that it is wrong, does it?

Mr. DINERSTEIN. All of the inferences that I have heard, that I have read in the newspapers, indicate that it may be bad or a questionable practice, one that should not have taken place. We never thought of it in that way.

The CHAIRMAN. What do you think of it?

Mr. DINERSTEIN. I considered it to be, sir, general business practice that took place throughout the industry. Whether it was wrong or not, I do not think at this point I am qualified to state.

We look back in retrospect and what we consider to be a general business practice, which might have more or less become almost a habit, very well may be wrong.

The CHAIRMAN. Like one diskjockey said the other day, the good old American practice.

Mr. DINERSTEIN. I read that comment, sir, and I don't think he meant that. I think he meant that he feels that this situation, or a parallel situation, does take place throughout all types of business which does not make it right, but that in many businesses, and certainly in the record business, it was regarded as a common business practice.

The CHAIRMAN. And the fact that it was regarded as common business practice in the record industry, caused you to meet your competition by the same practice?

Mr. DINERSTEIN. I would say that that would be correct.

The CHAIRMAN. Is there anything wrong in paying for advice?

Mr. DINERSTEIN. I don't know, sir. At this point, I am certainly beginning to believe that there is.

The CHAIRMAN. Well, the lawyers would not like that too much.

Mr. DINERSTEIN. Well, I cannot help it. All I can tell you is how I feel about this situation candidly, and——

The CHAIRMAN. Is there anything wrong in paying for good will?

Mr. DINERSTEIN. I don't believe that there is.

The CHAIRMAN. Why did you quit it, then?

Mr. DINERSTEIN. Pardon?

The CHAIRMAN. Why did you quit it, then?

Mr. DINERSTEIN. Well, there are some things that perhaps I do not have the proper insight into. There have been statements made that this practice has deceived the public, which should not be so, whether illegal or otherwise, that I am very vague on that particular point.

Perhaps I am not qualified——

The CHAIRMAN. I noticed you have been rather vague on several points.

Mr. DINERSTEIN. I say, sir, I don't think I am qualified to judge in this instance a deception of the public, and if this did take place, if the public was harmed, that certainly indicates that perhaps there was something wrong.

The CHAIRMAN. But you thought enough of it, until you decided that it is not now good business practice, to engage in it any further?

Mr. DINERSTEIN. Well, sir, as I stated before, the very fact that Congress has taken an interest in this matter strongly indicates that it may have been and probably was or could have been a very ill-advised and questionable practice.

The CHAIRMAN. It strongly indicates that the public indignation, I should say, from what comes to the attention of this committee, is such that you know the American public is not going to stand for such practices.

Mr. DINERSTEIN. Yes, sir.

The CHAIRMAN. I think that is all.

Mr. LISHMAN. Mr. Chairman, I have one or two questions to ask in an attempt to clarify some things in the record.

The CHAIRMAN. Yes.

Mr. LISHMAN. Mr. Dinerstein, the total loans, so-called loans, made to Verve amounted to \$73,500.

Mr. DINERSTEIN. Excuse me. I have a figure here of \$73,750.

Mr. LISHMAN. \$73,750.

Mr. DINERSTEIN. Which I believe to be an accurate figure.

Mr. LISHMAN. How much record merchandise did Music Suppliers receive back from Verve to cover both principal and so-called interest or discount charges?

Mr. DINERSTEIN. I hope I can answer this clearly for you, Mr. Lishman, without taking 5 minutes with a pencil and paper to figure out the exact amount.

Mr. LISHMAN. Yes, sir.

Mr. DINERSTEIN. Taking these items one by one, with reference to the first loan in October of 1956, if we sent them \$15,000, and we received a 10 percent discount in merchandise, then we actually received \$16,666.66, and the application of the rate of discount down the line to these other loans would then bring us to a figure of the total number of dollars involved in their shipments to us.

Mr. LISHMAN. Well, roughly speaking, did you receive back, in record merchandise, from Verve, more than \$100,000 at a list price?

Mr. DINERSTEIN. Not at list price.

Mr. LISHMAN. No.

Mr. DINERSTEIN. At usual distributor's costs; yes, sir.

Mr. LISHMAN. At usual distributor's price, you had received back more than \$100,000?

Mr. DINERSTEIN. I don't think it would be more than \$100,000. It seems to me quickly it would be in that range, \$95,000 to \$100,000.

Mr. LISHMAN. How many Verve Records would that give you to dispose of?

Mr. DINERSTEIN. That would represent roughly 40,000 to 45,000.

Mr. LISHMAN. 45,000. And were these albums?

Mr. DINERSTEIN. Yes, sir; they were.

Mr. LISHMAN. What did they retail at?

Mr. DINERSTEIN. \$4.98.

Mr. LISHMAN. Well, you would have quite a problem in pushing this amount of merchandise into sales, would you not?

Mr. DINERSTEIN. No, sir; we would not. As these loans indicate, this took place over a long period of time, from 1956 until 1958, almost 2 years.

Mr. LISHMAN. Where you have 45,000 albums which represented approximately \$100,000 worth of merchandise to you, did that not create a situation where you would be inclined to use payola in order to push the sales of these records?

Mr. DINERSTEIN. No, sir; it would not. We took this merchandise, as I previously stated, over a period of close to 2 years. The arrangement with Verve was simply that we would take merchandise from them as we required it.

Mr. LISHMAN. Were any of these Verve albums played over any of the Boston stations?

Mr. DINERSTEIN. I would say that some of them were, sir, yes.

Mr. LISHMAN. Were they played over the air by diskjockeys who had received payola from Music Suppliers?

Mr. DINERSTEIN. I would not believe so. These albums were primarily—

Mr. LISHMAN. What diskjockeys in Boston did you not pay payola to?

Mr. DINERSTEIN. There are many diskjockeys whom we did not give any gifts to or any other consideration. These albums, sir, are primarily jazz albums. They would only be featured on certain shows that use this kind of music. And, as a matter of fact, they do not get much exposure on the air.

Mr. LISHMAN. Would that not be on the Bill Marlowe show?

Mr. DINERSTEIN. It could be. He played that type of material, but his leaning was more to Frank Sinatra or Dinah Washington type of artist than it was the type of record that are generally represented here, which are a different form of jazz.

Mr. LISHMAN. Did Stan Richards play these albums?

Mr. DINERSTEIN. I wouldn't think so.

Mr. LISHMAN. Did Joe Smith play any of these albums?

Mr. DINERSTEIN. I would not think so, sir.

Mr. LISHMAN. In connection with these loans of \$73,750, was Music Suppliers in any way obligated to repay the loans to the principals involved if Verve defaulted?

Mr. DINERSTEIN. No, sir. We considered it to be a personal investment that we were personally responsible.

Mr. LISHMAN. What security did Verve offer to the individual participants who supplied the money for these loans?

Mr. DINERSTEIN. There was no security. It was a gentlemen's agreement.

Mr. LISHMAN. I have no further questions.

The CHAIRMAN. Did I understand that your company was paying—

Mr. DINERSTEIN. I am sorry, sir, I couldn't hear.

The CHAIRMAN. Did I understand that your company was paying Mr. Clark's life insurance premiums?

Mr. DINERSTEIN. Yes, sir; in a sense. We were not paying it. These premiums were set up on the books.

The CHAIRMAN. You do not pay anything else—

Mr. DINERSTEIN. These premiums were set up in the loan account and are an obligation of Mr. Clark.

The CHAIRMAN. And that is still an obligation of Mr. Clark?

Mr. DINERSTEIN. It certainly is.

The CHAIRMAN. Even though he is not interested in it any more, but is on the record?

Mr. DINERSTEIN. He owes us this money. He will pay it to us, I am sure.

The CHAIRMAN. Yes. I assume that it was set up because of the beneficiary involved, is that right?

Mr. DINERSTEIN. I am not too well acquainted with this whole situation. I think—

The CHAIRMAN. From this letter I would assume that you are not.

Mr. DINERSTEIN. I believe if you wish me to speculate, sir, I think Mr. Carter is the beneficiary. I am not certain just what that arrangement is.

The CHAIRMAN. Mr. Carter is the beneficiary of Mr. Clark's life insurance policy?

Mr. DINERSTEIN. I may be way off base in that.

The CHAIRMAN. Who is Alice?

Mr. DINERSTEIN. Alice is Mrs. Clark.

The CHAIRMAN. I wonder what she thinks of that?

Mr. DINERSTEIN. I do not know, sir.

The CHAIRMAN. Anything else? Thank you very much.

Mr. MOSS. Yes, I have one more question.

Does the 25 percent additional discount in any way reflect itself in the increased earnings of Music Suppliers?

Mr. DINERSTEIN. No, it does not. Music Suppliers obtained the records at the price they normally would have paid for them.

Mr. MOSS. When your accounts tying the loans to you, Mr. Carter and Mr. Clark, were paid off, does that reflect an actual payment at this higher rate of return or an interest factor of about 25 percent?

Mr. DINERSTEIN. Sir, you sort of lost me on that question. It was rather long. Would it be possible for you to restate that.

Mr. Moss. Normally, the advantage you secure as a result of this loan arrangement would have increased the earnings of Music Suppliers, Inc.

Mr. DINERSTEIN. If we had felt that the company could—

Mr. Moss. Yes. Now, that earning would have been taxable at a corporate rate. So, in effect, you are declaring for these stockholders, these owners of the business, a special dividend through an unusually high interest payment on a loan they made to Music Suppliers.

Mr. DINERSTEIN. Sir, I do not look at it that way. We supplied—

Mr. Moss. I am not asking you how you look at it, but I am asking you if that is not the fact?

Mr. DINERSTEIN. No, sir; I don't believe so.

Mr. Moss. Normally, if you negotiate a deal for your company, which results in a better than average discount, it reflects itself in better than average earnings for the company, is that not correct?

Mr. DINERSTEIN. That is correct.

Mr. Moss. All right. In this instance, because the increased earnings to those who made the loan, the company is denied the benefit of that higher return. Is that not correct?

Mr. DINERSTEIN. Substantially, sir, that would be correct.

Mr. Moss. Now, you point out where it is not correct.

Mr. DINERSTEIN. It is correct.

Mr. Moss. Then it is not only substantially, but it is completely correct.

Mr. DINERSTEIN. We did not advance this money personally, so that the corporation would not make this additional profit.

Mr. Moss. Whether or not that was your intent, that is the effect.

Mr. DINERSTEIN. Yes, sir.

Mr. Moss. All right. That is all I have. Those are all the questions I have, Mr. Chairman.

The CHAIRMAN. Mr. Dinerstein, thank you very much for your appearance here and you may be excused.

Mr. DINERSTEIN. Thank you, sir.

The CHAIRMAN. Mr. Keith Simpson. Are you, Mr. Simpson?

Mr. SIMPSON. Yes, sir.

The CHAIRMAN. Do you object to the cameras?

Mr. SIMPSON. No, I did not, sir.

The CHAIRMAN. Off the record.

(Discussion off the record.)

The CHAIRMAN. Back on the record.

Mr. Simpson, will you be sworn?

Mr. SIMPSON. Yes, sir.

The CHAIRMAN. Do you solemnly swear the testimony you give to this subcommittee to be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. SIMPSON. I do, sir.

TESTIMONY OF PETER SIMPSON

The CHAIRMAN. Have a seat.

State your full name for the record.

Mr. SIMPSON. Peter T. Simpson.

The CHAIRMAN. What is your address?

Mr. SIMPSON. Route 1, Box 255, Vienna, Va.

The CHAIRMAN. You are a diskjockey by profession?

Mr. SIMPSON. Yes, sir.

The CHAIRMAN. How long have you been in this business?

Mr. SIMPSON. Approximately 4 years, sir.

The CHAIRMAN. Have you been employed by WPBE?

Mr. SIMPSON. That is WPGC, sir.

The CHAIRMAN. WPGC.

Mr. SIMPSON. Yes, sir.

The CHAIRMAN. That is a radio station?

Mr. SIMPSON. Yes, sir.

The CHAIRMAN. Where?

Mr. SIMPSON. That is out at Morningside, Md., sir.

The CHAIRMAN. Who owns it?

Mr. SIMPSON. Maxwell Richmond.

The CHAIRMAN. Is that the same Maxwell Richmond who testified before this committee yesterday?

Mr. SIMPSON. Yes, sir.

The CHAIRMAN. Mr. Lishman, you may proceed with your questions.

Mr. LISHMAN. Mr. Simpson, for how long were you employed at WPGC as a diskjockey?

Mr. SIMPSON. Since July of 1959, sir.

Mr. LISHMAN. And previous to that time by whom had you been employed?

Mr. SIMPSON. By WEEL, in Fairfax.

Mr. LISHMAN. What was your position there?

Mr. SIMPSON. I was salesman there, sir.

Mr. LISHMAN. And before that what line of radio business had you been in?

Mr. SIMPSON. Before that, sir, I was in the Army.

Mr. LISHMAN. So that your experience in radio is confined to these two places of employment?

Mr. SIMPSON. No, sir. The Army interspersed my work at WJMA at Orange, Va., and with WEER at Warrenton, Va.

Mr. LISHMAN. What did you do at those stations?

Mr. SIMPSON. I was an announcer.

Mr. LISHMAN. What were your duties as diskjockey at WPGC?

Mr. SIMPSON. I just—

Mr. LISHMAN. Did you run a show?

Mr. SIMPSON. I just followed the instructions, just followed the program log, sir.

Mr. LISHMAN. Did you have written instructions as to what you should do as diskjockey on that station?

Mr. SIMPSON. Not exactly, sir. I followed the format.

Mr. LISHMAN. Who supplied the format?

Mr. SIMPSON. That was made up, well, by the program department.

Mr. LISHMAN. Who was the head of the program department?

Mr. SIMPSON. Bob Howard.

Mr. LISHMAN. And while you were a diskjockey at WPGC was it a practice and a custom that the exact program that had been broadcast over station WMEX in Boston would be duplicated 1 week later, approximately, at station WPGC?

Mr. SIMPSON. That was my understanding, sir.

Mr. LISHMAN. I am not talking about your understanding. As diskjockey, were you told to duplicate the same program a week later on WPGC?

Mr. SIMPSON. Well, sir, I followed the music sheet and the music sheet was made up in Boston.

Mr. LISHMAN. Yes sir,

Mr. SIMPSON. One week prior to airing at WPGC.

Mr. LISHMAN. And as diskjockey, did you make commercial announcements?

Mr. SIMPSON. Yes, sir.

Mr. LISHMAN. On station WPGC?

Mr. SIMPSON. Yes, sir.

Mr. LISHMAN. What was the nature of these commercial announcements you made as a diskjockey?

Mr. SIMPSON. Well, some of the commercials were from advertising agencies, national accounts. Most of the commercials were for local businesses.

Mr. LISHMAN. Of what kind of business? What were you urging the public to buy, generally?

Mr. SIMPSON. Well, various products, sir.

Mr. LISHMAN. Name a few.

Mr. SIMPSON. Vacuum cleaners, sewing machines—

Mr. LISHMAN. Yes, sir.

Mr. SIMPSON. Were two of the most helpful hit products.

Mr. LISHMAN. What would you say about these products?

Mr. SIMPSON. Well, I don't know whether or not the advertising was misleading, sir, but brand-new sewing machines for \$12.95.

Mr. LISHMAN. You would advertise that over the air?

Mr. SIMPSON. Were advertised.

Mr. LISHMAN. I mean, how would you make that announcement?

Mr. SIMPSON. Well, sir, the announcement was so-called a pitch. It was referred to as a pitch announcement, and it—

Mr. LISHMAN. Did you prepare this pitch?

Mr. SIMPSON. I read the continuity, sir. It went for about 2 minutes.

Mr. LISHMAN. Who prepared that?

Mr. SIMPSON. That was prepared in the programing department.

Mr. LISHMAN. What would this pitch say, in substance?

Mr. SIMPSON. Well, it would say, in substance, that we would bring out to the listener's home a brand-new vacuum cleaner or a brand-new sewing machine for a ridiculous price of, say, for example, \$12.95 and completely free demonstration, no obligation, and we would, the sewing machine or the vacuum cleaner would, includes all of the attachments and complete guarantee for a certain length of time, this and that.

Mr. LISHMAN. Was that a false advertisement?

Mr. SIMPSON. Sir, that is not for me to say. I could only speculate as to its being misleading.

Mr. LISHMAN. Did you get complaints from listeners?

Mr. SIMPSON. Occasionally, sir, a few phone calls would come across that I would take, and I would say that—

Mr. LISHMAN. What would be the nature of these complaints?

Mr. SIMPSON. Well, occasionally, someone would call me and say that he thought the Better Business Bureau should be told about it. Occasionally I would get a call, something like that.

Mr. LISHMAN. Did you ever see the merchandise that was advertised over the station?

Mr. SIMPSON. No, sir; I never did.

Mr. LISHMAN. Did you ever discuss this matter with any other employee or officer of this station?

Mr. SIMPSON. No, sir; not formally. I never made any complaint.

Mr. LISHMAN. What companies were carrying these ads over that station?

Mr. SIMPSON. The Sun Vacuum Cleaner Co., Sun Sewing Machine Center. I believe that is on Ninth Street, I think, sir, in Washington.

Mr. LISHMAN. Did anyone ever claim when they tried to buy one of those pieces of apparatus at \$12.95 or whatever this low price was that they were unable to do so?

Mr. SIMPSON. I never heard personally of anybody not being able to get the merchandise.

Mr. LISHMAN. What were the complaints that you actually did receive?

Mr. SIMPSON. Well, as I mentioned before, sir, telephone calls. I took one or two—

Mr. LISHMAN. What would the person on the other end of the phone say to you?

Mr. SIMPSON. Well, in essence, he would say something to the effect that he was just unhappy about the advertisement. He would think that it was just highly misleading.

Mr. LISHMAN. Do you know whether any local listeners wrote to this station and requested records to be played?

Mr. SIMPSON. No, sir, I don't.

Mr. FLYNT. Mr. Chairman, may I ask a question following on the one just asked?

The CHAIRMAN. Mr. Flynt.

Mr. FLYNT. These people that called in, Mr. Simpson, and said they did not approve of the type of advertising, did they say whether or not they had bought one of the articles of merchandise?

Mr. SIMPSON. No, they didn't, sir.

Mr. FLYNT. Did they express dissatisfaction with the price or with the product?

Mr. SIMPSON. Well, just the overall announcement was irritating. Because they thought it was, they considered it misleading.

Mr. FLYNT. Had they followed up—

Mr. SIMPSON. No, I don't, no, I wouldn't say they followed up.

Mr. FLYNT. What I am getting at, Mr. Simpson, is, upon what did they base their complaint that the advertisement was misleading?

Mr. SIMPSON. Well, they just generally would mention that they were highly irritated by the announcement. They thought it was misleading and they thought it shouldn't be on the air, because, they said, they just thought it was not possible to buy this product for the low price. So this was an annoyance to them.

Mr. FLYNT. Well now, did the announcement that you made and the advertisement that the station carried, tell the people to call you or to call the company that was selling the article, if they were hurt?

Mr. SIMPSON. It worked both ways, sir. Sometimes they would call the station and sometimes we were putting a message across for the listener to call an answering service.

Mr. FLYNT. Now, the complaints that you got, do you know whether the complaining party had previously called the answering service or the merchandising company or anybody else?

Mr. SIMPSON. No; I don't, sir.

Mr. FLYNT. That is all, Mr. Lishman.

Mr. LISHMAN. No further questions.

The CHAIRMAN. Mr. Springer.

Mr. SPRINGER. No questions.

The CHAIRMAN. Mr. Moss.

Mr. Moss. Mr. Simpson, you indicated that you received a program sheet each week. What was the format?

Mr. SIMPSON. The music sheet, sir?

Mr. Moss. I am referring to this sheet that you received from Boston.

Mr. SIMPSON. Well, sir, the sheet was about five or six pages long. It listed various time segments. Every record we played was scheduled.

Mr. Moss. Then neither you nor any of the other station personnel ever had the opportunity at Morningside of selecting the recordings which were to be aired?

Mr. SIMPSON. Yes, sir; we did, occasionally. I never did. But I know that the other diskjockeys occasionally would select a particular record for, as a special of the week, as their pick hit for future popularity, a pick hit of the week.

Mr. Moss. Now, did you have the gold platter or some other feature record each week at the Morningside station?

Mr. SIMPSON. That gold platter has been discontinued, sir. When I came to work for the station in 1959, in July, that had been discontinued. That gold platter feature, but I think in lieu of that, why, the pick hit of the week was the record.

Mr. Moss. Was the pick hit of the week featured by each of the diskjockeys on the station?

Mr. SIMPSON. Yes, sir. Each one had his own pick hit of the week, sir.

Mr. Moss. Then you were permitted to pick one recording other than those listed on the schedule sent down from Boston?

Mr. SIMPSON. Yes, sir.

Mr. Moss. And was this a substitute for the gold platter which was aired each week in Boston?

Mr. SIMPSON. I think so, sir. I believe that was the case.

Mr. Moss. When you were first hired, were you instructed that a weekly or a daily schedule, would be supplied to you and that you were to play only the recordings on that schedule?

Mr. SIMPSON. Yes, sir.

Mr. Moss. Now, there was no change in this policy all the time you were there? The entire program, the specific programming, was done on instructions from Boston?

Mr. SIMPSON. As far as I know, yes, sir.

Mr. Moss. Excepting for this hit of the week.

Mr. SIMPSON. Yes, sir.

Mr. Moss. How did you select that?

Mr. SIMPSON. I don't know. I don't know how the——

Mr. Moss. How do you select it?

Mr. SIMPSON. I didn't select one, sir.

Mr. Moss. I thought you said each.

Mr. SIMPSON. I said except myself. I never did, but the other diskjockeys did. They picked up a particular record each week.

Mr. Moss. What did you do?

Mr. SIMPSON. I said before——

Mr. Moss. You did what?

Mr. SIMPSON. I said before I never selected any record; I never singled out any record for play; but the other disk jockeys did select a particular record for their pick hit of the week.

Mr. Moss. You never represented on your program that there was a pick hit of the week?

Mr. SIMPSON. No, sir.

Mr. Moss. Some of the others did?

Mr. SIMPSON. Yes, sir.

Mr. Moss. Entirely a matter of their own choice as to which recording that would be?

Mr. SIMPSON. Yes, sir.

Mr. Moss. Now, the policy of the management of WPGC was to disregard completely the indicated preference of their local listening audience in programing recordings?

Mr. SIMPSON. That would seem to be the indication, sir.

Mr. Moss. Did you have requests for the playing of recordings which you could not comply with? Did you ever have any fan mail?

Mr. SIMPSON. Quite a bit of fan mail came in, sir.

Mr. Moss. Did they ever ask you to play a record in any of these letters?

Mr. SIMPSON. Occasionally.

Mr. Moss. You could not accommodate those requests?

Mr. SIMPSON. Yes, sir.

Mr. Moss. Well, could you or could you not?

Mr. SIMPSON. Well, I don't think that we ever did.

Mr. Moss. Did you ever?

Mr. SIMPSON. I don't believe we ever did, sir.

Mr. Moss. If you had, would it have been a violation of the policy?

Mr. SIMPSON. I think it would have been, sir, yes.

Mr. Moss. Would it have been a violation of the policy as given to you when you were first employed?

Mr. SIMPSON. Yes, sir.

Mr. Moss. Those are all my questions, Mr. Chairman.

The CHAIRMAN. Mr. Springer.

Mr. SPRINGER. How long have you been a diskjockey?

Mr. SIMPSON. Approximately 4 years, sir.

Mr. SPRINGER. And where was your first place of employment?

Mr. SIMPSON. WJMA, Orange, Va.

Mr. SPRINGER. And where was your last place of employment?

Mr. SIMPSON. Well, I was fired yesterday at WPGC.

Mr. SPRINGER. And where is WPGC?

Mr. SIMPSON. That is the station we are discussing, which is in Morningside, Md.

Mr. SPRINGER. Morningside, Md. Would you care to tell the subcommittee why you were fired?

Mr. SIMPSON. Well, sir, I broke a clasp on my dentures and I could not talk, obviously, and so I called up and they said, "Well, if you cannot come in, you are fired." So obviously I couldn't go on the air without a front plate, without my bridge, so I called up and I said I have to be off today and they said just don't bother to ever come in ever.

Mr. SPRINGER. How long have you worked there?

Mr. SIMPSON. I have been there since July of last year, sir.

Mr. SPRINGER. Did the subcommittee know about you before today?

Mr. SIMPSON. No, sir, I don't believe so.

Mr. SPRINGER. How were you first attracted to this subcommittee; or how did you arrive in the witness chair? That is what I was trying to find out.

Mr. SIMPSON. I was here today and I talked with a member of the subcommittee, I believe, who was in the office outside.

Mr. SPRINGER. In other words, today is the first time that you have had any contact with the subcommittee; is that correct?

Mr. SIMPSON. Yes, sir.

Mr. SPRINGER. Do you feel that the testimony you are rendering is by virtue of the fact that you were fired yesterday?

Mr. SIMPSON. Well, no; I had planned to come to the subcommittee before, before today.

Mr. SPRINGER. How long ago did you make that resolve?

Mr. SIMPSON. I had decided several months ago, 2 months ago, to leave WPGC because of what I felt was misleading advertising, and so that was a decision I made about 2 months ago.

Mr. SPRINGER. And when were you going to terminate your employment with this station?

Mr. SIMPSON. I had planned, I had been planning for the past month to give notice.

Mr. SPRINGER. But when your dentures broke, that was the first opportunity you had?

Mr. SIMPSON. It worked the other way when that happened. [Laughter.]

Mr. SPRINGER. There is nothing vindictive in your testimony and it is not in any way out of revenge against the station that you appear here today?

Mr. SIMPSON. I told the truth, sir.

Mr. SPRINGER. I have not said that you have not told the truth. In fact, I am inclined to believe that you are. My question is a little bit different than that.

Would you read it, Mr. Reporter.

(Pending question read.)

Mr. SIMPSON. No, sir.

Mr. SPRINGER. You are positive of that?

Mr. SIMPSON. Well, sir, I can't see—

Mr. SPRINGER. Pardon me. I did not hear you.

Mr. SIMPSON. I don't understand what difference the motivation is. Just so long as you are getting the complete honest report.

Mr. SPRINGER. I think that is true. But what I was trying to find out is whether or not you were motivated here by the fact that you had been fired by the station. That is the purpose of my question.

Mr. SIMPSON. I think that had something to do with it, to some extent.

Mr. SPRINGER. That is all.

Mr. SIMPSON. Thank you.

The CHAIRMAN. Just a minute.

Mr. Devine.

Mr. DEVINE. No questions.

The CHAIRMAN. But the fact does remain that you know that the format for these records that were to be played over the station was sent down from the station in Boston?

Mr. SIMPSON. Yes, sir.

The CHAIRMAN. Do you know whether the same thing is true of the other station that Mr. Richmond owns in Nevada?

Mr. SIMPSON. I don't know on that, sir.

The CHAIRMAN. You do not know.

Well, thank you very much for your appearance here, and I expect you had better try to go to get your dentures fixed.

Mr. SIMPSON. Thank you.

The CHAIRMAN. I would like to ask the subcommittee to meet with me in the back office in the morning at 10 o'clock. These doors will be opened so those who come here for the public hearing may have a place to sit down.

I would like to ask Mr. Smith, Edward F. Smith, that is, and Mr. Carter, if they will meet with us in the morning at 10 o'clock in the back room.

The committee will adjourn until 10 o'clock tomorrow morning, as has been announced. I would like to ask the cooperation of those who are here now, to let us have this room, because it is to be used for another prominent and important meeting. The committee is adjourned.

(Whereupon, at 4:15 p.m., the hearing was adjourned, to reconvene at 10 a.m., Wednesday, February 17, 1960, in executive session.)

RESPONSIBILITIES OF BROADCASTING LICENSEES AND STATION PERSONNEL

WEDNESDAY, FEBRUARY 17, 1960

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON LEGISLATIVE OVERSIGHT
OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.
EXECUTIVE SESSION

(Released by the Subcommittee, February 17, 1960)

The special subcommittee met, pursuant to recess, at 11 a.m., in room 1334, New House Office Building, Hon. Oren Harris (chairman of the special subcommittee) presiding.

Present: Representatives Harris, Mack, Flynt, Moss, Bennett, Springer, Derounian, and Devine.

Also present: Robert W. Lishman, counsel; Beverly M. Coleman, principal attorney; Oliver Eastland, attorney; James P. Kelly, investigator; Herman Clay Beasley, chief clerk; and Jack Marshall Stark, minority counsel.

The CHAIRMAN. Mr. Carter, the subcommittee decided to proceed with your testimony at this time, instead of going into the public committee room.

Mr. CARTER. Thank you, sir.

The CHAIRMAN. Mr. Smith, you indicated that you did not want to be here?

Mr. SMITH. Definitely. No; I do not, sir.

The CHAIRMAN. That is your decision.

Mr. SMITH. So he can tell the whole story to you gentlemen.

The CHAIRMAN. Let the record show it is the decision of Mr. Smith.

Mr. FLYNT. He may stay if he desires.

The CHAIRMAN. It is his decision that he not remain during the testimony of Mr. Carter.

Mr. SMITH. Thank you.

The CHAIRMAN. You are Mr. Harry Carter?

Mr. CARTER. Yes, sir.

The CHAIRMAN. Where do you live, Mr. Carter?

Mr. CARTER. I live at 108 Stanley Road, Waban, Mass.

The CHAIRMAN. What is your business or profession?

Mr. CARTER. I am president of Music Suppliers, Inc.

The CHAIRMAN. Will you be sworn.

Do you solemnly swear the testimony you give to this subcommittee to be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. CARTER. I do.

TESTIMONY OF HARRY CARTER

The CHAIRMAN. You may be seated and I think, Mr. Lishman, you may proceed.

Mr. LISHMAN. Mr. Carter, in order that you will know what questions we are going to ask, I will indicate first and second and so on.

First, we are going to ask you questions concerning your stock interest in Music Suppliers, Inc., and your interest in Music Distributors. Then we are going to ask you concerning your participation in the Verve loans which Mr. Dinerstein testified yesterday totaled some \$73,750.

Then we are going to ask you some questions pertaining to a certain contract made between Music Suppliers and station WORL, whereby, according to the terms of the contract, Music Suppliers agreed to pay \$75 a week for a substantial period to that station. In return for this, the station would air records distributed by Music Suppliers and, more specifically, certain records of Verve.

Is that clear?

Mr. CARTER. Yes, sir.

Mr. LISHMAN. Then following that, we will question you concerning your tie-in with Mr. Samuel H. Clark by means of stock options and other agreements.

Mr. CARTER. Mr. Lishman, is it all right if I smoke here?

Mr. LISHMAN. Yes, sir. I am not the chairman.

Mr. MACK (presiding). You may, certainly.

Mr. CARTER. Thank you.

Mr. LISHMAN. What is your present stock interest in Music Suppliers, Inc.?

Mr. CARTER. I own 75 percent, sir.

Mr. LISHMAN. What is your position in that company?

Mr. CARTER. President and treasurer.

Mr. LISHMAN. Who owns the remaining 25 percent interest?

Mr. CARTER. Mr. Gordon Dinerstein.

Mr. LISHMAN. Does any other person have an indirect or beneficial interest in the 75 percent of the stock owned by you?

Mr. CARTER. No, sir.

Mr. LISHMAN. Do you know whether anyone has any indirect or beneficial interest in the 25 percent of the stock owned by Mr. Dinerstein?

Mr. CARTER. I am sure there is nobody who has any interest in Mr. Dinerstein's stock.

Mr. LISHMAN. Is the outstanding capital stock of Music Suppliers 50 shares of class A and 50 shares of class B?

Mr. CARTER. I believe it is 100 shares of class A and 100 shares of class B.

Mr. LISHMAN. Of Music Suppliers?

Mr. CARTER. Of Music Suppliers.

Mr. LISHMAN. So that you own 75 percent of that and 25 percent is owned by Mr. Dinerstein?

Mr. CARTER. That is the way it would break down, sir; yes, sir.

Mr. LISHMAN. Now, do you also own a part interest in Dumont Record Distributing Corp.?

Mr. CARTER. I do, based upon an investment I made almost 2 years ago.

Mr. LISHMAN. How much was that investment?

Mr. CARTER. \$5,607.38, sir.

Mr. LISHMAN. What position do you hold in Dumont Record Distributing Corp.?

Mr. CARTER. I am treasurer.

Mr. LISHMAN. And you own 50 percent of the outstanding stock in that company?

Mr. CARTER. Yes, sir.

Mr. LISHMAN. Before going on, my attention has been called to some photostatic copies of stock certificates issued by Music Suppliers, Inc., which indicate that the capitalization is 50 shares of class A common stock, no par, and 50 shares class B common stock, no par. Yet you have testified that it is 100 shares of each of these classes.

Would you like to look at this photostatic copy?

Mr. CARTER. Mr. Lishman, I think I said that I wasn't quite sure. I thought it was 100, but if you have them there.

Mr. LISHMAN. I would like to be absolutely certain on this. If you would look at this photostatic copy, I would like you first to state whether it bears your signature as treasurer and president of Music Suppliers, Inc., and ask you whether that correctly states the capitalization of Music Suppliers.

On the front sheet you will notice, right below the eagle, the paragraph which states the capitalization of the company.

Mr. CARTER. Yes, sir.

Mr. LISHMAN. First of all, I will ask you whether the document you have in front of you is a true and correct photostatic copy of a stock certificate of Music Suppliers, Inc.

Mr. CARTER. They are, sir.

Mr. LISHMAN. And the photostatic copies of the signatures on there are your signatures?

Mr. CARTER. Yes, sir.

Mr. LISHMAN. As president and treasurer?

Mr. CARTER. Yes, sir.

Mr. LISHMAN. Now, with that document in front of you, will you please state what the capitalization of the company is?

Mr. CARTER. Fifty shares of class A common stock, no par, and 50 shares of class B common stock, no par.

Mr. LISHMAN. Yes.

Mr. Carter, is it a fact that you are the record owner of 37½ shares of class A stock?

Mr. CARTER. Yes, sir.

Mr. LISHMAN. And you are also the record owner of 37½ shares of class B stock?

Mr. CARTER. Yes.

Mr. LISHMAN. It is a fact that the remaining 12½ shares of class A and 12½ shares of class B are owned by Gordon J. Dinerstein?

Mr. CARTER. Yes, sir, that is true.

Mr. LISHMAN. Now, Music Suppliers, Inc., is engaged in the distribution of records in the New England area, is that correct?

Mr. CARTER. That is correct, with the exception of Connecticut and the four western counties of Massachusetts.

Mr. LISHMAN. We will come back to the manner in which you acquired your stock ownership. We will now go to the loans made to Verve by you and Mr. Clark in some instances, and in others, by Mr. Dinerstein.

Do you recall that a loan was made to Verve Records in October 1956 in the amount of \$15,000?

Mr. CARTER. Yes, sir, I do.

Mr. LISHMAN. Do you recall that that loan was in the name of Music Suppliers, Inc.?

Mr. CARTER. Yes, sir, it was.

Mr. LISHMAN. Do you recall that that loan was not evidenced by any note?

Mr. CARTER. There was no note, sir.

Mr. LISHMAN. Or by any written agreement?

Mr. CARTER. No, sir.

Mr. LISHMAN. Do you recall that that loan was arranged pursuant to a conversation that Mr. Dinerstein had in Las Vegas with Mr. Norman Granz?

Mr. CARTER. Yes, sir.

Mr. LISHMAN. And is it a fact that \$15,000 for this loan were contributed to by you, Mr. Samuel Clark, and Mr. Dinerstein?

Mr. CARTER. That is correct, sir.

Mr. LISHMAN. And did you contribute \$5,000?

Mr. CARTER. Yes, I did, sir.

Mr. LISHMAN. Did Mr. Clark contribute \$7,000?

Mr. CARTER. That is correct.

Mr. LISHMAN. And Mr. Dinerstein contributed \$3,000?

Mr. CARTER. Yes.

Mr. LISHMAN. What was the rate of discount on that loan?

Mr. CARTER. Ten-percent discount on merchandise.

Mr. LISHMAN. Well, was that 10-percent discount on merchandise in addition to the regular wholesale discount that Music Suppliers would normally receive?

Mr. CARTER. Yes, it was, sir.

Mr. LISHMAN. Do you recall that a second loan was made to Verve in the name of Music Suppliers, Inc., in the amount of \$25,000, this loan being made in January of 1958?

Mr. CARTER. That is correct, sir.

Mr. LISHMAN. Is it a fact that with respect to this loan you supplied approximately one-third?

Mr. CARTER. Yes, sir.

Mr. LISHMAN. Mr. Dinerstein supplied one-third?

Mr. CARTER. Yes, sir.

Mr. LISHMAN. Approximately.

Mr. CARTER. Yes, sir.

Mr. LISHMAN. And the balance of \$8,000 was supplied by Mr. Samuel Clark?

Mr. CARTER. Yes, sir.

Mr. LISHMAN. Was this loan evidenced by a note?

Mr. CARTER. No, it was not, sir.

Mr. LISHMAN. Or any written agreement?

Mr. CARTER. No, sir.

Mr. LISHMAN. Did you arrange this loan?

Mr. CARTER. No, sir. All these loans, and all the dealings that have to do with the Verve loan situation, were handled by Mr. Dinerstein.

Mr. LISHMAN. Did he consult with you?

Mr. CARTER. Yes, he acquainted me of the fact and asked me whether or not I would be interested in participating on a personal basis, and I said, yes, that I would.

Mr. LISHMAN. What interest rate was charged on this \$25,000 loan?

Mr. CARTER. Twenty-five percent discount on merchandise.

Mr. LISHMAN. And again that was 25 percent in addition to your usual wholesale discount?

Mr. CARTER. That is correct, sir.

Mr. LISHMAN. Do you recall a further loan made to Verve Records in the name of Music Suppliers in the amount of \$18,750?

Mr. CARTER. I do, sir.

Mr. LISHMAN. And that loan was made in March of 1958?

Mr. CARTER. Yes, sir.

Mr. LISHMAN. Did you put up one-half of the amount of money in this loan?

Mr. CARTER. No. In two of these loans, Mr. Dinerstein arranged for financing personally through his bank. It was understood that we would both share in the proceeds.

Mr. LISHMAN. Let me get it clear about this \$18,750 loan, the third one.

Yesterday, Mr. Dinerstein testified that the principal of that loan was contributed on a 50-50 basis by you and by him; is that correct?

Mr. CARTER. Mr. Lishman, in trying to recall this and to get these facts absolutely straight so that they could be understood, I think, I am not positively sure, that going back to the second loan, my capital in there was \$8,333.33, which I left in the company funds, and this, then, was applied to the third loan.

In other words, I had no need of it as of that moment. Perhaps he, in thinking that way, knew that that \$8,000 that the company owed me on the capital of the second loan was going to be applied to the third.

May I say something, please, Mr. Lishman, here?

Mr. LISHMAN. Yes, sir.

Mr. CARTER. If it would help this subcommittee, we would be more than happy to give you a factual breakdown of dates and times, and so forth, of these transactions when we have access to our books. We would like to show you exactly how this took place and what happened in order to get this money through the company which was a conduit; and how the company, in turn, received the merchandise, sold it, made their normal markup. We, because of the loans advanced to the company, received the balance or the interest.

Mr. LISHMAN. I notice in the statement you just made you used the phrase "when we have access to our records." Where are your records now?

Mr. CARTER. We have some here, but I don't think they are complete enough in order to do this. We would have to do it when we get back to Boston. I admit it does sound confusing.

Mr. LISHMAN. Now, was there a fourth loan made to Verve?

Mr. CARTER. There was a fourth loan, sir, in October 1958.

Mr. LISHMAN. How much was that loan?

Mr. CARTER. \$15,000.

Mr. LISHMAN. Who supplied the money for that loan?

Mr. CARTER. This was a personal check. I believe it was sent directly to Verve by Gordon Dinerstein for money he borrowed from the bank on a 90-day note.

Mr. LISHMAN. Did you contribute any of the funds?

Mr. CARTER. I did not, sir.

Mr. LISHMAN. What was the rate of interest on that loan?

Mr. CARTER. That was 20 percent.

Mr. LISHMAN. Twenty percent?

Mr. CARTER. Yes, sir.

Mr. LISHMAN. And was that 20 percent in the form of a further discount below the wholesale, the usual wholesale price?

Mr. CARTER. Yes, sir.

Mr. LISHMAN. How was the principal and so-called interest on these loans paid?

Mr. CARTER. It was paid to us in the form of a salary.

Mr. LISHMAN. In the form of a salary?

Mr. CARTER. Yes, sir.

Mr. LISHMAN. The principal of the loan?

Mr. CARTER. The principal of the loan, no, was not. The principal of the loan was paid to us directly from Music Suppliers.

Mr. LISHMAN. The principal of the loan was paid to you directly by Music Suppliers?

Mr. CARTER. Yes, sir. In other words, when the merchandise was sold, all that money remained in the company. When there was enough to take, we took back our capital or our principal.

Mr. LISHMAN. With respect to the interest, you received that in the form of salary?

Mr. CARTER. Yes, sir.

Mr. LISHMAN. And was this salary in addition to the amount of the salary to which you were limited under your contract with Mr. Sam Clark?

Mr. CARTER. Yes, it was; except that Mr. Clark agreed to it.

Mr. LISHMAN. In other words, as I understand it, you had a contract with Mr. Sam Clark which originally limited your salary to \$26,000 a year; is that correct?

Mr. CARTER. That is correct, sir.

Mr. LISHMAN. It was later increased to what figure?

Mr. CARTER. \$28,500.

Mr. LISHMAN. And this amount of interest, so-called, that you received in the form of salary from Music Suppliers, Inc., was in addition either to the \$26,000 or the increased figure of \$28,000?

Mr. CARTER. That is correct, sir.

Mr. LISHMAN. Under your agreement with Mr. Clark?

Mr. CARTER. That is correct.

Mr. LISHMAN. Did Mr. Clark enter into a written agreement with you about this matter?

Mr. CARTER. I think that Mr. Smith, our company attorney, would have this in writing.

Mr. LISHMAN. Well, I was wondering whether this was an oral variation of your written contract or was there a formal amendment to your written contract with Mr. Clark?

Mr. CARTER. I believe, sir, that in every instance where I had asked for and received a raise, there was a formal notification sent to Mr. Clark and assented to.

Mr. LISHMAN. You do not have a copy of that with you?

Mr. CARTER. I do not, sir.

Mr. LISHMAN. Now, coming to Mr. Clark, was the amount of so-called interest that he received from Music Suppliers by check?

Mr. CARTER. Yes, it was, sir.

Mr. LISHMAN. And to what was that charged?

Mr. CARTER. I have a note here regarding a \$2,000 check sent to Sam Clark from Music Suppliers, and a check sent to Shaw-Ross Co. on Mr. Clark's request in the amount of \$777.77, making a total of \$2,777.77 paid to Mr. Clark.

Mr. LISHMAN. To what was that charged? Was it charged to salary?

Mr. CARTER. No, sir; it was not.

Mr. LISHMAN. What was it charged to on the books of Music Suppliers?

Mr. CARTER. I am assuming it might be charged to loans payable; I am not sure.

Mr. LISHMAN. Well, had Mr. Clark made a loan to Music Suppliers?

Mr. CARTER. He had in this instance.

Mr. MOSS. He made a loan for the amount loaned Verve?

Mr. CARTER. \$8,000.

Mr. MOSS. \$8,000.

Mr. CARTER. Yes, sir.

Mr. MOSS. But you would be paying him back \$10,777.77?

Mr. CARTER. Right. We actually paid Mr. Clark the \$8,000 which was the principal, before we paid him the interest on that.

Mr. MOSS. Then, did you charge this as interest paid?

Mr. CARTER. Pardon me, sir?

Mr. MOSS. Did you handle this as interest paid?

Mr. CARTER. I may be using the word "interest"—

Mr. MOSS. How can you use it on loans payable unless you set up an account against the loans for the interest?

Mr. CARTER. Yes, sir; it possibly was done in just that manner. It was a loans payable, I am not too sure.

Mr. MOSS. Are there usury statutes in Massachusetts?

Mr. CARTER. I am afraid I don't know, sir.

Mr. LISHMAN. Mr. Carter, in each of these instances where you received this extra discount on the Verve loan, how long did that extra discount continue?

Mr. CARTER. Well, we could not touch any of this until the merchandise was sold. I can't give you an exact date when that took place. But in order for us to get our money back, including principal and so-called discount, we had to wait until that merchandise was sold.

Mr. LISHMAN. Did you make any special efforts to insure that the Verve Records would be moved fairly rapidly?

Mr. CARTER. Over and above the normal course of our business, we did not, sir. In order to show you the activity of the Verve account with us and the amount of records we sell for Verve, Mr. Dinerstein thinks that approximately \$42,000 was due Verve February 10 for cur-

rent purchases; \$42,000 translated into records would be, roughly 20,000 records, 20,000 LP records.

Mr. MOSS. You sell a lot of Verve records.

Mr. CARTER. We do sell a lot of Verve recordings.

Mr. MOSS. You have a heavy turnover?

Mr. CARTER. Yes, we do.

Mr. MOSS. This would be current billings. What are you billed on a current basis?

Mr. CARTER. We are billed 2-10 e.o.m.

Mr. MOSS. So you are running about \$30,000 to \$40,000 a month?

Mr. CARTER. This may be a little heavier because of the Christmas season. It does usually run a little heavier for that reason. We have been currently engaged in sales promotions at the dealer levels, so that the Verve as well as other accounts payable would show a little heavier because we are selling more merchandise.

Mr. LISHMAN. Mr. Carter, I note from your testimony that Mr. Sam Clark, for his \$8,000 loan, received back \$2,000 interest; is that correct?

Mr. CARTER. \$2,777.77.

Mr. LISHMAN. So that Mr. Clark received in excess of 33 $\frac{1}{3}$ percent interest on his \$8,000 loan: is that correct?

Mr. CARTER. I believe that Mr. Dinerstein yesterday pointed out that on these loans where the merchandise was sent to us along with the regular purchase we made, that the merchandise dollar value would then be more than the amount of the loan. Let me see if I can give you a more concrete example. We have not figured this out with pencil—we had at one time. If we actually bought \$10,000 worth of records, figuring the loan was \$10,000, we in turn would have received not 10 percent but a figure in excess of 10 percent. We would then have received something like \$11,000-some-odd worth of records, and this same thing would apply to all these loans.

Mr. MOSS. You received about \$33,000 worth of records on the \$25,000 loan?

Mr. CARTER. Approximately; yes, sir.

Mr. LISHMAN. Mr. Carter, why is it that Mr. Clark got in excess of 33 $\frac{1}{3}$ percent interest on his loan?

Mr. CARTER. Well, I imagine the \$8,000 was a round figure, and it satisfied both Mr. Dinerstein and myself as to the amount that should be put in there. I certainly would have made that difference up if we thought it was necessary. Mr. Clark and I have been—well, there is nobody closer to me than Sam Clark other than my immediate family.

Mr. LISHMAN. Was there an indication that Mr. Clark would have refused to go into this deal because it was so risky, unless he got extra compensation for his money?

Mr. CARTER. No, sir; it was not.

Mr. LISHMAN. Was it agreed in advance with Mr. Clark that he would get 33 $\frac{1}{3}$ percent interest?

Mr. MOSS. Would you yield there? I do not want the record to show this is 33 $\frac{1}{3}$. I contend at the moment that it is 100 percent. The yield may have been only that much, but the rate, the effective rate, was in excess of 100 percent.

Mr. LISHMAN. I am taking into account that this was translated into dollars so far as Mr. Clark was concerned. Mr. Carter signed the checks involved and I just want to find out how much in dollars. I am not touching on the 100-percent situation—

Mr. Moss. No; I am just talking about rate of interest because the effective rate was in excess of 100 percent.

Mr. LISHMAN. Let us call it the effective rate on this portion.

Mr. Moss. The yield on this portion.

Mr. LISHMAN. The yield on this portion was 33 $\frac{1}{3}$ percent to Mr. Clark.

Did you enter into an agreement in advance with Mr. Clark telling him that would be his yield on the \$8,000 he would put up?

Mr. CARTER. The only thing which we had talked to Mr. Clark about, and it was purely conversation—as a matter of fact, Mr. Dinerstein had this conversation with him—was that we would invest the \$25,000 on a loan basis to Verve, and in turn get 25 percent discount in additional merchandise. What that figure would be offhand, we would have to stop and figure out.

But for purposes of record, the \$8,000 and not the \$8,333.33 received satisfied us at that time.

Mr. LISHMAN. Could you translate each loan in terms of dollars, just what interest did you receive on the money that was loaned?

Mr. CARTER. Well, on the first one, if I can use a pencil here for a moment, we would add 10 percent to \$15,000, and receive \$16,500 worth of merchandise.

Mr. LISHMAN. What would you do with the \$25,000 loan?

Mr. CARTER. On the same basis, sir, 25 percent of \$25,000—may we use \$6,000 as a rough figure for the moment?

Mr. Moss. Your figure would run more than that because \$25,000 is your loan, and you are to get an additional 25 percent. The \$25,000 then represents 75 percent of the total, so you are going to get a return of about \$8,000, not \$6,000. I think I am correct.

Mr. CARTER. I am not following your figures, sir. The way I would figure it out would be this way: \$6,250 in additional merchandise, making a total shipped to us in merchandise of \$31,250.

Mr. Moss. You are going to get an additional 25 percent on the billings; on \$25,000 of billings?

Mr. CARTER. Right.

Mr. Moss. So the \$25,000 in billings represents 75 percent of the total, because you are going to increase it on your rate of discount. Your discount there, as I figure it, the normal pricing practice would give you \$33,000, more or less, worth of records. I do not know which system you used. You can use either, but the more normal system in markup on merchandise is the one I am using.

Mr. CARTER. I think this is the one we used, sir.

Mr. LISHMAN. What was the markup on this merchandise, the normal markup?

Mr. CARTER. We sell to the dealer at a 40-percent discount. We buy a 55-percent discount.

Mr. LISHMAN. And this 25 percent was in addition to the 55-percent normal discount?

Mr. CARTER. Yes, sir.

Mr. MOSS. Was it 25 off list?

Mr. CARTER. 40 percent off list.

Mr. LISHMAN. 40 percent off list.

Mr. MOSS. You buy at 55 percent off list, is that what you indicate, normally?

Mr. CARTER. Normally; yes, sir.

Mr. MOSS. Then were you buying it 90 percent off list?

Mr. CARTER. Sir, I am very much confused with these figures.

Mr. MOSS. I think it is very important.

Mr. CARTER. I am not a good mathematician—

Mr. LISHMAN. From the testimony yesterday I gained the impression that it was 80 percent off list that they got this merchandise for. If that is wrong, we want to be corrected.

Mr. CARTER. I think you are, sir. It doesn't figure that way. It didn't work that way, and if the percentages are actually that way, I myself would have to be—

Mr. LISHMAN. Let us go through this again.

Mr. FLYNT. Just a moment. The impression I got, and I may be entirely wrong about it, was that the first discount was reported to be 55 percent off list.

Mr. LISHMAN. Yes.

Mr. FLYNT. Then there was an additional 25-percent off the adjusted figure arrived at from 55 percent off list; that was the impression I got.

Mr. MOSS. You can figure it three ways; it could come out at 68.7 as the net.

Mr. CARTER. I think this might simplify it somewhat. In this particular instance here, where we got this 25 percent, if we bought four records, we got the next one free, the fifth one. I think this is how it might work out.

Mr. MOSS. Then it would be 80 percent.

Mr. CARTER. If we would break it down into records instead of dollars.

Mr. MOSS. I think you got 80 percent off in your billing.

Mr. FLYNT. In view of the statement that I have just made, that would appear that it would be a straight 80-percent discount rather than the impression that I gained from the testimony yesterday.

Mr. LISHMAN. Mr. Carter, about how many records did you receive from Verve to satisfy the principal and interest, so-called?

Mr. CARTER. It would be, approximately, between 40,000 and 45,000 LP's for this entire 4-loan situation.

Mr. LISHMAN. I did not hear you.

Mr. CARTER. I say it would be an approximation of 40,000 to 45,000 LP's to cover the entire loan situation.

Mr. LISHMAN. What did they retail at?

Mr. CARTER. They retail at \$4.98, sir.

Mr. LISHMAN. In addition to these records, did you get the usual number of Freebies?

Mr. CARTER. No, sir.

Mr. LISHMAN. You did not. Mr. Carter, I have before me a Thermo-Fax copy of what appears to be a contract between Music Suppliers of New England—Was that the corporate name of Music Suppliers, Inc.?

Mr. CARTER. It was Music Suppliers of New England, sir, Incorporated. We had the name changed to Music Suppliers, Inc.

Mr. LISHMAN. I have this Thermo-Fax copy of what purports to be a contract signed by you, arranged by salesman Harold Segal. Do you know Harold Segal?

Mr. CARTER. I do, sir.

Mr. LISHMAN. Who is he?

Mr. CARTER. Harold Segal is now general manager for a small chain of radio stations in the New England area.

Mr. LISHMAN. And in May 1957 was he employed by Music Suppliers of New England?

Mr. CARTER. No, sir. He was employed by a radio station. I believe it was WORL.

Mr. LISHMAN. Had he ever been employed by Music Suppliers?

Mr. CARTER. No, sir.

Mr. LISHMAN. This contract, which is on the letterhead of radio station WORL, is dated May 15, 1957. It appears to provide that commencing May 20, 1957, until January 17, 1959, Music Suppliers of New England, of which you were president, agreed to pay \$75 a week for the 18 record announcements. I would like to show you this Thermo-Fax copy and ask you if this is correct.

Mr. CARTER. Yes, sir; it appears to be correct.

Mr. LISHMAN. Mr. Chairman, I would like to have that contract made part of the record at this point.

Mr. MACK. Without objection, the contract will be included at this point.

(The contract referred to follows:)

C O P Y

STANDARD CONDITIONS

Governing Contracts for Spot Broadcasting, Adopted 1946 by National Association of Broadcasters

1. PAYMENT

- (a). The agency agrees to pay, and the broadcasting station agrees to hold the agency solely liable for payment for the broadcasts covered by this contract, unless expressly otherwise agreed in writing.
- (b). The agency agrees to pay for broadcasts covered by this contract, at the office of the broadcasting station or of its authorized representative, on or before the last day of the month following that in which the broadcasting is done unless otherwise stipulated on the face of this contract; or, when cash discount is allowed but payment date not specified on the face of the contract, on the fifteenth of the month following.
- (c). In all cases date of payment is material and unless otherwise stipulated the postmark date on the envelope properly addressed to the broadcasting station or to its representative shall be considered the date when payment was made.
- (d). Station's invoices for broadcasts covered by this contract shall be in accordance with the station's log and shall so state on each such invoice, and shall be deemed to be correct unless proved otherwise.
- (e). Invoices should be rendered not less than monthly.
- (f). Upon request of the agency, affidavits or certifications of performance are to be furnished by the station to the agency at the time of billing. Unless requested prior to billing, the request for the furnishing of such affidavits or certifications shall not act as a condition precedent to the payment or the time of any payment called for hereunder.
- (g). The station reserves the right to cancel this contract at any time upon default by the agency in the payment of bills, or other material breach on the part of the agency of any of the conditions herein; and upon such cancellation all broadcasting done hereunder and not paid shall become immediately due and payable. In case of delinquency in payment, due in the opinion of the station to impaired credit or if the station believes reasonably that the agency's credit has been impaired, the station shall have the right to change the requirements as to the terms of payment for further broadcasts under this contract as it may see fit, by giving the agency written notice addressed to the agency's last known business address.
- In the event of a cancellation by reason of a material breach by the agency, the agency shall pay to the station, as liquidated damages, a net sum equal to the actual out-of-pocket cost to the station incurred through the cancellation of this contract, together with the amount owing at the earned rate, for broadcasts performed hereunder prior to such cancellation.
- (h). In event of a cancellation by reason of a material breach by station, the station shall pay to the agency, as liquidated damages, a net sum equal to the actual out-of-pocket cost to the agency incurred through cancellation of the contract.

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2. TERMINATION AND RENEWAL

(a). This contract may be terminated by either party by giving the other twenty-eight (28) days' prior written notice; provided that no such notice shall be effective until twenty-eight (28) days after start of broadcasts hereunder. It is provided further that this contract insofar as it covers broadcasts of less than five minutes duration, may be terminated by either party giving the other fourteen (14) days' prior written notice, but no such notice shall be effective until fourteen (14) days' prior after the start of broadcasts hereunder. If agency so terminates this contract, it will pay station at earned rate according to station's rate card on which this contract is based. If station so terminates this contract, agency will then either agree with station on a satisfactory substitute day or time for continuance of broadcasts covered by this contract at the card rates on which this contract is based for such substitute time, or, if no such agreement can be reached, agency will pay station according to the rates specified herein for all broadcasts previously rendered by station, that is, the agency shall have the benefit of the same discounts which the agency would have earned had it been allowed to complete the contract. In the event of termination hereunder, neither party shall be liable to the other party otherwise than as specified in this paragraph, and in paragraph 6 hereof.

(b). The broadcast time (or times) covered by this contract may be renewed by agency provided there is no interruption in the continuity of the broadcasts, by giving the station twenty-eight (28) days' written notice prior to the expiration of this contract or any extension thereof. It is agreed further that this contract, insofar as it covers broadcasts of less than five minutes duration, provided there is no interruption in the continuity of the broadcasts, may be renewed by agency giving the station fourteen (14) days' written notice prior to the expiration of this contract or any extension thereof. Failure to exercise this option to renew within the time and in the manner provided voids all agency's rights to such renewal.

3. INABILITY TO BROADCAST

(a). Should the station, due to public emergency or necessity, legal restrictions, labor disputes, strikes, boycotts, secondary boycotts, Acts of God (whether or not such Acts of God have occurred frequently or habitually or are of a common or seasonal occurrence in the general locality of such broadcasting), or for any other reason, including but not restricted to mechanical breakdowns, beyond the control and without the fault of the station provided that station has taken reasonable precautions against their recurrence, be unable to broadcast any or a part of any of the agency's broadcasts at the time specified, the station shall not be liable to agency except to the extent of allowing in such case: One (1), a pro-rata reduction in the time charges hereunder, or two (2), if any interruption occurs during the commercial announcement portion of any broadcast, a credit to agency in the same proportion to the total station charges which the omitted commercial portion bears to the total commercial portion of the broadcast, it being mutually agreed that station shall credit agency on whichever basis is more favorable to agency. In the event of such omission, station will, upon agency's request, make a suitable courtesy announcement as to such omission. Such omission or interruption shall not affect rates of discount; that is, the agency shall have the

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benefit of the same discount which the agency would have earned had it been allowed to complete the broadcasts omitted.

4. SUBSTITUTION OF PROGRAMS OF PUBLIC IMPORTANCE OR IN THE PUBLIC INTEREST

(a). The station shall have the right to cancel any broadcast or any portion thereof covered by this contract in order to broadcast any program which in its absolute discretion it deems to be of public importance or in the public interest. In any such case the station will notify the agency in advance, if reasonably possible, but, in any case, within a reasonable time after such broadcast, that the agency's broadcast has been cancelled.

(b). In the case of any broadcast cancelled under Paragraph 4 (a) above, the agency and the station will agree on a satisfactory substitute day and time for the broadcast or, if no such agreement can be reached within a reasonable time, the broadcast will be considered as cancelled without affecting the rates, discounts, or rights provided under this contract, except that the agency shall not be required to pay for the cancelled broadcast unless required by Paragraph 4(c).

(c). In the event of a cancellation of a broadcast of five minutes or more, under Paragraph 4(a): If such a broadcast is displaced by any broadcast of public importance or in the public interest, and a substitute time is not agreed upon, as provided in 4(b) above, the station shall pay to the agency only the amount represented by the non-cancellable net cost of live talent, incurred by virtue of, and resulting directly from, such cancellation, but which amount shall not exceed the net time charges (gross less earned time discounts) for the station time involved in the cancellation.

5. TIME RATES

(a). It is agreed that the time rate named in this contract is the lowest rate made by the station for like broadcasts and that if at any time during the life of this contract the station makes a lower rate for like broadcasts, this contract shall be completed at such lower rate from that date.

(b). All time rates shall be published by the station. There shall be no secret rates, rebates or agreements affecting rates. All rates shall be furnished agency if requested in writing so to do.

(c). Except as otherwise agreed to in writing, if this contract is continued, without interruption within the control of the agency beyond the time specified herein, the additional broadcasts shall be considered in part of this contract and the same time rate shall apply until any lower rates, prevailing at the time this contract was made, shall have been earned; and then such lower time rate shall apply to the whole contract. This provision shall not, however, cover a broadcast later than one year from the date of the first broadcast.

(d). In the event of revision of station rates or discounts, any continuous broadcasts under this contract may be extended at the rates and discounts herein shown without penalty of short rate or loss of discounts on previous broadcasts hereunder for a period of not more than fifty-two (52) weeks from the effective date of such revision.

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(e). In the event the agency contracts with the station for additional broadcast time, the time rates and discounts shown on the rate card on which this contract is based shall apply to such additional time for a period of fifty-two (52) weeks from the effective date of any revision of station time rates or discounts.

(f). All broadcasts placed with station for the agency for consecutive broadcasting within one year from the date of the first broadcast hereunder shall be combined for the purpose of calculating the total amount of frequency discounts earned, provided, however, that announcements cannot be so combined with five (5) minute or longer programs.

6. BROADCASTS

(a). The contract for station time includes the services of the technical staff and of a regular staff announcer. Other talent and service charges if any, are covered in this contract and such charges are subject to change by the agency with the consent of the station.

(b). Broadcasts prepared by the agency are subject to the approval of the station both as to artists and to broadcast content.

(c). If the station has not received material for any broadcast at least 96 hours in advance of broadcast time, the station shall notify the agency by collect telegram. Should the station fail to receive material for such broadcast at least 72 hours in advance of broadcast time, the station shall have the right to produce a substitute broadcast, making its regular charges for time and a reasonable charge for talent used, and, unless otherwise instructed by agency, announcing the name, address and business of the advertiser.

(d). Except as otherwise hereinafter expressly provided, the agency will hold and save the station harmless against all liability for libel, slander, illegal competition or trade practice, infringement of trade marks, trade names or program titles, violation of rights of privacy and infringement of copy-rights and proprietary rights, resulting from the broadcasting of the broadcasts herein provided in the form furnished by the agency. The station agrees, however, to hold and save the agency harmless against all such liability with respect to music on station-built broadcasts. Station will hold and save agency harmless against all such liability with respect to music on agency-built broadcast, provided such music has been cleared and approved for broadcasting by a licensor designated by the station. Agency will hold and save station harmless against all such liability with respect to music on agency-built broadcasts if such music has not been cleared and approved for broadcasting by a licensor designated by the station.

(e). The provisions of Paragraph 6(d) shall survive any cancellation or termination of this contract.

7. GENERAL

(a). This contract is subject to the terms of licenses held by the station and is subject also to all Federal, State and Municipal laws and regulations now in force, or which may be enacted in the future, including the Rules and Regulations of the Federal Communications Commission made in pursuance of its quasi-legislative

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powers and its decisions and actions and orders when acting in its quasi-judicial capacity.

(b). This contract, including the rights under it, may not be assigned or transferred without first obtaining the consent of the station in writing; nor may the station be required to broadcast hereunder for the benefit of any other agency than the one named on the face of the contract.

(c). The station shall not be required to broadcast hereunder for any other products than the ones named in the contract, without first obtaining the approval of the station so to do in writing.

(d). In dealing with agencies, the station shall follow a uniform policy to avoid discrimination.

(e). All requests by the agency for the station to receive and handle mail, cables, telegrams or telephone calls, in connection with the broadcasts under this contract, must have the prior approval of the station and, if approved, the said communications will be received and handled at the sole risk of the agency, and the agency shall reimburse the station for all the expense incurred by it in connection with the handling of such matters.

(f). Any broadcast material or any other material, information or property of whatever nature or kind, to be received and handled by the station, must have the prior approval of the station and, if approved, will be received and handled at the sole risk of the agency, and the agency shall reimburse the station for all of the expense incurred by it in connection with the handling of such matters.

(g). The failure of the station or of the agency to enforce any of the provisions herein listed with respect to a breach thereof in any one instance shall not be construed as a general relinquishment or waiver under this agreement and the same shall nevertheless be and remain in full force and effect.

(h). The agency agrees that the station may deduct from any period of five minutes or longer not more than thirty seconds for station-break purposes.

Mr. LISHMAN. Did you observe, Mr. Carter, that attached to the back of that Thermo-Fax is the letter whereby station WORL canceled this contract?

Mr. CARTER. No, I didn't, Mr. Lishman, I am sorry.

Mr. LISHMAN. Will you please look at that and see, also, if that is a correct copy. The letter is written by you.

Mr. CARTER. A letter written by me, sir; yes, sir.

Mr. LISHMAN. I think I would like to have that letter read by you into the record, Mr. Carter.

Mr. CARTER. This is a letter from Music Suppliers, Inc., 263-265 Huntington Avenue, Boston, Mass., dated December 30, 1958, addressed to Mr. Arthur Haley, radio station WORL, 705 Beacon Street, Boston, Mass.:

DEAR ARTHUR: It is with a great deal of reluctance that I write this letter but at this time I am forced to ask you to cancel our "Hit of the Week" sponsorship.

At this time of the year, and especially when all record companies begin to formulate new plans promotionwise, the availability of advertising money is curtailed and most of my sources have so advised me. Perhaps at a later date, if it is desirable to you, we can continue.

Would 2 weeks' notice be sufficient? In other words, Saturday, January 17, would be the final day of such programing.

I would like to restate my thanks and appreciation to you for your help and consideration. If we can be of any service to you, no matter what, please don't hesitate to call me.

My best to you and yours for a greater 1959.

Sincerely,

HARRY CARTER.

Incidentally, Mr. Lishman, I don't recognize the signature. I suppose it is because of the Thermo-Fax; is that correct?

Mr. KEELAN. Yes, sir, that is correct.

Mr. LISHMAN. But you wrote that letter?

Mr. CARTER. Yes, sir; that is correct.

Mr. LISHMAN. For what purpose did you enter into this contract with WORL?

Mr. CARTER. We thought it would be a good idea, and so did WORL, after discussing it with them, to have a so-called hit record of the week. When the details were worked out, and, incidentally, the record was not anything we desired to have exposed, the record was submitted to WORL for their approval. Therefore, there were various records submitted to them. There were at various times some rejected completely for various reasons, and they agreed to accept this contract for which we paid \$75 a week for 18 announcements. I believe, they specifically stated that it was the Music Suppliers hit record of the week.

Mr. LISHMAN. Did they announce they were being paid \$75 a week for picking this or airing this record as the hit record of the week?

Mr. CARTER. To my knowledge, they did not, sir. They just announced the week that it was Music Suppliers hit record of the week.

Mr. LISHMAN. Now, I notice in this second paragraph of your letter to station WORL that you speak of the—

the availability of advertising money is curtailed and most of my sources have so advised me.

What sources so advised you?

Mr. CARTER. Well, this is a pretty broad statement, but at various times some of the manufacturers allowed us promotion money to be used the best way we saw fit. We used some of it in this manner. At times they would also advise us that they would have to stop, because of lack of availability of money.

In other words, I am referring, sir, to some of our manufacturers.

Mr. MOSS. Mr. Chairman, may I ask a question?

Was the promotion money accumulated on the basis of a percentage of billings by the manufacturer?

Mr. CARTER. Not necessarily, sir.

Mr. MOSS. Was there not some basic amount on which you could depend based on your billings?

Mr. CARTER. Not based on billings, sir, no, sir.

Mr. LISHMAN. Mr. Carter—

Mr. CARTER. Yes, sir.

Mr. LISHMAN. I am going to read you a list of payments WORL made to Music Suppliers in connection with this hit record of the week and ask you if this is correct. On December 10, 1958 WORL paid Music Suppliers \$300.

Mr. CARTER. I think that is the other way around, sir.

Mr. LISHMAN. Music Suppliers paid WORL \$300.

Mr. CARTER. Yes, sir.

Mr. LISHMAN. On November 10, 1958 Music Suppliers paid WORL \$375.

Mr. CARTER. Yes, sir.

Mr. LISHMAN. On October 10, 1958, Music Suppliers paid \$300?

Mr. CARTER. Yes, sir.

Mr. LISHMAN. On September 10, 1958 another \$300 was paid to WORL?

Mr. CARTER. Yes, sir.

Mr. LISHMAN. On August 11, 1958, \$375 was paid?

Mr. CARTER. Yes, sir.

Mr. LISHMAN. On July 10, 1958, \$300 was paid?

Mr. CARTER. Yes, sir.

Mr. LISHMAN. On June 10, 1958, \$375 was paid?

Mr. CARTER. Yes.

Mr. LISHMAN. On May 12, 1958, another \$300 was paid?

Mr. CARTER. Yes, sir.

Mr. LISHMAN. On April 10, 1958, another \$300 was paid?

Mr. CARTER. Yes, sir.

Mr. LISHMAN. On March 10, 1958, another \$300 was paid?

Mr. CARTER. Yes, sir.

Mr. LISHMAN. On February 10, 1958, \$375 was paid?

Mr. CARTER. Yes, sir.

Mr. LISHMAN. And on January 10, 1958, \$300 was paid?

Mr. CARTER. Yes, sir.

Mr. LISHMAN. And the total amounts for that period paid by Music Suppliers to station WORL was \$3,900; is that correct?

Mr. CARTER. I will accept those figures as correct, sir.

Mr. LISHMAN. Did you pay them any more than that?

Mr. CARTER. No, sir. May I say something, Mr. Lishman?

Mr. LISHMAN. Yes.

Mr. CARTER. I believe there is a chronological sequence there. These were paid on a monthly basis because I believe we were billed on a monthly basis.

Mr. LISHMAN. For what purpose did you make these payments to WORL?

Mr. CARTER. Well, as I stated before, sir, we thought it would be good for us to have a record exposed on a hit basis. In other words, so many announcements per week.

Mr. LISHMAN. During the period covered by the payments that have just been recited, is it a fact that you had loans outstanding from Music Suppliers to Verve Records?

Mr. CARTER. Yes, sir.

Mr. LISHMAN. Is it a fact that WORL received suggestions from Music Suppliers to play Verve records as hits of the week?

Mr. CARTER. No, sir; I don't think that ever came about. If we had any Verve records on this program it was solely our own decision.

Mr. LISHMAN. Well, I have before me a record paper obtained from the files of WORL entitled, "WORL Radio Copy. Client: Music Suppliers."

The date is September 8, 1958. The record is Ella Fitzgerald, with band, and it states—

Ella Fitzgerald with Oscar Peterson. Jazz of the Philharmonic, Sunday, September 4, Symphony Hall, 1 hour at 8:30—

and so, on, and then it states:

Verve handled by Music Suppliers.

What does that mean?

Mr. CARTER. I don't think that has any reference to this, sir. I think that had to do with, perhaps, our buying time in conjunction with a jazz concert at the Philharmonic.

Verve had issued records under that name, "Jazz at the Philharmonic," in which artists appearing in the concert also made the records, and we might have, I am not sure, bought that time to announce the concert.

Mr. LISHMAN. Do you recall what announcement was made by WORL when they had the hit of the week?

Mr. CARTER. I don't, sir.

Mr. LISHMAN. Well, Mr. Carter, in connection with this \$3,900 that you paid to WORL, did any record company reimburse you for any of that amount?

Mr. CARTER. I don't recall who or when they did, but they possibly might have, sir.

Mr. LISHMAN. Mr. Carter—

Mr. CARTER. Yes, sir.

Mr. LISHMAN (continuing). You heard the testimony yesterday that Music Suppliers, Inc., had paid to diskjockeys and station librarians the sum of at least \$27,121.54?

Mr. CARTER. Yes, I did, sir.

Mr. LISHMAN. For less than a 3-year period; is that correct?

Mr. CARTER. Yes, sir.

Mr. LISHMAN. Did you know whether you paid more than that amount?

Mr. CARTER. I don't believe so, sir.

Mr. LISHMAN. For what purpose were these payments made to these diskjockeys and station librarians?

Mr. CARTER. To show our appreciation for exposure of our records at record hops, to more or less thank them in their help given to us in the selection of what they believed to be potential hit records, and in order to maintain our good will, sir.

Mr. LISHMAN. You didn't pay it to them for the purpose of airing labels that were distributed by your company?

Mr. CARTER. No, sir; we did not.

Mr. LISHMAN. Now, the \$3,900 you paid directly to radio station WORL is in addition to that \$27,000 figure; is that correct?

Mr. CARTER. I am not sure, because in that advertising, that Mr. Keelan spoke about yesterday, I think he might have had some of these figures mixed in there as well. I am not sure, sir.

Mr. LISHMAN. I will give you the exhibit and ask you to cull out of there anything that was—

Mr. CARTER. If that doesn't appear on there, Mr. Lishman—

Mr. LISHMAN. It does not appear on there.

Mr. CARTER (continuing). I will accept it as what we had given to WORL.

Mr. LISHMAN. So the \$3,900 given to the station itself was in addition to diskjockeys?

Mr. CARTER. Yes, sir.

Mr. LISHMAN. So your company, Music Suppliers, Inc., was in a position of making payments to two different places that would assist you in getting your records aired, namely, one directly to a station licensee and two, to these diskjockeys and librarians who were employees of the station. Is that correct?

Mr. CARTER. Yes, sir.

Mr. LISHMAN. Mr. Carter, when did you first acquire your interest in Music Suppliers?

Mr. CARTER. I believe it was 1946, sir.

Mr. LISHMAN. How did you obtain that interest?

Mr. CARTER. I had, prior to that, been working for Decca Records, and decided to leave them.

I don't recall the first circumstances of my meeting Mr. Clark, but we did meet. I think, perhaps, it was some place on the road in our various travels. He was also selling phonograph records at the same time. From that we got to see each other fairly frequently, and then Sam said to me one day, "Harry, I understand you are unhappy where you are. Would you like to come in with me?" And I think that is how the germ was born.

Mr. LISHMAN. How did you go in on it, on what basis did you go in with him?

Mr. CARTER. Well, I borrowed money to equal whatever his net worth was, so that we both owned a 50-percent share in the company.

Mr. LISHMAN. Is it a fact that prior to July 22 of 1955 that Samuel H. Clark and you owned Music Suppliers under a setup whereby Mr. Clark owned all the 50 outstanding shares of Class A stock?

Mr. CARTER. Owned all the 50 outstanding shares of Class A stock? Prior to July 1955?

Mr. LISHMAN. Yes.

Mr. CARTER. Yes, sir.

Mr. LISHMAN. And you owned all the 50 shares of Class B stock?

Mr. CARTER. Yes, sir.

Mr. LISHMAN. It is true that both classes have voting rights; is that correct?

Mr. CARTER. That is right, sir.

Mr. LISHMAN. Is it a fact that on or about May 28, 1958, you acquired a half interest in Dumont Record Distributing Corp.?

Mr. CARTER. About May 1958; yes, sir.

Mr. LISHMAN. And since that time have you continued to have that one-half interest?

Mr. CARTER. I have, sir; up until, I believe it is June of this year.

Mr. LISHMAN. Were you also an officer of Dumont Record Distributing Co.?

Mr. CARTER. I am, sir.

Mr. LISHMAN. And you had 220 of the 440 shares of outstanding capital stock of Dumont?

Mr. CARTER. Yes, sir.

Mr. LISHMAN. In June of this year you divested yourself of that?

Mr. CARTER. Mr. Dumont has an option to buy me out at that time.

Mr. MOSS. On what basis was the option?

Mr. CARTER. Pardon, sir.

Mr. MOSS. On what basis?

Mr. CARTER. It was an agreement we entered into when I bought into this company, and I might state for the record again, sir, that this was, as far as I was concerned, an investment.

Mr. MOSS. But on what basis did you sell out on June 1960?

Mr. CARTER. It was a 2-year agreement we entered into, sir.

Mr. MOSS. On what evaluation?

Mr. CARTER. For the net worth of the company at that time.

Mr. MOSS. Net worth of the company?

Mr. CARTER. That is right, sir.

Mr. MACK. Was that the \$5,600 amount?

Mr. CARTER. Roughly, yes, sir.

Mr. MACK. And your agreement is to resell at the same price?

Mr. CARTER. If we would desire—not the same price.

Mr. MOSS. Not the same price. What is the net worth?

Mr. CARTER. Offhand, I wouldn't know at this moment, sir.

Mr. MOSS. Well, you have just come to the yearend estimate. Do you have any estimate?

Mr. CARTER. I don't think we have received the accountant's figures as yet. If I hazard a guess, I am sure I am going to be wrong. I may say, though, that it might be around—

Mr. MOSS. Reasonably accurate guess, wouldn't it be?

Mr. CARTER. I may say it would be between \$25,000 and \$30,000.

Mr. MOSS. What are the billings of Dumont Records in the course of a year?

Mr. CARTER. I believe that Dumont does or had done in 1958, and this is not factual, somewhere in the vicinity of \$700,000, sir.

Mr. LISHMAN. Now, Mr. Carter, you were treasurer and general manager of Dumont?

Mr. CARTER. Treasurer, sir; not general manager.

Mr. LISHMAN. Did you receive a salary from Dumont Record Distributors?

Mr. CARTER. Yes, I did, sir.

Mr. LISHMAN. How much?

Mr. CARTER. In 1958, \$5,000. In 1959 I believe it was \$2,500. I don't have that figure with me, but I believe it was \$2,500.

Mr. LISHMAN. Did you receive any money in addition to that salary you have just mentioned?

Mr. CARTER. No, sir.

Mr. LISHMAN. Isn't it a fact that at the end of the year you and Mr. Dinerstein would receive a check from Dumont which would equal the amount taken out by Donald E. Dumont?

Mr. CARTER. No, sir.

Mr. LISHMAN. Do you recall that the board of directors had a resolution on their books adopted May 28, 1958, that you were not to receive any salary?

Mr. CARTER. Sir, that was recalled to me yesterday. I will admit that I had forgotten it, but Donald Dumont and I were the stockholders, and we had agreed that for value received I should be getting something in the form of compensation.

Mr. LISHMAN. I am informed that the books of Dumont show that you would receive \$2,500 apparently as salary from Dumont, and Mr. Dinerstein would get \$2,500 as salary, and then Mr. Dumont would get \$5,000 as salary, which indicated there was a division here.

Mr. CARTER. It would indicate that, sir, but actually the facts were not that way.

Mr. LISHMAN. But in addition to that, the books show that Mr. Dumont received a regular salary of \$175 a week?

Mr. CARTER. I believe that is correct, sir.

Mr. LISHMAN. Is Dumont a competitor in the record-distributing business in the Boston area with Music Suppliers?

Mr. CARTER. In a sense; yes, sir. But I would like to try to clarify the word "competitor."

We are all out into the market trying to sell our own records—when I say our own records, record manufacturers do not have duplication of distribution in a given area.

What Music Suppliers represents, no other distributor in the territory has, and this is nationwide.

The result is that we naturally are trying to get, as the case may be, an MGM record into a store, but he does not have MGM records to get into a store. He would be trying to get his, as the case may be, Epic records into a store.

We are competitors in the sense that we both operate separately and go about our business separately, but we are not competitors in the sense we are trying to sell the same record by the same artist.

Mr. LISHMAN. Now, Mr. Carter, you have testified that you borrowed the money to buy your original 50-percent interest in Music Suppliers, Inc., is that correct?

Mr. CARTER. Yes, sir.

Mr. LISHMAN. How much did you borrow to buy that stock?

Mr. CARTER. I think our original capitalization was \$4,000. The result was that I borrowed \$2,000.

Mr. LISHMAN. Is it a fact that when you were interviewed in December 1959 by our investigators, you told them that when Sam Clark went with Am-Par, he, Mr. Clark, gave you his share of ownership in Music Suppliers?

Mr. CARTER. I don't think we can use the term "gave me." I bought those shares, sir.

Mr. LISHMAN. I think we found that our later and we are going to come to that now.

Did you have anything to do with organizing a new company known as Music Distributors, Inc?

Mr. CARTER. Yes, sir; I did.

Mr. LISHMAN. What is the outstanding capital of that?

Mr. CARTER. I don't recall what that was capitalized for. I know it was a nominal figure.

Mr. LISHMAN. Was it 100 shares of class A common and 100 shares of class B?

Mr. CARTER. That is correct, sir.

Mr. LISHMAN. All shares of both classes were issued to you?

Mr. CARTER. Yes, sir; they were.

Mr. LISHMAN. Do you still hold them?

Mr. CARTER. No, sir, I don't. I hold 90 class A and 90 class B. Mr. Dinerstein holds 10 class A and 10 class B shares.

Mr. LISHMAN. Did you enter into a contract on July 22, 1955, with Mr. Samuel H. Clark?

Mr. CARTER. Yes, sir; I did.

Mr. LISHMAN. What is the substance of that contract?

Mr. CARTER. The substance of the contract is that Sam Clark's shares were sold to me, so that I could become the sole owner of Music Suppliers for certain considerations.

Mr. LISHMAN. Was that \$50,000?

Mr. CARTER. That was \$50,000, sir.

Mr. LISHMAN. How was that \$50,000 to be paid?

Mr. CARTER. It was to be paid approximately in the amounts of \$2,500 per year.

Mr. LISHMAN. Did it provide it would pay \$208 at the time of execution of the contract and \$208 a month?

Mr. CARTER. Yes, sir, it does.

Mr. LISHMAN. Beginning August 1, 1955?

Mr. CARTER. I am not sure of the date, but the figures are correct, sir.

Mr. LISHMAN. Until the balance was paid?

Mr. CARTER. Yes, sir.

Mr. LISHMAN. And no interest was provided on that payment?

Mr. CARTER. No interest, sir.

Mr. LISHMAN. Under the terms of the contract, would that not take about 20 years?

Mr. CARTER. I believe it would, sir; yes, sir.

Mr. LISHMAN. Under the terms of the contract did you agree to transfer the 50 shares of class A stock you were purchasing from Clark to Edward F. Smith, your attorney?

Mr. CARTER. I think those shares, as well as my own, were transferred to Edward F. Smith, to be held in escrow for the completion of the contract.

Mr. LISHMAN. Does Mr. Smith still hold them?

Mr. CARTER. Yes, he does, sir.

Mr. LISHMAN. Did you enter into a subsequent agreement dated August 7, 1956, where you agreed to transfer to Mr. Smith as trustee, 90 shares of class A and 90 shares of class B stock of Music Distributors?

Mr. CARTER. I did, sir.

Mr. LISHMAN. What was the purpose of transferring all this stock to Mr. Smith?

Mr. CARTER. As explained about Music Suppliers, Inc., the purpose was to guarantee the payments to Mr. Clark. As far as Music Distributors were concerned, Music Distributors was, somebody used the term "outgrowth" of Music Suppliers. I would like to say it was a splinter of Music Suppliers, where we had taken certain assets from Music Suppliers and put them into the new company.

Mr. Clark's feeling was that he did not want to diminish the value of Music Suppliers, sir.

Mr. MOSS. Do I understand that the shares were issued then to protect Mr. Clark?

Mr. CARTER. He wanted additional security, sir, as long as the segments of Music Suppliers was being reduced.

Mr. MOSS. Was the agreement changed in that respect?

Mr. LISHMAN. Was this agreement of August 7, 1956—

Mr. MOSS. Was it changed, then?

Mr. LISHMAN. I have before me a copy of the agreement made August 7, 1956, by and between Harry Carter and Samuel Clark. I will hand this copy to the witness and ask him if it is a true and correct copy of this contract.

Mr. CARTER. Yes, sir; it appears to be, sir.

Mr. LISHMAN. I would like to have that contract made part of the record at this point.

(The contract referred to follows.)

AGREEMENT entered into this 7th day of August, 1956 by and between HARRY CARTER, of the Waban District of Newton, Middlesex County, Commonwealth of Massachusetts and SAMUEL H. CLARK, of New Rochelle, Westchester County, State of New York.

Witnesseth That—

Whereas under date of July 22, 1955, the said Clark entered into a written Agreement with said Carter whereby the said Clark sold and transferred to said Carter all of the shares of Class A common capital stock owned by said Clark in Music Suppliers of New England, Inc., a Massachusetts corporation with an usual place of business in Boston, in the County of Suffolk, in said Commonwealth for the sum and upon the terms and conditions stated in said Agreement, and

Whereas in order to secure the payment of said purchase price by said Carter to said Clark, said Carter endorsed the certificates representing said shares of Class A stock and also the certificates representing all of the shares of Class B stock owned by said Carter in said Corporation and delivered the aforesaid Certificates to Edward F. Smith, Esquire, of said Boston, the Trustee named in said Agreement dated July 22, 1955, the same to be held and dealt with by said Trustee in strict accordance with the terms of said Agreement, and

Whereas the said Clark has requested of said Carter that he turn over to said Trustee additional security for the payment of said stock and, whereas, said Carter is agreeable thereto.

Now Therefore, the parties hereto, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by each to the other, receipt whereof is hereby acknowledged, and in further consideration of these presents and the mutual covenants herein contained, do hereby, for themselves and their respective heirs, executors, administrators, and assigns agree together as follows:

1. The said Carter does hereby agree, forthwith upon the execution of this Agreement by both of the parties hereto, to endorse and deliver to Edward F. Smith, Esquire, of said Boston, as Trustee as aforesaid, two Certificates of stock, viz., one Certificate representing ninety (90) shares of the Class A common capital stock of Music Distributors, Inc., a Massachusetts corporation having an usual place of business in said Boston, and the other Certificate representing ninety (90) shares of the Class B common capital stock of said Music Distributors, Inc., the said Certificates to be held and dealt with by said Trustee in the same manner as the other stock held by him and in strict accordance with the terms, covenants and conditions of said written Agreement between the parties hereto dated July 22, 1955. The said Carter shall have the right to vote said Class A and Class B stock notwithstanding the aforesaid escrow thereof.

2. The said Carter further hereby agrees forthwith upon the execution of this Agreement to deliver to the said Trustee his undated resignation as President, Treasurer and Class A Director of said Music Distributors, Inc. and the undated resignations of the persons then holding the other Class A and Class B Directorships in said Music Distributors, Inc. Furthermore, said Carter agrees that if persons other than those whose undated resignations are held by said Trustee are elected to office in said Music Distributors, Inc. at any time in the future, that he will procure and deliver the undated resignations of all such persons from such offices forthwith upon their election thereto, to the end that the Trustee shall at all times hold in his possession the undated resignations of the President and Treasurer and Class A and Class B Directors of said Music Distributors, Inc. All such resignations shall recite that they take effect forthwith. The said resignations shall be held and dealt with by said Trustee in the same manner and in strict accordance with the terms and conditions of said

Agreement, dated July 22, 1955, insofar as such terms and conditions pertain to the handling of resignations by the said Trustee.

3. The said Carter and Clark do hereby agree that said written Agreement dated July 22, 1955, and any and all prior Amendments thereto shall, except as specifically herein amended by the addition of said Certificates to the security now held by said Trustee, remain in full force and effect, and unchanged in any respect.

4. And, for the aforesaid consideration, the said Carter does hereby agree that in the event said Clark exercises the option contained in the Option Agreement between said Carter and Clark dated August 10, 1955, and said Clark performs all of the conditions of said Option Agreement within the time required to be performed by said Agreement, then and in such event said Carter shall (with the assent of said Clark) obtain from the aforesaid Trustee, and endorse and deliver to said Clark the aforesaid Certificate for ninety (90) shares of the Class B common capital stock of said Music Distributors, Inc. upon the following terms and conditions:

(a) The said Clark shall in consideration for the transfer to him of the aforesaid Certificate for ninety (90) shares of the Class B common capital stock of said Music Distributors, Inc. forthwith execute an employment Contract with said Music Distributors, Inc. for a period of not less than ten (10) years at a salary and bonus equal to the salary and bonus then being paid by said Music Distributors, Inc. to said Carter. The duties to be performed by said Clark shall be of the same nature as that performed by him when he was associated with the aforementioned Music Suppliers of New England, Inc.

(b) In the event of the exercise by said Clark of the option herein granted, said Carter hereby agrees as follows:

(i) To resign as Treasurer of said Music Distributors, Inc., or, if he is not Treasurer at such time, to obtain forthwith and deliver to said Clark the written resignation of the person holding the office of Treasurer;

(ii) To vote all stock owned by him in said Corporation for the election of said Clark as Treasurer;

(iii) To forthwith obtain and deliver to said Clark the written resignations of the persons then holding the offices of Class B Director of said Corporation.

5. It is expressly understood and agreed that if said Clark does not exercise the option contained in said Option Agreement dated August 10, 1955 within the time therein set forth, then this Agreement shall be null and void and of no further force and effect.

6. This Agreement shall be binding upon the parties hereto and their respective heirs, executors, and administrators.

7. This Agreement shall terminate and become null and void upon the death of said Clark or in the event said Clark shall attempt to assign his rights hereunder, it being expressly understood that the within Agreement and the rights of the parties hereunder cannot be assigned to any other person, firm, or corporation without the consent of said Carter.

8. In the determination of the legal rights of the parties under this Agreement the laws of the Commonwealth of Massachusetts shall apply.

9. If any provision of this Agreement, or the application thereof to any person or circumstances, shall to any extent be invalid or unenforceable, then the application of such provision to persons or circumstances other than those to which it is invalid or unenforceable, as well as the remaining provisions of this Agreement, shall not be affected thereby.

10. It is expressly understood that the Trustee by accepting the Certificates and other documents herein referred to and acting therewith in accordance with the terms, covenants, and conditions of this Agreement and said Agreement dated July 22, 1955 shall be answerable and accountable only for his own wilful act, neglect, or default and not for any loss or damage in any event whatsoever, unless the same shall occur through his own wilful act, neglect or default, and not otherwise.

In witness whereof to this instrument and to two other instruments of like tenor, all of which are to have the legal effect of original instruments under

seal, the parties hereto have hereunto set their hands and seals the day and year first above written.

(Signed) Harry Carter,
(Typed) HARRY CARTER.

In presence of :

(Signed) Samuel H. Clark,
(Typed) SAMUEL H. CLARK.

To signature of Samuel H. Clark

(Signed) ALICE CLARK.

To signature of Harry Carter

(Signed) MILDRED CARTER.

AUGUST 7, 1956.

I, Edward F. Smith, the Trustee referred to in the foregoing Agreement, do hereby agree to accept and deal with the Certificates and Documents therein referred to in strict accordance with the terms of said Agreement and the Agreement between the parties dated July 22, 1955, appointing me Trustee.

(Signed) Edward F. Smith.
(Typed) EDWARD F. SMITH.

Mr. LISHMAN. Since that copy appears as an amendment to an earlier contract, I would like, for completeness, to hand him another contract dated July 22, 1955, between Samuel H. Clark and Harry Carter and ask him if this is a true and correct copy of that contract.

The CHAIRMAN (presiding). In the first place, Mr. Moss, did you have occasion to look at the preceding contract referred to?

Mr. Moss. I am looking at it now.

The CHAIRMAN. They have asked to put it into the record. Without objection, it will be included in the record.

(The contract referred to follows :)

AGREEMENT entered into this 22nd day of July 1955, by and between SAMUEL H. CLARK, of Boston, Suffolk County, Commonwealth of Massachusetts, and HARRY CARTER, of the Waban District of Newton, Middlesex County, in said Commonwealth.

Witneseth That—

The parties hereto, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by each to the other, the receipt whereof is hereby acknowledged, and in further consideration of these presents and the mutual covenants herein contained, do hereby, for themselves and their respective heirs, executors, administrators and assigns, agree together as follows :

1. The said Clark does hereby sell, assign, transfer set over and deliver to said Carter the fifty (50) shares of Class A common capital stock owned by him in Music Suppliers of New England, Inc., a Massachusetts Corporation with an usual place of business in said Boston (hereinafter referred to as the "Corporation"), and said Carter hereby agrees to pay for such stock the sum of Fifty Thousand Dollars (\$50,000.00) in the following manner :—

The sum of Two hundred and Eight Dollars (\$208.00) upon the execution of this Agreement and a like sum on the first day of each and every month hereafter commencing with the first day of August, 1955, until the entire purchase price has been paid in full.

2. In order to secure the payment of the aforesaid purchase price the said Carter hereby agrees forthwith upon the execution of this Agreement to endorse not only the certificate representing the stock hereby purchased by him but also the certificate representing the fifty (50) shares of the Class B common capital stock of said Corporation owned by him and upon such endorsement to turn over both of said Certificates to Edward F. Smith, Esquire, of said Boston, as Trustee, to be held by said Trustee in strict accordance with the terms of this Agreement. The said Carter shall have the right to vote said Class A and Class B stock notwithstanding the aforesaid escrow thereof.

3. In the event that said Carter shall fail to make a payment when due he shall have thirty (30) days within which to make up such defaulted pay-

ment and if he shall neglect so to do then said Clark may, at his option, by written notice to said Carter declare the entire balance due and payable forthwith, whereupon interest at the rate of six percent (6%) per annum shall accrue on such unpaid balance from the date of such default. In the event said Clark shall declare the entire balance due, as aforesaid, he shall notify the Trustee thereof whereupon the Trustee shall notify said Carter in writing to pay such entire balance and interest from the default date to Clark within thirty (30) days and in the event that said Carter shall fail so to do, the Trustee shall sell, assign and deliver the Certificates representing the A and B stock to the highest bidder at a public or private sale, at the option of the said Clark, first giving said Carter seven (7) days written notice of the date, time, and place of such sale, and, if the sale is to be a public sale, advertise such sale in a newspaper published in said Boston at least seven (7) days before such public sale. The net proceeds of such sale, i.e., after deducting all expenses of such sale, shall be paid over to said Clark toward payment of the balance due on said purchase price, including interest from the default date to the date of sale at the rate of six percent (6%) per annum, and any balance remaining shall be paid to said Carter. The Trustee shall deliver the Certificates representing said stock to purchaser who shall be entitled to have the same transferred to his own name on the records of said Corporation. The said Clark and his nominees may bid on said stock at the sale. Notwithstanding anything to the contrary contained in this Agreement, in the event that said Carter shall fail to make the payments for said stock as herein provided, the said Clark may not take any legal action against said Carter for the recovery of said purchase price but shall be limited to the sale of the security as herein provided; furthermore, the said Carter shall not be liable for any deficiency in the event that the net proceeds from such sale are insufficient to satisfy the unpaid balance due on the purchase price at the time of said sale.

4. In the event of a termination of the lease held by said Corporation covering premises now occupied by it, whether because of fire, or a taking by eminent domain or otherwise, and the said Corporation is caused to vacate or voluntarily vacates its said premises, then payments required to be made by said Carter shall be suspended until such time, not exceeding ninety (90) days, as the Corporation shall have re-located and re-opened its business. However, if said Corporation shall fail to re-locate and re-open its business within said ninety (90) day period then said Carter agrees to vote all of said stock, Class A and B in favor of the immediate liquidation of said Corporation. Upon liquidation the net proceeds received shall be paid over to said Trustee who shall thereupon divide the same equally between said Clark and Carter. After such distribution the Trustee shall deliver the Certificates deposited with him to the said Corporation, whereupon the liability of the said Clark and Carter to each other under this Agreement shall cease and be deemed discharged in full.

5. Forthwith upon the execution of this Agreement said Clark agrees to execute and deliver to said Carter his resignation as Treasurer and Class A Director of said Corporation and also to obtain prior to and to deliver at the same time as his own resignation as aforesaid the resignation of the person then holding the other Class A Directorship of said Corporation.

6. Said Carter hereby agrees forthwith upon the execution of this Agreement to deliver to said Trustee his undated resignation as Class B Director and President of said Corporation and the undated resignation of the person then holding the other Class B Directorship in said Corporation. Also, said Carter agrees to obtain and deliver to said Trustee forthwith upon the election of the successors to the offices of Treasurer and Class A Directors the undated resignations of such successors. Furthermore, said Carter agrees that if persons other than those whose undated resignations are held by said Trustee are elected to office in said Corporation at any time in the future, that he will procure and deliver the undated resignations of all such persons from such offices forthwith upon their election thereto, to the end that the Trustee shall at all times hold in his possession the undated resignations of all Officers and Directors of said Corporation. All of said resignations shall recite that they take effect forthwith. In the event that said Carter shall fail to pay the balance and interest to Clark within thirty (30) days after notification by the Trustee, as provided in paragraph numbered 3 above, the Trustee shall, at the expiration of said thirty (30) day period, and not otherwise, deliver said undated resignations to said

Clark who may insert the dates therein and deliver same to the said Corporation. In such event said Carter agrees to vote the said A and B stock for the election of Clark's nominees to fill such vacancies.

7. Said Carter further hereby agrees that so long as the purchase price of said stock is unpaid he will not, except as otherwise provided in this Agreement, vote any of said Class A and Class B stock, directly or through proxy, so as to authorize the sale, mortgage, pledge, lease, or the exchange of the property or assets of said Corporation, including its goodwill except in the ordinary course of the business of said Corporation; nor to merge said Corporation with another; nor to increase nor reduce the corporate capital stock; nor to change the capital stock structure in any form; nor to authorize proceedings for dissolution; nor to vote to alter or amend the preferences, voting power, restrictions and qualifications of said stock; nor to vote to issue additional stock; and not to vote to amend the By-Laws, Agreement of Association, Articles of Organization of said Corporation.

8. It is a condition of this Agreement that the net worth of said Corporation as determined by an audit made by the Certified Public Accountant for said Corporation shall at all times be in excess of Fifty Thousand Dollars (\$50,000.00). If at any time such audit discloses that the said net worth has dropped below said amount, then, and in such event, at the option of said Clark said Carter shall take immediate steps to cause the said Corporation to be liquidated. In the event of such liquidation the net proceeds shall be distributed in the same manner as provided in paragraph numbered 4 of this Agreement.

10. The said Carter hereby further agrees that, except as otherwise provided in this Agreement, neither he, nor his heirs, executors, administrators, or assigns will, while this Agreement is in effect, transfer, encumber, pledge, or otherwise deal with said Class A and Class B stock.

11. The said Carter further agrees that so long as this Agreement is in effect he will not draw in excess of Twenty-Two Thousand Dollars (\$22,000.00) annually from said Corporation, whether by way of salary, dividends, borrowings, or otherwise; and that he will not pledge the credit of said Corporation for his personal benefit.

12. It is hereby further agreed that until the purchase price of said stock has been paid in full to said Clark, said Clark or his representative shall be entitled to be present at all takings and pricings of inventory; and that all merchandise shall be valued at cost or market, whichever is lower, and fixed assets to be valued at cost, less depreciation, in accordance with Federal Government regulations; that all inventories are to be prepared at least in triplicate, one copy for said Clark one for said Carter and one for the Certified Public Accountant for the Corporation; and that the books of the said Corporation shall be audited by the Certified Public Accountant for said Corporation at least annually or oftener, at the option of said Clark, and a copy of said audits shall be furnished to said Clark.

13. It is hereby agreed that within Agreement shall terminate forthwith upon payment in full by said Carter of the entire purchase price (and interest as provided herein) and upon such termination the Trustee shall deliver to said Carter all of the Certificates deposited with him and all of said resignations.

14. If any provision of this Agreement, or the application thereof to any person or circumstances, shall to any extent be invalid or unenforceable, then the application of such provision to persons or circumstances other than those to which it is invalid or unenforceable, as well as the remaining provisions of this Agreement, shall not be affected thereby.

15. This agreement shall be binding upon the parties hereto and upon their respective heirs, executors and administrators.

16. The parties hereto do hereby agree that the Stock Purchase Agreement entered into between them and said Edward F. Smith, Esquire as Trustee, dated October 18, 1950, and all other previous Agreements heretofore entered into between them, whether oral or written, are hereby declared null and void, and that there are no representations or understandings other than those herein contained.

17. In case said Trustee dies, resigns or fails to act as Trustee hereunder then, and in such event, the said Clark and Carter shall forthwith appoint his successor Trustee and also all subsequent Trustees.

18. The parties further hereby agree forthwith upon the execution of this Agreement to exchange mutual Releases of all Demands under seal excepting therefrom such rights as they possess under this Agreement.

19. Any person dealing with the Trustee shall not be required to make inquiry as to the authority of the Trustee to perform any act hereunder and shall be entitled conclusively to assume that the Trustee is properly authorized to perform such act. Any such person may also conclusively assume that the Trustee has full power and authority to receive and receipt for any money or property paid or delivered to the Trustee and no such person shall be found to inquire as to the disposition or application of any money or property paid or delivered to the Trustee or paid in accordance with the written directions of the Trustee. The Trustee by accepting his appointment as Trustee hereunder shall be answerable and accountable only for his own willful act, neglect or default and not for any loss or damage in any event whatsoever unless the same shall occur through his own willful act, neglect or default, and not otherwise.

20. In the event that said Clark shall assent to any extension or postponement of the time fixed herein for said payments on the purchase price, or grants any other indulgence to said Carter, such extension, postponement or indulgence shall not constitute a waiver of any of his rights and/or remedies hereunder unless such waiver shall be in writing and signed by said Clark, and then only to the extent therein set forth. In addition, a waiver on any one or more occasions shall not be construed as a bar to or waiver of any such right and/or remedy on any future occasion.

21. In order to insure the payment of the balance due on said purchase price at the death of said Clark and/or Carter, or a portion of the balance if the insurance proceeds are less than such balance at date of death, the said Clark and Carter have taken out the following insurance on their respective lives with the Metropolitan Life Insurance Company, of New York City, New York, in which said Trustee is named as the absolute owner without right on the part of said Clark and Carter to change or revoke such designation.

Name of insuree	Number	Amount
Harry Carter.....	17800981A	\$10,000.00
Harry Carter.....	18290103A	\$10,000.00
Harry Carter.....	21043182A	\$5,000.00
Samuel H. Clark.....	17901058A	\$10,000.00
Samuel H. Clark.....	18290104A	\$10,000.00
Samuel H. Clark.....	21043181A	\$5,000.00

The said Trustee is hereby authorized and directed to write the following legend on the face of each such stock Certificate deposited with him as provided in this Agreement: "This Certificate is held subject to the Stock Purchase Agreement between Samuel H. Clark and Harry Carter and Edward F. Smith, Esquire, Trustee, dated July 22, 1955.

The Trustee agrees to receive, hold, and dispose of the aforesaid Certificates of Stock and the proceeds of the policies of insurance hereinabove mentioned subject to the provisions of this Agreement. The Trustee shall be held harmless from all liability in accepting any Certificates or notice believed by him to be genuine and acting thereon in accordance with the terms of the written Agreement. The compensation of the Trustee is hereby fixed at One thousand (\$1,000.00) Dollars, half of which is to be paid by Clark and half by Carter. The said Clark and Carter hereby agree to pay, and the Trustee hereby agrees to accept, the aforesaid amount in full payment for his services hereunder, excepting in the event of litigation. In the event of litigation the Trustee shall be paid an additional sum to be agreed upon in advance by the parties hereto, or their executors or administrators.

22. Upon receipt of due notice of death of said Carter the Trustee shall collect the proceeds of the policies on the life of said Carter and dispose of same as follows:

(a) If the balance due on said purchase price at the date of the death of said Carter is Twenty-five thousand dollars (\$25,000.00) or less, the Trustee shall pay from such insurance proceeds the entire unpaid balance and deliver the remaining insurance proceeds to the Executor or Administrator of said Carter, together with both Certificates of Stock deposited with him as aforesaid, whereupon this Agreement shall forthwith be terminated.

(b) If the balance due on said purchase price at the date of the death of said Carter is greater than such insurance proceeds then the Trustee shall pay over such entire insurance proceeds to said Clark and shall continue to hold said Certificates of Stock until the balance of said purchase price has been fully paid, all as more fully set forth above in this Agreement.

23. Upon receipt of due notice of death of said Clark the Trustee shall collect the proceeds of the policies on the life of said Clark and dispose of same as follows:

(a) If the balance due on said purchase price at the death of said Clark is Twenty-five Thousand Dollars (\$25,000) or less,¹ the Trustee shall pay from such insurance proceeds the entire unpaid balance to the Executor or Administrator of said Clark and deliver the remaining proceeds to said Carter, together with both Certificates of Stock deposited with him as aforesaid, whereupon this Agreement shall forthwith terminate.

(b) If the balance due on said purchase price at the date of the death of said Clark is greater than such insurance proceeds, then the Trustee shall pay over such entire insurance proceeds to the Executor or Administrator of said Clark and shall continue to hold said Certificates of stock until the balance of said purchase price has been fully paid, all as more fully set forth in this Agreement.

24. The said Clark and Carter hereby agree to continue to pay on their due dates the premiums on the said policies of insurance on each other's life. In the event of the failure of either Clark or Carter to so pay the premiums, as above provided, within fifteen (15) days following their due dates and to exhibit each to the other receipts evidencing such payment then, and in such event, the other may pay the same and shall thereupon be entitled forthwith to immediate reimbursement therefor from the defaulter.

In Witness Whereof of this instrument, and to four other instruments of like tenor all of which are to have the legal effect of original instruments, the parties hereto have hereunto set their hands and seals the day and year first above written.

In Presence of:

(Signed) Samuel H. Clark,
 (Typed) SAMUEL H. CLARK.
 (Signed) Harry Carter,
 (Typed) HARRY CARTER.
 (Signed) Alice Clark.

The CHAIRMAN. Now, you can proceed with this one.

Mr. CARTER. This appears to be correct, sir.

Mr. LISIMAN. Mr. Chairman, I would like to have this contract of July 22, 1955, identified by the witness made a part of the record.

The CHAIRMAN. That one is already made a part of the record, on the 22d day of July 1955. He has another one here. What is the date of that?

Mr. CARTER. July 22.

Mr. LISIMAN. The first contract, inquired about by Mr. Moss, was one of a later date which modified the earlier contract.

The CHAIRMAN. Let it be received for the record.

(The contract referred to follows:)

JULY 22, 1955.

I hereby accept my appointment as Trustee under the terms of the foregoing Agreement and agree to comply with the terms thereof insofar as they relate to the trust and to the administration thereof by me as Trustee.

(Signed) Edward F. Smith,
 (Typed) EDWARD F. SMITH.

WAIVER OF RESTRICTIONS ON TRANSFER OF STOCK

We, the undersigned, being all of the Directors of Music Suppliers of New England, Inc., referred to as the "Corporation" in the Stock Purchase Agreement between Samuel H. Clark, Harry Carter, and Edward F. Smith, Esquire,

¹ Correction initialed S. H. C. and H. C.

as Trustee, dated July 22, 1955, do hereby waive all restrictions on the transfer of the capital stock owned by said Samuel H. Clark and Harry Carter in Music Suppliers of New England, Inc., so as to permit the sale and/or transfer of said stock as provided in said Stock Purchase Agreement.

Dated this 22d day of July 1955.

Witness to signatures :

To Samuel H. Clark

To Nathaniel M. Clark

To Harry Carter

To Edward F. Smith

(Signed) Samuel H. Clark,
(Typed) SAMUEL H. CLARK.
(Signed) Nathaniel M. Clark.
(Typed) NATHANIEL M. CLARK.
(Signed) Harry Carter,
(Typed) HARRY CARTER.
(Signed) Edward F. Smith,
(Typed) EDWARD F. SMITH.

Mr. LISHMAN. I do not know whether Mr. Moss wants to ask some questions about that Music Distributors stock being pledged or placed in escrow to buttress the collateral—

Mr. Moss. Not at this time. You go ahead.

Mr. LISHMAN. Is it a fact, Mr. Carter, that the July 25, 1955, contract was subsequently amended so that you could draw out in salary the sum of \$26,000 in lieu of \$22,000 as originally provided?

Mr. CARTER. July 22, sir?

Mr. LISHMAN. Is that correct?

Mr. CARTER. July 22, sir?

Mr. LISHMAN. Yes. It was amended so that you would be able to draw—

Mr. CARTER. That is correct, sir.

Mr. LISHMAN. Then was it further amended so that you could draw out \$32,000 during the calendar year 1955, and thereafter \$26,000 annually?

Mr. CARTER. Yes, sir.

Mr. LISHMAN. And was that amendment made December 24, 1955?

Mr. CARTER. I am not sure of the date, but there was an amendment, sir.

Mr. LISHMAN. I notice that the authorized capital stock of Music Distributors, Inc., was 250 shares. Does anyone own any shares of Music Distributors other than you and Mr. Dinerstein?

Mr. CARTER. No, sir, they do not.

Mr. LISHMAN. Those shares were not issued?

Mr. CARTER. No, they are not, sir.

Mr. LISHMAN. How much have you paid on the \$50,000 purchase price to Mr. Clark?

Mr. CARTER. I have paid since July 1955 to date, \$11,648, sir.

Mr. LISHMAN. Was any of that money paid by Music Suppliers?

Mr. CARTER. No, sir, it was not.

Mr. LISHMAN. This was all paid by your own check?

Mr. CARTER. My own personal check, sir.

Mr. LISHMAN. Is there any provision in the agreement reducing the amount of collateral required to be maintained in the event of certain scheduled payments having been made by you?

Mr. CARTER. I don't believe so.

Mr. LISHMAN. What office do you hold in Music Suppliers?

Mr. CARTER. I am president and treasurer, sir.

Mr. LISHMAN. What office do you hold in Music Distributors?

Mr. CARTER. President and treasurer.

Mr. LISHMAN. What office do you hold in Dumont?

Mr. CARTER. Treasurer.

Mr. LISHMAN. Have you furnished Mr. Edward F. Smith, the trustee, with your undated resignation as an officer of Music Suppliers?

Mr. CARTER. I believe I have, sir.

Mr. LISHMAN. And of Music Distributors?

Mr. CARTER. Yes, sir. I think I just saw that in the agreement.

Mr. LISHMAN. What interest would Mr. Clark have in having you submit your undated resignation in Music Distributors?

Mr. CARTER. Well, again, as it was an outgrowth of Music Suppliers, and there were certain assets diminished in Music Suppliers, he would want also that additional protection in Music Distributors.

Mr. LISHMAN. Is it correct that the July 22, 1955, contract provides that Mr. Clark's only recourse in the event of a default by you in making the stipulated installment payments is to demand that you make up the default in 30 days? Further you must pay the entire balance within 30 days and the trustee is required to sell both the class A and the class B stock to the highest bidder, so that the balance of the purchase price of the class A stock to Clark can be paid out of net proceeds?

Mr. CARTER. I would have to read that thoroughly. In substance, I believe that is correct. You have a copy, I assume, that was given to your investigators by Mr. Smith, and I am sure that your information there is as stated.

Mr. LISHMAN. Does that agreement also provide that Mr. Clark cannot take any legal action against you to recover the purchase price if you default, and that you are not liable for any deficiency if the net proceeds of the sale of the securities is insufficient to pay the balance due on the purchase price?

Mr. CARTER. I believe that to be correct, sir.

Mr. LISHMAN. Does the agreement not provide that at the option of the trustee, the collateral can be sold at either public or private sale?

Mr. CARTER. To refresh my memory—

Mr. LISHMAN. At the option of Mr. Clark rather.

Mr. CARTER. To refresh my memory, I would have to have another look at that.

Mr. LISHMAN. Will you please look at it?

Paragraph No. 3. I will read the portion to you, Mr. Carter:

In the event of default by you, the trustee shall sell—

this is in paragraph 3 of the contract of July 22—

the trustee shall sell, assign and deliver the certificates—

Mr. CARTER. Pardon me. Can you tell me exactly where you are in this contract?

Mr. LISHMAN. Bottom of page 2 of this contract copy, paragraph No. 3 of the contract.

Mr. CARTER. I see.

Mr. LISHMAN. Beginning on the third line from the bottom in the middle of the sentence, because we covered the provisions respecting your default, this is what may be involved in the event of your default:

* * * the trustee shall sell, assign and deliver the certificates representing the A and B stock to the highest bidder at a public or private sale, at the option of the said Clark, first giving said Carter 7 days written notice of the date, time and place of such sale, and, if the sale is to be a public sale, advertise such sale in a newspaper published in said Boston at least 7 days before such public sale.

Is that correct?

Mr. CARTER. Yes, sir.

Mr. LISHMAN. Does it also provide that Clark or his representatives, in that same subsection, have the right to bid at either the public or private sale?

Mr. CARTER. Yes, sir, it does, sir.

Mr. LISHMAN. Does the contract provide that Mr. Clark or his representatives are entitled to be present at all takings and pricings of inventory of Music Suppliers, Inc., and that Mr. Clark is to receive a copy of each inventory?

Mr. CARTER. Where is that, sir?

Yes, sir, I see it, sir.

Mr. LISHMAN. Yes. Is that correct?

Mr. CARTER. Yes, sir.

Mr. LISHMAN. Is it also correct that the contract provides that the books of Music Suppliers must be audited at least annually and oftener at Mr. Clark's request, and that he is entitled to a copy of every audit?

Mr. CARTER. It does, sir. Mr. Clark, though, has never asked for it, although our books—

Mr. LISHMAN. I am not asking whether he has ever asked but the agreement so provided?

Mr. CARTER. I am sorry.

Mr. LISHMAN. Does it provide, in the event of liquidation of the corporations, that the first assets taken out will be to satisfy Mr. Clark?

Mr. CARTER. Can you tell me where that is, sir?

Mr. LISHMAN. Paragraph 4 on page 3. There are several references to that.

Look at page 4 on paragraph No. 4 which commences on page 3. Is it not correct that the contract provides that upon liquidation, the net proceeds received shall be paid over to the said trustee who shall thereupon divide the same equally between said Clark and Carter.

Do you find that on the top of page 4?

Mr. CARTER. The one I have says "execute." I am sorry. You handed me the wrong one. Yes, sir, it does, sir.

Mr. LISHMAN. Now, is it a fact that certain life insurance policies have been taken on your life and that of Mr. Clark?

Mr. CARTER. Yes, they are, sir.

Mr. LISHMAN. How many?

Mr. CARTER. I believe there are two on each of us.

Mr. LISHMAN. In what total amount?

Mr. CARTER. Total of—

The CHAIRMAN. Mr. Lishman, if you will permit an interruption, that is carried, as I observed, in the agreement, and there are three on each one of them.

Mr. MOSS. Three on each.

The CHAIRMAN. Two \$10,000 and one \$5,000 each.

Mr. CARTER. That is correct.

Mr. LISHMAN. Who is the beneficiary of your life insurance policy?

Mr. CARTER. The proceeds are to be paid to the trustee who, in turn, is to pay Mr. Clark for the balance of the indebtedness and if there is a balance remaining, it is to go to my wife.

Mr. LISHMAN. Have you personally paid all the premiums on that policy?

Mr. CARTER. No, sir.

Mr. LISHMAN. Is it a fact that Music Suppliers, Inc., pays the premiums on those policies?

Mr. CARTER. They have paid them, sir, but may I interject?

Mr. LISHMAN. Yes, sir.

Mr. MOSS. The agreement, as I read it, requires each individual to pay the premium.

Mr. LISHMAN. On the other's life.

Mr. CARTER. We had, sir, up to the time that Mr. Clark left. From that time on, for no reason that I can give you of a definite nature, it became more convenient to have the company pay them. We in turn owe the company this money. It will be paid. I have talked to Mr. Clark about it at various times, but as I said before, we are such good friends and have been, there really hasn't been an occasion when we could sit down and really iron the thing out.

Mr. LISHMAN. Well, the fact is that the premiums on these policies have been paid by Music Suppliers on all these policies?

Mr. CARTER. Yes, sir, but they appear as a loan on the books of the corporation.

Mr. LISHMAN. That is a good point to interrupt for me, Mr. Chairman.

The CHAIRMAN. The committee will recess until 2 o'clock in this same room, and you may be excused until 2 Mr. Carter.

Mr. CARTER. Thank you.

(Whereupon, at 12:25 p.m., the hearing was recessed until 2 p.m.)

AFTERNOON SESSION

(The special subcommittee executive session resumed at 2:15 p.m., Representative Flynt presiding.)

Mr. FLYNT. The committee will come to order.

When the committee recessed, prior to the noon hour, Mr. Harry Carter was the witness on the stand and being questioned by the subcommittee counsel, Mr. Lishman.

Mr. Lishman, you may resume your questioning at this point.

I will remind the witness that he is still under oath.

TESTIMONY OF HARRY CARTER—Resumed

Mr. LISHMAN. Mr. Carter, there is now being handed to you what purports to be a copy of an option agreement dated July 22, 1955, between you and Mr. Samuel H. Clark relating to the 50 shares of class A capital stock of Music Suppliers of New England, Inc., which had been the subject of your July 22, 1955, purchase agreement.

Will you please look at this option copy and state whether it is a correct copy of that option agreement.

Mr. CARTER. Yes, sir, it appears to be.

Mr. LISHMAN. And it is dated August 10, 1955?

Mr. CARTER. Yes, sir.

Mr. LISHMAN. And this was executed by you and Mr. Clark?

Mr. CARTER. That is correct, sir.

Mr. LISHMAN. Mr. Chairman, I would like to have this option agreement placed in the record at this point.

Mr. FLYNT. Without objection the agreement will be included in the record at this point.

(The option agreement referred to follows:)

OPTION AGREEMENT

Know all men by these presents—

This Option Agreement entered into this tenth day of August, 1955 by and between Harry Carter, of the Waban District of Newton, in the County of Middlesex, in the Commonwealth of Massachusetts and Samuel E. Clark, formerly of Boston, in the County of Suffolk, in said Commonwealth and now a resident of New Rochelle, in the County of Westchester, in the State of New York.

Witnesseth That—

Whereas, under date of July 22, 1955 said Clark sold to said Carter for fifty thousand dollars (\$50,000.00) the fifty (50) shares of the Class A common capital stock owned by him in Music Suppliers of New England, Inc., a corporation duly organized under the laws of the said Commonwealth and having an usual place of business in said Boston, hereinafter referred to as the "Corporation", the said purchase price being payable over a period of years, and

Whereas said Clark has now requested an option to repurchase said stock from said Carter and said Carter is agreeable to the granting of such option upon certain terms and conditions,

Now therefore, the parties hereto, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by each to the other, the receipt whereof is hereby acknowledged, and in further consideration of these presents and the mutual covenants herein contained, do hereby, for themselves and their respective heirs, executors, administrators and assigns, agree together as follows:

1. The said Carter hereby grants to said Clark an option to repurchase the said fifty (50) shares of Class A common capital stock, such option to be exercised only in the event that the present five (5) year written employment contract (excluding extensions and renewals) between said Clark and American Broadcasting-Paramount Theatres, Inc. and Am-Par Record Corp. is terminated for any reason whatsoever, whether such termination is by reason of the five (5) year term having expired, the resignation of said Clark, the discharge of said Clark for any cause, or by agreement between said Clark and said American Broadcasting-Paramount Theatres, Inc. and Am-Par Record Corp. However, in order to exercise such option, said Clark must notify said Carter in writing of his exercise of said option within thirty (30) days subsequent to the termination of his said written employment contract as aforesaid.

2. In the event said Clark shall exercise his option, then said Clark and Carter shall forthwith execute an instrument under seal terminating and annulling the said written Agreement dated July 22, 1955 and said Clark shall forthwith deliver

to said Carter a Release under seal from further liability under said written Agreement dated July 22, 1955, and in consideration thereof said Carter shall :

(a) Forthwith obtain from the Board of Directors of said Corporation a waiver of the restrictions on the transfer of the capital stock of said Corporation in order to permit said Carter to transfer back to said Clark the aforesaid fifty (50) shares of Class A common capital stock.

(b) Forthwith obtain with the consent and assistance of said Clark from the Trustee named in said written Agreement dated July 22, 1955 the Certificate for said fifty (50) shares of Class A common capital stock, endorse the same in blank and deliver the same to said Clark.

(c) Forthwith obtain and deliver to said Clark the written resignations of the persons then holding the office of Class A Director of said Corporation.

(d) Forthwith obtain and deliver to said Clark the written resignation of the person then holding the office of Treasurer of said Corporation.

(e) Vote his (Carter's) Class B common capital stock in said Corporation for the election of said Clark as Treasurer of said Corporation.

3. It is expressly understood and agreed that if said Clark does not exercise the right, privilege and option herein given and granted within the time herein set forth then this Agreement shall be null and void and of no further force and effect.

4. This Agreement shall be binding upon the parties hereto and their respective heirs, executors, and administrators.

5. This Agreement shall terminate and become null and void upon the death of said Clark or in the event that said Clark shall attempt to assign his rights hereunder, it being expressly understood that the within Agreement and the rights of the parties hereunder cannot be assigned to any other person, firm, or corporation without the written consent of said Carter.

6. In the determination of the legal rights of the parties under this Agreement the laws of the Commonwealth of Massachusetts shall apply.

In witness whereof to this instrument and to another instrument of like tenor, both of which are to have the legal effect of original instruments, the parties hereto have hereunto set their hands and seals the day and year first above written.

(Signed) ALICE CLARK.
To signature of Samuel H. Clark.

(Signed) Samuel H. Clark.
(Typed) SAMUEL H. CLARK.

(Signed) MILDRED CARTER.
To signature of Harry Carter.

(Signed) Harry Carter.
(Typed) HARRY CARTER.

Mr. LISHMAN. Now, Mr. Carter, what was the purpose of this option agreement?

Mr. CARTER. As far as I can recall, Mr. Lishman, Sam Clark thought that his contract would be with ABC-Paramount Records, a corporation of much means. It developed that, as I remember it, when he reached New York, the contract that was extended to him was an Am-Par Record Corp. contract, capitalized for, I believe, \$10,000, and not the sum that he thought perhaps would be at his disposal.

I imagine this sort of scared him, shook him up somewhat, and he said to me, "Harry, I don't know how this may work out down here, but if at all possible, could you agree to my coming back to the corporation if it doesn't?"

I think that I have reconstructed that to the best of my ability, sir.

Mr. LISHMAN. Was it intended by this agreement to make it easier for Mr. Clark to come back into Music Suppliers in the event his employment with Am-Par terminated?

Mr. CARTER. Well, I don't know whether it would be easier, sir. While this is legal, as I previously stated, we had a lot of friendly background and consideration that he gave me when the original

agreement was drawn up, and I figured that I could at least do this for him.

Mr. LISIMAN. It is correct, is it not, that this option agreement provides that Mr. Clark may exercise it without paying any money whatsoever.

Mr. CARTER. It would appear that way, sir, yes, sir.

Mr. LISIMAN. Is it not unusual? What would have happened in the event Mr. Clark exercised his option and you had paid in a substantial amount on the purchase price? Would this option permit Mr. Clark to just walk in and take back the stock and disregard the equity you had built up in the purchase price?

Mr. CARTER. I don't seem to be able to find it in here, but I am sure that would have been taken into consideration.

Mr. LISIMAN. Could you point to any section of this option where that is provided for?

Mr. CARTER. No, sir, I see nothing of that nature in here.

Mr. LISIMAN. Well, Mr. Carter, for all practical purposes, did this option agreement not, in effect, make nugatory the agreement of July 22, 1955, whereby you purported to purchase Mr. Clark's shares for \$50,000?

Mr. CARTER. No, sir. Again I would state that—

Mr. LISIMAN. Three weeks after you enter into a contract to purchase, you agree to turn the stock back to Mr. Clark at any time when his employment terminates with Am-Par. Furthermore you are not going to charge him anything for turning the stock back to him.

Mr. CARTER. Any time, sir, within 5 years, am I correct in that, or if his contract was renewed, then this option becomes null and void.

Mr. MOSS. Mr. Chairman.

Mr. FLYNT. Mr. Moss.

Mr. MOSS. Who is paying Mr. Clark \$208 a month?

Mr. CARTER. I am, sir.

Mr. MOSS. Personal checks?

Mr. CARTER. Yes, sir.

Mr. MOSS. None of it going through the books of Music Suppliers?

Mr. CARTER. No, sir.

Mr. MOSS. What did you gain out of this?

Mr. CARTER. Pardon me?

Mr. MOSS. What advantage did you gain out of this?

Mr. CARTER. I can't say that this option agreement might have been to my advantage. I have had no thoughts along those lines, sir. It is just something we did, as I say, based upon his asking me to do it and I agreed to it.

Mr. LISIMAN. Mr. Carter, do you know a Harry Weiss?

Mr. CARTER. Yes, sir, I do.

Mr. LISIMAN. Who is he?

Mr. CARTER. Harry Weiss is part of our promotion staff.

Mr. LISIMAN. What salary does he receive from Music Suppliers?

Mr. CARTER. I think Harry Weiss receives \$160 a week, plus normal expenses.

Mr. LISIMAN. Is any part of that \$160 a week contributed to by Am-Par?

Mr. CARTER. Yes, it is.

Mr. LISIMAN. How much?

Mr. CARTER. \$60 a week, sir.

Mr. LISHMAN. Mr. Weiss is engaged in record promotion?

Mr. CARTER. Yes, sir.

Mr. LISHMAN. Does he promote Am-Par Records?

Mr. CARTER. Yes, sir, he does, sir.

Mr. LISHMAN. And he promotes other records distributed by you?

Mr. CARTER. That is true, sir.

Mr. LISHMAN. Does he report to Mr. Clark concerning his promotion?

Mr. CARTER. Not directly, sir. Anything that Harry Weiss has to report, he would report to me, first. At no time have we ever stopped Harry Weiss from talking or having conversations with Mr. Clark.

Mr. LISHMAN. Did you ever have an agreement with Ray Lewis, who managed a group known as the Down Beats to manufacture a record entitled "Growing Love"?

Mr. CARTER. Yes, I did.

Mr. LISHMAN. Was that agreement to manufacture the record on a Hampshire label?

Mr. CARTER. That is correct, sir.

Mr. LISHMAN. Would you tell how you came about entering into this agreement?

Mr. CARTER. Yes, sir; if I can recollect it correctly. First I heard about Mr. Lewis from Mr. Weiss who, in turn, had become acquainted with Mr. Lewis through some radio personalities in Manchester, N.H. He informed me that Mr. Lewis had a group and potentially a record and wondered whether or not I might be interested in handling distribution for him.

I said, yes, if the record has some merit, we would be glad to entertain it.

Thereupon, an appointment was so set up between Mr. Lewis and myself, which took place. From there on in, after the determining of what we thought was a valuable piece of property, and subsequently discovered otherwise, that we would undertake the cost of this record, pay these costs, have records manufactured, and split the costs and the profits 50-50.

Mr. LISHMAN. Did there come a time when the record was shown to the Music-Gram as being a hit?

Mr. CARTER. I believe it appeared on a Music-Gram, but, sir, not as a hit. It appeared as perhaps a potential hit.

Mr. LISHMAN. Well, I will ask you to identify this paper that I will hand you.

Mr. CARTER. Yes, sir.

Mr. LISHMAN. Does that not state that this is Music Suppliers midwinter list of pops which lead on the "Hit Parade"?

Mr. CARTER. Well, Mr. Lishman, in our business, I guess we do exaggerate quite a bit.

Mr. LISHMAN. It does not say it is going to be a hit. It says it already is a hit.

Mr. CARTER. Well, it says it leads all hit parades, which would cover a lot of ground.

Mr. LISHMAN. Yes.

Mr. CARTER. At this particular moment, I don't know what the date of this was, we might have sold enough for us to realize that perhaps we did have a hit.

Mr. LISHMAN. Was that paper just handed you prepared in November or December 1958?

Mr. CARTER. I don't recall the date, sir.

Mr. LISHMAN. Would that be approximately correct?

Mr. CARTER. It might be, but again, I am not sure what the date is.

Mr. LISHMAN. When was the record released?

Mr. CARTER. Again, I don't have the exact dates here.

Mr. LISHMAN. Well, dates are important here because I think we can establish that this record was advertised as a hit before it was released and we want to find out what the custom in the business is.

Mr. CARTER. I would say this record was released perhaps in January, the end of December.

Mr. MOSS. 1959 or 1958?

Mr. LISHMAN. Was your first order for this record not received in December for 947 copies?

Mr. CARTER. I would have to look at the record, sir, to refresh my memory.

Mr. LISHMAN. Do you have that record with you?

Mr. CARTER. I don't have that with me; no, sir.

Mr. LISHMAN. I would like to hand you a record and ask you to read the label on this record, including the words on the left-hand side and ask you if that is the record involved.

Mr. CARTER. Hampshire Records, Hampshire Music, BMI, H.P. 2004, playing time 2 minutes 27 seconds, "Growing Love," S. Lane, D. Rogers, the Down Beats, H. 1002.

Mr. LISHMAN. And that was the record that was involved in your transaction with Mr. Lewis?

Mr. CARTER. Yes, sir.

Mr. LISHMAN. May I have that back?

Mr. CARTER, whom did you have print the label?

Mr. CARTER. I believe that labels and all mechanical processes involved in this record were handled by Silver Park Record Co.

Mr. LISHMAN. Where is that located?

Mr. CARTER. New Jersey; I can't think of the name of the town, sir.

Mr. LISHMAN. Who took the master of the tape down to Silver Park to get it done?

Mr. CARTER. I believe they were sent down by mail, sir.

Mr. LISHMAN. The record you have just identified bears the number BMI No. H.P. 2004 as you have just read?

Mr. CARTER. Yes, sir.

Mr. LISHMAN. Is it not a fact that that is a complete misrepresentation and that, in fact, this record is not a BMI record in any manner, shape, or form?

Mr. CARTER. I wouldn't know that, sir.

Mr. LISHMAN. Well, in order to make this clear, we caused a letter to be written to the attorney for BMI, and received a letter from them answering our inquiry as to whether there ever was such a BMI record. Under date of February 2, 1960, the attorneys for BMI over the sig-

nature of Mr. Edward M. Kramer addressed to Mr. Kelly, a letter that states:

I have had the BMI Index Department investigate the song "Growing Love" published by Hampshire Music and recorded on Hampshire Records. This song is not licensed by BMI. Hampshire Music is not a BMI publisher. It is curious that we have no record in our files that this song is licensed by any performing right organization. It does not appear in the list of songs registered with the Copyright Office.

You had a 50-percent interest in this record?

Mr. CARTER. Yes, sir.

Mr. LISHMAN. Well, now, who caused the BMI label and number on there to be placed on this record?

Mr. CARTER. I am assuming it was Mr. Lewis, sir. We asked him for the information for the label and that is what he told me.

The CHAIRMAN (presiding). Who is Mr. Lewis?

Mr. LISHMAN. Mr. Lewis is a deputy sheriff in Manchester, N.H. His statements to our investigators are flatly contradictory to the testimony we have just heard from the witness.

Mr. MOSS. What was his relationship here?

Mr. LISHMAN. He was the manager of the Down Beats who made the record.

Mr. CARTER, do you recall whether Music Suppliers ever paid any royalties to the Down Beats?

Mr. CARTER. No, sir; we did not.

Mr. LISHMAN. Is it not a fact that the reason they could never get any royalties was that it was not a BMI record and there were no means of collecting royalties?

Mr. CARTER. I don't know the exact mechanics of collecting from BMI. That would be the publisher's province, Mr. Lishman. I do know that Mr. Lewis, on February 4, asked me for an advance against his share of the profits of this record, which I gave him, and that we did pay Silver Park in two payments for the records being pressed and whatever mechanical processes were involved.

Mr. LISHMAN. How many records were sold?

Mr. CARTER. I don't have that record with me, sir.

Mr. LISHMAN. How much did Mr. Lewis receive as a result of his entering into this agreement with you?

Mr. CARTER. I gave Mr. Lewis on February 4, 1959, \$700 on account.

Mr. LISHMAN. Did Music Suppliers order 7,012 records of "Growing Love" from Silver Park?

Mr. CARTER. As I say, I don't have that in front of me, Mr. Lishman, but I will accept that figure.

Mr. LISHMAN. Did you tell our investigators that of that 7,012, you still have 1,041 records left?

Mr. CARTER. Yes, sir.

Mr. LISHMAN. Of which 12 are defective records?

Mr. CARTER. Yes; we are stuck with a considerable number.

Mr. LISHMAN. That means there must have been approximately 6,000 records sold.

Mr. CARTER. That is right.

Mr. LISHMAN. On the sale of 6,000 records at what price?

Mr. CARTER. Fifty-five cents, sir.

Mr. LISHMAN. Fifty-five cents.

Mr. Moss. A dollar a record?

Mr. CARTER. 98 cents.

Mr. Moss. 98 cents.

Mr. LISHMAN. For that amount of sales, Mr. Lewis, who theoretically was to have received half of the proceeds, got \$700?

Mr. CARTER. It may appear that way. I remember having this discussion with your investigator, Mr. Kelly. Actually what transpired was that he told me he was in need of money and the boys, the Down Beats, needed things, and so forth, and could I advance that sum to him. At that particular time the record did look good and I thought perhaps it was a safe advance.

Mr. LISHMAN. Do you know whether Mr. Harry Weiss asked Mr. Lewis for money in order to help promote the record?

Mr. CARTER. No, sir, he did not.

Mr. LISHMAN. Did he ask him for any money to have the record manufactured?

Mr. CARTER. No, sir, he did not.

May I volunteer some information, please?

Mr. LISHMAN. Excuse me.

Mr. CARTER. May I volunteer some information, please?

Mr. LISHMAN. Yes, sir.

Mr. CARTER. When I turned this check over to Mr. Lewis, Mr. Weiss was sitting in my office and Mr. Lewis said to Mr. Weiss, "Harry, I want to show my appreciation for the work and efforts you have put behind this record. I would like to give you a token." I think Mr. Lewis gave Mr. Weiss \$100 with our permission.

Mr. LISHMAN. What date did that happen?

Mr. CARTER. On February 4th, sir.

Mr. Moss. Could I interrupt here for a moment?

Mr. LISHMAN. Yes.

Mr. Moss. Very candidly these things sound most peculiar. A man comes to you and tells you that he needs an advance.

Mr. CARTER. Yes, sir.

Mr. Moss. Against prospective sales you gave him \$700.

Mr. CARTER. Yes, sir.

Mr. Moss. He needed this?

Mr. CARTER. Yes, sir.

Mr. Moss. And then in a burst of gratitude he asks permission to give \$100 to one of your employees who does not need it and you say, "Fine, go ahead."

Mr. CARTER. Yes, sir.

Mr. Moss. Do you not agree with me that sounds most peculiar?

Mr. CARTER. Well, originally, when Mr. Lewis asked for this \$700, his statement was that he did need the money. He owed the boys for something, I don't recall what it was. He had some expenses that he had incurred that needed taking care of and after I gave him the \$700, this was his reaction.

Mr. Moss. Frankly, I have never seen so many people who are so generous and so considerate. I would be very happy to yield to you, Mr. Chairman.

The CHAIRMAN. How much did Mr. Lewis ask for?

Mr. CARTER. \$700, sir.

The CHAIRMAN. He asked for \$700 in the first place?

Mr. CARTER. Yes, sir.

The CHAIRMAN. He needed that to advance to these boys and to buy some things that were necessary in connection with his management?

Mr. CARTER. Yes, sir, that is right.

The CHAIRMAN. He needed \$700 for that purpose?

Mr. CARTER. Yes, sir.

Mr. MOSS. Then he gave \$100 of it away?

The CHAIRMAN. Then he gave \$100 of what he needed back to your associate or employee.

Mr. CARTER. No, sir, he is an employee.

The CHAIRMAN. Yes, sir.

Mr. MOSS. Did he arrange this deal with Lewis?

Mr. CARTER. To my knowledge, he did, sir.

Mr. MOSS. Well, when he arranged the deal, did he not have any desire to be cut in?

Mr. CARTER. I doubt that very much, sir.

Mr. MOSS. He came to you and said, "I have got a group here, I think they are capable of making a hit record and they are willing to go along if you will put up the money to produce a recording for them"?

Mr. CARTER. I don't think Mr. Weiss had any idea of the value of this record at that time, sir.

Mr. MOSS. You pay Mr. Weiss \$160 a week to distribute records. And you are telling me that he has no idea of the value of records?

Mr. CARTER. He has to some extent, but usually——

Mr. MOSS. Do you have?

Mr. CARTER. Not completely, sir; no, sir.

Mr. MOSS. Well, do you have? You must have.

Mr. CARTER. I have some, yes, sir.

Mr. MOSS. Well, does he not have some, too?

Mr. CARTER. He has some as well. But usually in circumstances of this kind, we have a so-called meeting of the minds regarding the——

Mr. MOSS. How does this occur?

Mr. CARTER. Well, very frequently we would have, we are a small organization, a small staff meeting where we discuss the merits of certain records. This didn't fit in to that particular category because only Mr. Weiss and myself were present. But we do play and discuss records, new releases.

Mr. MOSS. We have heard from these disc jockeys that whenever they referred there might be some talent running around, someone was on hand to give them a substantial payment or a copyright or a half-interest. And Mr. Weiss, with all of this atmosphere of generosity, decided to be generous himself. He did not want anything at all.

Mr. CARTER. Sir, while I did commit myself at this particular time, I would also think that I did ask the advice of other people regarding this particular record.

Mr. MOSS. But not to take care of Mr. Weiss. That was just part of his duties.

Mr. CARTER. Yes, sir.

Mr. MOSS. But he got his hundred bucks from Mr. Lewis?

Mr. CARTER. Yes, he did, sir.

The CHAIRMAN. Let me ask you a question here. Who put out this Music-Gram?

Mr. CARTER. We do, sir.

The CHAIRMAN. Music Suppliers of New England, Inc., 263-265 Huntington, Boston 15, Mass.?

Mr. CARTER. Yes, sir.

The CHAIRMAN. When was this put out?

Mr. CARTER. As I said, sir, I don't know the exact date.

The CHAIRMAN. Approximate date.

Mr. CARTER. I would say it would be some time after February or March of 1959.

The CHAIRMAN. February-March of 1959?

Mr. CARTER. Yes, sir.

The CHAIRMAN. Do you remember telling the members of the staff who went over this with you that this came out in November and December 1958?

Mr. CARTER. I don't remember that, sir; no, sir.

The CHAIRMAN. You say you did not do it?

Mr. CARTER. I don't remember it, sir. It might have been, but I don't remember it.

The CHAIRMAN. And you do not know when this came out?

Mr. CARTER. No, sir, I do not. I don't exactly. My answer is an approximation or guess, I don't know the exact date of that, sir.

The CHAIRMAN. It is a rather strange thing, and if true, confirms what seems to be the procedure here, that this came out in November and the early part of December 1958. You did not even have the record "Growing Love" at that time. You did not order it until the 22d of December of 1958. And you could not have possibly gotten any records out until after the first of the year or probably up until March, could you?

Mr. CARTER. That is correct, sir.

The CHAIRMAN. And yet if this were printed in November and December, then it came out as one of your list of "Pops lead all hit parades"?

Mr. CARTER. Yes, sir.

The CHAIRMAN. Which went to all music stores that you supplied?

Mr. CARTER. I think that went to radio stations, sir, not music stores.

The CHAIRMAN. Radio stations?

Mr. CARTER. Yes, sir.

The CHAIRMAN. Even though, if that be true, it had not been printed at that time or pressed—what do you call it?

Mr. CARTER. Pressed, sir.

The CHAIRMAN. Then you put it on the list and sent it out to all the radio stations and expect it to be coming. If that is the kind of phony business that we have here of getting these records on the air, it seems to me, Mr. Lishman, that should be noted and the particular problem dealt with rather stringently.

Mr. Moss. Did this go only to the radio stations?

Mr. CARTER. I am not sure, sir. We sometimes send them to dealers as well as radio stations.

Mr. Moss. Did you have orders on hand when you ordered the pressing of "Growing Love"?

Mr. CARTER. We might have had some orders on hand.

Mr. MOSS. Will you check your records and let us know whether or not you had orders and, if so, how many?

The CHAIRMAN. The committee will be in recess subject to call of the Chair.

(Short recess taken.)

The CHAIRMAN. The committee will come to order.

Mr. LISHMAN, you may proceed.

Mr. LISHMAN. Mr. Carter, is it a fact that a radio station will not play any record unless it bears either an ASCAP number or a BMI number or some indication that a performing rights society will safeguard the station from the possibility of suit from unauthorized use of a record?

Mr. CARTER. I am not sure of that factually, Mr. Lishman. I do know that we had occasions to submit records to radio stations that have not officially been licensed but a letter accompanies the record. This goes back sometime, if my memory serves me correctly, a letter accompanies the record from the composer allowing the record to be played.

Mr. LISHMAN. Did that happen in the case of this record "Growing Love"?

Mr. CARTER. No, sir, it did not.

Mr. LISHMAN. In other words, the station owner seeing the BMI number on there would feel that he was dealing with a record from which he could not suffer any copyrighted infringement claim?

Mr. CARTER. That is correct, sir, just as I assume that was licensed by BMI.

Mr. LISHMAN. When you discussed your 50-percent interest in this record with Ray Lewis, did you tell Mr. Lewis that you would arrange that this record would receive national distribution through Am-Par?

Mr. CARTER. No, sir I did not.

Mr. LISHMAN. How many records of this release were sold in the Boston area?

Mr. CARTER. I don't think I could break that down for you inasmuch as we encompass an area larger than the Boston area and all our records are sold in an area.

Mr. LISHMAN. How many copies of this record did Music Suppliers sell?

Mr. CARTER. I think the figure quoted before was 6,000, sir.

Mr. LISHMAN. I have no further questions, Mr. Chairman.

The CHAIRMAN. Mr. MOSS.

Mr. MOSS. I have quite a number of things all tied together here.

I think we will start first with payments made by your company to the various diskjockeys. Before I do, you are, in fact, quite active in the management of Music Suppliers, are you not?

Mr. CARTER. Yes, I would say so.

Mr. MOSS. And in the affairs of Music Distributors?

Mr. CARTER. Yes, sir.

Mr. MOSS. And do you have any other business activities or income-producing activities?

Mr. CARTER. Well, there was Dumont Record Distributing Corp.

Mr. MOSS. Are you quite active in Dumont's affairs?

Mr. CARTER. May I refer to this, please?

Mr. MOSS. Certainly, you may.

Mr. CARTER. We had a company called Music Suppliers of Ohio, Inc., which I choose to call a defunct company at the moment.

Mr. MOSS. Is it in fact a defunct company?

Mr. CARTER. No, sir.

Mr. MOSS. It is in operation?

Mr. CARTER. No; it is not operating, sir.

Mr. MOSS. What are you trying to do, wind up its affairs?

Mr. CARTER. We are trying to do that.

Mr. MOSS. What does it consist of? Is it disposal of stock or collection of accounts?

Mr. CARTER. Primarily, sir, it is collection of some accounts, and we would be in a position to close it.

Mr. MOSS. Would you call it income producing?

Mr. CARTER. No, sir, we lost money.

Mr. MOSS. Well, what other income-producing activities do you have?

Mr. CARTER. Circle Distributing Corp.

Mr. MOSS. Is that a good active company?

Mr. CARTER. No. I think Mr. Dinerstein made reference yesterday to a graveyard operation.

Mr. MOSS. What do you do?

Mr. CARTER. We handle and sell distressed merchandise.

Mr. MOSS. You take distressed merchandise, and how long do you keep merchandise in stock where there is no movement on it?

Mr. CARTER. In this particular company we would not keep any in stock to speak of because once we knew where it could be placed—

Mr. MOSS. What do you do, stock these 15-cent bargain tables that one runs into in supermarkets?

Mr. CARTER. No, sir; we do not. These records would eventually wind up in that position; yes, sir. But through another source.

Mr. MOSS. But you are wholesaling entirely?

Mr. CARTER. That is right.

Mr. MOSS. To wholesalers?

Mr. CARTER. That is right.

Mr. MOSS. Are you active in the affairs of Circle Distributing?

Mr. CARTER. I am to a certain extent. Mr. Dinerstein takes care of most of these things.

Mr. MOSS. Are these companies—Dumont, Circle, Music Distributors, Music Suppliers—all housed in the same offices?

Mr. CARTER. Music Distributors is, Circle is, Dumont is not.

Mr. MOSS. Well, Distributors, Suppliers and Circle?

Mr. CARTER. Right, sir.

Mr. MOSS. Are they for all practical purposes, operating in the same headquarters?

Mr. CARTER. Right, sir.

Mr. MOSS. With the same staff?

Mr. CARTER. Yes, sir.

Mr. MOSS. Any exceptions to that?

Mr. CARTER. No, sir.

Mr. MOSS. Just under three different hats?

Mr. CARTER. So to speak; yes, sir.

Mr. MOSS. Dumont actually headquarters separately?

Mr. CARTER. That is right, sir.

Mr. MOSS. How about staff?

Mr. CARTER. Separate staff entirely.

Mr. MOSS. Entirely?

Mr. CARTER. Yes, sir.

Mr. MOSS. But no directing head?

Mr. CARTER. No, sir.

Mr. MOSS. Mr. Dumont is manager?

Mr. CARTER. Mr. Dumont is president and sales manager, I believe.

Mr. MOSS. What is his function? Does he sell?

Mr. CARTER. He does some selling. Generally——

Mr. MOSS. You are the treasurer?

Mr. CARTER. Yes, sir.

Mr. MOSS. What does Mr. Dinerstein do?

Mr. CARTER. Mr. Dinerstein is a stockholder but not an officer of the corporation.

Mr. MOSS. Does he actively participate in its affairs?

Mr. CARTER. More than I do, sir, yes.

Mr. MOSS. Well, in discussing the compensation you received, you stated that notwithstanding this agreement, you felt that you were entitled to compensation because of activity. I cannot remember the exact words. I thought I had written them down. But anyway, you thought you were entitled to compensation because of your activity.

Mr. CARTER. Yes, sir.

Mr. MOSS. The reason I am dealing with this matter of activity is that your counsel this morning, in presenting his plea to the committee that they have this limited session, stressed your lack of participation in the affairs of these companies. I noted in your testimony that there was every evidence that you had a rather firm grasp of the details of the business in each instance, which would indicate a very active role in the affairs of these companies.

Mr. CARTER. Excuse me——

Mr. MOSS. Am I correct?

Mr. CARTER. I have tried to, sitting here, concentrate on these various points.

Mr. MOSS. You would agree with me, if you concentrate on that of which you have no knowledge, it does not do you a bit of good?

Mr. CARTER. No, sir; it does not.

Mr. MOSS. So you do have the knowledge. Therefore, you indicate a more active role than was the impression I gathered from the statement of your counsel.

Mr. CARTER. Well, if I can say so, sir, I was trying to think of some of the questions asked yesterday in trying to frame my answers to be intelligent and truthful.

Mr. MOSS. Which again requires that you draw on a background of detailed information. You were not briefed.

Mr. CARTER. No, sir.

Mr. MOSS. So you had to have that knowledge from actual participation in the affairs of your business.

What criteria was used by you in determining the payments to disk jockeys?

Mr. CARTER. We have no set pattern to follow. Not knowing every disk jockey in our territory, we service, I think, a hundred stations. We have made these payments to those disk jockeys who have shown more active interest in Music Suppliers, in the advice we have asked of them, the exposure they give us at record hops and the attention they give us at that time.

Mr. MOSS. You keep speaking of record hops. How many have you had?

Mr. CARTER. I don't think I can give you a figure, but I am fairly confident that some of these fellows do three, four, or five a week.

Mr. MOSS. Well, would you state one to me.

Mr. CARTER. I think both Dave Maynard and Arnie Ginsburg have had that many hops.

Mr. MOSS. How many did Norman Prescott have?

Mr. CARTER. I don't recall exactly, sir, how many he might have had.

Mr. MOSS. You figure he had quite a number? You paid him \$5,515. He is your second high money man. Why did you give him \$5,515 instead of \$25?

Mr. CARTER. He might have had some hops, I don't know the exact number, but I will say that Norman Prescott perhaps evidenced more interest in us. Norman Prescott was a constant visitor to the office, in helping us select records that he thought might be potential hits.

Mr. MOSS. How did he do this?

Mr. CARTER. By listening to them, giving us his advice.

Mr. MOSS. Did you follow this all the time?

Mr. CARTER. Not all the time; no, sir.

Mr. MOSS. Is that reflected in this Music-Gram?

Mr. CARTER. No. You mean the selection on it?

Mr. MOSS. Yes.

Mr. CARTER. Yes, some of that may be reflected there, sir.

Mr. MOSS. Was "Growing Love" one of his selections?

Mr. CARTER. I don't recall, sir, whether I had discussed that with Norman or anybody in the organization.

Mr. MOSS. And how would Mr. Ginsburg have record hops when his program runs from 8 to 10 each evening?

Mr. CARTER. He taped very frequently.

Mr. MOSS. He taped his show and broadcast that tape and the listeners were content to have a taped program?

Mr. CARTER. Yes, sir, that is the information I received.

Mr. MOSS. What value can you get out of a record hop? I can understand the value of exposure on the air, but if you have 50 kids at a record hop, what value is it?

Mr. CARTER. They have run into the thousands.

Mr. MOSS. They have run into the thousands?

Mr. CARTER. Yes, sir.

Mr. MOSS. And how much is it worth at a record hop when there are a thousand people present? How many records would you sell?

Mr. CARTER. I don't think I can evaluate it that way, sir.

Mr. MOSS. Somewhere you did evaluate, did you not?

Mr. CARTER. Yes, the number of hops they did. I don't know whether we took the—

Mr. MOSS. But you had no record, you had no way of knowing the number they did?

Mr. CARTER. No, except what they told us.

Mr. MOSS. You believed them implicitly?

Mr. CARTER. Yes, I did.

Mr. MOSS. How much did you figure? Let us take a hypothetical case, or let us take an actual case. Let us take Stan Richards. You gave him \$6,025 over a period of 3 years.

How much of that was for record hops?

Mr. CARTER. I can't say, sir. I don't know.

Mr. MOSS. Well, how much of it was for interest?

Mr. CARTER. Neither there can I give you a definite percentage or figure, sir. I think in the Stan Richards case there were quite a few loans involved there.

Mr. MOSS. Well, there were some loans involved, yes.

Mr. CARTER. They had no bearing on the hops, sir.

Mr. MOSS. Well, it must have had some bearing. You did not give loans to him unless you were grateful to him, did you?

Mr. CARTER. Somewhere along the line, sir, some of these fellows had become very close friends of mine, as well.

Mr. MOSS. Do you customarily make loans to people, even friends, without any evidence of indebtedness, without expectation of payment with any fixed regularity and without the payment of any interest?

Mr. CARTER. No, sir, except that I did believe, and I believe even now, to some extent, that I will be repaid this money.

Mr. MOSS. No. But that is not what I asked. The fact is that you do not follow such practices, do you? You are a pretty good businessman and you expect when you loan money, that you are going to get it back, and that that money is going to have a normal earning capacity; is that not the fact?

Mr. CARTER. I expect to get it back, sure, yes, sir.

Mr. MOSS. Why in these instances were you so loose? You made these loans to Stan Richards and you have nothing to show that he owes it to you except an entry on your books.

Mr. CARTER. We have some bad checks.

Mr. MOSS. But that goes over here to the \$1,150. That is the exchange account. That is another very interesting facet to this business, but it is the loan account that I am interested in now. You do not try to collect them, do you?

Mr. CARTER. Yes, we have asked for the money, and—

Mr. MOSS. Nicely, hat in hand sort of arrangement?

Mr. CARTER. Yes, sir; I say we have asked for it nicely.

Mr. MOSS. I said have you tried to collect it? I did not ask whether or not you had pleaded for payment, but whether you had tried to collect?

Mr. CARTER. Through other means other than asking him verbally, no, sir, we have not.

Mr. MOSS. And you have no interest that you charge on this?

Mr. CARTER. No, sir, we didn't.

Mr. MOSS. He does not really owe it to you, does he? You would not have a chance of a snowball in the hot spot of collecting it, would you?

Mr. CARTER. No, except what our books disclose, sir. The money was given to them and posted in a loan account.

Mr. MOSS. You pat them on the back and said, "Son, do not worry about it; whenever you are ready, you just give it to us." You cannot tell me how much of that was for record hops. Can you give me any idea how much of Norman Prescott's was for record hops?

Mr. CARTER. No, I cannot.

Mr. MOSS. But you recollect that some of it was?

Mr. CARTER. Yes.

Mr. MOSS. You know that is strange because under oath he had testified that he never played a record hop. He liked to go home and spend the evening with his family.

Mr. CARTER. My——

Mr. MOSS. Did you ever have an arrangement with these fellows where you paid them a set amount every month?

Mr. CARTER. I think we had two, but——

Mr. MOSS. Let us hear about one of those two.

Mr. CARTER. This was something that Mr. Dinerstein and I decided without consulting them, sir.

Mr. MOSS. Mr. Dinerstein said that he decided in a few instances, but you usually did the deciding. That was his testimony yesterday. That is why I waited until I got you here to find out. This intrigues me.

Mr. CARTER. Well, I think we consulted each other more frequently than not, sir.

Mr. MOSS. Well, who finally made the decision? Somebody had to do it.

Mr. CARTER. Either one of us might have, sir.

Mr. MOSS. Who finally did in most cases? He indicated you did.

Mr. CARTER. It is very likely, sir, but I still think we both——

Mr. MOSS. Where you made the decision, how did you arrive at a figure?

You cannot really expect this subcommittee to believe that a successful business, paying for advertising, promotion or whatever you might want to call it, had no guidelines for the payment. It was not a gift, was it?

Mr. CARTER. No, sir, it was for promotion.

Mr. MOSS. It is an expense item on your books?

Mr. CARTER. Yes, sir, it is.

Mr. MOSS. You must have some way of justifying it.

Mr. CARTER. Just as I have stated before, to show our appreciation for record hops, the advice they had given us to further our goodwill.

Mr. MOSS. Were you ever appreciative of any one other than disk-jockeys?

Mr. CARTER. I might have been, sir.

Mr. MOSS. Well, if you recall paying anyone else anything, tell me.

Mr. CARTER. Well, we had given gifts to some of our dealers from time to time.

Mr. MOSS. We just established these are not gifts. These are payments. You said yourself just a minute ago that these were not gifts. You were paying for a service. You were paying for something of value to your company.

Mr. CARTER. Maybe in my mind, sir, I have got the two words synonymous: gifts and showing appreciation.

Mr. MOSS. They cannot be.

What were the earnings of your company in these three years?

Mr. CARTER. I don't have those records with me, sir.

Mr. MOSS. Well, it looks like you were giving out about a third as much as you were taking in for yourself and you were part owner.

Mr. CARTER. Yes, sir.

Mr. MOSS. At least a third as much as you were taking in on this.

Mr. CARTER. Yes, sir.

Mr. MOSS. Well, there is no use beating a dead horse. You want the record to show that the payments made here were, as I characterized it yesterday, just sort of willy-nilly?

Mr. CARTER. Yes, sir. I cannot give you a——

Mr. MOSS. A fantastic pattern.

Did you ever get together with Maynard and discuss this idea of attributing these payments to record hops, in order to help Maynard keep his job with WBZ?

Mr. CARTER. No, sir, I never did, sir.

Mr. MOSS. Did you ever get together with Maynard, either by personal contact or on the telephone, and discuss the need to corroborate each other's stories?

Mr. CARTER. No, sir, never did, sir.

Mr. MOSS. You never talked with Maynard about this at all?

Mr. CARTER. Never about this, no sir.

Mr. MOSS. Did you talk at all about this matter of payments, or any of the payments, with Maynard?

Mr. CARTER. No, sir.

Mr. MOSS. Do you regard this as a completely proper means of promoting business?

Mr. CARTER. Well, there is some doubt in my mind now since this investigation has taken place. I do know that it has been a part and parcel of the music industry.

Mr. MOSS. Was it part and parcel of the pattern followed when you were with Decca?

Mr. CARTER. To some extent; yes, sir.

Mr. MOSS. To what extent?

Mr. CARTER. I did not have access to a lot of things there. I was just a salesman.

Mr. MOSS. Did you cover the New England territory?

Mr. CARTER. I covered the New England territory, sir.

Mr. MOSS. Is it your understanding that certain diskjockeys were acting either as consultants or receiving payments for the gratitude of Decca for their cooperation?

Mr. CARTER. Well, sir, it goes so far back, I can't truthfully say so.

Mr. MOSS. Was it your impression that that was the situation in those days?

Mr. CARTER. I would say that I had heard of it; yes, sir.

Mr. MOSS. Did you put this practice into effect in your own company?

Mr. CARTER. I imagine I did, sir, yes, sir. Between Mr. Clark and myself going back to the early days.

Mr. Moss. Was Mr. Clark in the record business as a promotion man: was he a record promotion man?

Mr. CARTER. When we started out, sir, his duties consisted of promotion and sales.

Mr. Moss. Before I finally get off this diskjockey question, you indicated there were two cases where you paid a regular amount to diskjockeys.

Mr. CARTER. Yes, sir.

Mr. Moss. What were the two instances?

Mr. Carter. Norman Prescott and Arnie Ginsburg, sir.

Mr. Moss. As you were paying a regular amount, there must have been some sort of an agreement.

Mr. CARTER. We had no agreement with them, sir, and that is the truth. We had no agreement with them, sir.

Mr. Moss. No agreement at all.

Well, I have a copy of a check here, October 15, 1959, of \$200, drawn by Music Suppliers on U.S. Treasury Co. in Boston, signed by yourself and in your handwriting unmistakably are the words "through September," which is on the face of the check.

Mr. CARTER. Yes, sir.

Mr. Moss. Did you regard this as payment then up to the end of September?

Mr. CARTER. Yes, sir, I would say so.

Mr. Moss. Well, do you say so?

Mr. CARTER. Yes, sir. But I think there is an explanation for that.

Mr. Moss. Let us switch back now. We have got another one here of July 23, the same sort of check drawn on the same bank, signed by yourself and again in your handwriting, "through July."

Mr. CARTER. Yes, sir. Again Mr. Dinerstein and I decided to do this. We had no conversation about this with this particular individual, but those notations were made for bookkeeping purposes, sir.

Mr. Moss. What bookkeeping purpose was served by those?

Mr. CARTER. So we could keep track of these.

Mr. Moss. Were these salaries?

Mr. CARTER. No, sir, they are not.

Mr. Moss. What were they?

Mr. CARTER. They were gifts to both these individuals or the individual—

Mr. Moss. You said they were not gifts.

Mr. CARTER. Or the individual you are referring to.

I will say, again, somewhere in my mind I have the words synonymous.

Mr. Moss. Did you charge them off as gifts on your books?

Mr. CARTER. We charged them off either as advertising or promotion, sir.

Mr. Moss. Regular expense of the business?

Mr. CARTER. Yes, sir.

Mr. Moss. Well, this is the first time we seem to have arrived at a point where you and I both recognize there is a fixed amount paid each month here. How was that determined?

Mr. CARTER. Again, there was no yardstick in determining the amount, sir.

Mr. Moss. Just decided it would be nice to give Arnie \$100 a month?

Mr. CARTER. Yes, sir.

Mr. Moss. Well, I am not the subcommittee, but if I were at this point, I would take you out in the public and let you make these admissions so that everybody could see and observe them. I do not believe them.

When you had your agreement with WBZ, did you select the records which would be played? You had your agreement, I guess, with Mr. Prescott. Did you have an agreement with him?

Mr. CARTER. No, sir, I did not.

Mr. Moss. He says you did. Did you select the records you wanted him to consider for you?

Mr. CARTER. No, sir.

Mr. Moss. Would you say this is true or untrue, then? Mr. Lishman, our counsel, put this question to Mr. Prescott:

Did Harry Carter, the president of Music Suppliers, Inc., select the records he desired to have played over the air on WBZ or WBZ-TV and deliver them to you?

Mr. PRESCOTT. Deliver the records that he wanted particularly plugged on the air?

Mr. LISHMAN. Yes, sir.

He indicated that you selected them and sent them over. Did you?

Mr. CARTER. No, sir, I did not.

Mr. Moss. You never sent any records over?

Mr. CARTER. Yes, sir; we did. We were constantly sending records over to the radio station.

Mr. Moss. Were these suggestions?

Mr. CARTER. No. They would be the new releases we had received from the manufacturers, in the normal course of events, sir.

Mr. Moss. But you made no effort to indicate at any time that you wanted one of these records given particular consideration?

Mr. CARTER. No, sir. I might add, in getting Mr. Prescott's opinion and the advice he had given us, that he might have himself earmarked some of those records that he liked to be played on the air, sir.

Mr. Moss. He might have done it. But you did not. Did you discuss with him, and indicate in conversation, that you thought certain records had particular merit and would perhaps appreciate his giving them extra consideration?

Mr. CARTER. In playing new records for him, if he volunteered that information himself, I might have agreed with him.

Mr. Moss. Always it had to be that he would volunteer it?

Mr. CARTER. Yes, sir.

Mr. Moss. You were scrupulous in avoiding any possible hint as to your own thinking or your own preferences?

Mr. CARTER. In my mind; yes, sir.

Mr. Moss. I did not ask you what was in your mind. I asked you what was the fact.

Mr. CARTER. That would be the fact, sir.

Mr. Moss. That is the fact. All right.

You know there are some very interesting contradictions in your testimony. Here we have had a pattern of almost unparalleled generosity. You really loved these people who were diskjockeys, did you not? You had great affection for them; you could not resist giving

them the money. But you have a friend out in California who makes Verve Records and he needs some cash. We have got an unparalleled contrast in that you first loan him money and he gives you an extra 10 percent. As I understand it, the first loan was for \$15,000.

Mr. CARTER. Yes, sir.

Mr. MOSS. On that first loan you were given, roughly, \$1,550 interest.

Mr. CARTER. I think \$1,500 would be exact, sir.

Mr. MOSS. It depends which way you figure it.

Mr. CARTER. Yes, sir.

Mr. MOSS. We have not established a fact. I do not think you have stated that you know exactly the system used. So it is around \$1,500. You indicated that the current balance with Verve is roughly some \$40,000.

So we can assume that if your pattern of relationship with them is the usual one, that that represented about a 30-day buying of Verve Records, or a little less. Am I correct?

Mr. CARTER. Yes, sir.

Mr. MOSS. That means that you had an effective interest rate which would equal 120 percent a year on your money. You must relate your buying pretty well to your turnover pattern in your inventory.

Mr. CARTER. Well, I think this was brought out before, that the buying of Verve Records at the time of the loans did not necessitate our buying that much merchandise at that time.

Mr. MOSS. No; I recognize that. But you stated for our information that your billings currently—

Mr. CARTER. My current billings—

Mr. MOSS. On a 30-day basis—a 30-day count basis.

Mr. CARTER. I think I stated the terms, sir.

Mr. MOSS. You said 30 days, did you not?

Mr. CARTER. Yes. Our terms were 2-10 EOM.

Mr. MOSS. Were roughly \$40,000?

Mr. CARTER. Yes.

Mr. MOSS. So I think we could assume that you buy about \$15,000 in a month, do you not?

Mr. CARTER. Yes, sir.

Mr. MOSS. If you are buying that much, your turnover must be that much. You are not buying to build up inventories that are not turned over.

Mr. CARTER. No, sir.

Mr. MOSS. So we can assume, then, that it is pretty logical you had an effective interest rate of 120 percent on your money; is that correct?

Mr. CARTER. Well—

Mr. MOSS. That is real generosity.

Then you made another loan for \$25,000. I would be interested, Mr. Lishman, in determining if we can, and I will ask, Mr. Chairman, if we can have this information supplied: What was the turnover of purchases for the months of November 1956, January 1958, October 1958, and March of 1958 of Verve Records with Music Suppliers?

I think that would pretty well establish what the rate was here, that these people are getting. It appears to me that a fantastic interest was being charged.

Mr. LISHMAN. Mr. MOSS, are you requesting the witness to supply that for the record?

Mr. Moss. Yes, I am requesting, Mr. Chairman, that the witness be required to list this turnover for the record.

Mr. CARTER. May I have that again.

Mr. Moss. The purchases of Verve Records, or if you wish, your average monthly purchases of Verve Records, for the months the loans were made.

Mr. CARTER. Months in which loans to Verve were made against those corresponding months, sir?

Mr. Moss. Yes.

Mr. LISIMAN. Do you want that in the form of a certified statement by an officer of the company?

Mr. Moss. I would think so. It would not be of any value with us unless it would be.

The CHAIRMAN. Mr. Carter is the president. And it is appropriate to certify to it.

Can you supply the information, Mr. Carter?

Mr. CARTER. Yes, I can.

The CHAIRMAN. You may do so.

(The information requested follows.)

MUSIC SUPPLIERS, INC.,
Boston, Mass., March 2, 1960.

HON. OREN HARRIS,

Chairman, House Subcommittee on Legislative Oversight,
New House Office Building, Washington, D.C.

DEAR SIR: Relative to two requests for certain information made of me at my recent attendance before your committee, I am submitting the following.

First: Whether Music Suppliers, Inc., had any orders from its dealers on a Hampshire record, titled "Growing Love" at the time in question.

Music Suppliers, Inc., had no written orders but many verbal requests from our dealers for this record.

Second: Music Suppliers, Inc., total purchases from Verve Records, Inc., during the period from October, 1956 through December, 1958 and the resultant monthly average.

Music Suppliers, Inc., purchased from Verve Records, Inc., during this period a total of \$223,061.90 or a monthly average of \$8,579.30.

Respectfully yours,

MUSIC SUPPLIERS, INC.,
HARRY CARTER, President.

Mr. Moss. Now, you received your principal from Music Suppliers once the account had been amortized you set up a prepaid account, did you not?

Mr. CARTER. Yes, sir.

Mr. Moss. With Verve. Did they evidence this by issuing to you a credit memorandum for the amount of the prepaid account?

Mr. CARTER. I don't believe—

Mr. Moss. You must have had some sort of evidence here.

Mr. CARTER. I don't believe they did, sir. I think it was just we bought against this amount plus the increase.

Mr. Moss. Supposing Mr. Granz walked across the street and was hit by an automobile, you would want to have some way of insuring that the money you had advanced was not lost. Did the company issue any sort of an instrument or any sort of a credit notifying you that you had a balance with them of this amount, a credit balance against which you could purchase?

Mr. CARTER. I would have to check that, but I do not think that that took place, sir.

Mr. Moss. You do not think there was any evidence of this at all?

Mr. CARTER. No, sir, I don't think so, but I say, I would have to check that to make sure.

Mr. MOSS. Was Mr. Granz the sole owner of Verve Records?

Mr. CARTER. I don't know, sir.

Mr. MOSS. You don't know.

Mr. CARTER. I don't know, sir. I know he is the director of the company.

Mr. LISIEMAN. Mr. Moss, may I interrupt? We attempted to interview Mr. Norman Granz in California and learned that shortly before we arrived there he had gone to Europe and it was unknown when he would return. We were interested in ascertaining further information about this Verve Records matter.

Mr. MOSS. Would you not agree with me this is a curious case? You have no way of proving that this man owes you any money. I am not intimating that the man might be anything but the soul of integrity, but he is mortal, and being mortal, he might not be there tomorrow. What way would you have of collecting?

Mr. CARTER. It may appear so, sir, on the surface. Norman Granz has been a very old friend of ours.

Mr. MOSS. And the older he is, the more you should have concerned yourself with the normal safeguards.

Mr. CARTER. The loans were made to Verve Record Corp., not to Mr. Granz personally, and I feel confident that somebody in the corporation would have recognized—

Mr. MOSS. You did not make a loan, you made a prepayment on account, did you not?

Mr. CARTER. Well, it could be interpreted that way. We figured it was a loan.

Mr. MOSS. That is the fact, was it not? You set it up as an account payable with a credit balance, did you not?

Mr. CARTER. No, sir. In my mind, I figured these were loans right down the line, sir.

Mr. MOSS. I think we established with Mr. Dinerstein that these were set up as accounts payable with a credit balance.

Mr. CARTER. They were for bookkeeping purposes, sir.

Mr. MOSS. Well, when I go to your books to audit them, what else do I have to tell me what the transaction was? That is supposed to be a complete and accurate record of the transaction. For what other reason do you keep a book? They are not supposed to be a lot of this loose hanky panky on bookkeeping. There are some tax questions here that I am beginning to become a little interested in. In fact, it looks to me as though this one deal here might be a good way of avoiding a corporate levy of some of the profits of a corporation. I do not know who owned this money. It is a most irregular thing as I look at it.

Well, we do not seem to be getting anywhere on that.

We will go to something else very interesting. Although I do not think we are going to get any place on this, either, Mr. Chairman. There is this interesting agreement with Mr. Clark.

Did you ever regard this agreement, for the transfer of stock from Mr. Clark to yourself, as a completely final binding transaction of ownership?

Mr. CARTER. This was a completely final binding transaction, sir.

Mr. MOSS. Do you feel when he put on his hat and walked out after

he had signed that agreement, that you were the new owner and he was just somebody you owed money to?

Mr. CARTER. Yes, sir.

Mr. MOSS. I have read a few agreements and I have made a few, but I have never read one as one-sided as the one you executed. Did you both have the same attorney?

Mr. CARTER. Yes, sir, we did.

Mr. MOSS. Was that attorney also the attorney for the corporation?

Mr. CARTER. Yes, sir, he is.

Mr. MOSS. Whose attorney was he originally?

Mr. CARTER. I think that he was mine originally and Mr. Clark met him through me.

Mr. MOSS. What rights did you have under this agreement? The right to have the headaches to operate the business if Mr. Clark did not disagree with you? What rights did you have?

Mr. CARTER. The right to operate the business, vote the stock.

Mr. MOSS. Pay him \$208 a month.

Mr. CARTER. That is right, sir.

Mr. MOSS. And when he wanted to exercise his option, he could take over. What did he have to give you, or did you have to give him something when he took it over?

Mr. CARTER. No, sir.

Mr. MOSS. Did he have to give you anything when he took it over?

Mr. CARTER. No, sir.

Mr. MOSS. Let me get this again now. You see, I want to be very candid with you. I am just bowled over. I do not think even as a child reading fairy tales I have ever heard anything quite as fantastic as this. And I am deadly serious. You mean to tell me that you regarded this as a completely bona fide sale?

Mr. CARTER. I did, sir, and that is the truth.

Mr. MOSS. Absolute transfer of ownership?

Mr. CARTER. Yes, sir.

Mr. MOSS. And yet you agree to give back to him all of it, together with every dime you paid him and he does not have to give you anything. Is that the fact?

Mr. CARTER. Are you referring to the option, sir?

Mr. MOSS. I am.

Mr. CARTER. I think the option states he was to get back his 50 percent ownership.

Mr. MOSS. That is right.

Mr. CARTER. Not all of it, sir.

Mr. MOSS. Well, his 50 percent ownership, that is all we are talking about, is it not?

Mr. CARTER. That is correct, sir. I am sure when the time came for us—

Mr. MOSS. I am not talking about that. I am talking about the agreement provided for.

Mr. CARTER. The agreement is just as it is stated, sir.

Mr. MOSS. Well, Mr. Chairman, I am not going to continue to pursue this. I am not equipped to deal in this realm of fantasy.

Those are all my questions.

The CHAIRMAN. Any questions, Mr. Derounian?

Mr. DEROUNIAN. No.

The CHAIRMAN. What percentage did Mr. Clark own of the Music Suppliers before you got into it, Mr. Carter?

Mr. CARTER. Before I got into it back in 1946, he owned 100 percent, sir.

The CHAIRMAN. You became associated with him in 1946?

Mr. CARTER. Yes, sir.

The CHAIRMAN. What percentage did you own?

Mr. CARTER. I bought in 50 percent, sir.

The CHAIRMAN. In other words, you and Mr. Clark were each 50 percent stockholders until he sold out to you, with whatever kind of an agreement you might want to characterize this?

Mr. CARTER. That is correct, sir.

The CHAIRMAN. Anything further, Mr. Lishman?

Mr. LISHMAN. I would just like to ask one question: Did you or Mr. Dinerstein or Mr. Clark have any interest, direct or indirect, in Verve Records?

Mr. CARTER. No, sir, we have none. Indirectly we are their distributors, sir.

Mr. LISHMAN. Is it not a fact that the result of this agreement is that Music Suppliers, Inc., was really a conduit to siphon off the fantastic amount of profit that was involved in this deal to you, Mr. Dinerstein and Mr. Clark?

Mr. CARTER. I would say that Music Suppliers was a conduit in order to obtain the merchandise so that we could realize the benefits of these loans, sir.

Mr. LISHMAN. Well, Music Suppliers, in other words, did not receive any benefit from these loans?

Mr. CARTER. They made their normal markup, sir.

Mr. LISHMAN. But the interest, the extra interest—

Mr. MOSS. Mr. Lishman, I think there at the beginning of the record you ought to have him answer that definitely there was no benefit. The normal markup is available without any loan.

Mr. LISHMAN. You can ask him that.

Mr. MOSS. I will ask you.

Mr. CARTER. Yes.

Mr. MOSS. Then the answer to his question was, there was no benefit.

Mr. CARTER. The Music Suppliers had no benefit otherwise than its normal markup through these loans.

Mr. LISHMAN. Those are all the questions I have.

The CHAIRMAN. Mr. Carter, in 1959, what was your salary? Was it approximately \$32,500?

Mr. CARTER. No, sir; my salary was \$28,500, sir.

The CHAIRMAN. \$28,500?

Mr. CARTER. Yes, sir.

The CHAIRMAN. In 1959?

Mr. CARTER. In 1959.

The CHAIRMAN. You deposited in your bank, to your bank account, approximately \$49,000, did you not?

Mr. CARTER. I do not know if I did, sir. I cannot answer that offhand, sir.

The CHAIRMAN. Pardon? Did you or did you not?

Mr. CARTER. I can't answer that offhand, sir, I don't know.

The CHAIRMAN. You don't recall what you deposited in your own personal account?

Mr. CARTER. No, I don't, sir.

The CHAIRMAN. In 1959.

What bank do you do business in?

Mr. CARTER. First National Bank of Boston, sir.

The CHAIRMAN. If I were to hand you a list of deposits to your account, could you look over it and tell me whether or not it is correct?

Mr. CARTER. Yes, sir.

(Document handed to the witness.)

Mr. CARTER. Mr. Chairman, this appears to be a copy of a bank record, but I would still like to check it against my own records.

Mr. LISIIMAN. These are photostatic copies.

The CHAIRMAN. Can you identify the statement of account which I hand to you [handing documents to the witness]?

Mr. CARTER. They appear to be mine, sir.

The CHAIRMAN. If the statement which you have just looked over, which you say appears to be taken from the bank records, were made from what you have just identified as being apparently correct, then that statement would be correct, would it not?

Mr. CARTER. Yes, sir.

The CHAIRMAN. May I have it back.

If it is correct, then \$49,000 plus would be the amount that you deposited to your personal account in the First National Bank of Boston in 1959?

Mr. CARTER. Yes, sir.

The CHAIRMAN. Now there are innumerable cash deposits. Could you explain what those are for? Do you want to see them?

Mr. CARTER. Most of these, sir, appear to be a balance of my salary, sir. We, at the company, draw a payroll check, have it cashed, and then the money is disbursed to the employees in that manner, sir. I do not draw a check personally for payroll myself.

The CHAIRMAN. In other words, you draw the cash from the corporation?

Mr. CARTER. The check is drawn from the corporation, sir, to encompass all employees.

The CHAIRMAN. Then you parcel out in cash what each is entitled?

Mr. CARTER. That is right, sir.

The CHAIRMAN. Is that normal procedure, good business practice?

Mr. CARTER. I believe so, sir. I believe there are a great many corporations get a payroll in cash, sir.

The CHAIRMAN. I know it is done in some instances, I know that to be a fact. But you would say that the cash deposits there were your salary?

Mr. CARTER. Yes, sir. I had deducted living expenses and put the balance in the bank, sir.

The CHAIRMAN. Well, I was going to say that totaled \$16,000 for the year.

Mr. CARTER. Yes, sir.

The CHAIRMAN. And that is your salary plus what you spent for living expenses, and so forth?

Mr. CARTER. Yes, sir.

The CHAIRMAN. Can you identify where the other income came from?

Mr. CARTER. I think the first item on here, January 5, 1959, was part of my salary from 1958. It was not drawn until 1959, sir.

The CHAIRMAN. That was \$4,000.

Mr. CARTER. Yes, sir. I would have to check these others, sir. I can't reconcile them offhand.

The CHAIRMAN. Is that a check from Music Suppliers?

Mr. CARTER. I believe it is, sir.

The CHAIRMAN. Is the \$8,000 plus a check from Music Suppliers?

Mr. CARTER. I believe it is, sir. That looks like one of those Verve loan repayments, sir.

The CHAIRMAN. Has this been included in the record?

Mr. LISHMAN. No, sir.

The CHAIRMAN. I think in view of this, and since it is a part of what your testimony has already revealed here, that it should be included in the record. Unless there is objection, it will be included in the record at this point.

(The documents referred to follow.)

THE FIRST NATIONAL BANK OF BOSTON

Deposits to the account of Harry Carter for the year 1959

Date	Cash	Checks		Total deposit
		Bank No.	Amount	
Jan. 5, 1959.....	\$305	1 5-133	\$4,000.00	\$4,305.00
Feb. 27, 1959.....	245			245.00
Mar. 5, 1959.....	280			280.00
Mar. 19, 1959.....	835			835.00
Mar. 27, 1959.....	470	1 5-133	4,446.00	4,916.00
Apr. 1, 1959.....		1 5-133	3,333.33	3,333.33
Apr. 2, 1959.....	1,000			1,000.00
Apr. 9, 1959.....	255			255.00
Apr. 16, 1959.....	295			295.00
Apr. 24, 1959.....	295			295.00
May 1, 1959.....	270			270.00
May 7, 1959.....	255			255.00
May 14, 1959.....	295			295.00
		5-20	73.33	73.33
		5-20	266.67	266.67
		5-39	100.00	100.00
May 18, 1959.....	112			212.00
May 22, 1959.....	280			280.00
May 28, 1959.....	420			420.00
June 5, 1959.....	295			295.00
June 12, 1959.....	265			265.00
June 18, 1959.....	490			470.00
June 18, 1959.....	260			260.00
June 29, 1959.....	295			295.00
July 2, 1959.....	400	53-242	100.00	500.00
July 6, 1959.....	250			250.00
July 10, 1959.....	263	5-39	160.00	423.00
July 16, 1959.....		1 5-133	3,000.00	3,000.00
July 20, 1959.....				1,090.00
July 23, 1959.....	1,090			2,300.00
Aug. 11, 1959.....	2,300			2,300.00
Aug. 13, 1959.....	590	1 5-133	90.00	680.00
Aug. 21, 1959.....	295			295.00
Aug. 27, 1959.....	235			235.00
Sept. 2, 1959.....	250			250.00
Sept. 10, 1959.....	570	53-265	50.00	620.00
Sept. 17, 1959.....	290	53-265	35.00	325.00
Sept. 24, 1959.....	215			215.00
Oct. 1, 1959.....	295			295.00
Oct. 9, 1959.....	295	1 5, 133	60.49	456.17
		5-20	100.68	100.68
Oct. 15, 1959.....	290			290.00
Oct. 20, 1959.....	233	5-13	1,500.00	1,733.00
Oct. 29, 1959.....	295			295.00
Nov. 5, 1959.....	740			740.00
Total above.....	16,113		22,315.50	38,428.50
Total Dec. deposits.....				10,588.75
Total deposits for 1959.....				49,017.25

¹ Bank No. 5-133 U.S. Trust Co. Music Suppliers Inc., Depository.

The CHAIRMAN. Well, Mr. Carter, you may be excused. Do you not feel very well?

Mr. CARTER. No, sir; I do not.

The CHAIRMAN. You look a lot better than you did this morning when we were talking about your health. I trust that this subcommittee's requirement for your presence here did not in any way adversely affect your condition of health.

Mr. CARTER. Thank you, sir; and I want to thank you for allowing this closed hearing to take place, and the gentlemen of the subcommittee.

The CHAIRMAN. You may be excused.

Mr. CARTER. Thank you.

The CHAIRMAN. Tell Mr. Clark to come in.

Are you Mr. Sam Clark?

Mr. CLARK. Yes, sir.

The CHAIRMAN. Mr. Clark, will you be sworn?

Do you solemnly swear the testimony you give to this subcommittee to be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. CLARK. I do.

Mr. Chairman, may I make a request?

TESTIMONY OF SAMUEL CLARK; ACCOMPANIED BY THOMAS KIERNAN, ATTORNEY

The CHAIRMAN. Well, just have a seat.

State your name for the record.

Mr. CLARK. Samuel Clark.

The CHAIRMAN. Where do you live, Mr. Clark?

Mr. CLARK. New Rochelle, N. Y.

The CHAIRMAN. What is your business or profession?

Mr. CLARK. President of Am-Par Record Corp., 1501 Broadway, New York City.

The CHAIRMAN. Mr. Clark, you have been subpoenaed here by this subcommittee, is that not true?

Mr. CLARK. Yes, sir.

The CHAIRMAN. You made a request to be heard in executive session because of a condition of health. You advised the subcommittee that you had a coronary thrombosis last September which kept you in the hospital until October 17, at which time you were discharged. You then went home, convalescing under the care of a doctor. Your doctor's certificate states that the last time he had seen you, I believe, was December 17, 1959.

On that basis, the subcommittee decided to hear you in executive session. I observe you have your attorney with you.

Mr. CLARK. I have, sir.

The CHAIRMAN. I think probably it would be appropriate to identify yourself for the record at this time.

Mr. KIERNAN. My name is Thomas Kiernan, K-i-e-r-n-a-n, and my office is at 14 Wall Street, New York City, N. Y.; and this is Mr. Kaplan, who is counsel for Am-Par Records. He is connected with the company as its attorney, Mr. William Kaplan.

Mr. MOSS. Mr. Chairman, is he here as counsel?

The CHAIRMAN. I was just going to ask him.

Are you here as counsel for Mr. Clark?

Mr. KAPLAN. Yes, sir. I am here at his request, and I have been here with him since Monday a week ago, not in my capacity as counsel for Am-Par Records Corp., but to be with him here as assisting and associating myself with Mr. Keirnan.

The CHAIRMAN. Well, are you here in the capacity of attorney for Am-Par Records Co., or are you here to advise Mr. Clark of his constitutional rights?

Mr. KAPLAN. I would say that I am here to advise him, as well as with Mr. Kiernan, in that respect. Also in association with Mr. Kiernan, I am here to observe for Am-Par Records Corp. as well. I would say that it would have to be both.

The CHAIRMAN. You cannot be here under the rules, and representing yourself in both cases, because it is the company that is not here this afternoon. We are in executive session by Mr. Clark's request.

Mr. KAPLAN. Yes. I would like to say, sir, that I will withdraw then.

The CHAIRMAN. Mr. Clark, you had some statement you wanted to make?

Mr. CLARK. Mr. Harris, I hoped that I might be able to conclude my testimony this evening.

The CHAIRMAN. Well, you don't hope it any more than I do.

Mr. CLARK. I would like to feel if we got started, that we could completely finish my interrogation or put it off until tomorrow, where I could go through it without spending an evening under the tension that I have been 2 weeks ago this past month.

The CHAIRMAN. Well, I am very sorry if you have been undergoing tension. As a matter of fact, we have all been going through some of that.

Mr. CLARK. I agree with that.

The CHAIRMAN. Mr. Lishman, with those principal questions asked, you may proceed.

Mr. LISHMAN. Mr. Clark, was there a time when you were the sole owner of Music Suppliers of New England, Inc., which became, by change of name, Music Suppliers, Inc.?

Mr. CLARK. There was a time that I was sole owner, yes, sir.

Mr. LISHMAN. When was that time?

Mr. CLARK. I believe that was in 1946.

Mr. LISHMAN. Was there a time when your father, Nathaniel Clark, now deceased, transferred 50 shares of class A common, and 50 shares of class B common stock of Music Suppliers to you?

Mr. CLARK. I believe that is correct, sir. If I can rely on my memory to 1946, I believe that was correct.

Mr. LISHMAN. And was that transfer made some time in January of 1947?

Mr. CLARK. I don't know the month. It is entirely possible that it was January 1947.

Mr. LISHMAN. At or about that time did you, Mr. Clark, then transfer 21 shares of the class B stock to Mr. Harry Carter?

Mr. CLARK. I do not recall the amount of stock that was transferred. It does not seem right that I would have transferred 21

shares, because at that time Mr. Carter then became a 50-percent owner, if once again my memory serves me correctly.

Mr. LISHMAN. How was his 50-percent ownership of Music Suppliers evidenced?

Mr. CLARK. Evidenced in what respect, Mr. Lishman?

Mr. LISHMAN. Well, did he have 25 shares of class A and 25 shares of class B?

Mr. CLARK. I believe he had 50-percent of one class of stock, both classes of stock having equal voting rights.

Mr. LISHMAN. So that eventually, before you were employed by Am-Par, Music Suppliers stock was distributed 50 shares class A common to you and 50 shares class B common to Mr. Harry Carter?

Mr. CLARK. That is correct.

Mr. LISHMAN. On or about July 22, 1955, did you enter into an agreement with Harry Carter and Edward F. Smith, as trustee, whereby you sold your 50 shares of class A common stock of Music Suppliers to Harry Carter for the sum of \$50,000?

Mr. CLARK. Yes, sir.

Mr. LISHMAN. Did that agreement provide that the \$50,000 purchase price was to be paid by Harry Carter with a downpayment of \$208, in the sum of \$208 on the first day of each month thereafter?

Mr. CLARK. Mr. Lishman, I don't believe the downpayment entered into it. I am not sure of whether that was the interpretation, but our agreement was that this was to be paid off at the rate of \$208 a month.

Mr. LISHMAN. That would take approximately 20 years for Mr. Carter to complete the payment?

Mr. CLARK. It would, sir.

Mr. LISHMAN. Did the agreement also provide that Mr. Carter, in order to secure payment of the purchase price, should endorse the certificate representing the 50 shares of class A stock over to Edward F. Smith to be held by him in escrow until all the payments on the purchase price had been made?

Mr. CLARK. I believe that was part of the agreement.

Mr. LISHMAN. Did the agreement also provide that Mr. Carter should endorse to Mr. Smith the certificate for 50 shares of class B common stock of Music Suppliers then held by Mr. Carter as an additional collateral to secure payment of the purchase price?

Mr. CLARK. I believe that is correct, Mr. Lishman. But I don't believe that Mr. Carter would have paid a penalty in giving up his stock if he defaulted on the payments. I believe the company then would have had to be liquidated.

Mr. LISHMAN. Well, the agreement would take care of that.

Mr. CLARK. Yes, sir; but I do want to make it clear that the stock that Mr. Carter put up, at least to the best of my knowledge, was not to revert to me in the event he defaulted.

Mr. LISHMAN. How did Mr. Carter get these 50 shares of stock? Did he pay you for them?

Mr. CLARK. Yes. There was an exchange of money.

Mr. LISHMAN. Do you recall how much that was?

Mr. CLARK. No, sir; I do not.

Mr. LISHMAN. You did not make a gift of those shares originally to Mr. Carter?

Mr. CLARK. There was no reason for me to have done so, and I did not do it, Mr. Lishman.

Mr. LISHMAN. Did Mr. Carter, in fact, endorse the certificates representing both the 50 shares of class A and 50 shares of class B to Mr. Smith, and deposit those certificates with him pursuant to the agreement of purchase and sale?

Mr. CLARK. I am not exactly clear on that. I believe you are right, Mr. Lishman. I don't know whether it was pursuant, but I know that at some stage very close to that date that transpired.

Mr. LISHMAN. Now, is it correct that the agreement of the purchase provided that Mr. Carter should pay no interest on the purchase price?

Mr. CLARK. Yes, sir.

Mr. LISHMAN. Or the balance of the purchase price?

Mr. CLARK. Yes, sir.

Mr. LISHMAN. Unless he defaulted in making payments?

Mr. CLARK. Yes, sir.

Mr. LISHMAN. Did the agreement also provide that if Mr. Carter defaulted, he should pay interest at 6 percent from the date of the default?

Mr. CLARK. I would answer that "Yes," but I would once again like to look at the agreement, which my attorney has here.

Mr. LISHMAN. Yes, sir; you may look at any agreement you desire, or any paper you wish.

Mr. CLARK. As I say, I believe you are correct, sir. But I would like to refresh my memory on this.

That is right; it is on the second page.

Mr. LISHMAN. On August 7, 1956, did you enter into another agreement with Mr. Carter under which, as further security for the payment of the \$50,000, Mr. Carter agreed to turn over to Mr. Smith, as trustee, 90 shares of class A capital stock and 90 shares of class B capital stock of Music Distributors, Inc., then owned by Mr. Carter?

Mr. CLARK. I believe that is correct.

Mr. LISHMAN. What was the purpose of this August 7, 1956 agreement?

Mr. CLARK. I am relying on my memory, Mr. Lishman, and if it serves me correctly, during the time I was an owner of Music Suppliers of New England, we acted as sales agents for a company called Angel Records.

As agents all we were required to do was to sell through our salesmen Angel records to dealers. Angel Records would then ship this merchandise to the respective dealers as sold, and also bill.

Our return on this I believe was a 7- or 8-percent selling commission, somewhere in that vicinity, possibly lower. After I had left Music Suppliers, after I had divested myself of this stock, I understand that Angel Records insisted on independent or solely independent distribution. They made an offer to Music Suppliers of New England that if they would hire a separate sales force, separate selling organization and, in fact, practically separate warehouses, they would then adjust this selling cost to a figure which, I believe to be, 15 percent.

As a result, this would have diluted to some extent the earnings from Music Suppliers of New England. Therefore, I believe, that is why this instrument that you mentioned was drawn up.

Mr. LISHMAN. Did you also enter into an agreement on August 10, 1955, with Mr. Carter, whereby Mr. Carter granted to you an option to repurchase from him the 50 shares of class A stock which had been covered by the purchase agreement of July 22, 1955?

Mr. CLARK. I did, Mr. Lishman.

And may I explain the reason for the option?

Mr. LISHMAN. Yes, sir.

Mr. CLARK. When I first negotiated with American Broadcasting-Paramount Theaters, I assumed that my contract would be with American Broadcasting-Paramount Theaters, a company very well financed, and certainly able to take care of any obligations that the contract may call for in the event that the company had to go out of business.

However, when it came time to finalize the contract, I found that my contract was with Am-Par Record Corp., a newly formed corporation with a capitalization of \$10,000, with the assurance on the part of American Broadcasting Co.-Paramount Theaters that they would invest up to \$500,000. If it did not work out, then they would decide whether or not they wanted to stay in the record business.

When I found this out, I consulted with my New York attorney, Mr. Jack Katz, who advised me not to sign a contract of this type unless I had some protective measures, in the event that Am-Par Records were to fail, so that I would have someplace in the record business to go back to. This is an extremely volatile business, with just as much chance for failure as there is for success. That is why the option exists.

Mr. LISHMAN. Is it correct that under the terms of that option, at any time that your employment ceased with Am-Par, you could get back your 50 shares of class A stock without having to pay Mr. Carter any consideration for such return?

Mr. CLARK. That was not my interpretation, Mr. Lishman.

My interpretation was that I would have to pay back Mr. Carter the amount of money he had paid me, whether it be a year or two or three.

Mr. LISHMAN. Where is that?

I have here before me, Mr. Carter—and if you have a copy of the option agreement before you, too—

Mr. CLARK. I am Mr. Clark, Mr. Lishman.

Mr. LISHMAN. Mr. Clark, I would like to ask you to refer to any provision in the agreement—

Mr. CLARK. I am familiar with that phase of it, having looked the agreements over in the past week.

While it doesn't spell it out here, I say that my interpretation would have been, had it been necessary for me to go back, and Mr. Carter said, "You owe me X dollars for the amount of time or the amount of money I paid you," I would have assumed I would have had to give it to him.

Had we stayed to the strict letter of this agreement, apparently I may not have; but I don't believe I would have made an issue of it, had it been necessary for me to go back.

Mr. LISHMAN. According to the terms of the option, let us assume that Mr. Carter had paid a substantial amount on the installments. As I read it, and unless you can point out something to the con-

trary, it would appear that you would be entitled to get back the stock without having to reimburse Mr. Carter for the amount of installments he had already paid you.

Mr. CLARK. Mr. Lishman, I may have misinterpreted this even when I signed it. I would like to go a little further, if I may—

Mr. LISHMAN. Yes, sir.

Mr. CLARK. (continuing). And explain the circumstances of the sale of my stock to Mr. Carter.

Mr. LISHMAN. Yes, sir.

Mr. CLARK. When American Broadcasting-Paramount Theaters offered me this position, it was a position offering me a lot more money than I was getting as a distributor.

Had Mr. Carter at that time said to me, "Would you take \$10,000 or \$15,000?"—he was the only prime customer I had. There was nobody else I could sell this 50 percent to. I would have taken \$10,000 or \$15,000. I was that anxious to accept this opportunity.

There was no subterfuge. It may appear to the subcommittee and to yourself that there is, but there is absolutely no subterfuge behind this.

My contracts with American Broadcasting or Am-Par Record Corp. have since been renewed, and I have been told that this option is void.

Mr. LISHMAN. Well, Mr. Clark, we are not attempting to prejudice anything here. We are just trying to find out what certain facts are.

Mr. CLARK. I appreciate that, Mr. Lishman.

Mr. LISHMAN. The facts surround the situation where it appears that Music Suppliers, Inc., of New England was a comparatively large provider of money that was paid to diskjockeys and others in connection with the broadcasting of records.

Now, isn't it a fact, Mr. Clark, that as a result of the purchase agreement provisions in the stock option that you, in fact, controlled the actions of Mr. Carter, and through him, controlled Music Suppliers?

Mr. CLARK. I would like to take the first part, Mr. Lishman.

Mr. LISHMAN. Yes.

Mr. CLARK. Because of the manner in which these agreements were drawn up, Mr. Carter is restricted in many areas.

The second part—I have no control over the actions of Music Suppliers whatsoever. I do not dictate policy to them. I do not participate in their profits. That is the answer to the second part of the question.

Mr. LISHMAN. Well, what rights does Mr. Carter have under the agreement of July 22, 1955?

Mr. CLARK. Mr. Lishman, you could expedite this, if you will just ask me what pages to go to to indicate what rights he has. The first few pages give him no rights.

Mr. LISHMAN. Isn't it a fact that he is given the right to operate the business, to make installment payments to you, subject at all times to the contingency that your option might have been exercised and, in effect, have the money forfeited that he has paid in on installments?

Mr. CLARK. Well, as far as the rights are concerned—he had the rights to run the business.

He had agreed to pay me \$208 a month.

He was limited from drawing any more money than is indicated on page 6 of the 1955 agreement.

May I ask you, Mr. Lishman, to repeat the last part of that?

Mr. LISHMAN. Would you repeat that, please, Mr. Reporter?

(The question was read.)

Mr. CLARK. I would say, "Yes," sir.

Mr. LISHMAN. The money paid in installments would be, in effect, forfeited?

Mr. CLARK. No. As I told you, my interpretation of the agreement, and I thought I had answered that correctly, was that if I had to go back to Music Suppliers, any money that Mr. Carter had paid me would be paid back to him.

The CHAIRMAN. But the agreement doesn't say that, does it?

Mr. CLARK. No, sir.

Mr. LISHMAN. Now, Mr. Clark, is it not a fact that under the agreement of July 22, Mr. Carter is not liable for any deficiency if the proceeds of the sale of securities are insufficient to pay the balance due on the purchase price?

Mr. CLARK. I believe that is correct, Mr. Lishman.

Mr. LISHMAN. Is it also correct that at any time you could demand an audit of the inventory and its pricing?

Mr. CLARK. Yes, sir.

Mr. LISHMAN. Is it also correct that Mr. Carter had to deliver to the trustee undated resignations of all persons elected to office in the corporation so that the trustee at all times would have these undated resignations of all officers and directors?

Mr. CLARK. I believe that is correct. I would like to find the page that that is on.

Mr. LISHMAN. Yes, sir.

Mr. CLARK. Could you help me?

Mr. LISHMAN. I don't know whether the page of the agreement I have corresponds with your copy.

The CHAIRMAN. Well, you should know whether terms of that kind were in the agreement.

Mr. CLARK. Mr. Chairman, I did say that that was so, but I wanted to read the page.

That is correct, Mr. Lishman.

The CHAIRMAN. Who is the trustee?

Mr. LISHMAN. Edward F. Smith.

Is there a provision that if the corporation is liquidated, the net proceeds will be paid over to the trustee, which shall then be divided equally between you and Mr. Carter?

Mr. CLARK. Yes, sir.

Mr. LISHMAN. Were provisions made that certain life insurance policies should be taken out on the lives of yourself and Mr. Carter?

Mr. CLARK. These insurance policies, Mr. Lishman, I am quite sure, were taken out prior to 1955, prior to any thought on my part of leaving Music Suppliers of New England.

These policies that are mentioned in the agreement were existing policies that had been taken out on Mr. Carter's life and my own, perhaps starting as far back as 1950—I am not sure of the dates; I haven't seen the policies. I was unable to get them, to get the dates.

Mr. LISHMAN. Who paid the premiums on these six policies?

Mr. CLARK. After I had left, Mr. Lishman, or during the period I was with the Music Publishers?

Mr. LISHMAN. Well, both. We will take it both ways.

Mr. CLARK. Well, during the time I was with Music Suppliers I paid for, I believe, Mr. Carter's and Mr. Carter paid for mine. It worked out that there was very, very little difference because of an age difference of a year, I believe, in which the premium was just a few dollars' difference.

Since the time I have left, I understand that these premiums were paid by Music Suppliers and were set up as a loan to me.

Mr. LISHMAN. Since July 3, 1955, what loans have you made to Harry Carter?

Mr. CLARK. I don't believe I have made any personal loans to Harry Carter. I, perhaps, wish I had had.

Mr. LISHMAN. Have you made any loans to Gordon Dinerstein?

Mr. CLARK. I don't believe so.

Mr. LISHMAN. Have you made any loans to Dumont Record Distributing Corp.?

Mr. CLARK. No, sir.

Mr. LISHMAN. Did you make any loan to Music Suppliers, Inc.?

Mr. CLARK. Yes, sir.

Mr. LISHMAN. How many?

Mr. CLARK. I believe I made a total of three loans to Music Suppliers, or three checks, payable to Music Suppliers.

Two of them could have been considered loans. One was considered an investment in a distributing branch which was being opened up in Cincinnati, or somewhere in Ohio.

Mr. LISHMAN. What was the amount of the three loans?

Mr. CLARK. The first loan was \$7,000.

Mr. LISHMAN. About when did you make that loan?

Mr. CLARK. I have a photostat of a canceled check dated August 13, 1956, sir.

Mr. LISHMAN. 1956?

Mr. CLARK. Yes, sir. That is for \$7,000.

Mr. LISHMAN. Was that represented by a note?

Mr. CLARK. No, sir.

Mr. LISHMAN. Was interest charged on that?

Mr. CLARK. I would like to explain how this loan came about.

I received a phone call from either Mr. Dinerstein or Mr. Carter, and I am inclined to think that it was Mr. Dinerstein, telling me that there was an opportunity to advance a record company moneys which would make a rather substantial return.

As a result of this particular loan I received a profit on this loan, or it can be construed as interest, of \$777.77.

Mr. LISHMAN. Was that \$777.77 which you directed Music Suppliers, Inc., to have credited to your account at Shaw-Ross?

Mr. CLARK. No, sir.

Mr. LISHMAN. Well, did you ever authorize or direct Music Suppliers, Inc., to credit that amount to your account?

Mr. CLARK. Yes, sir.

Mr. LISHMAN. Did you have that amount credited to your account?

Mr. CLARK. I did, sir.

Mr. LISHMAN. Was that as a result of another loan that you had made?

Mr. CLARK. Yes, sir.

Mr. LISHMAN. What was this other loan ?

Mr. CLARK. This was a loan of \$8,000 made on February 9, 1958.

I believe that the loan itself was repaid to me. The loan was made in February 1958 in the amount of \$8,000.

Mr. LISHMAN. Yes, sir.

Mr. CLARK. The loan was repaid to me in May of 1958. I received \$8,000 back from Music Suppliers.

Mr. LISHMAN. By check ?

Mr. CLARK. By check.

Mr. LISHMAN. Yes, sir.

Mr. CLARK. Which took care of the even amount I had loaned them.

Mr. LISHMAN. Yes.

Mr. CLARK. In February of 1959 Music Suppliers sent me as the profit on this loan \$2,777.77, of which, at my direction, a check was made out to Shaw-Ross for \$777.77, because I had an obligation there for part of that, and shortly after that or just about that time, I believe, I bought additional clothing.

Mr. LISHMAN. Yes, sir.

And included in that was there an expenditure of \$103 for Ronnie Granger ?

Mr. CLARK. No, sir ; there should not have been.

Mr. LISHMAN. Well, does Am-Par have an account with Shaw-Ross ?

Mr. CLARK. I don't believe they have a running account, Mr. Lishman. I heard in the testimony yesterday of Am-Par having purchased some clothing for a Ronnie Granger. I believe you mentioned a second name.

Mr. LISHMAN. I will let you see this schedule made by the accountant from the billings of Shaw-Ross under the heading "American-Paramount Records Account" and it will give you a clearer picture.

Mr. CLARK. I am not too familiar with reading ledger sheets.

Mr. Lishman, I do not understand this. I believe I can explain it, but I do not understand it.

Mr. LISHMAN. If you will explain it.

Mr. CLARK. Mr. HARRIS, by that I mean I am aware of three garments bought for three individuals at Shaw-Ross for Christmas presents and paid for by check by Am-Par Record Corp. I was not one of the persons who received this clothing. I am sure that Mr. Lishman is correct when he says that Ronnie Granger received a suit. I think that the second name would be Rick Willard, but I don't know who the third name would be.

Mr. LISHMAN. We didn't know either.

Mr. CLARK. I am sure that Shaw-Ross should know.

Mr. LISHMAN. We have endeavored to find the names from them but they said they did not have them.

Mr. CLARK. I would just venture to guess, and only going my memory, the third name could conceivably be Johnny Brantley.

Mr. LISHMAN. Well, now, Mr. Clark, the schedule made from the billings of the Shaw-Ross Company on your account show that on March 9, 1959, you were given a credit of \$777.77 by a check apparently from Music Suppliers. Opposite this notation are a number of items which show what the \$777.77 was ultimately expended for, and I will ask you to explain this.

Mr. CLARK. I have no way of actually explaining it, Mr. Lishman. What would this indicate?

Mr. LISHMAN. Well, you will notice one item of \$103 opposite the \$777.77. It seems a coincidence that there would be these four items apparently expended by Am-Par for diskjockeys, when you find an item in the same amount opposite you, on your account.

Was that for any clothing for a diskjockey or other persons?

Mr. CLARK. Mr. Lishman, absolutely not. Other than the names that I mentioned, I feel certain it was not.

Mr. LISHMAN. Now the \$8,000 that you loaned to Music Suppliers, Inc. Did you understand that it was to be used as part of the \$25,000 loan that was to be made to Verve Records?

Mr. CLARK. I didn't know the exact amount, Mr. Lishman. I knew it was to be a substantial loan to Verve Records.

Mr. LISHMAN. Do you know Mr. Norman Granz?

Mr. CLARK. I do.

Mr. LISHMAN. What business is Verve Records in?

Mr. CLARK. They are in the phonograph record business.

Mr. LISHMAN. They are a manufacturer of phonograph records?

Mr. CLARK. Yes, sir.

Mr. LISHMAN. And Am-Par is a manufacturer?

Mr. CLARK. Yes, sir.

Mr. LISHMAN. Is Music Suppliers, Inc., the distributors for Am-Par Records in New England?

Mr. CLARK. They are, sir.

Mr. LISHMAN. Does Music Suppliers, Inc., employ Mr. Harry Weiss as a record promotion man?

Mr. CLARK. Yes, sir.

Mr. LISHMAN. And does Am-Par Record Corp. contribute \$60 a week to the salary he received from Music Suppliers, Inc.?

Mr. CLARK. We do, Mr. Lishman.

Mr. LISHMAN. Does Mr. Harry Weiss make reports to you concerning his record promotion activities?

Mr. CLARK. Not too often.

Mr. LISHMAN. What is the nature of his reports to you?

Mr. CLARK. Most of the time it would be as the result of a phone call to me telling him that we are releasing a new record or that we have released a new record a week or 2 or 3 weeks ago, which is starting to show some sales in a particular market. It could be Detroit, it could be Los Angeles. As a result, I then call up, I believe, five other people who fall in the same category as Mr. Weiss, who are also partially subsidized by Am-Par Records, for promotion.

Mr. LISHMAN. Yes.

When you were associated with Music Suppliers, Inc., did you make any payments to diskjockeys, music librarians, program directors, or other persons for the playing of records on the radio?

Mr. CLARK. No, sir; I made payments but they were not expressly for the playing of records on the radio.

Mr. LISHMAN. Did you make payments to Norman Prescott?

Mr. CLARK. I believe payments were made from Music Suppliers, yes, sir.

Mr. LISHMAN. While you were associated with it?

Mr. CLARK. Yes, sir.

Mr. LISHMAN. Did you make payments to Bob Clayton?

Mr. CLARK. I believe so; yes, sir.

Mr. LISHMAN. Did you make payment to other diskjockeys?

Mr. CLARK. I believe I did.

Mr. LISHMAN. And was that a common practice in the trade?

Mr. CLARK. I don't know whether it was a common practice in the trade to make payments of this type.

At any time the payments were made, and I am talking about 1952, 1953, 1954, and perhaps the early part of 1955, they were never given to an individual, whoever he might be, to play any records or any specific records.

We enjoyed very, very good business. I would like to say that diskjockeys, whether there were 1 or 50 of them, were responsible for this, but I don't believe that they played them because they got paid to play them.

Mr. LISHMAN. Did you have any arrangements with Bob Clayton whereby you would furnish Am-Par Recording Artists for appearance on Bob Clayton's shows free of charge?

Mr. CLARK. Mr. Clayton had called me, after I was in New York, and told me of a new television show that he was starting, and that he would appreciate any help in the form of artists that I could send him.

It was a very rare occasion that we were not able to supply an artist to Mr. Clayton. We did supply Mr. Clayton with artists.

Mr. LISHMAN. Free of charge?

Mr. CLARK. There was no charge on our part. We don't know what the AFTRA situation was in Boston or how it was handled.

Mr. LISHMAN. Did Mr. Clayton agree in return that he would play Am-Par records on his program?

Mr. CLARK. No, sir; he did not.

Mr. LISHMAN. Did he play such records?

Mr. CLARK. I don't know, sir.

Mr. LISHMAN. Does Am-Par Record Corp. act as the national distributor for Chancellor Records?

Mr. CLARK. Yes, sir.

Mr. LISHMAN. And do Am-Par and Chancellor split the profits 50-50?

Mr. CLARK. At the present time, after profits are derived at, after all expenses are removed and recording costs are reimbursed to Chancellor, we do split the profits.

Before that, it was a different arrangement: it was a selling cost arrangement, and as Chancellor became successful they insisted upon a modification of our original agreement.

May I mention something, Mr. Lishman?

Mr. LISHMAN. Yes, sir.

Mr. CLARK. I don't know whether this will throw any light on the subject or not.

Records, Inc., with whom I am not alleged to have any connection whatsoever, distributes to our most profitable labels; namely, Chancellor Records and Grand Award and Command.

I would like you to believe me, because it is the truth, that if I had a partnership in Music Suppliers of New England, Music Suppliers of New England would be distributing Command records, Chancellor

records, and Grand Award records, which are more profitable to a distributor than Am-Par or ABC-Paramount records are.

Mr. Moss. Was the distribution pattern in existence prior to your going to Am-Par?

Mr. CLARK. No, no. As a matter of fact, all this developed after I was with Am-Par. The founding of Chancellor Records was founded by two boys, and this all developed after. The pattern of distribution in the case of Chancellor came after I was with Am-Par.

I am not sure about the Grand Award because this is an acquisition. We purchased 100 percent of the stock in Grand Award Record Co. about 5 or 6 months ago.

Mr. Moss. Did they bring out full blown as successful lines of records, more successful than Am-Par?

Mr. CLARK. Chancellor?

Mr. Moss. Yes.

Mr. CLARK. Chancellor is a much smaller line than Am-Par. We have in our catalog now approximately 250 long-playing records. I believe that Chancellor has about eight long-playing records.

They have enjoyed wonderful success with two of their younger artists.

Mr. Moss. Which ones?

Mr. CLARK. Namely, Fabian and Frankie Avalon.

Mr. LISHMAN. Mr. Clark, who are the principals of Chancellor Records?

Mr. CLARK. Mr. Robert Marcucci, as president, and, I believe, Peter De Angelis is treasurer or vice president; and secretary is a Peter Girardi.

Mr. LISHMAN. You stated that Music Suppliers does not distribute Chancellor records as well as Am-Par records.

Mr. CLARK. They do not distribute them; no, sir.

Mr. LISHMAN. What was the reason that you gave for that?

Mr. CLARK. I have no reason for Music Suppliers not distributing them.

Mr. LISHMAN. Well, isn't it a fact that Marcucci and De Angelis had a prior arrangement for distribution in New England?

Mr. CLARK. We were not subpoenaed to bring down our agreement with Chancellor Records. We have 100 percent distribution control over Chancellor records.

Mr. LISHMAN. Isn't there an exception for New England?

Mr. CLARK. I don't believe so. I would not want to rely on my memory, but I don't believe so.

Mr. LISHMAN. Why is Cecil Steen of Records, Inc., distributing—

Mr. CLARK. Cecil Steen of Records, Inc., is a good distributor, and I don't believe, as president of a record company, that any one independent distributor can do justice to too many lines.

In the case of Music Suppliers, as well as in the case of Cecil Steen, they both have too many lines.

Mr. LISHMAN. Well, isn't it a fact that Cecil Steen had a prior agreement or an agreement that precedes in date your agreement with Chancellor Records?

Mr. CLARK. I don't believe so, Mr. Lishman. He has no written agreement.

Mr. Steen has been in arrears in his bills, and if there was such an agreement existing, the fact that he was in arrears in payments would have given us the right to make a change.

Mr. LISHMAN. Does Am-Par distribute the Chancellor label in New York?

Mr. CLARK. No, sir.

Mr. LISHMAN. Who distributes it in New York?

Mr. CLARK. I believe the individual's name is Johnny Holanka, Alpha Distributors.

Mr. LISHMAN. Are there any other exceptions with reference to the national distribution of Chancellor Records by Am-Par?

Mr. CLARK. I don't believe so.

Mr. LISHMAN. Does Am-Par Records have an arrangement with Music Suppliers whereby the latter retains a percentage of money due it from Am-Par for records purchased?

Mr. CLARK. Yes, sir.

Mr. LISHMAN. To be used for the promotion of record sales?

Mr. CLARK. Yes, sir.

Mr. LISHMAN. Is some of that money used to make payments to diskjockeys and others?

Mr. CLARK. It is not designated for that purpose.

Mr. LISHMAN. Do you know whether it is used for that purpose?

Mr. CLARK. I could not answer the question, and I doubt it very much.

Mr. LISHMAN. Does Am-Par also furnish free records to Music Suppliers, Inc.?

Mr. CLARK. By free records, I have heard the use of free records used in two different categories, and I would be perfectly willing to clarify it.

Is this the free records to radio stations? Is this the free records that are distributed to radio stations?

Mr. LISHMAN. We will take first the free records given to a record distributing company.

Mr. CLARK. It has been a policy of the industry, Am-Par included, on certain records to give what the trade has classified as free records. This depends on the initial order in many, many cases.

However, this is given to every one of our distributors with, perhaps one exception, and that is Great Falls, Mont., because of the size of the market.

Great Falls, Mont., buys 25 of a record, where in many other areas they buy, if the artist is important enough or the record is important enough, as high as 10,000 records.

Mr. MOSS. Do you have a regular schedule setting forth the number of free recordings given each distributor?

Mr. CLARK. I don't believe we have it, Mr. MOSS.

Mr. MOSS. Is it tied uniformly to a certain percentage of the order?

Mr. CLARK. We try to. It is difficult to pin it down to a percentage.

Mr. MOSS. Then it is not tied to a percentage?

Mr. CLARK. No, sir.

Mr. MOSS. All right.

Mr. LISHMAN. Does Am-Par have some of its records pressed by the Mallard Press Co. in Philadelphia?

Mr. CLARK. I don't believe Am-Par, ABC-Paramount, has ever had a record pressed under the ABC label at Mallard, nor have we ever had a Chancellor Record pressed under the Chancellor label at Mallard.

We pressed a very small quantity, I believe, in 1959. Between Chancellor and ABC-Paramount, we had pressed by various manufacturers in the vicinity of 15 million single records. I don't believe that Mallard pressed more than 50,000 of those 15 million records.

Mr. LISHMAN. Did you give orders to Mallard for pressing which they didn't fill?

Mr. CLARK. I don't believe so.

Mr. LISHMAN. Do you remember in the summer of 1958 making a telephone call to Donald Dumont of Dumont Record Distributing Corp. and telling him that you had a new line of records?

Mr. CLARK. I would have to say yes, because at some time I made a phone call to Donald Dumont in that respect, but I don't know exactly what date it was.

Mr. LISHMAN. Did you have a telephone conversation with him about having him distribute APT records?

Mr. CLARK. That would be the subject of the telephone conversation.

Mr. LISHMAN. At the time you made this call, were you aware of the fact that Harry Carter had recently acquired a half interest in Dumont Distributors?

Mr. CLARK. I was aware of an interest that had been acquired by Mr. Harry Carter, but I was not aware of how much of an interest.

Mr. LISHMAN. Is it not true that at the same time Mr. Carter acquired a half interest in Dumont Distributors, Edward F. Smith on or about May 20, 1958, was placed on the board of directors of that company?

Mr. CLARK. Mr. Lishman, I don't know this.

Mr. LISHMAN. You don't know this?

Mr. CLARK. Believe me, when I say I don't know anything about Dumont Distributing.

Mr. LISHMAN. Do you know whose interest is represented in Dumont Distributors by Edward F. Smith?

Mr. CLARK. I believe it to be Harry Carter's.

It certainly is not mine.

Mr. LISHMAN. Have you received any salaries, dividends, or remuneration, or any share of the profits of Music Suppliers, directly or indirectly, since July 3, 1955?

Mr. CLARK. I would have to answer, no, to that.

Mr. LISHMAN. Why do you phrase your answer in that way?

Mr. CLARK. I will have to answer no. I have not received any dividends or profits from Music Suppliers since 1955.

Mr. LISHMAN. Or remuneration of any kind?

Mr. CLARK. No, sir.

Mr. LISHMAN. Or any amount of money?

Mr. CLARK. Other than the loans or the interest on the loans that were paid to me by a Music Suppliers check.

Mr. LISHMAN. And those are the sole things of value which you have received?

Mr. CLARK. From Music Suppliers, yes, sir.

Mr. LISHMAN. Or from Mr. Harry Carter?

Mr. CLARK. I have received remuneration from Mr. Carter in the form of gratuities, replacement of expenditures that I have made for Mr. Carter.

Mr. LISHMAN. About how much did that total?

Mr. CLARK. I will make a very rough estimate, \$3,500.

Mr. LISHMAN. Why was Mr. Carter permitted to draw \$32,000 during the year 1955, and only \$26,000 in subsequent years as salary from Music Suppliers?

Mr. CLARK. I am sure there was a legitimate reason. I don't remember what it was, Mr. Lishman.

Mr. LISHMAN. Did it require you to enter into an amendatory agreement?

Mr. CLARK. It did, and I don't know at this time, and I will not rely, I cannot rely, on my memory at this time, as to why that took place.

However, it took place at a time, I believe, when the transfer was being made, not sometime later.

Now, whether I got any of this money, I don't remember.

Mr. LISHMAN. Isn't it correct that on or about July 25, 1955, Mr. Carter's salary with Music Suppliers was fixed at \$26,000 a year, effective July 1, 1955?

Mr. CLARK. I believe that we amended the original agreement to read that way.

Mr. LISHMAN. So that his salary between July 1 and December 31, 1955, would amount to \$13,000?

Mr. CLARK. What was that again, Mr. Lishman?

Mr. LISHMAN. His salary between July 1 and December 31, 1955, would come to \$13,000?

Mr. CLARK. I believe that is so. I am not accurate on the figures.

Mr. LISHMAN. Yet he was permitted during 1955 to draw \$32,000.

Mr. CLARK. During 1955?

Mr. LISHMAN. Yes, sir.

Mr. CLARK. I can't refresh my memory here; I would like to have an opportunity to refresh my memory, but I am sure that took place very shortly after, and it was a very short-term agreement, and it was for some express purpose—

Mr. LISHMAN. Yes.

Mr. CLARK. That tied into my selling of stock.

Now, whether I got any money for this, I don't recall.

Mr. LISHMAN. Do you recall what is meant by the seven-and-one deal which Am-Par Records had with Music Suppliers?

Mr. CLARK. Yes, sir.

Mr. LISHMAN. Does it mean that Music Suppliers, Inc., was to receive one free record for every seven?

Mr. CLARK. This was a deal we had throughout the United States.

Mr. LISHMAN. Yes.

Mr. CLARK. This is common practice in the business.

Mr. MOSS. Does this also go to the one in the Northwest?

Mr. CLARK. In the LP field it would be extended to many.

Mr. MOSS. What was the qualifying volume?

Mr. CLARK. No qualifying volume. There was no qualifying volume.

Mr. MOSS. Just the flat one out of seven?

Mr. CLARK. If you bought seven you got the eighth one free.

Mr. MOSS. And that went to him?

Mr. CLARK. Absolutely. In that area, in the long-playing record area, that was extended to him; we sent him the same sales information that every one of our other distributors got when it pertained to a so-called deal.

Mr. MOSS. Special promotion?

Mr. CLARK. It is pretty much of a practice in the record business today. We have something very similar going on right now which started last month.

Mr. LISHMAN. Mr. Clark, do you remember writing a letter dated May 3, 1957, to Harry Weiss?

Mr. CLARK. I know I have written some letters to Mr. Weiss.

Mr. LISHMAN. Do you remember receiving a letter dated April 29, 1957, from Mr. Weiss?

Mr. CLARK. I am sorry, sir.

Mr. LISHMAN. I will show you these letters.

Mr. CLARK. I would appreciate it because—

Mr. LISHMAN. Before I show you them, sir, I would like to point out that in this April 29, 1957, letter to you, which appears to be a photostatic copy from Harry Weiss, he states that he has auditioned a record "June Is Busting Out," with a number of Boston diskjockeys. From the tone of this letter and from the testimony we have received here, it would appear that many of the names mentioned, have been the recipients of so-called payola.

In this letter Mr. Weiss points out:

that the boys for whom I auditioned this record are as follows:

Bill Gibbons, John Bassett, Norm Prescott, Dave Maynard, Greg Finn, Lou Goldberg, John Scott in the absence of Bob Clayton.

Mr. CLARK. I would like, if I may, to tell you the circumstances behind this particular record. This record was done by a new singing group called the Axidentals—it is spelled wrong in this letter, because it is an "x", and was released in long-playing form.

We received a reaction from somewhere in the United States, I have no idea at this time, perhaps San Francisco, because the Axidentals come from San Francisco, a reaction that warranted our releasing the record as a single record, which we did.

I may have called up or written. The two letters do not tie in together on the same song.

I may have called Mr. Weiss or written to Mr. Weiss or spoken to Mr. Carter or to Mr. Dinerstein, because my direct contacts, for the most part, were Mr. Carter or Mr. Dinerstein, as they are in every other instance with distributors. I usually talk to the head of the distributing organization, telling them I would like them to get this around because it did have possibilities, and this is a custom that I follow now. It is the only way I know how to sell records.

Mr. LISHMAN. Mr. Clark, did you ever ask for or obtain an assignment of a copyright as a consideration for releasing a record by Am-Par?

Mr. CLARK. We have over the years, when a new piece of property comes in that was unpublished, asked for the copyright. I cannot recall when we have asked for an assignment of a copyrighted piece—of a published piece of material to be given to us.

Mr. LISHMAN. Do you know of the Pamco Music Co.?

Mr. CLARK. Yes, sir.

Mr. LISHMAN. Who owns it?

Mr. CLARK. American Broadcasting-Paramount Theaters—Am-Par Record Corp.

Mr. LISHMAN. Is that a subsidiary of Am-Par?

Mr. CLARK. It is, sir.

Mr. LISHMAN. Do you know whether or not that company required an assignment of a copyright in order to release a record called "Pretty Girl"?

Mr. CLARK. I cannot answer that question. But if the person who was running the publishing firm had gotten a piece of unpublished material, and we were releasing it on Am-Par, the first question he would ask would be, "Can we have a copyright for our publishing firm?"

But I don't believe there has ever been an instance when we have asked a song writer or a publisher to turn over to us for a recording the copyright or any part of it.

Mr. LISHMAN. Do you know a Mr. Santo Lembo?

Mr. CLARK. I have had two experiences with Mr. Lembo.

Mr. LISHMAN. Yes.

Mr. CLARK. Yes, sir.

Mr. LISHMAN. What business is he in?

Mr. CLARK. I really don't know. He has produced records, but I don't know what his general business is.

Mr. LISHMAN. Did he ever contact you while you were with Am-Par?

Mr. CLARK. He did, sir.

Mr. LISHMAN. Did he contact you for the purpose of selling you the master recording of a record which had on one side "Pretty Girl," and on the other side "Coolation"?

Mr. CLARK. He did, sir.

Mr. LISHMAN. Did you tell him you wouldn't be able to do business with him unless you owned one of the songs?

Mr. CLARK. I did not, sir.

Mr. LISHMAN. Did you tell him that you must have an assignment of the publisher's copyright?

Mr. CLARK. I did not, sir.

Mr. LISHMAN. Did you flip a coin to see which side he would get on this record?

Mr. CLARK. I did not, sir.

Mr. LISHMAN. Did you win the toss and did you pick "Pretty Girl"?

Mr. CLARK. Sir, I have answered that question with "Noes," and I certainly would answer that part of the question with a no.

Mr. LISHMAN. We happen to have here a sworn affidavit, by Sam Lembo.

Mr. CLARK. From a very disgruntled, may I say, artist or person who was doing business or has done business with our company and has taken \$5,000 for a record that we lost \$5,000 on.

Mr. LISHMAN. Well, I have here an assignment of the copyright by Sam Lembo of "Pretty Girl" to PAMCO Music.

Mr. CLARK. But, Mr. Lishman, I said that I did not toss a coin nor did I insist upon this. That is the only thing I answered "No" to.

Mr. LISHMAN. Yes, sir.

Mr. CLARK. You will find in our publishing firm or any other publishing firm from the Irving Berlin Music down to— well, I may make an exception, Mr. Berlin writes most or all of his own songs—but for most large publishing firms there will be assignments of copyright exactly like this.

Mr. LISHMAN. That is correct.

Mr. CLARK. We did not coerce Mr. Lembo in assigning the copyright. If Mr. Lembo has said this, or anything like this, all I can do is refute him.

Mr. LISHMAN. Did you promise Mr. Lembo 5 percent of the sales of this record, "Pretty Girl"?

Mr. CLARK. We—I believe, our agreement with Mr. Lembo was 5 percent of 90 percent of sales.

Mr. LISHMAN. And did you tell Mr. Lembo in a discussion with him after the record was released on an Am-Par label to contact Harry Weiss of Music Suppliers, Inc., regarding record promotion?

Mr. CLARK. I may have. It would have been the logical thing for me to tell him. Mr. Lembo came from Boston. The group that recorded them for him, I imagine, came from that area and it was a logical area to try, in what we term, "kick the record off."

Mr. LISHMAN. Yes, sir. I have no further questions, Mr. Chairman.

The CHAIRMAN. Do you have any questions, Mr. Moss?

Mr. Moss. Yes, I think just a few, Mr. Chairman.

In the two instances where you entered into an arrangement with Mr. Carter and Mr. Dinerstein to loan money to Verve Records, did you have a definite understanding of the yield that would accrue to you on those loans?

Mr. CLARK. I don't believe there was a definite understanding, Mr. Moss. It was approximated what the return would be in the second instance. The first instance, I don't believe it was discussed.

Mr. Moss. Not at all?

Mr. CLARK. As far as the return, I think there would be a reasonably good return, but there was no definite amount spelled out.

Mr. Moss. How long did they have this money?

Mr. CLARK. The check for \$7,000 was issued on August 13, 1956, which I have a photostat of here, Mr. Moss.

Mr. Moss. Is this the repayment?

Mr. CLARK. No. This is my check to them.

Mr. Moss. Your check.

Mr. CLARK. And on January of 1957, I received the check from Music Suppliers for \$7,777. The check that I received in January was the return of the \$7,777.77.

Mr. Moss. Let me ask you this: You made this loan for the specific purpose of loaning it to Verve?

Mr. CLARK. Yes, sir.

Mr. Moss. You made the loan on the 13th of August in 1956 and the loan to Verve was made in October of 1956.

Mr. CLARK. What was that again, sir?

Mr. Moss. It was made in October of 1956.

Mr. CLARK. My check was sent to them in August.

Mr. Moss. August?

Mr. CLARK. I cannot explain that, Mr. Moss.

Mr. Moss. Was there any time on this loan?

Mr. CLARK. No, sir.

Mr. Moss. And you received repayment in January?

Mr. CLARK. I received repayment, their check dated January 1957. I received a check from them for \$7,777. They repaid this \$7,777 in January.

Mr. Moss. When did they give you the interest?

Mr. CLARK. At the same time. I mean it was the one check for \$7,777.77. We have a different situation in the \$8,000 check. That was repaid under different circumstances.

Mr. Moss. When was that paid?

Mr. CLARK. That was paid in two forms. It was a year after the loan was made that I got the profit or interest, but I got the return on my \$8,000. On February 9, 1958, I mailed them a check for \$8,000, to the order of Music Suppliers.

In May of 1958 I received a check from Music Suppliers repaying the \$8,000.

In February of 1959, 1 year later, 1 year after I issued the check, I received the \$2,777.77.

Mr. Moss. Was there any reason why you waited the year to pick up the earnings?

Mr. CLARK. I believe that it took them that long, that it took them that long to dispose of the merchandise, that they had bought at this discount, because there was no time spelled out. I mean, this loan could have gone a year and a half.

Mr. Moss. They indicated that the purchases each month were approximately equal to the turnover and that the purchases each month—

Mr. CLARK. I think they took that into consideration.

Mr. Moss. And the purchases each month was approximately the amount of the loan?

Mr. CLARK. In that area, I am not familiar, Mr. Moss.

Mr. Moss. Were you a distributor for Verve when you were associated with Music Suppliers?

Mr. CLARK. I don't believe we had the Verve label when I was there. But I don't believe we did. Now, there is a very slight possibility that it was there in 1955. I doubt it.

Mr. Moss. What is the practice of Am-Par in underwriting promotional costs of its distributors? And does it maintain any direct liaison or indirect liaison with radio or television stations?

Mr. CLARK. We have a direct liaison with radio stations through two individuals that work for Am-Par Record Corp., and in, I believe, six other areas we have liaison with radio stations in which we participate in the salary of the employee who does not work exclusively for Am-Par.

Our primary function is to get these records delivered to the radio station, other than by mail.

Mr. Moss. You have six?

Mr. CLARK. I believe we have six distributors throughout the United States in which we participate on the same basis as we do with Music Suppliers.

Mr. MOSS. That is in direct subsidy to a salary of promotional personnel?

Mr. CLARK. I would call that a subsidy for promotional personnel.

Mr. MOSS. But what arrangement have you for underwriting other promotional costs?

Mr. CLARK. We do set up an advertising and promotional budget which is reviewed every 3 month. In that area, I don't believe it is confined to either one of the two. If it is necessary for us to spend more money for advertising, we would take it out of what we call the promotional budget.

Mr. MOSS. If I am a distributor, do I have the assurance that I will have at least a floor under the amount available to me? Is it related to my purchases, my billings?

Mr. CLARK. No. It is not related to the distributor's purchases.

Mr. MOSS. What is it related to?

Mr. CLARK. His activities. And by activities, I would like to make that clear.

Mr. MOSS. It must be productive activities?

Mr. CLARK. Productive in the following manner: We contribute to newspaper advertising on a local level.

Mr. MOSS. That is a regular participation, you pay part of the costs and they pay part of the costs; is that right?

Mr. CLARK. The dealer pays part of the costs, the distributor pays part of the costs.

Mr. MOSS. This is cooperative advertising?

Mr. CLARK. That is right, cooperative advertising. That is one area in which our promotional allowance is given to distributors. We are very anxious—

Mr. MOSS. That is a minimal effort, is it not?

Mr. CLARK. I beg pardon?

Mr. MOSS. That is a minimal effort, the newspaper advertising, in record promotion?

Mr. CLARK. It doesn't take a great deal of effort to get it because we are contributing in some cases 50 percent.

Mr. MOSS. Yes.

Mr. CLARK. For the store, and they are in many cases anxious to advertise.

Mr. MOSS. Is that cooperative tied to purchases in any way?

Mr. CLARK. Not necessarily, no, sir. It is not tied in in any way. I am sure that we wouldn't allow a distributor who was buying \$50,000 a year from us to promiscuously go out and advertise for \$2,000 in 1 month or \$1,000 in 1 month, whereas in New York City we might agree that \$2,000 is reasonable.

Mr. MOSS. In other words, you arranged that entirely on the basis of individual negotiation between your company and the distributor?

Mr. CLARK. I would say that that is it.

Mr. MOSS. That is the newspaper portion of the advertising effort?

Mr. CLARK. Yes; the newspaper advertising.

Mr. Moss. What provision do you have for underwriting the cost which appears to be very generally characteristic of distribution activities, which characterize them, as you will, the result in payments to diskjockeys?

Mr. CLARK. Mr. Moss, we have no provisions for this payoff.

Mr. Moss. None whatsoever?

Mr. CLARK. None whatsoever. But may I talk to you as a distributor for a moment and not as a manufacturer.

A distributor works on a very substantial profit. He works on a very good profit. Now, I believe these payments are made out of his profits. I don't know. We have made no allowances for this.

Mr. Moss. Well, now, we have heard testimony which indicates that certainly there are record companies which do make allowances when they receive billings for promotional activities. What type of promotional activities do you permit to be underwritten in part or in whole, by your company?

Mr. CLARK. I hope I can answer it completely and correctly, but the only type of advertising that I am interested in, and it applies to our longplaying product, is display wherever we can get it. We feel we get a better return on our investment. If we tell a distributor to go into a retail store on Broadway in any city in the United States and get our records in the window or get our records——

Mr. Moss. What inducements do you offer there?

Mr. CLARK. Well, we will offer that particular dealer, through the distributor, free records, free LP's, depending on the size of the market.

Mr. Moss. This is a policy of Am-Par?

Mr. CLARK. This is a policy of Am-Par. And to me this is the most important way, at least it is the most important way for us.

Mr. Moss. Then you are willing to pay a premium for exposure?

Mr. CLARK. Of a certain nature.

Mr. Moss. Of a certain nature. Which you have described. And you are willing to underwrite the cost of newspaper advertisements. What other types?

Mr. CLARK. That is all—about all I can think of. I am sure that there are other areas that require the expenditure of promotional funds.

Mr. Moss. I can assure you, sir, that after the last few days there are a great many other ways.

Mr. CLARK. But, Mr. Moss, in the past few days I have sat here and, believe me, I am not taking a holier than thou attitude because somewhere in my career, I have stepped over this line and that is being brought out now. However, in very little of the testimony, particularly in the Cleveland testimony, has the name Am-Par Records come about as a payola company.

I believe I have been very fortunate to develop an organization that is both a good merchandising organization and a good selling organization, and creative as well.

Mr. Moss. Let us take a look here. We had a discussion of a Shaw-Ross account with suits at \$103 each, which is a good medium-priced garment.

Mr. CLARK. It was gross——

Mr. MOSS. One to Ronnie Granger, and I think you indicated that the other two probably went to Johnny Brantly and Dick Willard.

Mr. CLARK. Mr. MOSS, I did not say that we did not participate in some way in gratuities, but I think you will find that whatever gratuities we did involve ourselves in, in many, many cases, there have been exceptions.

Mr. MOSS. Mr. Clark, I am not sitting here in judgment on you. All I want are the facts.

Mr. CLARK. I am trying to give you them.

Mr. MOSS. That is the assignment of the subcommittee. I asked you what other types you participated in and you indicated you did not. Then when I tied you back to this Shaw-Ross account, you agreed that you did participate in other types. All I am trying to get you to tell me are the types in which you do participate. I am not, at this point, trying to express an opinion as to how sound they might be, how moral or ethical they might be.

This subcommittee has assigned to it the job of finding out what they are, not characterizing them.

Mr. CLARK. Well, in the area that you are pointing out, such as the Ronnie Granger area, this is not in a promotional or advertising allowance.

Mr. MOSS. What is it?

Mr. CLARK. Well, I don't know what kind of a bookkeeping entry we would make in it, but it certainly does not fall into a fixed category where we set aside so much money for payola.

Mr. MOSS. What is the objective of the company?

Mr. CLARK. In regard to these three people who do not play records?

Mr. MOSS. What are they?

Mr. CLARK. Who do not have any influence on the playing of records.

Mr. MOSS. All I want to know is what they are. I do not care what they are not.

Mr. CLARK. I believe they are music librarians.

Mr. MOSS. Yes. Now, Mr. Clark, we have had testimony indicating that music librarians are people of considerable influence in the making up of schedules for play by diskjockeys. Now, you tell me they have no influence.

Mr. CLARK. I mentioned these three particular ones, sir.

Mr. MOSS. Well, I think we had direct testimony that one of them had influence.

Mr. CLARK. One of these individuals?

Mr. MOSS. Yes.

Mr. CLARK. I am not aware of it.

Mr. MOSS. Just gave it to them for what reason?

Mr. CLARK. I would like to explain the reason.

Mr. MOSS. I wish you would.

Mr. CLARK. Because there is a reason.

Mr. MOSS. I would love to hear it.

Mr. CLARK. Practically every radio station in the United States—

Mr. MOSS. That shocks me.

Mr. CLARK. Gets an average of 150 to 200 records a week.

Mr. MOSS. Yes, sir.

Mr. CLARK. In most cases they come in a package. Most packages are identified with the same envelope, and when they are stacked upon each other you cannot tell the difference. The only thing that I would like to see done with our packages is to have them put up close enough to the top where they will be listened to and, if they are good, then be programmed.

But there is no influence to play these records. It is important that they get heard by the individuals that may play them.

Mr. MOSS. What you are trying to buy is preferential treatment, however you may characterize it.

Mr. CLARK. I would have to agree, if getting our package moved up to the top 10 where a diskjockey or program director will play the record, rather than go to the bottom.

Mr. MOSS. I want to be reasonable. Is that not what you are trying to do?

Mr. CLARK. I have answered the question, I think.

Mr. MOSS. All right. That is all. We do not have to go into any great detail on it.

How general is this practice, then?

Mr. CLARK. It is not very general with us.

Mr. MOSS. Well, how general?

Mr. CLARK. Spelled out in dollars and cents?

Mr. MOSS. Dollars and cents, numbers of people, however you want to.

Mr. CLARK. I believe in the 4½ years that Am-Par Records has been in the record business for all types of activities such as this, we have spent less than \$5,000.

Mr. MOSS. Well, I wonder if you would be kind enough to supply us with a list of those expenditures?

Mr. CLARK. I will try, sir.

Mr. MOSS. Well, it is within the current range of the records of your company.

Mr. CLARK. Oh, sure.

Mr. MOSS. And there should not be any great difficulty.

Mr. CLARK. I mean it would take me perhaps the time to get back.

Mr. MOSS. Mr. Chairman, I would like to ask unanimous consent that Mr. Clark be instructed to supply that to the committee.

The CHAIRMAN. You may supply that.

Mr. CLARK. I will, sir.

The CHAIRMAN. You can supply it?

Mr. CLARK. As quickly as possible. I will try to do it sometime next week, but with the holiday it may pose a problem.

(The material referred to is as follows.)

Date	Recipient	Expenditure	Explanation ¹
Jan. 18, 1957.....	Tony Mammarella (producer for Dick Clark, Philadelphia).	\$50.00	Gift.
Mar. 28, 1957.....	Brad Phillips (diskjockey, New York).	10.38	Purchase of gift.
Apr. 12, 1957.....	Gene Edwards (diskjockey, Milwaukee).	50.00	Gift.
May 14, 1957.....	Bob Larson (diskjockey, Milwaukee).	333.40	For purchase of furniture for new home.
July 12, 1957.....	Dave Maynard (diskjockey, Boston).	100.00	Gift.
Oct. 7, 1957.....	Alan Dary (diskjockey, Boston).....	37.50	U.S. Treasury bond to child on birth of child.
December 1957.....	Jack Lacy (diskjockey, New York).	25.00	Salad bowl as Christmas gift.
Do.....	Jerry Marshall (diskjockey, New York).	25.00	Do.
Do.....	Dick Clark (diskjockey, Philadelphia and New York).	25.00	Do.
Feb. 12, 1958.....	Bill Stewart (program director, Storz Radio Stations).	329.95	Purchase of washing machine for new home.
Feb. 18, 1958.....	Arnie Kuvent (diskjockey, Portland, Maine).	15.30	Payment of 1 day's hotel bill on visit to New York.
Mar. 14, 1958.....	Peter Tripp (diskjockey, New York).	150.00	Wedding gift.
May 14, 1958.....	Joe Saccone (record librarian, New York).	100.00	Do.
Do.....	John Brantley (producer for Alan Freed, New York).	50.00	Do.
June 11, 1958.....	Alan Dary.....	107.87	Payment of 2 days' hotel bill for 2 on visit to New York.
June 23, 1958.....	Chuck Stevens (diskjockey, Providence).	25.00	Gift.
July 22, 1958.....	Mel Leeds (program director, New York).	100.00	Wedding gift.
July 23, 1958.....	Jocko Henderson (diskjockey, New York).	204.95	Reimbursement for payment to artists appearing on show (charged to artists' royalty account).
Aug. 5, 1958.....	Norman Prescott (diskjockey, Boston).	32.85	Purchase of pair of shoes.
Aug. 27, 1958.....	Stan Richards (diskjockey, Boston).	100.00	Payment of expenses on visit to New York.
Sept. 4, 1958.....	Alpha Distributing Co.....	91.90	Reimbursement for payment to Alan Freed for appearance of artists on show (charged to artists' royalty account).
Sept. 22, 1958.....	Bob Green (diskjockey, Miami).....	66.95	Purchase of suit while on visit to New York.
Oct. 18, 1958.....	Larry Dixon (diskjockey, Detroit)...	50.00	Payment for services in helping Am-Par acquire master recordings.
Nov. 12, 1958.....	Larry Dixon.....	100.00	Do.
Nov. 21, 1958.....	Norman Prescott.....	200.00	Payment of expenses on visit to New York re national promotion of "Teen Commandments."
Dec. 30, 1958.....	Rick Willard (record librarian, New York).	103.00	Purchase of Christmas gift certificates for suits.
Do.....	Ronnie Granger (record librarian, New York).	103.00	Do.
Do.....	John Brantley.....	103.00	Do.
Do.....	Various women employees of radio stations in New York area.	58.50	Purchase of Christmas gifts—10 bottles of toilet water.
Do.....	Various diskjockeys in New York area.	385.00	Purchase of Christmas gifts—40 sport shirts and 21 sets of ties.
December 1958.....	Jack Lacy.....	20.00	Salkon hot tray as Christmas gift.
Do.....	Jerry Marshall.....	20.00	Do.
Do.....	Dick Clark.....	20.00	Do.
Do.....	Lonny Starr (diskjockey, New York).	20.00	Do.
Jan. 13, 1959.....	Norman Prescott.....	200.00	Payment for services in national promotion of "Teen Commandments."
Jan. 14, 1959.....	Larry Dixon.....	100.00	Gift.
Feb. 4, 1959.....	Malverne Distributors.....	2,725.00	Reimbursement for payment to Alan Freed for appearance of artists on show during 1958.
Mar. 23, 1959.....	Dick Clark.....	20.60	Flowers for anniversary of program.
May 21, 1959.....	Rick Willard.....	100.00	Wedding gift.
May 25, 1959.....	Peter Tripp.....	15.45	Flowers to wife on birth of child.
May 27, 1959.....	Norman Prescott.....	500.00	Payment by Pamco Music, Inc. for consultations regarding acquisition of musical properties.
June 4, 1959.....	Ronnie Granger.....	150.00	Wedding gift.
July 1, 1959.....	Larry Dixon.....	200.00	Gift.
Oct. 15, 1959.....	Norman Prescott.....	500.00	Payment in full for services in national promotion of "Teen Commandments."

See footnote at end of table.

Date	Recipient	Expenditure	Explanation ¹
Dec. 7, 1959.....	Tru Tone Distributors.....	222.00	Reimbursement for payment of transportation of diskjockeys from airport to hotels at Miami convention.
December 1959....	Jack Lacy.....	23.00	Osterizer as Christmas gift.
Do.....	Jerry Marshall.....	23.00	Do.
Do.....	Dick Clark.....	23.00	Do.
Do.....	Mel Leeds.....	23.00	Do.
Do.....	Bob Green.....	23.00	Do.
June 1957-August 1959.	Bill Stewart.....	2,700.00	Payment of \$100 per month as consultation fee for services with respect to possible master purchases and advice as to music trends in various areas.

¹ Charged to promotion, entertainment, or miscellaneous business expense, except as otherwise indicated

On August 28, 1957, Pamco Music, Inc. (a wholly owned subsidiary of Am-Par Record Corp.) assigned the copyright to the musical composition of "Don't Gamble With Love" to Sea Lark Enterprises, Inc., a corporation in which Dick Clark had an interest.

On November 1, 1957, Pamco Music, Inc. assigned the musical composition "Rocket" to Figure Music, Inc., a corporation in which Alan Freed had an interest.

In November 1957 Pamco Music, Inc. assigned the musical composition "When I Stop Loving You" ("That'll Be The Day") to Figure Music, Inc.

In January 1958 Pamco Music, Inc. assigned the musical composition "I Dig You Baby" to Ed Bonner, a St. Louis diskjockey.

In March 1958, at the request of Fred Carmen and Don Garman, the composers of the musical composition "Cha Cha Doo," Pamco Music, Inc. assigned the composition to Kincord Music Corp., a corporation in which Dick Clark had an interest. In February 1960 Kincord Music Corp. reassigned the composition to Pamco Music, Inc., effective as of January 1, 1960.

In April 1958 Am-Par Record Corp. assigned to Globe Record Corp., a corporation in which Dick Clark had an interest, Am-Par rights and obligations under a master acquisition agreement with respect to master recordings of "Dreaming" and "Pickin' On The Wrong Chicken." In February 1960 Globe Record Corp. advised Am-Par Record Corp. that it had relinquished all rights to the master recordings.

In June 1958 Am-Par Record Corp. assigned to Globe Record Corp. Am-Par's rights and obligations under a master acquisition agreement covering master recordings of "Don't Say Goodbye" and "That's My Story." In February 1960 Globe Record Corp. advised Am-Par Record Corp. that it had relinquished all rights to the master recordings.

In June 1958 Pamco Music, Inc. assigned the musical composition "Little Turtle" to Seeley Music, Inc., a corporation in which Marty Faye (a Chicago diskjockey) had an interest.

In July 1958 Am-Par Record Corp. assigned to Globe Record Corp. Am-Par's rights and obligations under a master acquisition agreement covering master recordings of "The Voice of Love" and "A Certain Smile." In March 1960 Globe Record Corp. advised Am-Par Corp. that it had relinquished all rights to the master recordings.

Mr. Moss. How do you decide which librarians are going to receive this evidence of—

Mr. CLARK. I make the decision to authorize it. I don't make the decision who they will be.

Mr. Moss. Who does?

Mr. CLARK. I have two promotional people.

Mr. Moss. Who are they?

Mr. CLARK. Namely, Irwin Garr and, secondly, David Berger.

Mr. Moss. What do they do? Cover the country for you?

Mr. CLARK. Mr. Garr could be classified as our national promotion manager. And Mr. Berger could be classified as his assistant but primarily interested in the New York, Baltimore, Washington area, in which he cannot travel because of health. He cannot travel by plane because of health, or has not been able to, and therefore we try to keep him in an area where he can travel by train. He doesn't drive an automobile.

Mr. MOSS. Now, we have covered these three areas. What other types of promotion do you underwrite in part or in whole?

Mr. CLARK. I believe that that is about everything that I can think of, Mr. Moss. I would like at this same time to review, if you will allow me to.

Mr. MOSS. I would appreciate it.

Mr. CLARK. And submit any other types of promotion that we would do. I would be happy to cooperate with you.

Mr. MOSS. When you were with Music Suppliers originally as sole proprietor and then, secondly, as an equal——

Mr. CLARK. With Mr. Carter.

Mr. MOSS. Equal ownership under a corporate organization with Mr. Carter, did you pay this type of gratuity money when you were the sole owner of Music Suppliers?

Mr. CLARK. Mr. MOSS, when I was sole owner of Music Suppliers, I could hardly afford to pay anybody. The capitalization of that——

Mr. MOSS. That is all right. That is all I want to know. You do not have to go into any detail. When did you start?

Mr. CLARK. You are asking me to push my memory pretty far. I would say it was about 3 or 4, possibly 5 years, after the company was organized, incorporated.

Mr. MOSS. About 1955?

Mr. CLARK. No. It would be even before 1955.

Mr. MOSS. 1952? When was it incorporated?

Mr. CLARK. 1946. I would say somewhere in the 1952, 1953 area.

Mr. MOSS. When did Mr. Carter come with you?

Mr. CLARK. Mr. Carter came in, in 1947, I believe I am correct.

Mr. MOSS. Who decided to start it?

Mr. CLARK. The company or the——

Mr. MOSS. The payments.

Mr. CLARK. I believe that fell into my jurisdiction, sir.

Mr. MOSS. Why did you decide that?

Mr. CLARK. It was not a question of paying——

Mr. MOSS. I would like to know what it was.

Mr. CLARK. We did enjoy very, very good relations.

Mr. MOSS. I have lots of people I enjoy the very best of relations with.

Mr. CLARK. But because of the nature of our business, it was important to maintain the good will of these people. Now, I have heard this word used over and over again since I have sat here.

However, this was the case, as far as I was concerned, I never as a distributor, never as a manufacturer, have asked anybody to play my records or a specific record.

Mr. MOSS. Mr. Clark, I quite go along with you that it is the established custom in American business that you do give gifts to create good will, maybe a case of whisky or things of that type. However,

we run into very substantial gifts. The testimony does not indicate that this seems to be the exception to all of the rules. This is an area where there are substantial gifts, on a regular routine basis.

Mr. CLARK. I will agree, based on the testimony I heard, that is so.

Mr. MOSS. Were they gifts or were they the purchase of a service? I would just like to have—

Mr. CLARK. Speaking for myself?

Mr. MOSS. Yes.

Mr. CLARK. They were a gift or a gratuity, not for the purchase of a service.

Mr. MOSS. Were they for the purchase of preferential treatment?

Mr. CLARK. I would not want to say that they were. They were, as far as I am concerned—

Mr. MOSS. Would you want to say that they were not?

Mr. CLARK. I do not think I would want to say they were not.

Mr. MOSS. I do not think you would, either. I think that you probably are a pretty good businessman, and when you paid out this money, you felt you were actually getting value for every dollar you expended; do you not agree with me?

Mr. CLARK. I would have to agree with you, sir, but under different circumstances than are being pointed out here.

Mr. MOSS. Did you continue to give, even if you had a feeling that somehow the recipient was not giving the attention to your labels that you desired?

Mr. CLARK. It was very difficult for me to determine whether I was getting my records played on the air other than by the sales attained. I had no time. I was a record salesman in the early stages of Music Suppliers, and for the 5 years following the founding of the company. I had no time to listen to a radio. I was in retail stores—

Mr. MOSS. Did retailers tell you they were pleased by the exposure you were getting on the radio?

Mr. CLARK. I can only tell you how, when I took out the records, I took out my briefcase and put on a phonograph and played, if they were accepted, I would assume, someone, somewhere, was hearing them.

Mr. MOSS. Is it not true that the only ones that were sold were heard on diskjockey programs?

Mr. CLARK. No, I think the artists have a great influence. I believe you can put out an artist today that will sell a quarter of a million records and never be played on the radio.

Mr. MOSS. I agree with you. I have heard some horrible things on the radio. I think you have, too. And you probably helped put some of them there.

Mr. CLARK. I would not be surprised.

Mr. MOSS. Why did you assume automatically that the sales were an indication that the diskjockeys were—

Mr. CLARK. Because I had no important artist, Mr. MOSS. My artists were the polka artists or new people.

Mr. MOSS. Did you have—

Mr. CLARK. No, I am going back to the pre-rock and roll era, which seems to be a very touchy subject with everybody throughout the

United States, and perhaps well it should be. But I am going back when we didn't know rock and roll when so-called good music——

Mr. MOSS. When singers could sing?

Mr. CLARK. There are some new singers that can sing very well. I mean some of the newer singers are wonderful.

Mr. MOSS. I am pleased to hear that.

Mr. CLARK. There are many who don't know how to sing and they do sell records, but I would say for the most part the public can only be fooled up to a point.

Mr. MOSS. Let us go back. How did you, why did you relate the success of a record solely to the exposure by diskjockeys?

Mr. CLARK. Why did I relate it?

Mr. MOSS. Did your dealers tell you that they were pleased that you were getting radio exposure?

Mr. CLARK. No.

Mr. MOSS. What means——

Mr. CLARK. I don't believe that there was a means. You seem to feel that you had a record. If you walked into a store and played five records——

Mr. MOSS. Yes, sir, I do feel that way, because I have sold all my life prior to going into public office, and I have never sat down to plan a promotional effort without having some idea of the facts that I was dealing with, and I don't think you do, either.

Mr. CLARK. But, Mr. Moss, that was not the question.

Mr. MOSS. The question was, how did you decide? You said you had no way to decide it.

Mr. CLARK. I believe there was an intangible. All I know is I would walk into a store and play five different records.

Mr. MOSS. Just in a store?

Mr. CLARK. If this is my account that I was calling on.

Mr. MOSS. Yes.

Mr. CLARK. I would play 5 records or 10 records. For some reason, and I believe it was based on the call by the consumer, the dealer would say, "I will take a box of those; I don't want any of those," or, "I will take five of these."

Mr. MOSS. Then you didn't leave it only to the sales. You leave it to your dealer reaction.

Mr. CLARK. Well, that was how I knew.

Mr. MOSS. He had to buy them before he could sell them.

Mr. CLARK. This answers the question.

Mr. MOSS. You had a lot of new labels, too?

Mr. CLARK. How did I know diskjockeys were playing my records? I didn't know. Only by sales.

Mr. MOSS. Maybe you can answer this for me, I recognize this has all taken place since your departure from Music Suppliers, but I assume that it represents an established pattern. The agreement you had with Mr. Carter doesn't leave him too much latitude in what he can do in departing from the established. Why did some diskjockeys get \$25 and some of them \$5,000 and \$6,000 in a period of just a few years?

Mr. CLARK. Mr. Moss, I wish I could answer it. I don't know why in that particular instance someone had a scale of \$25 and some had a scale of \$100 or \$150.

Mr. Moss. What was the scale? Who set it?

Mr. CLARK. I mean these were scales, I mean these are scales, \$25, \$100—I would use the word “scale.” I don’t know how this was determined.

Mr. Moss. I would, too. In fact, if I were writing a check, I would be inclined to take the withholding tax out, too.

Mr. CLARK. I don’t know what they did there.

Mr. Moss. Those are all the questions I have, Mr. Chairman.

The CHAIRMAN. When you testified that these were gifts in your opinion, that is, the intent to be gifts, did you credit them as gifts in your company records, or did you credit them as another business expenditure?

Mr. CLARK. Mr. Harris, I believe they were credited as a business expenditure.

The CHAIRMAN. In other words, you carried them on your books as a business expenditure?

Mr. CLARK. I believe so.

The CHAIRMAN. But you felt that they were just a gift?

Mr. CLARK. I would like at the same time that I am going to try to get this list, to substantiate what kind of a bookkeeping entry was made. I am inclined to think that it was a business expense, or entered as a business expense.

The CHAIRMAN. Well, I have just two points that I want to inquire about because I must go and I imagine Mr. Moss must, too.

Verve is a record manufacturing company?

Mr. CLARK. Yes, sir.

The CHAIRMAN. Am-Par is a record manufacturing company?

Mr. CLARK. Yes, sir.

The CHAIRMAN. You testified that you loaned money on three different occasions to Music Suppliers.

Mr. CLARK. I did, sir.

The CHAIRMAN. For, or in connection with, a transaction with Verve Records.

Mr. CLARK. No. There were only two transactions with Verve. The third was an area which was apart from the Verve transaction.

The CHAIRMAN. You are familiar with the agreement that you have with Am-Par?

Mr. CLARK. I am, sir.

The CHAIRMAN. The agreement of the 3d of July 1955, which is the basic agreement and became part of the subsequent or amendment thereto?

Mr. CLARK. Yes, sir.

The CHAIRMAN. How did you get around this provision of the agreement in the first stages?

Mr. CLARK. I have not gotten around it, sir. I don’t know what the consequences will be. I have divulged this to my bosses, shortly prior to being subpoenaed here about 3 weeks ago. I don’t know what action they will take. I certainly admit that I was imprudent in doing these things, but I have no way of explanation how I got around it.

The CHAIRMAN. Mr. Clark, the last man who was before this subcommittee and used that particular term or phrase, “I was imprudent.”

Mr. CLARK. This was not a quotation; I don’t know who he was.

The CHAIRMAN. Subsequently resigned from the second most important and strongest position in the United States, and that was the assistant to the President of the United States. I just call that to your attention.

But I wondered when you were testifying as to these incidents, about the effect when you say here, "Mr. Clark agrees that during the term of this agreement he will not directly or indirectly in any form or manner be interested in or invest capital in any record or music publishing business or enterprise or in any business or enterprise in the field relating to or in competition with the corporation," and so on and so forth.

I was wondering if that was causing you any—

Mr. CLARK. A great deal of concern, sir.

The CHAIRMAN. Concern.

One other thing: When you were interviewed by the staff I believe you said to them that ABC is most cautious about Am-Par Records being played over ABC stations. Do you recall that?

Mr. CLARK. I believe that in talking to Mr. Kelly and Mr. Ranstad, I said that we had, and this goes back 4½ years, a great deal of trouble having ABC-Paramount Records played over our own stations, our own owned stations, although I believe there are six. This has been an ABC or American Broadcasting Co. policy, not to put themselves in any position where anyone can say that they favor the playing of their own records. By an independent survey, this has certainly been substantiated, much to my disappointment in the early stages of forming Am-Par Records.

The CHAIRMAN. You did not want to be accused of using the networks to play your own records?

Mr. CLARK. It was not me, sir. I would have loved to have had them played on there.

The CHAIRMAN. No. But I mean ABC did not want to be accused as such?

Mr. CLARK. Well, I think they did not want to put themselves in a position where at any time anybody could say that they were favoring their own records, and, as a result, they leaned over backward not to play them.

The CHAIRMAN. And you feel that CBS and NBC got by with this more than ABC?

Mr. CLARK. Well, I tried to create that impression to the people at ABC, but they didn't agree with me.

The CHAIRMAN. Have you expressed a feeling that Am-Par gets a better break with the other networks than they do with your own?

Mr. CLARK. I said I think we get more records played on CBS stations than on an ABC station or an NBC station.

The CHAIRMAN. Mr. Dick Clark is an artist and he has his program on ABC, does he not?

Mr. CLARK. Yes, sir.

The CHAIRMAN. How do you account for the fact that in this particular period of time that was checked during October 1959, on the Bandstand an analysis showed that Am-Par records for this particular time, a total of nine Am-Par records were played by Mr. Dick Clark on his show, and they were played 30 times. Columbia had

eight records played 28 times; and RCA had eight records played 22 times.

Now, that goes on, MGM, eight records, 21 times; Capital, seven records, 36 times; and Chancellor, and so on and so on.

Mr. CLARK. I could answer that, Mr. Harris, if you would like me to.

The CHAIRMAN. Yes. I would just like to know how that occurs.

Mr. CLARK. I don't believe that Dick Clark or any other diskjockey of his size or importance would play an Am-Par record or an ABC-Paramount record until after it became an established hit and enthusiasm had been created for it through shows and mediums, other than his. Mr. Dick Clark really has played an ABC-Paramount record, what we would say "upfront" before it has become established, and we have been blessed, I believe—I may be using the wrong word—with having good creative talent. Some of our records that have been hits fall into the rock-and-roll field. I would say a good share of them, but some of our hits also fall into what would be classified as music that many people, adults, would enjoy listening to. We spend somewhere in the vicinity of \$300,000 a year in creating product.

Now, a good part of this is spent in the creating of good long-playing products, and out of 250 albums, we may have 5 that fall into the so-called rock and roll field. For the rest of them, I feel certain that many people, adult people, would be happy to listen to and enjoy listening to. They are not raucous, they give a great deal of pleasure, we hope.

The CHAIRMAN. Mr. Clark, I have observed, that certainly at times, during your testimony that you felt somewhat chagrined at being required to come here to testify. Mr. Moss has already stated that we have one objective, and that is to obtain the facts.

I can appreciate the fact that a matter as sensitive as this business is makes one reluctant to testify and particularly in view of certain actions which have caused the American people to rebel. Nevertheless, it is our duty to find out the facts. You happen to be in a position to furnish information on how this business was operated. You have been very frank to admit your part in some of it, in years past, and have made an effort to explain your actions since you have been with Am-Par.

We appreciate your appearance here and your testimony, and trust that we have not caused you any inconvenience by it.

We hope that you do not have any ill effects from your appearance here in view of your condition of health.

Mr. CLARK. Now that it is over, I think that——

The CHAIRMAN. We hope you sleep better tonight.

Mr. CLARK. The waiting was much worse than the sitting. Thank you very much.

The CHAIRMAN. You may be excused. Thank you very much.

The subcommittee will adjourn until 2 o'clock tomorrow afternoon. We have an executive session of the subcommittee.

(Whereupon, at 6:10 p.m., the hearing was adjourned, to reconvene at 2 p.m., Thursday, February 18, 1960.)

RESPONSIBILITIES OF BROADCASTING LICENSEES AND STATION PERSONNEL

THURSDAY, FEBRUARY 18, 1960

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON LEGISLATIVE OVERSIGHT
OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The special subcommittee met, pursuant to recess, at 3:35 p.m., in room 1334, New House Office Building, Hon. Oren Harris (chairman of the special subcommittee) presiding.

Present: Representatives Harris, Mack, Flynt, Moss, and Devine.

Also present: Robert W. Lishman, counsel; Beverly M. Coleman, principal attorney; Oliver Eastland, attorney; James P. Kelly, investigator; Herman Clay Beasley, chief clerk; and Jack Marshall Stark, minority counsel.

The CHAIRMAN. The subcommittee will come to order.

Are you Mr. Weiss?

Mr. WEISS. Yes, sir.

The CHAIRMAN. Do you object to the photographers?

Mr. WEISS. Not at all.

The CHAIRMAN. Will you be sworn, please?

Mr. WEISS. Yes, sir.

The CHAIRMAN. Do you solemnly swear the testimony you give to the subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. WEISS. Yes, sir.

The CHAIRMAN. Have a seat, sir.

TESTIMONY OF HARRY WEISS

The CHAIRMAN. State your name for the record.

Mr. WEISS. Harry Weiss.

The CHAIRMAN. Mr. Weiss, will you speak up now.

Mr. WEISS. I have laryngitis, sir. I will do the best I can, sir.

The CHAIRMAN. Well, we were back in the other room in executive session giving you plenty of time to get that laryngitis straightened out. Somebody must have been bothering about you.

Mr. WEISS. I will do the best I can to be heard.

The CHAIRMAN. Will you state your address.

Mr. WEISS. 21 Beaconwood Road, Newton Highlands, Mass.

The CHAIRMAN. What is your profession?

Mr. WEISS. I do promotion for Music Suppliers of Boston.

The CHAIRMAN. I will have to ask those who are here as guests of our subcommittee to be exceedingly quiet. A little noise is going to interfere with the subcommittee's work and we cannot be interrupted.

This witness has a condition that makes it difficult for us to hear and the testimony he has to give is important. At least we think so, although he may doubt it.

Mr. LISHMAN, you may proceed.

Mr. LISHMAN. Mr. Weiss, what are your duties as promotion man for Music Suppliers, Inc?

Mr. WEISS. I service radio stations with records. My other duties are to try to get these records aired.

Mr. LISHMAN. For how long have you been employed as promotion man?

Mr. WEISS. Since December of 1950.

Mr. LISHMAN. In the course of your duties do you have discussions with diskjockeys and record librarians at radio stations?

Mr. WEISS. Yes, I do.

Mr. LISHMAN. What salary do you receive from Music Suppliers?

Mr. WEISS. \$160 plus expenses.

Mr. LISHMAN. What expense account are you allowed?

Mr. WEISS. Whatever I spend, I put in for.

Mr. LISHMAN. Do you put a voucher in for all your expenses?

Mr. WEISS. Yes, sir.

Mr. LISHMAN. Do you know whether part of your salary is contributed by Am-Par?

Mr. WEISS. I do now, sir.

Mr. LISHMAN. When did you first know that part of your salary was paid for by Am-Par?

Mr. WEISS. When a member of your staff, Mr. Kelly, advised me of this when he was in Boston.

Mr. LISHMAN. About when was that?

Mr. WEISS. I would think it was in January, sir.

Mr. LISHMAN. Do you know Mr. Samuel Clark?

Mr. WEISS. Yes, sir, I do.

Mr. LISHMAN. And he is head of Am-Par?

Mr. WEISS. To my knowledge he is, yes, sir.

Mr. LISHMAN. Did you make oral and written reports to Mr. Clark concerning your record promotion?

Mr. WEISS. I never made any reports to Mr. Clark. We have discussed releases from time to time as to the progress of some of Am-Par's releases.

Mr. LISHMAN. Did Mr. Clark call you and say, in effect, that he was not satisfied with the sales of Am-Par labels in your area?

Mr. WEISS. Mr. Lishman, I had actually nothing to do with sales for Music Suppliers.

Mr. LISHMAN. Would he call you and say that Am-Par records were not moving as well in that area as he wanted them to?

Mr. WEISS. He might have said to me that this record was a hit somewhere else and wondered why it wasn't a hit in Boston.

Mr. LISHMAN. And would you tell him you would do your best to see that diskjockeys would listen to the records, and that you would do your best to see that they gave the Am-Par records favorable consideration?

Mr. WEISS. I tried to do my best on all the labels that we release, sir.

Mr. LISHMAN. Did you tell that to Mr. Clark?

Mr. WEISS. I don't remember ever telling him that I would specifically try to do my best for any one release that he talked to me about.

Mr. LISHMAN. I am talking about Am-Par labels.

I will refresh your recollection.

Mr. WEISS. All right, sir.

Mr. LISHMAN. I will hand you two typed copies of what appear to be in one instance a letter from you dated April 29, 1957, to Mr. Sam Clark, Am-Par Record Corp., and the second one dated January 3, 1957, from you to Mr. Larry Newton of ABC-Paramount. Are those correct copies of what you sent to Am-Par?

Mr. WEISS. Mr. Lishman, these letters, one of which was written in January 1957, and the other in April 1957, are, without a doubt, written by me and signed by me, or I should say the typewritten name is mine. I do not deny that I wrote these letters. I don't remember the incidents clearly, because of the time that has elapsed.

But to me these letters are reports as you put it, of the progress that I thought could be made by these respective records.

Mr. LISHMAN. Do these letters refresh your memory to the extent that you can now remember that you auditioned certain records for a number of different diskjockeys?

Mr. WEISS. Mr. Lishman, in the performance of my duties, I try to get, although I am not always successful, a diskjockey to listen to the records that I am servicing, so that we can discuss the merits of the record. If I just dropped a record in at a radio station or gave it to a diskjockey without trying to get them to hear it, I would rather think that I was nothing more than a messenger boy.

Mr. LISHMAN. Did you ever ask a diskjockey to play the records?

Mr. WEISS. I have asked many diskjockeys to play my records.

Mr. LISHMAN. Did you ever ask any employee of a radio station for the blank letterheads of that station?

Mr. WEISS. Yes, I believe I did, sir.

Mr. LISHMAN. For what purpose would you ask the employee of a radio station for blank letterheads of a radio station?

Mr. WEISS. Well, it came to my attention that I had seen some listings in some trade papers of specific top listings that were sent in, while none of my records which I considered hits had appeared. When I questioned them about this, and asked why some of the records that I had, that were hits at that particular time, did not appear in their list, I was told that, "Well, you did not send this one in and somebody sent it in for me." I asked them whether I might enjoy the same privilege, so that I could list my hit records.

Mr. LISHMAN. Now, Mr. Weiss, was this situation brought to your attention by Mr. Sam H. Clark of Am-Par Records?

Mr. WEISS. This situation regarding the lists, sir?

Mr. LISHMAN. Yes.

Mr. WEISS. Not that I remember.

Mr. LISHMAN. Well, I have before me what purports to be a photostatic copy of a letter addressed to you by Mr. Sam H. Clark of Am-Par dated August 18, 1958. I would like to read it to you

and see if it refreshes your memory. It is addressed to you at Music Suppliers and states:

DEAR HARRY: In looking over this week's Cashbox, listings on ABC-Paramount are noticeably absent from Joe Smith, station WMEX; Tom Roulstone, WPEP in Tauton; Ted Eldredge, WKNE in Keene; Jerry Jerome, WPAW in Providence, R.I.; Charlie Mansfield, WHAV in Haverhill, Mass.

You will note that many other stations are listing, if nothing else, the Ponitails' "Born Too Late." Is there something we can do to improve the listing situation in your territory? It is most important and reflects additional plays.

Cordially,

AM-PAR RECORD CORP.,
SAM H. CLARK.

Did you receive such a letter?

Mr. WEISS. If you have it there, sir, I will accept the fact that I did receive it.

Once again, I say that it is also the duty of a promotion man, if they know that a diskjockey is listing or submitting lists for the trade papers, to make them aware of the hit records that you think deserve listings in their top 10. We do this verbally, and this is more or less a form letter that I get from a lot of the record manufacturers. I may even get these from publishers asking me whether I think that their songs merit listings in these respective trade papers.

Mr. LISHMAN. I started off by asking you if you ever obtained blank stationery with the letterheads of radio stations from employees of a radio station. Your answer was "Yes."

Mr. WEISS. That is so.

Mr. LISHMAN. What did you do with this blank stationery which you obtained bearing the letterhead of a radio station?

Mr. WEISS. Well, once again, I say that I asked for this after discovering that my hit records were being neglected in their listings. I asked whether I might enjoy the same privilege that my competitors were having, and they consented to give me this letterhead signed by them at the bottom so that I might fill in the hit records in the area, including my own hit records.

Mr. LISHMAN. And then you would mail that letter, which purportedly would come from a radio station, to Cashbox; is that correct?

Mr. WEISS. That is so.

Mr. LISHMAN. And then Cashbox would publish the top records of the week as though it came from the radio station?

Mr. WEISS. If they had published it at that time. Of course, there is no guarantee that they will publish everything that you submit. That depends on space.

Mr. LISHMAN. Would not Cashbox indicate in its columns that this came from the radio station?

Mr. WEISS. Yes, sir.

Mr. LISHMAN. They would not indicate that it came from you?

Mr. WEISS. That is right, sir.

Mr. LISHMAN. Cashbox would not indicate that, in effect, it was a stacked record list compiled by a record distributor, would they?

Mr. WEISS. No, they would not do that. However, the lists that were submitted were those I thought at the time, were to be the top records in the area at the time.

Mr. LISHMAN. Is this a customary practice among record promotion men to get blank stationery, have it signed by some radio station em-

ployee, fill in either the top 10 or the top 40 or top 50, and then have a publication such as Cashbox publish it as though it were the independent statement of a radio station?

Mr. WEISS. I wouldn't say that it was a general practice, sir. But I asked for this privilege after finding that some of my competitors were doing the same thing.

Mr. LISHMAN. Yes, sir. Do you know what competitors were doing this?

Mr. WEISS. No, I was not told. I was just told that it was sent in by someone else.

Mr. LISHMAN. Who told you that?

Mr. WEISS. On a couple of occasions, sir. A Mr. Don Masters and Mr. Ken Mayer.

Mr. LISHMAN. Mr. who?

Mr. WEISS. Mr. Ken Mayer.

Mr. LISHMAN. Did you ever receive any money, cash, check, or other consideration for promoting a record for any individual other than in the ordinary course of your employment by Music Suppliers?

Mr. WEISS. I have received gifts which I interpreted as bonuses for working on a record.

Mr. LISHMAN. Would you please describe those gifts.

Mr. WEISS. I have them listed. I could make them available. But they were gifts for working on a record in the area from a record company, and from a publisher.

Mr. LISHMAN. What did these gifts consist of?

Mr. WEISS. A check.

Mr. LISHMAN. For how much?

Mr. WEISS. Some were \$25, some were \$50.

Mr. LISHMAN. Could you approximate the total that you received?

Mr. WEISS. It would be an approximation, sir. But I would say, for working on a record, Mr. Lishman, is that what you are talking about?

Mr. LISHMAN. Yes, sir.

Mr. WEISS. Oh, \$125, \$150 during the past year.

Mr. LISHMAN. Well, in 1958?

Mr. WEISS. I couldn't tell you that until I saw my tax return.

Mr. LISHMAN. You believe that in 1959 you received \$150?

Mr. WEISS. From a record company or a publisher.

Mr. LISHMAN. What was that company?

Mr. WEISS. I believe Cameo Records sent me a check for Christmas, sir. I received, I believe, a \$25 check for Christmas from Paris Records. I received a \$25 check from a publisher, George Pincus. Beyond that, I would have to consult my list, sir.

Mr. LISHMAN. You are convinced now in your own mind that the total in 1959 was approximately \$150?

Mr. WEISS. From record companies or publishers, that I can remember.

Mr. LISHMAN. Let us say individuals.

Mr. WEISS. Individuals?

Mr. LISHMAN. Yes, sir.

Mr. WEISS. Well, there was an occasion where I did receive a substantial amount of money for recommending a record to a company that was just being distributed locally in the New England area only.

This man was desirous of selling the master, and asked me whether I could recommend it to some of the labels that we represented. We had had some fairly decent success with this record in our area, and I so reported it to a couple of the companies. The outcome of this was that he sold this master to the record company, and had given me a gift.

Mr. LISHMAN. What was the name of this individual?

Mr. WEISS. Mr. Sam Lembo.

Mr. LISHMAN. What was the name of the record? Was it "Linda Jean?"

Mr. WEISS. "Linda Jean."

Mr. LISHMAN. How much did he pay you?

Mr. WEISS. He came to my office after he had made a deal in selling the master for \$5,000, and gave me \$500 which I turned over to my employer.

Mr. LISHMAN. When did this happen?

Mr. WEISS. I can't remember the date, sir, but I would say that it was in the spring of 1959. I am venturing a correct guess. I couldn't tell.

Mr. LISHMAN. Was this record sold to Sam Clark by Mr. Lembo?

Mr. WEISS. Yes, sir.

Mr. LISHMAN. For \$5,000?

Mr. WEISS. That is right, sir.

Mr. LISHMAN. And the \$500 represented 10 percent commission to you?

Mr. WEISS. Well, I didn't think that it was representing 10 percent. He came in to see me. I didn't know until he came in that he had made the deal for \$5,000. He came into my office and told me that he had sold the record for \$5,000, and then he gave me this \$500, which I in turn turned over to my employer.

Mr. LISHMAN. Was this in the form of cash or a check?

Mr. WEISS. That was in the form of cash, sir.

Mr. LISHMAN. \$500 cash?

Mr. WEISS. Yes, sir.

Mr. LISHMAN. And you turned that \$500 cash over to your employer?

Mr. WEISS. To my employer, sir.

Mr. LISHMAN. Were you questioned by the investigators concerning any incident of this kind?

Mr. WEISS. Not that I remember.

Mr. LISHMAN. Did you ever receive any sum in cash or by check from any other individuals in connection with your efforts to manufacture or promote a record that they had?

Mr. WEISS. Yes, I believe I know the situation you refer to, sir.

Mr. LISHMAN. What is that situation?

Mr. WEISS. A Mr. Ray Lewis was recommended to me. He had a tape and he wanted to process this tape into a record for marketing. He didn't know how to go about this routine. He came to me and asked whether I would advise him on such matters, and if we would distribute this record when it was processed.

I talked to him about the means of processing this record, and then asked my employer whether he would be willing to handle this record for distribution. He said he would.

We then went through the motions of getting this record mastered and processed for marketing.

Mr. LISHMAN. Is it a fact that Mr. Lewis is a deputy sheriff in Manchester, N.H.?

Mr. WEISS. I didn't know that until much after I had met him for the first time, sir.

Mr. LISHMAN. Is it not a fact he did not know much about the record business?

Mr. WEISS. I guess that is why he was recommended to me.

Mr. LISHMAN. What was the name of the record?

Mr. WEISS. "Growing Love."

Mr. LISHMAN. Did you take care of the arrangements for having this record manufactured?

Mr. WEISS. Yes, sir.

Mr. LISHMAN. Did you take care of the arrangements for having the labels on that record printed?

Mr. WEISS. Well, after discussing it with Mr. Lewis, I did.

Mr. LISHMAN. You caused the labels to be printed, you say?

Mr. WEISS. Well, we picked out the color and the name of the label.

Mr. LISHMAN. Did you cause a BMI designation to be placed on that record with a BMI number?

Mr. WEISS. No, sir. That is for publishing.

Mr. LISHMAN. Do you know who did?

Mr. WEISS. I don't know who the publisher is.

Mr. LISHMAN. Who gave you this information to put on there?

Mr. WEISS. All the information I gave to the pressing plant was the color of the label, the name of the label, title, the group, and the number, which I believe was—

Mr. LISHMAN. 200?

Mr. WEISS. 101 or 102, or something.

Mr. LISHMAN. 1002?

Mr. WEISS. Or something like that.

Mr. LISHMAN. Yes. What was the name of the record?

Mr. WEISS. "Growing Love."

Mr. LISHMAN. What label?

Mr. WEISS. Hampshire label.

Mr. LISHMAN. Where did that name come from?

Mr. WEISS. I suppose Mr. Lewis comes from Manchester, N.H., and he picked the Manchester label.

Mr. LISHMAN. What was the publishing company?

Mr. WEISS. I have no idea about publishing, sir.

Mr. LISHMAN. Well, do you know now that that was not a BMI record?

Mr. WEISS. I do not, sir.

Mr. LISHMAN. You do not?

Mr. WEISS. I do not. It was on the label. And I assumed that some arrangements had been made for publishing, but I had no part of that.

Mr. LISHMAN. Did you go down and handle this matter with BMI?

Mr. WEISS. No, sir.

Mr. LISHMAN. Did you handle any of the transactions with Silver Park?

Mr. WEISS. With Silver Park, yes, sir.

Mr. LISHMAN. Did you go to New York on that ?

Mr. WEISS. I happened to be in New York at that time and arranged it with Silver Park.

Mr. LISHMAN. Were you down there on business for Music Suppliers ?

Mr. WEISS. No, sir. It was on a weekend when I was there on a Saturday and arranged for the whole thing.

Mr. LISHMAN. Who did you see at that record manufacturing plant ?

Mr. WEISS. Mr. Silver Park.

Mr. LISHMAN. Who paid your expenses on that trip to New York ?

Mr. WEISS. Mr. Lewis did.

Mr. LISHMAN. Did Mr. Lewis make any other payments to you ?

Mr. WEISS. Yes, he did, sir.

Mr. LISHMAN. How much ?

Mr. WEISS. \$100.

Mr. LISHMAN. When did he make that \$100 payment ?

Mr. WEISS. Well, Mr. Lewis came in and said that he had needed some money to defray some expenses. He asked whether he could get an advance, so I brought him in to see my employer. He asked for this advance, and I believe he received \$700. When he got this, he asked Mr. Carter whether it was all right for him to give me \$100, and Mr. Carter said, "By all means."

Mr. LISHMAN. On the same day that he received the \$700 from Music Suppliers, he gave you the \$100 ?

Mr. WEISS. Yes, sir.

Mr. LISHMAN. I will ask you to identify this photostatic copy of a check made by the Downbeats dated February 4, 1959, drawn to your order in the amount of \$100, and ask you if you can identify this as the check and your endorsement on the back of this photostatic copy ?

(Document handed to witness.)

Mr. WEISS. Yes, sir.

Mr. LISHMAN. Why did Mr. Lewis give you that check ?

Mr. WEISS. I would like to think it was for services rendered, sir.

Mr. LISHMAN. Why, when he said that he was in such dire straits that he needed an advance of \$700, would he then turn around and give you \$100 on the same day ?

Mr. WEISS. I didn't know, Mr. Lishman, that I had said dire straits. I thought I had said to defray some expenses. But maybe he felt he was obliged to repay me for some services that had been rendered.

Mr. LISHMAN. What services ?

Mr. WEISS. Well, I had made all of these arrangements and I had worked on the record, which I would do normally in my everyday routine.

Mr. LISHMAN. Is it a fact that the photostatic copy of the canceled check just handed you bears the notation on the lefthand side "expense" ?

Mr. WEISS. I did not notice that, sir. Yes; it does say expense.

Mr. LISHMAN. Had you promoted the record for the Downbeats at this time ?

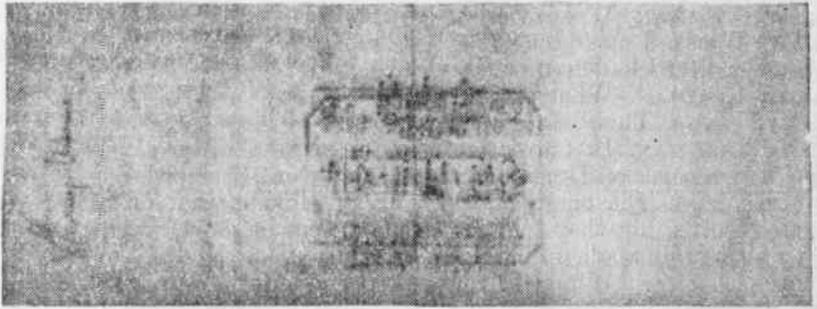
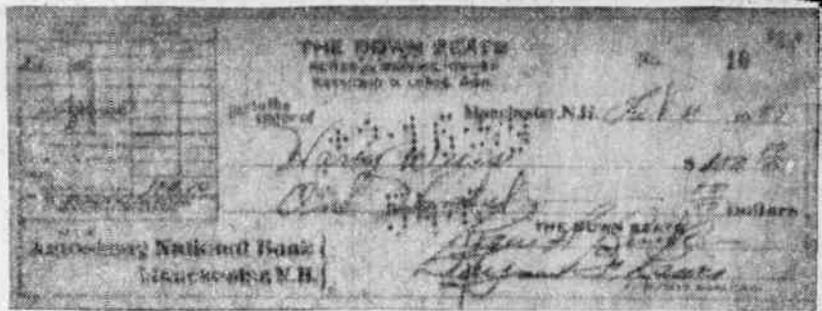
Mr. WEISS. I believe I had.

Mr. LISHMAN. Do you think that this \$100 was for your services in promoting the record?

Mr. WEISS. That and arranging for the processing of the record. I thought that was the reason he was giving this \$100.

Mr. LISHMAN. I offer this check for the record.

(The check referred to follows:)



Mr. LISHMAN. Did you receive any other money from the Downbeats for promotional purposes?

Mr. WEISS. No, sir.

Mr. LISHMAN. Did you receive any other money from the Downbeats or Mr. Ray Lewis for any purpose?

Mr. WEISS. Other than my expenses in going to New York.

Mr. LISHMAN. You received nothing for promotion?

Mr. WEISS. No, sir.

Mr. LISHMAN. How much in all did you receive from Mr. Lewis or the Downbeats?

Mr. WEISS. As far as I can recollect, sir, that was it, outside of my expenses in going to New York.

Mr. LISHMAN. Did you ever send a bill to Mr. Lewis?

Mr. WEISS. I don't know whether I sent a bill or he was in my office and we went over the expense items. I can't recall, sir.

Mr. LISHMAN. What were these expense items?

Mr. WEISS. Well, my fare to New York, staying over, normal expenses of traveling.

Mr. LISHMAN. What other expenditures did you have on the weekend you went to New York in connection with this record?

Mr. WEISS. I can't recall that, sir.

Mr. LISHMAN. Did you pay for the pressing of 2,000 of these records?

Mr. WEISS. For the first pressing, sir.

Mr. LISHMAN. How much?

Mr. WEISS. I don't remember the exact amount, sir, but if it is a matter of record, then—

Mr. LISHMAN. Would it be 14 cents for 2,000 labels?

Mr. WEISS. I would say that that would be about the right figure, 14 cents a copy, including the labels.

Mr. LISHMAN. Did you pay for 2,000 labels?

Mr. WEISS. 2,000 labels is what were ordered, I believe.

Mr. LISHMAN. What did you pay for them?

Mr. WEISS. I can't remember the figure on that; it could be a half-cent or a penny.

Mr. LISHMAN. \$18 for the total?

Mr. WEISS. Something like that. It could be. It sounds reasonable.

Mr. LISHMAN. What weekend did you go to New York?

Mr. WEISS. I think it was—

Mr. LISHMAN. Was it December of 1958?

Mr. WEISS. I can't remember the date, but I think it was a couple of weeks after I had first met Ray Lewis.

Mr. LISHMAN. When did you first meet him?

Mr. WEISS. That date is not clear to me.

Mr. LISHMAN. Is it not a fact that the original order placed by you for these records on December 22, 1958, was for 947 records?

Mr. WEISS. The original order, Mr. Lishman, was for, I believe, 1,000 records, but they had sent some orders in short, which I think they ultimately made up in future pressings.

Mr. LISHMAN. Who paid for those pressings?

Mr. WEISS. The original pressings were paid for by Mr. Lewis.

Mr. LISHMAN. As I understand your testimony you were paid no other money than the \$100 for record promotional expense or record promotional services; is that correct?

Mr. WEISS. Other than my expense of going to New York, whatever I incurred.

Mr. LISHMAN. I have before me a photostatic copy of a canceled check of the Down Beats, Raymond Lewis, manager, dated December 22, 1958, drawn to your order in the amount of \$210, and bearing your endorsement on the back. I would like you to read what is on the left-hand side of this check when you identify it. [Showing document to witness.]

Mr. WEISS. Yes, sir; this was drawn to me and signed by me.

Mr. LISHMAN. Did you get that \$210?

Mr. WEISS. I believe I did, sir.

Mr. LISHMAN. What does the check state on the left-hand side?

Mr. WEISS. It says for "promotional"—it is not too clear there—"promotional record." Then it says "exp."

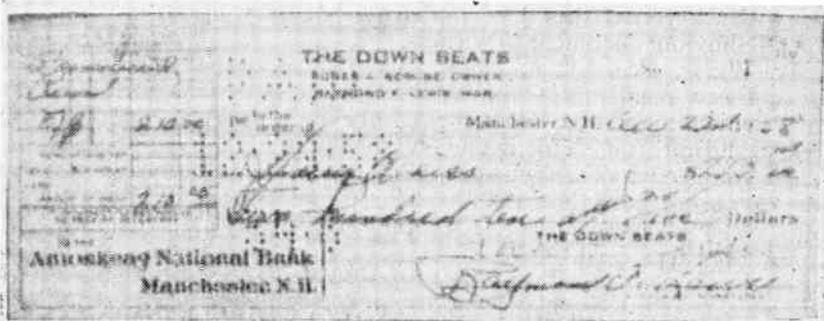
I remember this check, sir.

Mr. LISHMAN. Well, this is in addition to the \$100 which you previously testified was the only check you got?

Mr. WEISS. Well, this check was part payment for the payment of the pressing and the expense to New York, as far as I can remember.

Mr. LISHMAN. Mr. Chairman, I would like to have that check introduced into the record at this point.

The CHAIRMAN. Let it be received in the record.
(The document referred to follows:)



Mr. LISHMAN. In view of the fact that we found one check that you had not thought of before, I am going to ask you now if you want to refresh your memory a little more before I ask you the next question.

Did you receive any other payments from the Downbeats in connection with this record other than these two checks that you have now testified to?

Mr. WEISS. I believe I did, sir. It is the \$100 that I referred to that Mr. Lewis asked my employer whether he could give me.

Mr. LISHMAN. What was the next check that you got from the Downbeats?

Mr. WEISS. I can't recall, sir.

Mr. LISHMAN. But your original testimony is being corrected now; is that right?

Mr. WEISS. I don't know whether it is being corrected now, sir. I am trying to relate the incidents as I remember them.

Mr. LISHMAN. You remembered originally that all you got was \$100. Now when we showed you the next check you remembered it.

I am going to show you another one and ask you if you can remember that. This is a check of December 1, 1958, in the amount of \$440, drawn to your order by the Downbeats, Raymond Lewis, manager. It bears your endorsement on the back of it, and I ask you if you received this check.

Mr. Weiss, you will notice there is a handwritten notation on this check in the lower left-hand corner, "payment—expense for 2,000 records."

I will ask you if this is a check received by you and endorsed by you. [Showing document to witness.]

Mr. WEISS. Yes, sir; and now that I have seen this check, sir, I think I can recall what one of the other checks was for. I don't know which one it was, but you can only use a master or stamper for a thousand records. This is our original pressing.

But you need another type of stamper to master a record if you are going to press more than 1,000 records. I believe that is what one of those other checks was for, additional expenses in putting out and processing this record.

Mr. LISIMAN. Mr. Chairman, I would like to have this check introduced into the record at this point, please.

The CHAIRMAN. Did you identify this?

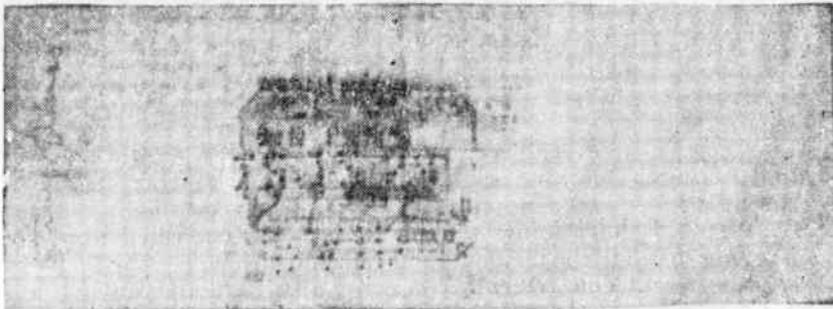
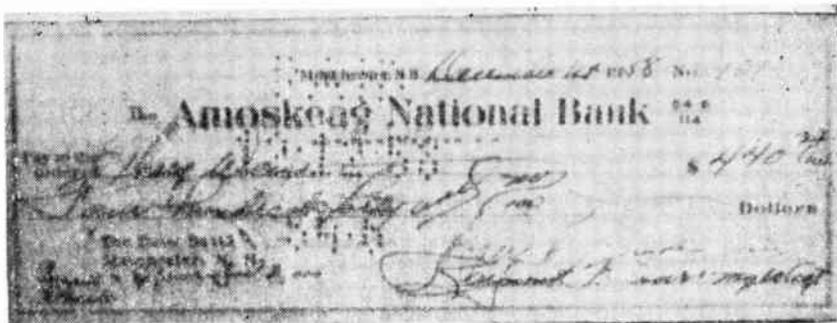
Mr. WEISS. Yes, sir.

The CHAIRMAN. As a photostatic copy of the original?

Mr. WEISS. Yes, sir.

The CHAIRMAN. Let it be received for the record.

(The document referred to follows:)



Mr. LISHMAN. Is it a fact, Mr. Weiss, instead of \$100 that you received from Ray Lewis and the Downbeats, you actually received \$750?

Mr. WEISS. Well, it would appear that I received that money which was expended for the processing of records and additional—

Mr. LISHMAN. Go ahead.

Mr. WEISS. Right.

Mr. LISHMAN. Yes, sir.

Mr. WEISS. And additional expenses when we pressed beyond a thousand records which no longer could be pressed with the original stamper or dies or whatever processes are used.

Mr. LISHMAN. How much of the \$750 was for record promotion?

Mr. WEISS. So far as I can recollect \$100.

Mr. LISHMAN. I also hand you a sheet of paper which appears to be "Memo from Harry Weiss," and ask you if you can identify this piece of paper. [Handing document to witness.]

Mr. WEISS. This is a memo from me, sir.

Mr. LISHMAN. Is that your handwriting?

Mr. WEISS. Yes, sir.

Mr. LISHMAN. What is the last notation?

Mr. WEISS. "Record promotion."

Mr. LISHMAN. How much?

Mr. WEISS. \$175.

Mr. LISHMAN. I have before me the record which was introduced in evidence yesterday, and I will ask you if this is the record "Growing Love," that was the subject of your transaction with Ray Lewis and the Downbeats?

Mr. WEISS. Yes, sir.

Mr. LISHMAN. May I have it back? Just a minute before you hand it back, Do you know it has a BMI notation on there?

Mr. WEISS. Yes, sir.

Mr. LISHMAN. What does it say about BMI?

Mr. WEISS. It says Hampshire Music, BMI, and in brackets HP-2004.

Mr. LISHMAN. Mr. Weiss, is it a fact that a radio station will not play a record unless it is certain that it will not be subjected to liability for unlawful use of the music or the records?

Mr. WEISS. I am not clear in that area, sir. I am not too familiar with it.

Mr. LISHMAN. Is it a fact that when a record bears the notation "BMI" with a number after it, that the licensee knows that he can safely use that record?

Mr. WEISS. Once again, I say I am not too familiar, but I imagine that is conceivably true.

Mr. LISHMAN. You don't know who caused that BMI notation to be placed on it?

Mr. WEISS. No, sir; that is unfamiliar to me.

Mr. LISHMAN. And yet you had charge of arranging for obtaining the printing of these labels?

Mr. WEISS. Mr. Lewis and I picked the color, as I stated before, Mr. Lishman. As a matter of fact, Mr. Lewis picked the color, and the name Hampshire, because he comes from Manchester, N.H.

Mr. LISHMAN. I wish the record to be clear. Yesterday we received testimony and evidence in the form of a letter from the attorney for BMI stating that there was no such BMI record, and there were no copyrights on it.

Do you know anything about that?

Mr. WEISS. No; I know nothing about that. All I made arrangements for was to process the record. I had nothing to do with the publishing of that.

Mr. LISHMAN. Who gave you the information to put on the label?

Mr. WEISS. Well, all the information I gave to put on the label was the name of the label, the title of the song, the artists who performed on this record, and the number of the record so that it could be categorized in sales. So far as publishing was concerned, I had no part of this whatsoever, sir.

Mr. LISHMAN. Where did this number come from? Did the printer put it on of his own volition?

Mr. WEISS. Sometimes they do and sometimes they don't. You just pick a number at random.

Mr. LISHMAN. Who would tell them to do that?

Mr. WEISS. It is conceivable that we picked out a number.

Mr. LISHMAN. I mean a BMI number.

Mr. WEISS. That is not a BMI number. That is a record number.

Mr. LISHMAN. That is the record number?

Mr. WEISS. That is a record number, sir.

Mr. LISHMAN. With the initials BMI preceding it?

Mr. WEISS. Yes.

Mr. LISHMAN. Up on top. Who told them to put BMI on it?

Mr. WEISS. I didn't, sir. I don't know.

The CHAIRMAN. Did you receive the label before you received the record?

Mr. WEISS. No, sir. The label is put on at the pressing plant at the time of the pressing of the record from a master, which is made from a tape.

The CHAIRMAN. As I understood the testimony yesterday, this listing which you have just described and which you put out had this particular record on it before the record was ever pressed.

Now, if that testimony was true, how did you get the number which this record carried? This number was your listing 6 weeks or more before the record ever hit the market.

Mr. WEISS. That is a little confusing to me, Mr. Chairman. May I ask a question, sir? Is this listing you're talking about for trade papers? What sort of listing do you refer to?

The CHAIRMAN. Radio stations.

Mr. WEISS. For radio stations?

The CHAIRMAN. Yes.

Mr. WEISS. The record must have—

The CHAIRMAN. You are going to go into that, Mr. Lishman?

Mr. LISHMAN. Yes.

Mr. MOSS. I have a question.

Who printed the label? Was it the pressing company?

Mr. WEISS. The pressing company, sir.

Mr. Moss. Didn't they follow what would appear to be routine and submit a proof of the label to you before they went ahead and pasted it on all these recordings?

Mr. WEISS. Well, being a private contractor, this was, in substance, a record company with their first release. I don't believe they had any proofreaders in their employ to look these things over.

Mr. Moss. No, they don't need proofreaders. You usually want to proof it back when you have anything you want printed; don't you?

Mr. WEISS. Well, I believe, Mr. Moss, at that time I didn't ask for a proof. We agreed on the color of the label and the name of the label, the title, the artist, and we picked a number at random, like 2,002 which appears there. It was the first record of a company, and they had nothing to succeed in the way of releases.

Usually releases are No. 1 and consecutive.

Mr. Moss. That is getting into a very complex explanation for a very simple question.

Mr. WEISS. No, I did not ask for proof, sir.

Mr. Moss. That is all I wanted to know.

Mr. WEISS. Thank you.

Mr. LISHMAN. Now, Mr. Weiss, is it a fact that Harry Carter, the president of Music Suppliers, Inc., your employer, owned a 50-percent interest in this record?

Mr. WEISS. Yes, sir.

Mr. LISHMAN. And you knew that?

Mr. WEISS. After the record had been in release a few weeks, yes. They had made some sort of arrangement, and I knew it at the time, sir.

Mr. LISHMAN. Didn't you assure Mr. Lewis in this connection that you would arrange to have Am-Par give this record national distribution?

Mr. WEISS. No, sir; no, sir.

Mr. LISHMAN. Now, isn't it rather peculiar that you would take \$175 in promotion expense on a record in which your employer owned a 50-percent interest?

Mr. WEISS. Well, I believe that Mr. Lewis told me that he would sort of take care of me if I worked on this record. This was prior to his making a deal for a partnership in the record with Harry Carter.

Mr. LISHMAN. Isn't it a fact that by December 1958 Mr. Lewis had already paid \$650 for expenses on this record?

Mr. WEISS. If the checks show that, I would—

Mr. LISHMAN. Including your own promotion?

Mr. WEISS. If that is what the total is, I will go along with that, sir.

Mr. LISHMAN. That is shown in your own handwriting.

Mr. WEISS. If that is the total, that would be it.

Mr. LISHMAN. Did you identify this paper as your own handwriting?

Mr. WEISS. Yes, I did, sir.

Mr. LISHMAN. Mr. Chairman, I would like to have this paper in the record at this point.

The CHAIRMAN. Have you seen this paper, Mr. Weiss?

Mr. WEISS. Yes, I did, sir.

The CHAIRMAN. You identify it?

Mr. WEISS. I did sir.

The CHAIRMAN. Is it authentic?

Mr. WEISS. Yes, it is, sir.

The CHAIRMAN. Let it be included in the record.

(The document referred to follows:)

MEMO FROM HARRY WEISS

2,000 at 14 cents.....	\$280. 00
2,000 labels at \$9 per thousand.....	18. 00
4 sides mastering, at \$11.....	44. 00
4 strikeoff plates, at \$15.....	60. 00
Fare (air).....	30. 03
Taxis to and from airport.....	6. 50
Taxis in New York City.....	4. 50
Hotel.....	12. 00
Per diem (food), 2 days.....	15. 00
Total.....	470. 00
Engineer at WORL.....	5. 00
Total.....	475. 00
Record promotion.....	175. 00
Total.....	650. 00

Mr. LISHMAN. As I understand the first of your testimony, in the early part of 1959 Mr. Lewis came and asked for an advance of \$700 because he was hard up. Is that correct?

Mr. WEISS. He came in and asked for an advance of \$700 because he wanted to defray some of his expenses, and these are the words he said to me.

Mr. LISHMAN. And he had already paid \$650 of these expenses in December; is that correct?

Mr. WEISS. Yes, sir.

Mr. LISHMAN. What part of the expenses were paid by Mr. Harry Carter, who owned the other 50 percent interest in this record?

Mr. WEISS. Mr. Carter paid for the subsequent pressings and ordering of this record.

Mr. LISHMAN. How much did that come to?

Mr. WEISS. Well, at that particular time, at the time they had made arrangement for a 50-50 partnership, the record had been selling fairly well. I, at this time, cannot say how many records were ordered at that point.

Mr. LISHMAN. Didn't that amount of Mr. Carter total a little less than \$500?

Mr. WEISS. I am unfamiliar with that, sir.

Mr. LISHMAN. Will you accept that figure as approximately correct?

Mr. WEISS. I couldn't tell you because I don't know how many records were ordered after the initial order.

Mr. LISHMAN. Did you ever tell Mr. Ray Lewis of the Down Beats that he would have to put up \$100 extra to you so that you could pay Norm Prescott?

Mr. WEISS. No, sir.

Mr. LISHMAN. Didn't you tell him that Norm Prescott was demanding \$100 as a Diskjockey on WBZ to play this record "Growing Love," and to get it on the WBZ music survey list?

Mr. WEISS. No, sir; that is not true.

Mr. LISHMAN. Did this record ever get on the WBZ music survey list?

Mr. WEISS. Yes, sir.

Mr. LISHMAN. When?

Mr. WEISS. After it had been in release for a little while. The record started to sell in the dealers' shops in and around through Boston. It had made the WBZ list.

Mr. LISHMAN. Was this a case where you borrowed stationery of WBZ and included this record on a list that you sent into Cash Box?

Mr. WEISS. I didn't borrow stationery from WBZ, sir.

Mr. LISHMAN. What stations did you borrow the stationery from?

Mr. WEISS. I was given stationery from WBOS, WHIL.

Mr. LISHMAN. Are those the only two stations?

Mr. WEISS. No, sir. Those are not the only two stations.

Mr. Prescott gave me some stationery to send in.

Mr. LISHMAN. And you included this record, "Growing Love," on that list that you sent to Cash Box?

Mr. WEISS. If that is what the list was. It was a long time ago. It was a hit at the time, and I listed it as a hit.

Mr. LISHMAN. Is it a fact that Mr. Prescott played this record only twice?

Mr. WEISS. If he did, it is twice more than I thought he played it.

Mr. LISHMAN. Didn't you have an argument with him because he wouldn't play it more?

Mr. WEISS. I wouldn't say I had an argument with him. We disagreed as to the merits of the record.

Mr. LISHMAN. How many copies of the record "Growing Love," were sold.

Mr. WEISS. Once again, Mr. Lishman, I say that I am not in the sales, but I could venture a guess.

Mr. LISHMAN. What is that guess?

Mr. WEISS. It would be purely a guess. I would say somewhere around 7,000 records.

Mr. LISHMAN. Over what period of time?

Mr. WEISS. Well, that is hard to say. I don't know when the last sale ends and when the first records were sold.

Mr. LISHMAN. What was the release date of the record, do you recall?

Mr. WEISS. That is pretty difficult for me to say, too. But if we were negotiating for the processing of this record in December, I would say it would be somewhere around that time, late December or early January.

Mr. LISHMAN. Were you ever paid money by a record owner to get a record on a list?

Mr. WEISS. No, sir; no, sir.

Mr. LISHMAN. Were you ever paid money by a person other than Mr. Ray Lewis to promote his record?

Mr. WEISS. I would construe the gifts from a publisher as getting this particular gift for working on a record.

Mr. LISHMAN. Did you ever hear of the Salem Music Co?

Mr. WEISS. Salem Music?

Mr. LISHMAN. Yes.

Mr. WEISS. I did not, sir. It is not familiar to me.

Mr. LISHMAN. Did you ever hear of Santo Lembo?

Mr. WEISS. I didn't get that.

Mr. LISHMAN. Did you ever hear of Mr. Santo Lembo?

Mr. WEISS. Sam Lembo?

Mr. LISHMAN. Yes.

Mr. WEISS. Yes, sir.

Mr. LISHMAN. Who is he?

Mr. WEISS. Sam Lembo has from time to time put out records with local New England groups, and distributed locally, and on some occasions had them distributed nationally.

Mr. LISHMAN. Was that on an Am-Par label?

Mr. WEISS. I believe that he did have one record on Am-Par.

Mr. LISHMAN. Did they have "Pretty Girl" on one side of that record?

Mr. WEISS. If I remember rightly, I think his first record with Am-Par was a record called "Coolation."

Mr. LISHMAN. Wasn't "Pretty Girl" on the other side of that record?

Mr. WEISS. That I just don't know.

Mr. LISHMAN. Do you recall that?

Mr. WEISS. Yes, I do.

Mr. LISHMAN. Were you aware that Mr. Sam Clark told Mr. Lembo that he should contact you with respect to pushing this record for promotion purposes?

Mr. WEISS. Well, a lot of artists, writers and publishers come into my office when they have a record that they are affiliated with that we are distributing. They like to get around and visit with the librarians and respective diskjockeys to talk up their records. They visit with me on these occasions; yes, sir.

Mr. LISHMAN. And did you have a conversation with Mr. Lembo about promoting his record?

Mr. WEISS. Well, he did come in and inquired about how his record was going.

Mr. LISHMAN. Did you tell Mr. Lembo, among other things, that he would have to put up \$50 to pay Norm Prescott to have his record played on station WBZ?

Mr. WEISS. No, sir.

Mr. LISHMAN. Well, did you ever pay Mr. Prescott \$50?

Mr. WEISS. No, sir.

Mr. LISHMAN. Did the record "Coolation" ever appear in the WBZ top 50 list?

Mr. WEISS. It is pretty difficult to remember that, but I would say hardly, because the record was not a successful record.

Mr. LISHMAN. Well, I will show you a WBZ list, under the heading, "Hot Five, Predictions of Up-and-Coming Records." This is No. 2 on that list. Does this refresh your recollection?

[Handing document to the witness.]

Mr. WEISS. I see it here, sir, and it is a surprise to me because the record was there. To me it wasn't a successful record.

Mr. LISHMAN. Was "Pretty Girl" a successful record?

Mr. WEISS. Was that the other side of this record?

Mr. LISHMAN. Yes.

Mr. WEISS. I don't believe the record in its entirety was a successful record.

Mr. LISHMAN. Do you recall anything about "Pretty Girl," on the other side of the record?

Mr. WEISS. No, sir; I believe that this was supposed to have been the plugged side.

Mr. LISHMAN. Do you know Mr. Lou Goldberg?

Mr. WEISS. Yes; I do, sir.

Mr. LISHMAN. Is he the record librarian at station WCOP in Boston?

Mr. WEISS. He was formerly with WCOP, sir.

Mr. LISHMAN. Was he employed there in March 1958?

Mr. WEISS. Yes, sir.

Mr. LISHMAN. Did you contact him with respect to having the "Pretty Girl" side of this record placed on the WCOP 40 top tunes, or new records to watch?

Mr. WEISS. Once again I say that if my memory serves me right, I thought that "Coolation" was the side that we were plugging and thought could be a commercial hit.

Mr. LISHMAN. Isn't it a fact that Mr. Sam Clark's 50 percent interest, in that record was in the "Pretty Girl" side of the record and not in the "Coolation" side of the record?

Mr. WEISS. I didn't know that, sir. I didn't know that, sir.

Mr. LISHMAN. Well, I hand you a photostatic copy of a WCOP 40 top tunes of Greater Boston. The notation in a box at the bottom concerns new records to watch. I ask you to look at the lower left-hand corner of this list and see if "Pretty Girl," an ABC record, is not listed as one of those to watch?

[Handing document to the witness.]

Mr. WEISS. I see it down at the bottom, sir, under a listing of March 31, 1958.

Mr. LISHMAN. Did it also appear in the April 7 listing of WCOP?

Mr. WEISS. I couldn't remember that. These were weekly affairs, sir.

Yes, sir; it does appear.

Mr. LISHMAN. Do you know Arnie Ginsburg?

Mr. WEISS. Yes, sir.

Mr. LISHMAN. And he was a diskjockey at WMEX in Boston?

Mr. WEISS. He is a diskjockey at WMEX in Boston now.

Mr. LISHMAN. Did he have that position in March of 1958?

Mr. WEISS. I believe he worked at another station, sir, at that time.

Mr. LISHMAN. Did you tell Mr. Lembo that he would have to give you another \$50 to pay Arnie Ginsburg in order to get him to air this record and get it on the WMEX list?

Mr. WEISS. I did not, sir, tell him that; and in 1958, I believe then, he was working for WBOS, who had no list.

Mr. LISHMAN. Did you ever take any cash from Mr. Lembo?

Mr. WEISS. No, sir; I did not.

Mr. LISHMAN. Did you ever give Don Masters any money or gifts for the purpose of playing records or for any other purpose?

Mr. WEISS. I believe that I had given Don Masters a sweater or a shirt as a gift.

Mr. LISHMAN. Did you ever go to an employer of a diskjockey and indicate to him that he should be discharged because he was not cooperating with you?

Mr. WEISS. That is not true, sir.

Mr. FLYNT. Mr. Chairman, as I understood, you asked a question, didn't you, Mr. Lishman?

Mr. LISHMAN. Yes.

Mr. FLYNT. Would you have the reporter read back the question? I don't think the answer was responsive to the question.

The CHAIRMAN. Read the question, Mr. Reporter.

(The last question was read by the reporter.)

Mr. WEISS. My answer is, "No," sir.

Mr. LISHMAN. Did you ever go to a station licensee where a diskjockey was about to be employed and tell him that he shouldn't employ this person?

Mr. WEISS. No, sir.

Mr. LISHMAN. Did you ever indicate to the prospective employer of this diskjockey that if he was employed he would have great difficulty in getting his records?

Mr. WEISS. No, sir. I don't believe I have such powers.

Mr. LISHMAN. Did you bring free records to stations?

Mr. WEISS. "Free," did you say?

Mr. LISHMAN. Free records.

Mr. WEISS. Free records to stations?

Mr. LISHMAN. Yes.

Mr. WEISS. Yes, sir; on occasions.

Mr. LISHMAN. What occasions would you bring free records to stations?

Mr. WEISS. By "free records," Mr. Lishman, do you mean over and above the original servicing of a new release?

Mr. LISHMAN. Well, either way. Let's have it both ways.

Mr. WEISS. Well, there are times when records will be damaged in the grooves somewhat, and they might ask for an additional copy, which I will bring.

Mr. LISHMAN. Yes, sir.

Mr. WEISS. There are also times when a diskjockey may have occasion at record hops to give away some records that are not marketable, and we could give away anywhere from 10 to 25 of those non-marketable records for them to give away at record hops.

Mr. LISHMAN. Didn't you ever give away free records for promotion purposes?

Mr. WEISS. For promotion purposes? Promotional records are always free, sir.

Mr. LISHMAN. Didn't you have it in your power to cut off the supply of free records to a station licensee?

Mr. WEISS. No, sir; I don't have such powers.

Mr. Lishman, in answer to that, may I make a statement, sir?

Mr. LISHMAN. Yes, sir.

Mr. WEISS. In the duties that I perform for Music Suppliers, the things that this embraces are the servicing of stations and the promoting of records for airing.

Other than that, I have no voice in setting policy for Music Suppliers, nor am I taken into the confidence of the executives of that company in the policies that they set.

Mr. LISIMAN. I have no further questions, Mr. Chairman.

The CHAIRMAN. Mr. Mack?

Mr. MACK. I have no questions.

The CHAIRMAN. Mr. Flynt?

Mr. FLYNT. I have no questions.

The CHAIRMAN. Mr. Moss?

Mr. MOSS. Mr. Weiss, what are your principal duties?

Mr. WEISS. The servicing of record releases to radio stations and the promoting of these records or seeing that they get played.

Mr. MOSS. Do you work only with radio stations?

Mr. WEISS. Radio stations and, on occasion, a TV show in town.

Mr. MOSS. You worked entirely with broadcasters?

Mr. WEISS. Yes, sir.

Mr. MOSS. What promotional tools were you permitted to use?

Mr. WEISS. None other than my own ingenuity, sir.

Mr. MOSS. Well, what did that embrace?

Mr. WEISS. I would say a lot of conversation.

Mr. MOSS. Is that all?

Mr. WEISS. The good will that I could create.

Mr. MOSS. Good food?

Mr. WEISS. On occasion we had lunches and dinners, sir; yes, sir.

Mr. MOSS. Good drinks?

Mr. WEISS. I imagine we had a drink here and there.

Mr. MOSS. Good clothes?

Mr. WEISS. A sweater or a shirt. I think they were good shirts.

Mr. MOSS. How many, how often?

Mr. WEISS. Not very often, sir. I would say on maybe half a dozen occasions. Over a period of 4 years that I was with—

Mr. MOSS. How many years?

Mr. WEISS. Over a period of 4 years that I was with Music Suppliers.

Mr. MOSS. In other words, you were limited strictly to contracting, with an occasional privilege of buying a lunch or dinner or a cocktail or a shirt or a sweater; is that correct?

Mr. WEISS. Well, may I clarify that, sir?

Mr. MOSS. Yes, I would want you to.

Mr. WEISS. I don't believe I was restricted as to lunches or dinners or an occasional drink. But I had to get permission if I thought that I should buy a shirt or a sweater for one of the boys.

Mr. MOSS. What did your expense account usually amount to?

Mr. WEISS. My personal expense accounts amounted to—

Mr. MOSS. First, let me ask—

Mr. WEISS. Yes, sir.

Mr. MOSS (continuing). Did you always put these items on an expense account?

Mr. WEISS. No, sir. These are charged to the company, sir, the clothing, the apparel.

Mr. MOSS. The apparel is charged?

Mr. WEISS. Charged to the company.

Mr. MOSS. Music Suppliers?

- Mr. WEISS. Yes, sir.
- Mr. Moss. Was any of it ever charged to a manufacturer?
- Mr. WEISS. Not to my knowledge, sir.
- Mr. Moss. Always charged to Music Suppliers?
- Mr. WEISS. Always to Music Suppliers, sir.
- Mr. Moss. Did you ever work for Music Distributors?
- Mr. WEISS. No, sir.
- Mr. Moss. Did you ever work for, what is it, Circle?
- Mr. WEISS. No. Mr. Moss—
- Mr. Moss. You didn't?
- Mr. WEISS. No, I didn't.
- Mr. Moss. Just one employer?
- Mr. WEISS. That is right; Music Suppliers.
- Mr. Moss. The clothing and personal items were always charged—
- Mr. WEISS. To Music Suppliers; that is right.
- Mr. Moss. Then the expense account could only include food?
- Mr. WEISS. Food, my car expenses, lunches or dinners.
- Mr. Moss. And you charged all of these expense items to your expense account?
- Mr. WEISS. Yes, sir.
- Mr. Moss. What did your expense account usually run to?
- Mr. WEISS. It could run anywhere from \$30 to \$70, depending on how well—
- Mr. Moss. A week?
- Mr. WEISS. Yes, sir, depending on how well my car stood up.
- Mr. Moss. Were you paid on a mileage basis?
- Mr. WEISS. No, sir; I was not paid on a mileage basis.
- Mr. Moss. Or reimbursement for actual expenses?
- Mr. WEISS. Actual expenses. If I had damages to the car, if it needed fixing, they paid that.
- Mr. Moss. You always had to substantiate the car expense?
- Mr. WEISS. Yes, sir.
- Mr. Moss. Did you have to do that on the other expenses?
- Mr. WEISS. I didn't substantiate a drink or a dinner.
- Mr. Moss. Did your employer keep a pretty close control over your expenses?
- Mr. WEISS. Well, I would say that I didn't abuse it.
- Mr. Moss. Now, you were actively engaged in calling on radio stations and occasional TV shows throughout the area of distribution of Music Suppliers?
- Mr. WEISS. That is right, sir.
- Mr. Moss. Generally that was the New England area?
- Mr. WEISS. Yes, sir.
- Mr. Moss. You worked with many diskjockeys?
- Mr. WEISS. Yes, sir.
- Mr. Moss. Were you aware of the diskjockeys who were receiving some evidence of the generosity of Music Suppliers?
- Mr. WEISS. Not until this investigation started, sir.
- Mr. Moss. At no time prior to this investigation?
- Mr. WEISS. No, sir. I was never taken into their confidence.
- Mr. Moss. Your employer never told you that these diskjockeys were receiving sums of money or gifts from Music Suppliers?
- Mr. WEISS. That is right, sir.

Mr. Moss. Did your employers ever consult with you as to the worth of diskjockeys, as to their attitude toward the labels distributed by Music Suppliers?

Mr. WEISS. They consulted with me as to whether they were playing our records, whether they were receptive to specific records, whether we were getting our records exposed, and whether I had had any problems with any of them in disagreements on the merit of any specific records. That was the extent of my conversation with my employer as to my relationship and their relationship with me.

Mr. Moss. How did you know whether the diskjockeys were playing your records?

Mr. WEISS. Well, we travel around in an automobile all day, and that radio is going, and I keep hopping from one station to another.

Mr. Moss. You checked on them, and you actually listened?

Mr. WEISS I do.

Mr. Moss. You are a glutton for punishment.

Mr. WEISS. Sometimes I think you are right. [Laughter.]

The CHAIRMAN. At least we can have that much of an agreement. [Laughter.]

Mr. Moss. But at no time did you ever advise your employer that a diskjockey was helpful to you and you thought he should be given some consideration, some evidence of gratitude?

Mr. WEISS. Mr. Moss, I didn't advise them. I reported to them as to the reception our records were getting with the diskjockeys that I was calling on.

Mr. Moss. Mr. Weiss, maybe you could be helpful to me.

Mr. WEISS. I would be very happy to if I could.

Mr. Moss. I have been listening for a number of days to the most interesting testimony of people being paid money. Someone gets \$25 and another one gets \$6,000; someone else gets \$15,000, and no one can tell me how it was determined who was to receive what.

Mr. WEISS. Well, once again I say to you, Mr. Moss, these are the things that I was not aware of. I wasn't taken into their confidences, and how they arrived or anybody arrived at these figures is beyond me.

Mr. Moss. You disclaim any knowledge or any responsibility or any participation?

Mr. WEISS. That is true, sir.

May I say this, Mr. Moss: I would hate to think that the job that I am attempting to do in getting my records cleared was not entirely due to my efforts.

Mr. Moss. Well, aren't you a little bit suspicious now that it might not have been?

Mr. WEISS. Well now, I am starting to get a little bit suspicious, sir. I am starting to feel sorry for myself.

Mr. Moss. I would be dead certain if I were you. [Laughter.] I don't know why they have this thing, of going out and creating good will and light and happiness, when it is a simple matter to get these records played. All you have to do is outbid the other fellow.

Did you ever receive, other than the instance recited here, any kind of a payment as a token of gratitude for services rendered or

for furnishing a recording from anyone other than your employers?

Mr. WEISS. Other than what has been given in testimony before this?

Mr. MOSS. You have told us two, one quite candidly, and the other one, I might say, after some rather painful extraction.

Mr. WEISS. Mr. MOSS, I didn't intend it to be painful extraction. It was a question of not remembering.

Mr. MOSS. Candidly, you didn't expect to have an extraction, did you?

[Laughter.]

Mr. WEISS. I made a list of these things, and I thought that I had referred to two or three of them. However, I would have to consult some of the records that I have, to determine whether it was a Christmas gift or what, so that I can report these things.

Mr. MOSS. Do you bank at more than one bank?

Mr. WEISS. I have a checking account, sir, and a savings account, sir.

Mr. MOSS. At the same bank or at different ones?

Mr. WEISS. No, at different banks. My savings account is in my neighborhood, the checking account is adjacent to the office.

Mr. MOSS. What the names of those banks?

Mr. WEISS. One is the Newton Savings Bank, and the other is the First National Bank.

Mr. MOSS. Those are the only two accounts you have?

Mr. WEISS. I am sorry, sir, I must add to that. One is a cooperative bank of which I am saving vacation money.

Mr. MOSS. What is the name of that one?

Mr. WEISS. Cooperative, Workmen's Cooperative Bank, I believe.

Mr. MOSS. You have three, that is all you have?

Mr. WEISS. What is that, sir?

Mr. MOSS. That is all you have?

Mr. WEISS. That is all I have, sir.

Mr. MOSS. Other than the instances which we have been able to get on this record, you have received no payments or gifts of substantial value?

Mr. WEISS. In addition to what we have testified here to, sir?

Mr. MOSS. Yes.

Mr. WEISS. I would have to refer to a record and see whether there are any others.

Mr. MOSS. Would you carefully refer to your records and supply me with a list of all additional payments you have received?

Mr. WEISS. I would be very happy to, sir.

Mr. MOSS. In order to accommodate that, Mr. Chairman, I would ask that this record be kept open at this point to receive the information.

The CHAIRMAN. It will be supplied within a reasonable time?

Mr. WEISS. Yes, Mr. Chairman.

The CHAIRMAN. Very well, you may submit it for the record.

(The information referred to follows:)

NEWTON HIGHLANDS, MASS., March 4, 1960.

HON. OREN HARRIS,
 Chairman, Special Subcommittee on Legislative Oversight of the Committee on
 Interstate and Foreign Commerce, New House Office Building, Washington,
 D.C.

DEAR SIR: In accordance with your request, I examined my records and they show the following moneys received by me from persons other than my employers, Music Suppliers, Inc.

	Received from—	Amount
1957—May 23	Kapp Records	\$50
Aug. 9	George Pincus	25
Sept. 27	Cameo Records	25
Do	Kapp Records	50
Dec. 27	Cameo Records (Christmas gift)	50
Do	George Pincus (Christmas gift)	25
1958—May 23	George Pincus	25
Dec. 26	Ampar Records (Christmas gift)	50
1959—Jan. 16	Carlton Records (1st prize contest)	25
Feb. 4	Hampshire Records	175
July 30	Sam Lembo	200
Dec. 25	Ampar Records (Christmas gift)	50
Do	Paris Records (Christmas gift)	25

Respectfully yours,

HARRY WEISS.

NOTE.—This is a copy of the original letter.

Mr. Moss. You stated that in one instance you received \$50—

Mr. WEISS. Yes, sir.

Mr. Moss (continuing). As evidence of gratitude from some people you had helped in the selling of a master or a tape?

Mr. WEISS. It was a master, sir.

Mr. Moss. And you had turned that over to your employer?

Mr. WEISS. That is right, sir.

Mr. Moss. Did you get any of it back?

Mr. WEISS. Yes, sir. My employer gave me \$200.

Mr. Moss. And he kept the \$300. Why did you turn it over to him?

Mr. WEISS. Well, I did it in the performance of my duties while I working for Music Suppliers.

Mr. Moss. Were you required to report to your employer whenever you had any kind of transaction with anyone other than Music Suppliers?

Mr. WEISS. I generally report all of the gifts or bonuses that I receive; I tell them that I had just received a check or a gift—

Mr. Moss. Is your employer acquainted with all of the details of this transaction with Mr. Lewis and the Downbeats?

Mr. WEISS. Yes, sir; he is, sir.

Mr. Moss. He knows about all of it?

Mr. WEISS. I believe he does, sir.

Mr. Moss. Mr. Carter?

Mr. WEISS. Yes, he does.

Mr. Moss. Well, I am very pleased to know that.

You held back nothing?

Mr. WEISS. I don't believe I did.

Mr. Moss. Those are all the questions I have, Mr. Chairman.

Mr. LISHMAN. May I ask one question?

The CHAIRMAN. Yes.

Mr. LISHMAN. Mr. Carter testified yesterday that the only amount you had received, to his knowledge, from the Downbeats, was \$100. So you didn't tell him about these other checks we have produced today.

Mr. WEISS. Well, the checks that were produced today, Mr. Lishman, were for the expenses in the processing of the original records. Mr. Carter at that particular time was not a partner in the Downbeats record.

Mr. LISHMAN. So you didn't tell him about these.

Mr. WEISS. These are the things that Mr. Lewis came to Mr. Carter with.

Mr. MOSS. May I interrupt you?

Mr. LISHMAN. Yes.

Mr. MOSS. I am sorry, I was receiving a message. Do I understand that you didn't tell your employer about all of this that you have told us?

Mr. WEISS. From the time that Mr. Carter entered into an agreement where he was a 50-percent partner in the record, he knew of all of the transactions that went on. But the original—

Mr. MOSS. That is not what I asked you at all. I asked you if your employer knew all the details that you had given us here today. I didn't give you any starting date at all. I merely asked you if he knew the details, all of them.

Mr. WEISS. I think I understand your question, sir. I don't believe Mr. Carter knew of the original checks for the payment in the processing of these records. I don't believe he knew that.

Mr. MOSS. You were quick to give him the \$500. Did he know about that?

Mr. WEISS. I turned it over to him.

Mr. MOSS. Did he know about that before you told him? Did he know you were getting the \$500?

Mr. WEISS. No, sir. I didn't know I was getting it until these people came into my office.

Mr. LISHMAN. Mr. Chairman, may I ask one more question?

The CHAIRMAN. Yes.

Mr. LISHMAN. Is it a fact, Mr. Weiss, that you were interviewed by Mr. Kelly and Mr. Keelan, and that Mr. Harry Carter was present at that interview?

Mr. WEISS. I don't remember being interviewed by Mr. Keelan, but Mr. Eastland and Mr. Kelly were in the office with me. Mr. Carter was not present, but Mr. Smith was present.

Mr. KELLY. The second time.

Mr. WEISS. I didn't remember it.

Mr. KELLY. We questioned you about "Growing Love."

Mr. WEISS. I didn't remember that.

Mr. LISHMAN. Were you questioned about "Growing Love" at that second meeting when Mr. Carter was present?

Mr. WEISS. I believe I was asked whether I knew of the record "Growing Love," and I said I think I did know about the record—

Mr. LISHMAN. Were you asked by Mr. Kelly if you had received any money other than the \$100, or even the \$100, from Mr. Lewis?

Mr. WEISS. I don't remember being asked that question, Mr. Lishman.

Mr. LISHMAN. Did you deny to Mr. Kelly that you had ever received any money whatsoever from Mr. Lewis?

Mr. WEISS. That question I don't think was ever posed to me, Mr. Lishman.

Mr. LISHMAN. What questions did Mr. Kelly ask you?

Mr. WEISS. I think he asked me whether I knew a Mr. Lewis, and whether I knew of a Hampshire label, and the record "Growing Love," and I said that I did.

Mr. LISHMAN. Weren't you asked the question, "Did you receive any money from Mr. Lewis in connection with the manufacture or promotion of that record?"

Mr. WEISS. I don't remember that question being asked me, Mr. Lishman.

Mr. LISHMAN. Do you remember that you said "No"?

Mr. WEISS. No, sir; I do not remember that, sir.

Mr. LISHMAN. I have no further questions.

The CHAIRMAN. Mr. Weiss, you have frequently referred to the phrase, "It was a hit," talking about certain songs and records. What is your definition of a hit?

Mr. WEISS. There are a couple of definitions, Mr. Chairman. One could be termed a turntable hit, which means that it is an accepted record and programed because of its quality.

The other version of a hit could be one that is a good selling record.

The CHAIRMAN. In other words, one could be authentic and another not authentic.

Mr. WEISS. And then once again, Mr. Chairman, if I may add a term that is used, potential hit.

The CHAIRMAN. Is there any understanding in the industry as to how many sales are necessary to make a record a genuine hit?

Mr. WEISS. That is pretty hard to define, Mr. Chairman.

There are some people who are very close to a record, whether they own the record or they are artists, who will sell anywhere from 100 to 1,000 records and say that this is a great hit. At that particular point they are thinking with their hearts and not with their heads.

On other occasions, some manufacturers who are in business to sell records may not consider it a hit until on a national basis it has gone past anywhere from 70,000 to 100,000. This is my interpretation of it.

The CHAIRMAN. Well, thank you very much for your appearance. You may be excused.

Mr. WEISS. Thank you, sir.

The CHAIRMAN. Mr. Lishman, we have Mr. Lewis, do we not?

(Discussion off the record.)

The CHAIRMAN. The committee will adjourn until 10 o'clock in the morning, at which time the first witness will be Mr. Donald Dumont, president of Dumont Record Distributing Corp.

(Whereupon, at 5:05 p.m., the committee recessed, to reconvene at 10 a.m., Friday, February 19, 1960.)

RESPONSIBILITIES OF BROADCASTING LICENSEES AND STATION PERSONNEL

FRIDAY, FEBRUARY 19, 1960

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON LEGISLATIVE OVERSIGHT
OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The special subcommittee met, pursuant to recess, at 10 a.m., in room 1334, New House Office Building, Hon. Oren Harris (chairman of the special subcommittee) presiding.

Present: Representatives Harris, Mack, Rogers (Texas), Moss and Springer.

Also present: Robert Lishman, general counsel; Beverly M. Coleman, principal attorney; Oliver Eastland, attorney; James P. Kelly, investigator; Herman Clay Beasley, chief clerk; and Jack Marshall Stark, minority counsel.

The CHAIRMAN. The subcommittee will come to order.

Mr. Joe Smith. Is Mr. Smith here?

Mr. LISHMAN. We have not heard from Mr. Smith.

The CHAIRMAN. Mr. Donald Dumont. Are you Mr. Dumont?

Mr. DUMONT. Yes, sir.

The CHAIRMAN. Do you object to these cameras?

Mr. DUMONT. No, sir.

The CHAIRMAN. Will you be sworn, Mr. Dumont?

Do you solemnly swear the testimony you give to the subcommittee will be the truth, the whole truth and nothing but the truth, so help you God?

Mr. DUMONT. I do.

TESTIMONY OF DONALD DUMONT

The CHAIRMAN. Will you state your name for the record, please, sir.

Mr. DUMONT. Donald Dumont.

The CHAIRMAN. What is your address, Mr. Dumont?

Mr. DUMONT. 6 Emerson Road, Lexington.

The CHAIRMAN. What is your occupation or profession?

Mr. DUMONT. I am a record distributor in Boston, Mass.

The CHAIRMAN. Mr. Lishman, you may proceed.

Mr. LISHMAN. Mr. Dumont, are you president of Dumont Record Distributing Co.?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. Who is the treasurer and general manager of the company?

Mr. DUMONT. Mr. Harry Carter is treasurer of Dumont Record Distributing, and also general manager, as I am also.

Mr. LISHMAN. And Mr. Harry Carter is also president of Music Suppliers, Inc.?

Mr. DUMONT. I believe so, sir.

Mr. LISHMAN. Does Mr. Carter own a 50-percent interest in Dumont Record Distributing?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. When did Mr. Carter acquire this 50-percent interest?

Mr. DUMONT. About the end of May in 1958, I believe.

Mr. SPRINGER. Mr. Chairman, I cannot hear the witness. If he could speak up a little bit, it would be helpful.

Mr. DUMONT. I will. About the end of 1958—of May of 1958.

Mr. LISHMAN. How did Mr. Carter acquire his 50-percent interest in Dumont Record?

Mr. DUMONT. We negotiated. I negotiated with Mr. Carter beginning in April of 1958, and we eventually came to the agreement that I would sell him a 50-percent interest in the company.

Mr. LISHMAN. For how much?

Mr. DUMONT. For one-half of the net worth of that company at that time.

Mr. LISHMAN. And how did you arrive at the figure of net worth?

Mr. DUMONT. That was arrived at by the assets minus the liabilities.

Mr. LISHMAN. What was the amount of money that Mr. Carter paid for this half interest?

Mr. DUMONT. About \$5,400, I believe.

Mr. LISHMAN. Did he pay \$5,607.93?

Mr. DUMONT. Yes; that is the figure.

Mr. LISHMAN. In return for that, did he become owner of 220 of the outstanding 440 shares of Dumont?

Mr. DUMONT. Yes.

Mr. LISHMAN. Do you know Mr. Gordon Dinerstein?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. Who is he?

Mr. DUMONT. He is, he works for Music Suppliers, and is a part owner of Music Suppliers.

Mr. LISHMAN. He and Mr. Carter are the ostensible owners of Music Suppliers, Inc.; is that correct?

Mr. DUMONT. I believe so, sir.

Mr. LISHMAN. Do you recall that Mr. Dinerstein and Mr. Carter, who are associated with Music Suppliers, arranged with Epic Records to transfer its distributorship from Cecil Steen, of Records, Inc., to Dumont?

Mr. DUMONT. Yes.

Mr. LISHMAN. How did that come about?

Mr. DUMONT. Well, I know Mr. Dinerstein went to New York once or twice to see the Epic people. They were interested in making a change in distributorships in Boston. I wasn't aware that they had approached Music Suppliers for the line. They were talking to me about that time about taking on the line and I was interested in it but there was a problem in the financing of it because it is a rather large

line, and Mr. Dinerstein went to New York and talked to them about my taking the line over.

Mr. LISHMAN. Did you take that line over?

Mr. DUMONT. Yes, I did.

Mr. LISHMAN. About when did that happen?

Mr. DUMONT. I believe that was about the end of June 1958 or July 1958.

Mr. LISHMAN. Is it a fact, Mr. Dumont, that in April 1958 Dumont Record Distributing Corporation was in financial difficulty?

Mr. DUMONT. I would say it was almost in financial difficulty since I went into business.

Mr. LISHMAN. I am picking that particular date because that is when you testified Mr. Carter—

Mr. DUMONT. That is true; I needed money at that time.

Mr. LISHMAN. Invested.

Mr. DUMONT. Yes.

Mr. LISHMAN. Did Mr. Carter come to you and offer to invest in this company?

Mr. DUMONT. I don't remember whether he came to me or I went to him.

Mr. LISHMAN. Did Mr. Carter come to you and say, "Mr. Dumont, I know your company is in difficulty but if I can get a half interest in it, I can arrange to get you the transfer of the Epic Record account to your company and I can arrange to get other distributorships for this company that you would not be able to do by yourself?"

Mr. DUMONT. No, sir.

Mr. LISHMAN. Did the fact that you were going to get the distributorship of the Epic Records have anything to do with your willingness to have Mr. Carter acquire a 50-percent interest in your company?

Mr. DUMONT. No, sir; it wasn't because I was going to get the Epic label that decided me to sell a half interest to Mr. Carter.

Mr. LISHMAN. As I understand your testimony, when Mr. Carter first came into your company in April 1958, its net worth was a little more than \$10,000; is that correct?

Mr. DUMONT. I believe so, sir, yes.

Mr. LISHMAN. What is its net worth today?

Mr. DUMONT. Well, this is strictly a guess, sir. The financial statement for this year is not completed yet by my accountant. I would say the total net worth of the company today is about \$60,000.

Mr. LISHMAN. How much?

Mr. DUMONT. About \$60,000.

Mr. LISHMAN. Yes, sir.

Is it a fact that after Mr. Carter acquired his half interest in Dumont that, in addition to getting the Epic distributorship, you also got a distributorship for a new line of Apt records?

Mr. DUMONT. About 3 or 4 months later, yes.

Mr. LISHMAN. Yes, sir. Is Apt an Am-Par label?

Mr. DUMONT. Subsidiary; yes, sir.

Mr. LISHMAN. After Mr. Carter came with Dumont, did you get a call from Mr. Sam Clark of Am-Par inquiring whether you would like to handle this new line of records?

Mr. DUMONT. I don't remember if it was Sam Clark that called me or his sales manager, Mr. Larry Newton, called me. In handling the

line I would talk to either Mr. Sam Clark or Mr. Larry Newton and I don't remember which one of them called me and asked me if I would like to handle the line.

Mr. LISHMAN. Who is Larry Newton?

Mr. DUMONT. He is Am-Par's national sales manager.

Mr. LISHMAN. Now, is it not a fact, Mr. Dumont, that on or about April 1958 your company was in difficulties, and you went to Mr. Carter and asked him for a loan?

Mr. DUMONT. No, sir.

Mr. LISHMAN. Do you recall making that statement to Mr. Kelly in the presence of your attorney?

Mr. DUMONT. No, sir.

Mr. LISHMAN. Do you recall making the statement to Mr. Kelly in the presence of your attorney that Mr. Carter suggested that he would have to have a 50-percent interest in the company in order to make a loan?

Mr. DUMONT. No, sir.

Mr. LISHMAN. Do you recall making the statement to Mr. Kelly in the presence of your attorney that you then told Mr. Carter that it should be a 25-percent interest and not a 50-percent interest?

Mr. DUMONT. I may have said that, sir; yes.

Mr. LISHMAN. Then you eventually settled for a 50-percent interest?

Mr. DUMONT. Yes, sir; and in our talking he——

Mr. LISHMAN. Is it not a fact that Music Suppliers and Dumont are theoretically competitors in the record distribution business?

Mr. DUMONT. We are competitors; yes, sir.

Mr. LISHMAN. Is it a fact that you gave your competitor a 50-percent interest in your business because he brought in at least two new lines of records?

Mr. DUMONT. I sold the 50-percent interest to Mr. Carter, not to Music Suppliers.

Mr. LISHMAN. Mr. Carter is the president of Music Suppliers; is he not?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. When you paid for Apt Records, to whom did you make your checks payable?

Mr. DUMONT. I believe it was the Am-Par Record Co.

Mr. LISHMAN. You have an option to repurchase a half interest from Mr. Carter?

Mr. DUMONT. Yes, I do, sir.

Mr. LISHMAN. How much would it be necessary to pay Carter now in order to purchase his interest?

Mr. DUMONT. 50 percent of the net worth.

Mr. LISHMAN. Do you recall a resolution of Dumont's board of directors to the effect that no salary or compensation should be paid to Mr. Carter for his treasurership and his general managership?

Mr. DUMONT. Yes; I believe there is a resolution in the original agreement.

Mr. LISHMAN. Well, has that resolution ever been amended?

Mr. DUMONT. No, sir. It was supposed to have been at our last meeting but it was not.

Mr. LISHMAN. Well, is it not a fact that notwithstanding this resolution of the board of directors of Dumont that Carter receive no

salary or compensation, that Dumont, in fact, has paid him compensation?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. Who authorized the payment of such compensation to Mr. Carter in violation of the resolution of the board of directors?

Mr. DUMONT. Mr. Carter and myself.

Mr. LISHMAN. How much compensation was Mr. Carter paid?

Mr. DUMONT. I guess he has received \$11,000, I believe.

Mr. LISHMAN. Is Mr. Gordon Dinerstein an employee of Dumont?

Mr. DUMONT. I guess so, sir.

Mr. LISHMAN. You guess so. Well, is he not a partner of Music Suppliers, Inc.?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. In what capacity is he employed by Dumont?

Mr. DUMONT. He is an adviser.

Mr. LISHMAN. What does he get paid for his advisory services to his competitor, Dumont?

Mr. DUMONT. Why does he get paid, sir?

Mr. LISHMAN. What amount does he get paid.

Mr. DUMONT. It was agreed between Mr. Carter and myself to pay half of Mr. Carter's compensation to Mr. Dinerstein.

Mr. LISHMAN. Why is that?

Mr. DUMONT. For both of their advisory services to me, to Dumont Record Distributing.

Mr. LISHMAN. Yet ostensibly Mr. Dinerstein and Mr. Carter are the owners of Music Suppliers, Inc., which is a competitor of Dumont; is that correct?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. Did the corporate resolution that prohibited Mr. Carter from receiving compensation also prohibit any other person from receiving compensation unless specially authorized by the board of directors?

Mr. DUMONT. Would you repeat that, please, sir.

Mr. LISHMAN. Would you read it.

(Question read by reporter.)

Mr. DUMONT. I don't believe so, sir.

Mr. LISHMAN. Can you explain, Mr. Dumont, why it is that each time compensation payments are made to Mr. Carter and Mr. Dinerstein, that you receive an amount equal to the sum of the amounts paid to those two men?

Mr. DUMONT. Would you repeat that again, sir.

Mr. LISHMAN. Read it, Mr. Reporter.

(Question read by reporter.)

Mr. DUMONT. Well, my salary is such that if the business is doing well, and when the compensation was paid to Mr. Carter, Mr. Dinerstein, we agreed that I would take an equal amount.

Mr. LISHMAN. Did you have a regular salary schedule for Mr. Carter?

Mr. DUMONT. No, sir.

Mr. LISHMAN. Did you have a regular salary schedule for Mr. Dinerstein?

Mr. DUMONT. No, sir.

Mr. LISHMAN. Who determined the amounts Mr. Carter and Mr. Dinerstein were to be paid?

Mr. DUMONT. It was agreed between Mr. Carter and myself.

Mr. LISHMAN. Is it true you had a regular salary schedule for yourself?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. What was that salary schedule?

Mr. DUMONT. \$225 a week.

Mr. LISHMAN. Mr. Dumont, did you furnish to the subcommittee through your attorney, a schedule showing the amounts which you admitted paying to various diskjockeys and station librarians of radio stations in Boston?

Mr. DUMONT. Yes, I believe my lawyer furnished that list.

Mr. LISHMAN. I will hand you a paper and ask you to identify it.

(Document handed to witness.)

Mr. DUMONT. Yes, sir; this is the list, I believe, my attorney furnished to the counsel.

Mr. LISHMAN. This is the list of payments made by Dumont Record Distributing Corp. to diskjockeys and station librarians of radio stations in Boston for the period indicated on this schedule?

Mr. DUMONT. Sir, this is a list which was compiled by a Mr. McCarthy of the FTC who went over my books and made this list up and asked that I sign this for them and my lawyer had this list in his office and this is the list he furnished to the Government accountant.

Mr. LISHMAN. Is this list complete and accurate?

Mr. DUMONT. I don't know, sir.

Mr. LISHMAN. What is that?

Mr. DUMONT. I don't know, sir, if it is accurate—

Mr. LISHMAN. Did you sign this as being an accurate and complete list?

Mr. DUMONT. No. It doesn't say this is an "accurate, complete, list," sir.

Mr. LISHMAN. So that this may only be a partial list of the amounts you so paid?

Mr. DUMONT. It may be, sir. I did not—

Mr. LISHMAN. Did you not understand that the Federal Trade Commission was trying to ascertain the complete and accurate amount paid by you or Dumont to these persons?

Mr. DUMONT. Sir, they came in and went over my books, and copied down what they wanted and made this list up, and asked me to sign it.

Mr. LISHMAN. Who made up this list?

Mr. DUMONT. Mr. McCarthy of the FTC.

Mr. LISHMAN. Did your wife assist in preparing any material in this list?

Mr. DUMONT. No, sir.

Mr. LISHMAN. Is she or not the bookkeeper for Dumont?

Mr. DUMONT. She does part of the books, sir.

Mr. LISHMAN. Who is your accountant?

Mr. DUMONT. Mr. Needles, Ted Needles.

Mr. LISHMAN. Was this list submitted to him in order to have its accuracy verified?

Mr. DUMONT. No, sir; not to my knowledge, sir.

Mr. LISHMAN. Has your accountant ever seen this list?

Mr. DUMONT. I don't believe so, sir.

Mr. LISHMAN. Is it correct that this list does not reflect all of the payments made by Dumont Record Distributing to diskjockeys, station librarians, and other personnel of radio stations in Boston?

Mr. DUMONT. Sir, I only verified this list as to the accuracy of the dates and amounts, not whether they had missed any payments.

Mr. LISHMAN. Is it not a fact that in addition to the names and the amounts paid as shown on this list, there are other names and amounts paid by you to persons not included on this list?

Mr. DUMONT. Offhand, sir, I don't know if there are any missing on this list.

Mr. LISHMAN. Does this list show any payment for meals or gift certificates or matters of that kind?

Mr. DUMONT. No, sir.

Mr. LISHMAN. Have you made such gifts to diskjockeys and station personnel?

Mr. DUMONT. I believe so, sir.

Mr. LISHMAN. Well, going over this list, is it correct that on February 12, 1958, you paid \$200 to Norm Prescott, a diskjockey at WBZ?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. And on February 21, 1958, \$105 to the same diskjockey?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. And on March 7, 1958, \$350 to the same diskjockey?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. And on April 9, 1958, \$200 to the same diskjockey?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. On June 18, 1958, \$300 to the same person?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. On July 18, 1958, \$200?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. On August 6, 1958, \$200?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. On September 26, 1958, \$335?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. And on October 31, 1958, \$200?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. On December 19, 1958, \$200?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. On January 16, 1959, \$200?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. March 12, 1959, \$400?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. May 15, 1959, \$400?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. July 6, 1959, \$200?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. Is it also correct that you paid to Dave Maynard, a diskjockey on WORL, on August 7, 1959, \$250?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. On August 4, 1959, \$300?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. On September 4, 1959, \$300?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. On October 15, 1959, \$400?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. Is it a fact that you paid Dave Maynard while he was with WORL and with WBZ?

Mr. DUMONT. No, sir.

Mr. LISHMAN. Why is it down here?

Mr. DUMONT. I don't know, sir.

Mr. LISHMAN. Well, you certified that this was accurate. Is it not a fact that in 1959 Dave Maynard was a diskjockey with WBZ?

Mr. DUMONT. I believe so; yes, sir.

Mr. LISHMAN. Did someone from WBZ approach you and ask you to put the letters WORL after the words "Dave Maynard"?

Mr. DUMONT. No, sir.

Mr. LISHMAN. Why did you put the letters WORL after his name when he was a diskjockey at WBZ?

Mr. DUMONT. I did not make up this list, sir. I believe—

Mr. LISHMAN. You certified to it as being correct.

Mr. DUMONT. I made some corrections on the list, sir. I must have missed that. I thought I corrected it. I have other corrections on here.

Mr. LISHMAN. Is it true that you paid a diskjockey, Bill Marlowe of WILD, on July 24, 1959, \$150?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. What was that payment for?

Mr. DUMONT. He was going on vacation, sir, and it was just a gift for his vacation.

Mr. LISHMAN. Did you make a payment to Ed Penner of WIAO on July 18, 1958, of \$50?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. Was he going on vacation?

Mr. DUMONT. I don't know, sir.

Mr. LISHMAN. Is it correct that you made payments to Arnie Ginsburg, a diskjockey on WMEX, on March 12, 1958, of \$50?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. On May 14, 1958, of \$50?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. June 18, 1958, of \$50?

Mr. DUMONT. It says \$150.

Mr. LISHMAN. \$150, rather.

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. On July 18, 1958, \$50?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. On September 26, 1958, \$100?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. On October 31, 1958, \$100?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. On December 19, 1958, \$50?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. On January 16, 1959, \$100?

Mr. DUMONT. \$100.

Mr. LISHMAN. On March 13, 1959, \$200?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. On May 1, 1959, \$100?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. On July 6, 1959, \$100?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. On August 7, 1959, \$75?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. On September 4, 1959, \$100?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. On October 15, 1959, \$100?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. Is it true that you paid Lou Goldberg, employed by station WCOP, or at least employed at the date these payments were made, on December 19, 1958, \$100?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. And on March 19, 1959, \$55?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. Is it correct you paid Joe Smith, then a diskjockey at station WILD, on June 16, 1958, \$100?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. On November 19, 1958, \$100?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. On January 16, 1959, \$50?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. On July 6, 1959, \$175?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. On August 7, 1959, \$125?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. And September 4, 1959, \$100?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. On October 15, 1959, \$100?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. Is it correct that you paid to a diskjockey, Don Masters on WHIL, on February 7, 1958, \$50?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. On August 1, 1958, \$50?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. On October 31, 1958, \$50?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. On December 19, 1958, \$25?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. On May 1, 1959, \$50?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. On August 24, 1959, \$100?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. Is it correct that you paid Mr. Rosen, the WBZ librarian, on March 4, 1958, the sum of \$60?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. Is it true that you paid to WMEX for its Gold Platter of the Week on June 5, 1959, \$75?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. On July 15, 1959, \$10?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. On October 2, 1959, \$25?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. On November 2, 1959, \$50?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. On November 19, 1959, \$25?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. Well, going back to Mr. Rosen, the librarian at WBZ, why did you make a single payment of \$60 to him in March?

Mr. DUMONT. I don't remember what the particular reason was, sir.

Mr. LISHMAN. Is it correct, Mr. Dumont, that you paid Ken Mayer on WBOS, on March 13, 1959, \$50?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. On May 1, 1959, \$50?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. On July 6, 1959, \$50?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. On August 7, 1959, \$75?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. On September 4, 1959, \$100?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. On October 15, 1959, \$50?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. Is it true that on November 19, 1958, you paid \$100 to Bob Clayton on WHDH?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. Is it also true that you paid Jack McDermott of WHIL on October 31, 1958, \$100?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. And on December 19, 1958, \$50?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. Is it correct that the total of the payments that you have just admitted making according to this apparently incomplete sheet comes to \$8,565?

Mr. DUMONT. I haven't added it up, sir, but I will accept that as a total.

Mr. LISHMAN. Now, Mr. Dumont, for what purpose did you make these payments totaling over \$8,000 to the various diskjockeys and station librarians contained on this incomplete list?

Mr. DUMONT. Sir, some of these checks were sent as Christmas gifts, some of them were sent for playing my records at record hops and testing new records at record hops, and for equal consideration in listening to my new releases for air play.

Mr. LISHMAN. Did some of these persons named also receive things such as liquor and other gifts?

Mr. DUMONT. They may have, sir.

Mr. LISHMAN. Do you recall paying Mr. Lou Goldberg \$100 for a phonograph?

Mr. DUMONT. No, sir; I think that was a Christmas gift.

Mr. LISHMAN. I will show you a schedule and ask you if the payments indicated on this schedule are included in the amounts we have just read into the record?

Mr. DUMONT. The first check is included in the record, sir.

Mr. LISHMAN. Yes, sir.

Mr. DUMONT. The second check is included in the record, sir, the third check is included, the fourth check is included. The fifth one is not.

Mr. LISHMAN. Yes, sir. That was \$60?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. On behalf of Alan Dary?

Mr. DUMONT. Yes.

The next check is not.

Mr. LISHMAN. How much is that?

Mr. DUMONT. \$63, I believe. It is a little blurred.

Mr. LISHMAN. Is that on behalf of Alan Dary?

Mr. DUMONT. Yes, sir.

The next check is not.

Mr. LISHMAN. What is the amount of that?

Mr. DUMONT. \$75.

Mr. LISHMAN. Was that for—

Mr. DUMONT. Three \$25 gift certificates.

Mr. LISHMAN. To Stan Richards, Bill Marlowe, and Alan Dary?

Mr. DUMONT. Yes, sir.

And the last check is not, sir.

Mr. LISHMAN. Do you recall making any payments to a clothing store on behalf of a diskjockey?

Mr. DUMONT. No, sir.

Mr. LISHMAN. Do you know the Andover Shop in Boston?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. Do you have an account there?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. Do you recall whether any purchases were charged to your account for material that was supplied to a diskjockey?

Mr. DUMONT. Yes, sir; I guess there are a few items. I have also purchased items—

Mr. LISHMAN. Could you estimate the expenditures in that store for the benefit of diskjockeys?

Mr. DUMONT. I would say maybe \$150, sir. Sweaters and shirts and ties.

Mr. LISHMAN. Well, we have on April 17, 1959, you paid the Andover Shop \$324.05.

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. What was that for?

Mr. DUMONT. Well, I also bought gifts there for my employees one Christmas.

Mr. LISHMAN. We find that on March 16, 1959, you had a \$300 purchase.

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. Is that correct?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. Was that gifts for your employees and for your own personal—

Mr. DUMONT. Part of it was for my employees, part of it was for some items I gave out to some of my dealers and part were gifts to some diskjockeys.

Mr. LISHMAN. Now, Mr. Dumont, do you know Don Masters?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. Who is Don Masters?

Mr. DUMONT. He is now a diskjockey at WHIL.

Mr. LISHMAN. And have you paid him various sums of money from time to time?

Mr. DUMONT. Yes, I have sent him some checks, sir.

Mr. LISHMAN. Did there come a time when Mr. Masters came to you and said that he had been asked by his station to give an affidavit that he had never received payola or any gifts or money from any record distributor?

Mr. DUMONT. No, sir.

Mr. LISHMAN. Well, did there come a time when he came to you and said that he had to explain the checks that he had received from you?

Mr. DUMONT. No, sir.

Mr. LISHMAN. Why did you give these checks to Mr. Don Masters?

Mr. DUMONT. For playing, testing new records at record hops and listening to my new releases.

Mr. LISHMAN. Did you pay him any money to have some of your labels put on the WHIL survey sheet?

Mr. DUMONT. No, sir.

Mr. LISHMAN. Do you recall the first payment that you made to Mr. Masters?

Mr. DUMONT. It must be the one listed here, February 7, 1958.

Mr. LISHMAN. How much was that, sir?

Mr. DUMONT. \$50, sir.

Mr. LISHMAN. Why did you give him the \$50?

Mr. DUMONT. For giving my new releases equal consideration with the other record distributors in Boston. I was——

Mr. LISHMAN. Do you recall having a conversation with Don Masters, and I will quote Mr. Masters, in effect, "I understand that you are putting out a considerable amount of money around town to disk-jockeys and I hope the next time you are doing that, you will remember me." Did Mr. Masters ever say anything to that effect to you?

Mr. DUMONT. No, sir.

Mr. LISHMAN. Is that not the reason why you sent him the \$50?

Mr. DUMONT. No, sir.

Mr. LISHMAN. The first check. Do you recall sending Mr. Masters a note saying, "Thanks for everything, one Don to another"?

Mr. DUMONT. No, sir.

Mr. LISHMAN. You do not recall sending a check with that note enclosed?

Mr. DUMONT. No, sir.

Mr. LISHMAN. Do you recall sending him a note, "What can I say but thanks"?

Mr. DUMONT. I may have, sir.

Mr. LISHMAN. Did you say "from one Don to another"?

Mr. DUMONT. I don't know, sir. I don't remember.

Mr. LISHMAN. Is it not a fact that Mr. Masters came to you and said he had to have some kind of a concocted story whereby he could get off the hook with respect to the payments that you had made to him while he was a diskjockey?

Mr. DUMONT. No, sir.

Mr. LISHMAN. Around the end of November or the beginning of December of 1959, did he not come and tell you that he was afraid he was going to lose his job because of the payments that you had made to him?

Mr. DUMONT. I don't remember him coming to me and saying that, sir.

Mr. LISHMAN. Did he not tell you a story that he had concocted to explain these payments on an innocent basis and asked you to corroborate that story?

Mr. DUMONT. No, sir.

Mr. LISHMAN. Did you ever hear of the Everett Music Shop?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. Did Mr. Masters not come to you and tell you that you should tell the investigators from this subcommittee and others that he was merely a messenger boy to bring the money you had paid him to the Everett Music Shop or to station WHIL, in payment for advertising the Music Shop had with the station?

Mr. DUMONT. No, sir.

Mr. LISHMAN. Is it not true that when he first told you this concocted story you said to him, "Don, you had better go and tell the truth"?

Mr. DUMONT. No, sir.

Mr. LISHMAN. And then when he talked with you a while and gave this concocted story, you finally said, "In order to save your job, I will corroborate it and go along with you"?

Mr. DUMONT. No, sir.

Mr. LISHMAN. You are positive of that?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. Was this not the same thing you did with Dave Maynard when he came to you and told you that he was in trouble? You then fabricated the story that all the payments made to him were for appreciation of his record hop services?

Mr. DUMONT. No, sir.

Mr. LISHMAN. Immediately prior to your being interrogated by the station officials of WBZ on December 2, 1959, did you not have a conversation with Dave Maynard?

Mr. DUMONT. Would you repeat that, please.

Mr. LISHMAN. Read it, please, Mr. Reporter.

(Question read by reporter.)

Mr. DUMONT. Sir, I have had a lot of conversations with Dave Maynard.

Mr. LISHMAN. I am referring to a specific conversation. Immediately preceding your being questioned by the WBZ officials about payola, did you have a talk with Dave Maynard?

Mr. DUMONT. I don't remember if it was immediately previous. I talked to Dave quite often, sir.

Mr. LISHMAN. Is it not true, that immediately prior to your meeting with the WBZ officials, you were met in the hall by Mr. Carter and Mr. Dinerstein who had already been questioned? And is it not true, that they briefed you on the questions asked of them?

Mr. DUMONT. I saw them in the hall, sir. But I just passed them—

Mr. LISHMAN. Did they not have a conversation with you?

Mr. DUMONT. We had a conversation ; yes, sir.

Mr. LISHMAN. Did they not tell you that they had told the WBZ officials that the moneys that Music Suppliers had paid to Dave Maynard was for record hop purposes only?

Mr. DUMONT. No, sir. I don't remember them saying that, sir.

Mr. LISHMAN. Is it not a fact that you and Mr. Dinerstein and Dave Maynard are neighbors?

Mr. DUMONT. I live about 4 miles away, sir, 4 or 5 miles away from them.

Mr. LISHMAN. Mr. Dinerstein lives on the same street with him; does he not?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. Do you feel that your records would not have received equal consideration or fair consideration by the disk jockeys unless you paid them?

Mr. DUMONT. No, sir.

Mr. LISHMAN. Was it necessary for you to pay these disk jockeys to get equal consideration of your records with other records?

Mr. DUMONT. No, sir.

Mr. LISHMAN. Well, you have already testified this morning that you paid these diskjockeys in order to get equal consideration. What do you mean?

Mr. DUMONT. I didn't feel I had to do it, sir.

Mr. LISHMAN. Is it correct that at one time you worked for Cecil Steen of Records, Inc.?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. When you worked for him, did you not know payola was going on in Boston?

Mr. DUMONT. I didn't know it was going on in Boston, sir, but I had heard about it.

Mr. LISHMAN. From whom did you hear about it?

Mr. DUMONT. No particular person, sir, just the talk of the trade.

Mr. LISHMAN. Do you know a Peter Vardas?

Mr. DUMONT. I can't recall, sir.

Mr. LISHMAN. Is he an artist on one of your labels?

Mr. DUMONT. Peter Vardas.

Mr. LISHMAN. V-a-r-d-a-s. He is also known as Hal Dennis.

Mr. DUMONT. I didn't know they were the same person, sir. I know Hal Dennis.

Mr. LISHMAN. You know Dennis. Who is he? Who is Dennis?

Mr. DUMONT. He is a fellow I have met in New York. He used to handle an artist on Epic Records. He has been a publisher, he has been associated with a number of record companies.

Mr. LISHMAN. Did Dumont ever arrange to make any payment to Peter Vardas or Hal Dennis for his appearance on a TV or radio show in Boston?

Mr. DUMONT. No, sir, not that I can remember, sir.

Mr. LISHMAN. In August 1959.

Mr. DUMONT. Not that I can remember, sir.

Mr. LISHMAN. Did Dumont ever make any payment to any artist for appearances on radio or TV shows in Boston?

Mr. DUMONT. I think so, sir. I have paid their expenses to come into Boston for various—

Mr. LISHMAN. Just a minute. What did you pay? You paid their expenses?

Mr. DUMONT. To come into Boston for various purposes; yes, sir.

Mr. LISHMAN. Did you pay what would be the equivalent of their union scale as an artist?

Mr. DUMONT. I don't think so, sir. Not that I can remember.

Mr. LISHMAN. Are you sure about it?

Mr. DUMONT. No. I am not certain, sir, but I can't recall.

Mr. LISHMAN. Under what circumstances would you, as a record distributor, undertake to pay the compensation of an artist appearing on a TV or radio show in Boston?

Mr. DUMONT. Under what circumstances would I pay for the appearance on the particular program?

Mr. LISHMAN. Yes, sir. I am referring not to their expenses but to pay them for their services in appearing as an artist on a program. Why would you do that?

Mr. DUMONT. I don't know as I did, sir. I can't remember that I ever did.

Mr. LISHMAN. Did you ever have any conversations with a disk-jockey or station personnel about Dumont making such payments to an artist for their services in appearing on a show?

Mr. DUMONT. Not that I can recall, sir.

Mr. LISHMAN. I will hand you a paper and ask you if this is not your signature and ask you if it is not a correct statement. It is on the Dumont Record Distributing Corp. letterhead and relates to an incident of August 1, 1959.

[Document handed to witness.]

Mr. DUMONT. This is my signature, sir.

Mr. LISHMAN. Does that not reflect that you made a payment of \$40 to either Peter Vardas or Dennis on August 1, 1959?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. Did you make that payment by check?

Mr. DUMONT. I can't recall, sir.

Mr. LISHMAN. Did you actually make the payment? Or did you just simply request the artist to sign this without making the payment?

Mr. DUMONT. No. I may have paid him in cash, sir, out of the petty cash.

Mr. LISHMAN. Do you remember whether you paid him at all?

Mr. DUMONT. If I signed it, sir, I guess I must have paid him.

Mr. LISHMAN. You are not certain?

Mr. DUMONT. I believe I did, sir.

Mr. LISHMAN. Will you say under oath that you paid that \$40 to the person whose signature appears there as the recipient?

Mr. DUMONT. Sir, I can't be certain whether I paid him the \$40.

Mr. LISHMAN. But that document purports to be a statement by you that you did pay him, is that correct?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. Do you recall any conversation with the disk jockey whose name appears on that sheet relating to this incident?

Mr. DUMONT. I have had a lot of conversations with this disk-jockey, sir.

Mr. LISHMAN. Did you have conversations with this diskjockey relating to the payment of artists who appeared on this show?

Mr. DUMONT. I believe so, sir, probably.

Mr. LISHMAN. In this instance, does that not purport to be a receipt, signed by you, stating that you had paid \$40 to an artist who had appeared on that diskjockey's show?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. Who asked you to pay that \$40 for that talent?

Mr. DUMONT. I believe it was probably the diskjockey named here.

Mr. LISHMAN. Why would he want you to pay for talent appearing on his show?

Mr. DUMONT. I don't know why, sir.

Mr. LISHMAN. Why was this particular diskjockey so interested in getting a receipt showing that the artist had been paid?

Mr. DUMONT. I don't know, sir, and if he asked me for this receipt, I probably gave it to him.

Mr. LISHMAN. Is it customary for you to make payment to persons for services by cash rather than by check?

Mr. DUMONT. If it is a small amount, I may, sir, and Mr. Dennis may have asked to give it to him in cash instead of a check. I don't remember making a check out in this amount.

Mr. LISHMAN. I notice when you took another diskjockey to lunch and the check came to \$10.55 at Cathay Restaurant you paid for that by check.

Here is one for \$40 and I believe you paid for that one by cash.

Mr. DUMONT. Sir, I have a charge account at the Cathay House and I just charged the bill and they sent me a bill later.

Mr. LISHMAN. Are there any other instances where you paid for the compensation of artists who appeared on this particular diskjockey's show?

Mr. DUMONT. There may have been, sir.

Mr. LISHMAN. Well, do you know? You are in business. You must know what you do.

Mr. DUMONT. Sir, I can't remember everything.

Mr. LISHMAN. These are fairly recent incidents. Is this a regular occurrence? Do you mean that you have so many of these incidents, you cannot remember because of the volume of them?

Mr. DUMONT. No, sir.

Mr. LISHMAN. Are they unusual transactions?

Mr. DUMONT. Well, they don't happen very often; I just can't remember.

Mr. LISHMAN. Would not an unusual transaction be more likely to stick in your mind than a usual one?

Mr. DUMONT. Sir, as the president of Dumont Record Distributing, I do hundreds of small and large items every day, and I just do not remember them all.

Mr. LISHMAN. Do you know what label the artist, whose name appears there, is on?

Mr. DUMONT. I believe that was the Phase label.

Mr. LISHMAN. Do you know?

Mr. DUMONT. I am not certain, sir.

Mr. LISHMAN. We did not get that record label.

Mr. DUMONT. Phase.

Mr. LISHMAN. How do you spell it?

Mr. DUMONT. Phase, P-h-a-s-e.

Mr. LISHMAN. We will take that paper back, please.

Do you know a Mr. Steve Clayton who is an artist appearing on television shows?

Mr. DUMONT. The name sounds familiar, sir.

Mr. LISHMAN. Is he on any of your labels?

Mr. DUMONT. I believe I had one of his records, sir.

Mr. LISHMAN. What label is that.

Mr. DUMONT. I can't recall, sir.

Mr. LISHMAN. In August 1959 do you recall paying him \$40 for his appearance as an artist on a television show in Boston?

Mr. DUMONT. I may have, sir.

Mr. LISHMAN. I will show you this receipt on your letterhead signed by you and ask you if this refreshes your memory.

Mr. DUMONT. I guess I did, sir.

Mr. LISHMAN. You did?

Mr. DUMONT. I guess so, sir.

Mr. LISHMAN. Did you make that payment by check or by cash?

Mr. DUMONT. I believe this was cash, sir.

Mr. LISHMAN. Why did you make this payment to this artist?

Mr. DUMONT. For appearing on Bob Clayton's Saturday night show, sir.

Mr. LISHMAN. How was this posted in your book?

Mr. DUMONT. It must be a paid out, out of petty cash expense.

Mr. LISHMAN. Do you have a copy of that receipt in your files?

Mr. DUMONT. I must have some copy of what the \$40 went for, sir.

Mr. LISHMAN. Did you ever pay any of the artists who appeared on a television show in Boston by check?

Mr. DUMONT. I don't know, sir.

Mr. LISHMAN. Do you know a recording artist by the name of Buddy Shepherd?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. Whose label is he on?

Mr. DUMONT. Play Me label.

Mr. LISHMAN. What?

Mr. DUMONT. Play Me.

Mr. LISHMAN. How do you spell that?

Mr. DUMONT. P-l-a-y M-e.

Mr. LISHMAN. Is that a label distributed by Dumont?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. Do you recall making a payment to Buddy Shepherd in September 1959, in the amount of \$40 for his appearance on another television show in Boston?

Mr. DUMONT. I may have, sir.

Mr. LISHMAN. Well, I will show you this paper and ask you if it refreshes your recollection.

[Document handed to witness.]

Mr. DUMONT. I guess I did, sir.

Mr. LISHMAN. You did. Did you make this payment by cash?

Mr. DUMONT. I believe so, sir.

Mr. LISHMAN. Do you have any records that show how you made this payment?

Mr. DUMONT. Well, there would be some sort of a slip, sir, in cash receipt.

Mr. LISHMAN. Do you have a copy of this receipt in your file?

Mr. DUMONT. No, sir.

Mr. LISHMAN. Do you have a copy of any receipts that you gave to these artists?

Mr. DUMONT. No, sir.

Mr. LISHMAN. You just paid them the cash and did not take a receipt?

Mr. DUMONT. That is right, sir.

Mr. LISHMAN. Why did you do it that way?

Mr. DUMONT. I didn't see any reason to keep a receipt, sir.

Mr. LISHMAN. When you make a cash payment?

Mr. DUMONT. No. I usually keep a receipt, sir.

Mr. LISHMAN. Were you reimbursed by any record manufacturer for these expenditures?

Mr. DUMONT. I may have been, sir. They may have sent in some nocharge records.

Mr. LISHMAN. Do you know an artist named Kini Kai?

Mr. DUMONT. Who?

Mr. LISHMAN. K-i-n-i- K-a-i.

Mr. DUMONT. Not that I can recall, sir.

Mr. LISHMAN. I will show you this and ask you if this refreshes your recollection?

[Document handed to witness.]

Mr. DUMONT. I can't recall that name, sir.

Mr. LISHMAN. You signed that, did you not?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. What date did you sign that?

Mr. DUMONT. I didn't notice, sir. August 1, 1959.

Mr. LISHMAN. Does that not refer to the date of the appearance of the artist rather than the date of your signature?

Mr. DUMONT. I guess; yes, sir.

Mr. LISHMAN. We have shown you four receipts which you have identified as being signed by you representing cash payments of \$40 each to the artists named, is that correct?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. And you state you made these payments in cash, is that correct?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. Mr. Chairman, I would like to have these four receipts, authenticated by the witness as bearing his signature, placed in the record.

The CHAIRMAN. Let them be received in the record.

(The documents referred to follow :)

DUMONT RECORD DISTRIBUTING CORP.,
Boston, Mass.

I hereby acknowledge receipt of 40 Dollars from Dumont Record Dist. Corp. in payment for my appearance on Bob Clayton's Boston Ballroom Saturday night August 1, 1959.

/Signed/ PETER VARDAS,

Artist.

Countersigned by :

/Signed/ DUMONT RECORD DIST. CORP.
DONALD E. DUMONT.

DUMONT RECORD DISTRIBUTING CORP.,
Boston, Mass.

I hereby acknowledge receipt of 40 Dollars from Dumont Record Dist. Corp. in payment for my appearance on Bob Clayton's Boston Ballroom Saturday night August 29, 1959.

/Signed/ STEVE CLAYTON,
Artist.

Countersigned by :

/Signed/ DUMONT RECORD DIST. CORP.
DONALD E. DUMONT, *Pres.*

DUMONT RECORD DISTRIBUTING CORP.,
Boston, Mass.

I hereby acknowledge receipt of 40 Dollars from Dumont Record Dist. Corp. in payment for my appearance on Bob Clayton's Boston Ballroom Saturday night August 1, 1959.

KINI KAI, *Artist.*

Countersigned by :

DUMONT RECORD DIST. CORP.
DONALD E. DUMONT, *Pres.*

DUMONT RECORD DISTRIBUTING CORP.,
Boston, Mass.

I hereby acknowledge receipt of 40 Dollars from Dumont Record Dist. Corp. in payment for my appearance on Bob Clayton's Boston Ballroom Saturday night September 5, 1959.

(Signed) BUDDY SHEPHERD, *Artist.*

Countersigned by :

DUMONT RECORD DIST. CORP.
DONALD E. DUMONT.

Mr. LISHMAN. Mr. Dumont, how did you charge these amounts off on the books of the Dumont Co.? What account did you charge them to?

Mr. DUMONT. Advertising and promotion, I guess sir.

Mr. LISHMAN. Is it a fact that you did not charge them to any account because you never paid any of the amounts stated on those receipts?

Mr. DUMONT. I wouldn't say that, sir, no.

Mr. LISHMAN. You are under oath. You swear that you actually paid the cash shown on those receipts to the artists whose names appear here?

Mr. DUMONT. Sir, I may not have handed the money myself personally to the artist. I have a promotion man. I did not take these artists to the television show. He was instructed to see that they signed this upon receipt of \$40 taken out of petty cash, sir.

Mr. LISHMAN. Well, is it the business of Dumont Record to supply artists to diskjockey shows?

Mr. DUMONT. It sometimes happens, sir.

Mr. LISHMAN. Will you please tell us whether you did or did not charge these amounts off to any account on your books?

Mr. DUMONT. Sir, I would have charged it off to promotion and advertising.

Mr. LISHMAN. Not would you, but did you, because we have been unable to find any record of it.

Mr. DUMONT. If it was paid out in cash, when the petty-cash book is balanced every few days, a check for cash is written for any cash

charges taken out of the cashbox. And this is entered in the books as either freight or paid outs—

Mr. LISHMAN. Is it not a fact that each item in that petty-cash box is charged to a specific item?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. Is a charge slip or receipt or some evidence made up of what the expenditure was for?

Mr. DUMONT. Right, sir.

Mr. LISHMAN. Why is there no such paper showing why these \$40 payments were made?

Mr. DUMONT. I didn't say there was no paper, sir.

Mr. LISHMAN. Do you say there is such a paper in there?

Mr. DUMONT. There should be, sir.

Mr. LISHMAN. I notice that you say there should be. Is there?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. Have you seen it?

Mr. DUMONT. Sir, I don't remember. Every 2 or 3 days the cashbox is checked out and papers are clipped together and filed away. I don't remember seeing it myself.

Mr. LISHMAN. We are referring to transactions made in September and August of last year.

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. And you indicated that there is something a little unusual about them.

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. Is that correct?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. Were all the payments to diskjockeys that you have testified to made by check? Some of these were as low as \$25.

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. Why?

Mr. DUMONT. For the records, sir.

Mr. LISHMAN. For the record?

Mr. DUMONT. Yes.

Mr. LISHMAN. Here we have some payments of \$40 each. Why did you not make these by check?

Mr. DUMONT. Well, probably, sir, because they were on Saturday and I am not always in on Saturday and my promotion man would come back to the office and pay the artist out of petty cash because I was not there.

Mr. LISHMAN. And you have testified you did not even keep a copy of these receipts, let alone have anything in the cashbox; is that correct?

Mr. DUMONT. No, sir.

Mr. LISHMAN. That is what you have testified to.

Mr. DUMONT. I don't have receipts of those, sir, but I believe that I have a record of a payment.

Mr. LISHMAN. Is this not all a subterfuge to give the appearance that the particular artist appearing on a television show was paid the minimum union scale when, in fact, they were not paid at all?

Mr. DUMONT. No, sir.

Mr. LISHMAN. Do you sign these receipts in blank and give them to your promotion man?

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. Who is your promotion man?

Mr. DUMONT. Mr. Bert Johnson.

Mr. LISHMAN. How many do you give him?

Mr. DUMONT. A few, a half dozen, I guess.

Mr. LISHMAN. Who makes the payment?

Mr. DUMONT. He did.

Mr. LISHMAN. Who does?

Mr. DUMONT. He does.

Mr. LISHMAN. Does he charge it to petty cash?

Mr. DUMONT. Yes, sir, I guess so. Yes, sir.

Mr. LISHMAN. Well, you say, "Yes, sir, I guess so, yes, sir."

Mr. DUMONT. Yes, sir.

Mr. LISHMAN. About how many times does Dumont make payments of this nature to talent who appeared on a television show in Boston?

Mr. DUMONT. I guess it has happened about four or five times, sir.

Mr. LISHMAN. Why do you give your promotion man six or so of these presigned receipts?

Mr. DUMONT. I gave him five or six of these receipts, and I believe that is the five or six were the only ones that I gave him.

Mr. LISHMAN. Did anyone reimburse Dumont Record Co. for these \$40 payments?

Mr. DUMONT. I may have received some no-charge records for them, sir, from the particular manufacturer involved.

Mr. LISHMAN. Well, could not the promotion man, instead of \$40, put down, say, \$100 on each of these, and then turn in a petty cash slip?

Mr. DUMONT. No, sir. As I recall—

Mr. LISHMAN. How would you know whether he did or did not?

Mr. DUMONT. I trust him, sir.

Mr. LISHMAN. In other words, you sign a receipt in blank. You have such infinite trust in your promotion man that you allow him to pass out money wherever he wishes and to fill in the amount. Then he comes back and collects from petty cash and this is all right with you?

Mr. DUMONT. No, sir. As I remember it, when he asked me to sign them in blank, he said that the payment would be \$40 to the particular artist concerned.

Mr. LISHMAN. Now, you recall that these were made to particular artists. Before you did not recall.

Mr. DUMONT. Well, I had forgotten about them, sir.

Mr. LISHMAN. Did you ever provide letterheads to any diskjockey in Boston? Letterheads of Dumont Record Distributing Corp.

Mr. DUMONT. Not that I can recall, sir.

Mr. LISHMAN. Did you ever provide letterheads of Dumont Record Distributing Corp. to any person other than an employee of the company?

Mr. DUMONT. I don't believe so, sir.

Mr. LISHMAN. Is it not true, Mr. Dumont, that you have a reputation for keeping a tight rein on everyone in your company? You are a very careful watcher of the dollars, are you not?

Mr. DUMONT. I guess so, sir.

Mr. LISHMAN. Is it not correct that your wife keeps the books and your books are kept right in your own home?

Mr. DUMONT. Part of them are, sir, yes, sir.

Mr. LISHMAN. I have no further questions.

The CHAIRMAN. Mr. Mack, do you have any questions?

Mr. MACK. When did you go into business in the record distributing business?

Mr. DUMONT. Dumont Record Distributing, sir?

Mr. MACK. Yes.

Mr. DUMONT. In my own company, sir?

Mr. MACK. Yes.

Mr. DUMONT. September 2, 1957.

Mr. MACK. That is the Dumont Record Distributing Corp.?

Mr. DUMONT. Yes, sir.

Mr. MACK. What was your capital investment at that time?

Mr. DUMONT. \$1,400, sir.

Mr. MACK. In the early part of 1958 you started paying some of the diskjockeys around Boston, is that not correct?

Mr. DUMONT. Yes, sir.

Mr. MACK. If you were so hard pressed financially, why were you so free with the money you were giving to the diskjockeys as Christmas gifts and expensive clothing and things of that nature?

Mr. DUMONT. I was appreciative of the help they were giving me, sir.

Mr. MACK. You had a good investment, then, is that correct?

Mr. DUMONT. Yes, sir, I guess that is true, sir.

Mr. MACK. Would you care to state again just how they helped you?

Mr. DUMONT. Well, in playing and testing my records at record hops and listening to my new releases.

Mr. MACK. Now, how did they go about testing new records at record hops?

Mr. DUMONT. Well, they would take the new records and take them to record hops and play them and they got reactions on them. They would either call me or I would see them. I was around at the radio stations quite often and they would tell me, "This record the kids liked," or, "I think that is the side on that record," or they didn't like this one or to forget that one.

Mr. MACK. Then what happened, after you received this information? What did you do with it?

Mr. DUMONT. Well, I would probably make a mailing, all over New England. I have a list of about a hundred radio stations that I send out records to. Quite often in testing a record I would only take 25 records and just take them around town or hand them out to certain diskjockeys who would listen to them, or take them to record hops with them. I wouldn't send out the other 75 to the rest of the list until I had somehow determined whether the record was worth sending out to everybody.

Mr. MACK. It has been called to my attention that Norm Prescott, I believe his name was, did not go to record hops.

Mr. DUMONT. No, that is true, sir.

Mr. MACK. Well then, there are quite substantial sums paid to Mr. Prescott, more than to anyone else. Was this all in the form of gifts that you gave to him?

Mr. DUMONT. Yes, sir, I was quite friendly with Mr. Prescott and I used to drop by his house—

Mr. MACK. Were you in a financial position to throw away all this money?

Mr. DUMONT. Pardon, sir?

Mr. MACK. I understood you to state that these were only gifts in the case of Mr. Prescott. Were you financially in a position to throw away all of this money?

Mr. DUMONT. I didn't feel I was throwing it away, sir. I was making friends.

Mr. MACK. Did I understand you to say it was a gift?

Mr. DUMONT. Yes, sir. In appreciation.

Mr. MACK. In appreciation for what he had done for you?

Mr. DUMONT. Yes, sir.

Mr. MACK. I see. Then it was a good investment on your part?

Mr. DUMONT. I would say so, sir.

Mr. MACK. Is it not true that you purchased automobiles for some of these people?

Mr. DUMONT. No, sir.

Mr. MACK. You did not?

Mr. DUMONT. No, sir.

Mr. MACK. I stand corrected. I see it was Mr. Carter's other firm that was involved in this.

Now, when Mr. Carter acquired a 50-percent interest in your company, you said you were in very difficult financial straits at the time, is that correct?

Mr. DUMONT. Money was tight, yes, sir; it is always tight.

Mr. MACK. Of course you had been paying out substantial sums prior to that time for gifts and promotion.

Mr. DUMONT. Yes, sir.

Mr. MACK. And testing fees, as you call it, prior to that time?

Mr. DUMONT. Yes, sir.

Mr. MACK. You must have felt it was very important to pay out this money if you were on the verge of bankruptcy at the time you were paying out that money.

Mr. DUMONT. Well, sir, I wasn't on the verge of bankruptcy.

Mr. MACK. Tell me then just what the conditions were at the time?

Mr. DUMONT. Well, I needed financial help of some sort. I couldn't go to the bank; I hadn't been in business long enough.

Mr. MACK. Did you try to go to the bank?

Mr. DUMONT. Yes, sir; I did. In fact, I did make a \$1,000 loan, from the Merchant's Bank, the bank in Boston, but that was as much as I could get from them.

Mr. MACK. You did not try to incorporate yourself?

Mr. DUMONT. Pardon, sir?

Mr. MACK. You did not try to incorporate?

Mr. DUMONT. I was incorporated on December 31, 1957.

Mr. MACK. You did. But you couldn't dispose of any of the stock at that time, is that correct?

Mr. DUMONT. I didn't try to dispose of it, sir.

Mr. MACK. That is what happened when Mr. Carter bought into your firm, is that correct?

Mr. DUMONT. Yes, sir.

Mr. MACK. You disposed of 50 percent of your stock?

Mr. DUMONT. I sold him 50 percent, yes, sir.

Mr. MACK. Did you ever try to dispose of any of your stock prior to the time that you sold it to Mr. Carter?

Mr. DUMONT. No, sir. I asked for financial help from people, but they always wanted a certain amount of stock for it, and I got together with Mr. Carter, and worked out the plan that I did with him.

Mr. MACK. Would it not be the normal thing for you to sell for the highest price you could get for the stock in your company?

Mr. DUMONT. Yes, sir.

Mr. MACK. Well, did you think Mr. Carter was giving you the highest price?

Mr. DUMONT. I don't know if I could have gotten any more money for it, sir. But the fact that a large distributor, such as Music Suppliers, had an interest in my firm, would certainly help me with some of the labels who might be a little dubious about giving me their line because of financial conditions of my company at the time.

Mr. MACK. You were willing to sell to Mr. Carter for a little less money than you would have sold to anyone else; is that correct?

Mr. DUMONT. I think so, yes, sir.

Mr. MACK. You made a concession to him for certain reasons?

Mr. DUMONT. Yes, sir.

Mr. MACK. When did you first hear about payola?

Mr. DUMONT. Well, I don't remember when the first time I heard about it, sir.

Mr. MACK. Did you hear about it from Mr. Carter?

Mr. DUMONT. No, sir.

Mr. MACK. Did he ever talk to you about it?

Mr. DUMONT. No, sir.

Mr. MACK. Well, you said, I think, a few minutes ago that it was the talk of the trade. Did I understand you correctly?

Mr. DUMONT. It was talk in the trade, sir.

Mr. MACK. Well, talk in the trade.

Now, would you explain that to the subcommittee.

Mr. DUMONT. Well, sir, I have been in the record business for 8 years. I worked for Mr. Cecil Steen for 5 years. I have been to many conventions, record conventions. I have met a lot of other distributors, a lot of manufacturers, and I have heard it talked about at these various conventions, in talking to other distributors on the phone, and manufacturers.

Mr. MACK. It was talk in the trade then for the last 8 years? Is that correct?

Mr. DUMONT. Well, I don't say for the last 8 years, sir. At some point I must have first heard about it and just a little bit here and a little bit there.

Mr. MACK. Well, tell us the first time you heard a little bit about it.

Mr. DUMONT. I don't remember, sir, what the incident was or how it was referred to or—

Mr. MACK. When you first heard a little bit about it, what was the talk about? Did someone mention to you that it paid great dividends to buy the diskjockeys a substantial present?

Mr. DUMONT. I don't remember, sir.

Mr. MACK. Then, if you have such a vague recollection of this, why did you pay such substantial sums to these diskjockeys? No one told you to, did they?

Mr. DUMONT. No, sir.

Mr. MACK. You do not recall the first time you heard about it, yet you seem to have fallen right into the groove and paid the going rate, so to speak; is that not correct?

Mr. DUMONT. I didn't realize it was the going rate, sir, as you say.

Mr. MACK. Well, I understood the testimony to indicate you watched your dollars very closely. I would imagine that under the circumstances, you would not pay any more than you would have to.

Mr. DUMONT. No, sir.

Mr. MACK. So it must have been the going rate; is that not correct?

Mr. DUMONT. I guess when I went into business, sir, I figured that advertising and promotion was a legitimate expense of a businessman, and after I was in business for a few months, the people that had been helpful to me or were helpful to me, instead of going out and buying them a sweater or a case of liquor or something, I thought I would send them a check in appreciation for their help.

Mr. MACK. You were aware that the payola practice was the talk in the trade at the time you went into business, is that correct?

Mr. DUMONT. Well, I had heard about it, sir; yes.

Mr. MACK. Yes. So therefore you accepted it as part of your business to get by. It was not just a question of advertising or promotion. It was an accepted fact that payola was necessary to survive; is that correct?

Mr. DUMONT. No, sir; I didn't think I had to have it in order to survive. I was just appreciative to the people who—

Mr. MACK. As I understand the situation, you were having a difficult time surviving even with it?

Mr. DUMONT. Yes, sir, I was.

Mr. MACK. Is that correct?

You cannot recall then the first time that you heard about payola?

Mr. DUMONT. No, sir.

Mr. MACK. Now, why did you give Mr. Masters \$50? The first check you gave Mr. Masters was \$50.

Mr. DUMONT. Well, when I used to go over to the radio station, he would listen to my new records with me, without me. He would sometimes call me and tell me such and such was a good record or this wasn't any good or that was. He was helpful to me, and concerned about me. I was appreciative to him.

Mr. MACK. Did he ask you for the \$50?

Mr. DUMONT. No, sir.

Mr. MACK. There was no discussion about the talk in the trade?

Mr. DUMONT. No, sir.

Mr. MACK. Between you and Mr. Masters?

Mr. DUMONT. No, sir.

Mr. MACK. He testified that you both had heard the same rumor, to the effect that there was a lot of payola in the business, and that he would like to get a little of it.

Mr. DUMONT. No, sir; I don't remember him discussing it with me, sir.

Mr. MACK. And you are testifying that he did not have that conversation with you?

Mr. DUMONT. That is right, sir; no, sir.

Mr. MACK. You are very well acquainted with him, are you not?

Mr. DUMONT. In a business way, sir.

Mr. MACK. There was an orchestra that appeared up in Boston by the name of Lester Lanin.

Mr. DUMONT. Yes, sir.

Mr. MACK. In connection with a, supposedly, charitable program of some kind?

Mr. DUMONT. Yes, sir.

Mr. MACK. And is it true that you invited Mr. Lanin out there?

Mr. DUMONT. Well, I did talk with him, sir, and set the date when he would come in to do this block party, and I also agreed to pay him the fee of \$1,000.

Mr. MACK. Did this also occur on a Saturday?

Mr. DUMONT. I don't honestly remember, sir, whether that was on a Saturday or not.

Mr. MACK. Why did you give him a check for \$400?

Mr. DUMONT. Well, I owe him \$1,000. The arrangement with Epic Records was that they would reimburse me for the moneys I sent to Lester Lanin. They told me that when they got the first bill from Lester Lanin, I called Epic and I said, "I have the \$1,000, shall I send it to him," and Epic Records said, "No, send him \$400 and charge us back for the \$400." I said, "How about the balance of the \$600?" They said, "We will let you know later when to send the balance of the \$600."

Three months later I received another statement from Mr. Lanin. I called Epic and said, "Shall I pay him the \$600?" They said, "No, don't pay him yet. We don't have enough in our advertising budget to allow you to charge us back the \$600."

They are reimbursing me for the full \$1,000. And this went on and on.

Mr. MACK. How did you go about requesting the \$1,000? Was it Epic Records?

Mr. DUMONT. Epic Records, sir.

Mr. MACK. All right. How did you go about asking them for the \$1,000?

Mr. DUMONT. I didn't ask them for the \$1,000. I called them up and made them aware of the plan to have Lester Lanin in and do a block party. The first time I heard that it was going to be \$1,000 was when Epic called me and says, "Lester will do the block party for \$1,000." And I asked them, "Who is going to pay the \$1,000?" And they said, "You will pay him; you will charge us back for the cost, for this \$1,000."

They have special forms when they have newspaper advertising or things like that, and I charged them back on a regular numbered charge blank and I was to put down on this advertising charge back Lester Lanin block party and the amount which was whatever they agreed with me for me to send him. And the first payment was \$400. And the next payment was either going to be two more \$300 payments or one \$600 or three \$200 payments.

They have just never released any more moneys to me to——

Mr. MACK. They have not paid you as yet is that right?

Mr. DUMONT. No sir.

Mr. MACK. And you have already paid Lanin——

Mr. DUMONT. I have paid him the \$400 sir. I still have not paid him——

Mr. MACK. You have not paid him the \$600?

Mr. DUMONT. I haven't paid him the \$600.

Mr. MACK. I understood him to testify the other day that you were to send him a check for the \$600.

Mr. DUMONT. Well I heard him. He said he was sure the check would be in the mail that night or the next day.

Mr. MACK. Well he stated under oath that you had assured him that you were going to pay him.

Mr. DUMONT. I do intend to pay him, sir, and I called Epic as late as last Friday, a week ago today, before I was due down here again and they are very aware of this whole situation and I said, "Shall I pay Lester the \$600," and they says, "We can't. If you want to pay him, go ahead, but we can't release the other \$600 for another couple of months."

Mr. MACK. How does Columbia Records Sales Corp. enter into this?

Mr. DUMONT. They own Epic Records, sir.

Mr. MACK. They do?

Mr. DUMONT. Yes, it is a subsidiary.

Mr. MACK. Have you corresponded with them at all?

Mr. DUMONT. Corresponded with Epic? Or Columbia?

Mr. MACK. Well, either of the two.

Mr. DUMONT. No. Generally, I pick up the phone and call them, sir. I don't write to them. I am a bad letter writer.

Mr. MACK. Did you not write Columbia asking reimbursement for \$400?

Mr. DUMONT. Did I write them? I charged them back on a charge-back form, sir. It is a form with blanks in it, with the amount of the charge-back and the reason for it. I have been reimbursed for the first \$400.

Mr. MACK. Well, could you not get the other \$600 the same way?

Mr. DUMONT. Pardon?

Mr. MACK. Could you not charge back the other \$600 the same way?

Mr. DUMONT. I could send them the charge-back, sir, but they would not send me—I get another credit back. This is just a form submitting it and then they have to send me a credit for it, and they told me last week——

Mr. MACK. Why do you not send them one?

Mr. DUMONT. Well, they told me they would not honor it for a couple of months.

Mr. MACK. You have never bothered to send one to them, have you?

Mr. DUMONT. No, I have not, sir. I suppose I could.

Mr. MACK. Mr. Chairman, I have no further questions.

Mr. SPRINGER. No questions.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS of Texas. Mr. Dumont, you say you paid this money in appreciation for what these fellows did for you?

Dr. DUMONT. Yes, sir.

Mr. ROGERS of Texas. Well now, did you pay them in advance for what you hoped they would do for you, or were you paying them for things they had already done?

Mr. DUMONT. For things they had already done, sir.

Mr. ROGERS of Texas. You mean by that, that you never did pay them hoping to get any future favors? You were always paying them for past favors?

Mr. DUMONT. Yes, sir.

Mr. ROGERS of Texas. Are you all paid up with them? You have stopped paying them, have you not?

Mr. DUMONT. Yes, sir.

Mr. ROGERS of Texas. When did you stop it?

Mr. DUMONT. When this subcommittee started looking into the subject.

Mr. ROGERS of Texas. Well, you mean that this subcommittee's activities brought your account up to date or you just quit paying them and you still owe them some?

Mr. DUMONT. No, I don't owe them anything, sir.

Mr. ROGERS of Texas. You did not owe them anything in the first place, did you, Mr. Dumont?

Mr. DUMONT. No, sir.

Mr. ROGERS of Texas. And the reason you paid that money was because you thought that you could get a distinct and unfair advantage over competitors, was it not?

Mr. DUMONT. No, sir.

Mr. ROGERS of Texas. Well, you did get that, though, did you not?

Mr. DUMONT. I don't think so, sir. I just wanted—

Mr. ROGERS of Texas. What?

Mr. DUMONT. I don't think so, sir. I just wanted equal treatment with my competitors. I was a new company—

Mr. ROGERS of Texas. You mean all your competitors were paying the diskjockeys?

Mr. DUMONT. I don't know, sir.

Mr. ROGERS of Texas. How did you figure out that you had to pay them in order to get equal treatment? I do not understand that.

Mr. DUMONT. I didn't feel that I had to pay them, sir. I was just paying them in appreciation for their help.

Mr. ROGERS of Texas. Did you ever discuss it with Norm Prescott or any of the rest of these diskjockeys or other music suppliers?

Mr. DUMONT. No, sir.

Mr. ROGERS of Texas. The fact of the matter is, Mr. Dumont, you all had meetings and discussed this thing over coffee and everything else, did you not? You figured out a way in which you could monopolize the music, the record business, did you not?

Mr. DUMONT. No, sir.

Mr. ROGERS of Texas. You say you just paid these diskjockeys. You had the merchandise, the diskjockeys had the public's airways, so you were just going to make a killing and run everybody else out that was not willing to resort to this sort of practice, were you not?

Mr. DUMONT. No, sir.

Mr. ROGERS of Texas. Would you have considered it an unfair advantage if they had taken money from other people and played their records and refused to play yours?

Mr. DUMONT. And refused to play mine?

Mr. ROGERS of Texas. Yes, or failed to play them.

Mr. DUMONT. I don't know, sir. I guess so, sir.

Mr. ROGERS of Texas. You do know, too, Mr. Dumont, do you not?

Mr. Dumont, if another music supplier or distributor had been paying Norm Prescott or these other diskjockeys to play their records and you could not get your records played, do you mean to tell me you do not know whether you would have thought that was unfair to you?

Mr. DUMONT. I guess it would be, sir.

Mr. ROGERS of Texas. You knew when you first heard of this payola practice that it was under a cloud of suspicion, did you not? You knew it was not right?

Mr. DUMONT. No, sir.

Mr. ROGERS of Texas. What?

Mr. DUMONT. No, sir.

Mr. ROGERS of Texas. You mean you did not know it was not right?

Mr. DUMONT. No. I did not know it was not right, sir.

Mr. ROGERS of Texas. What made you pay much attention to it as payola?

Mr. DUMONT. I didn't pay any attention to it as payola, sir.

Mr. ROGERS of Texas. You mean you heard there was a practice going on where you could get your records played and the other fellow could not?

Mr. DUMONT. No, sir, I did not hear about it—

Mr. ROGERS of Texas. What did you hear about it? You did not clear that up in my mind when you answered Mr. Mack's question. What did you hear about it?

Mr. DUMONT. Well, I did hear that there were manufacturers or music publishing companies, certain people in the record business, made gifts to people in the business, diskjockeys.

Mr. ROGERS of Texas. Let me help you out a little. What you heard was that these manufacturers and distributors of records had a scheme, whereby they were paying diskjockeys to play their records and hurting other people in the same business, did you not, Mr. Dumont?

Mr. DUMONT. I cannot say as I heard it just that way, sir.

Mr. ROGERS of Texas. Well, you understood it that way, you understood what the practice was, did you not?

Mr. DUMONT. Well, it was something like that, sir.

Mr. ROGERS of Texas. And you knew it was a questionable practice, did you not?

Mr. DUMONT. I guess so, sir.

Mr. ROGERS of Texas. And you figured if you did not get in on it, you would go broke, would you not?

Mr. DUMONT. No, sir, I never felt that.

Mr. ROGERS of Texas. You never felt that way?

Mr. DUMONT. No, sir.

Mr. ROGERS of Texas. How much money did you pay out?

Mr. DUMONT. I guess it was about \$8,000 or \$9,000, sir.

Mr. ROGERS of Texas. Well, you just paid out \$8,000 to make friends?

Mr. DUMONT. Not to make friends, sir. It was for the friends who were helping me.

Mr. ROGERS of Texas. Well, are you particularly favorable to diskjockeys or do you like to make friends in other kinds of businesses?

Mr. DUMONT. I like to make friends, sir, in any kind of business.

Mr. ROGERS of Texas. Friends that can make you money?

Mr. DUMONT. Yes, sir.

Mr. ROGERS of Texas. Are these diskjockeys still your friends?

Mr. DUMONT. I think so, sir.

Mr. ROGERS of Texas. Even though you quit paying them?

Mr. DUMONT. Yes, sir.

Mr. ROGERS of Texas. Do you expect to take up paying them again when this subcommittee completes its hearings?

Mr. DUMONT. I don't expect to, sir, no, sir.

Mr. ROGERS of Texas. Because you know it is wrong, do you not?

Mr. DUMONT. Well, it certainly is questionable, sir.

Mr. ROGERS of Texas. How long did it take you to pay out that \$8,000 or \$9,000?

Mr. DUMONT. A little over 2 years, sir.

Mr. ROGERS of Texas. A little over 2 years. That is all, Mr. Chairman. Thank you.

The CHAIRMAN. Mr. Moss.

Mr. Moss. Mr. Dumont, you indicated that you had started in the record business in 1957.

Mr. DUMONT. Yes, sir.

Mr. Moss. September 2?

Mr. DUMONT. Yes, sir.

Mr. Moss. And what is the date when you took Mr. Carter into your business?

Mr. DUMONT. The end of May 1958.

Mr. Moss. May of 1958. Do you recall the day?

Mr. DUMONT. Pardon, sir?

Mr. Moss. Do you recall the day?

Mr. DUMONT. No, I don't, sir. It was the last week, I believe. The latter part of the month.

Mr. Moss. And he put how much money into the business?

Mr. DUMONT. Approximately \$5,600, sir.

Mr. Moss. \$5,600. For a one-half interest?

Mr. DUMONT. 50 percent; yes, sir.

Mr. Moss. Did you indicate he brought some new labels with him?

Mr. DUMONT. No. He didn't bring any labels with him, sir. I acquired a couple of labels about that time.

Mr. Moss. On your own efforts or with his assistance?

Mr. DUMONT. Partially because he was connected with me.

Mr. Moss. Were you aware that it was the policy of Music Suppliers, the firm of your new partner, to pay or make payments to diskjockeys?

Mr. DUMONT. No, I wasn't aware, sir.

Mr. Moss. Did you learn as you became better acquainted with Mr. Carter that it was the policy?

Mr. DUMONT. No, sir; we never discussed it.

Mr. Moss. Did you discuss with him that it was your policy?

Mr. DUMONT. No, sir.

Mr. Moss. He was the treasurer of the company?

Mr. DUMONT. Yes, sir.

Mr. Moss. And he did not know you were making payments to disk-jockeys?

Mr. DUMONT. No, sir. All he ever saw was a financial statement every quarter. He did not——

Mr. Moss. Did he ever pay——

Mr. DUMONT. He never looked at a book, sir.

Mr. Moss. Did he ever sign any checks?

Mr. DUMONT. Not a one, sir.

Mr. Moss. Never signed a check?

Mr. DUMONT. No, sir.

Mr. Moss. But you paid him a salary, did you not?

Mr. DUMONT. Yes, sir.

Mr. Moss. For what?

Mr. DUMONT. Discussions, for his and Gordon's help, Gordon Dinerstein's help.

Mr. Moss. For discussions?

Mr. DUMONT. Yes, sales programs, how much——

Mr. Moss. Then apparently he and Mr. Dinerstein were worth as much to the corporation as you?

Mr. DUMONT. No, sir.

Mr. Moss. Did they not get as much money?

Mr. DUMONT. No, sir.

Mr. Moss. In payments?

Mr. DUMONT. No, sir.

Mr. Moss. Did you ever receive the same amount that the two of those received? Mr. Dinerstein——

Mr. DUMONT. Besides my salary, sir, yes.

Mr. Moss. You said you paid them a salary. What did you call the extra that you received yourself? It was not a dividend, was it?

Mr. DUMONT. No. That was also salary in addition to my salary.

Mr. Moss. Salary?

Mr. DUMONT. Yes, sir.

Mr. Moss. Your salary was "X" number of dollars per week plus whatever amount was necessary to equal the payments made to Mr. Dinerstein and Mr. Carter as their salary?

Mr. DUMONT. Yes, sir.

Mr. Moss. You paid them a salary, and that amount you always picked up and matched with your own, therefore, your advice to yourself at these meetings was as valuable as theirs, is that correct?

Mr. DUMONT. No, sir.

Mr. Moss. You paid yourself for your advice. Was it not worth as much as that for which you paid them?

Mr. DUMONT. Why we did it that way, sir, was because rather than to take a high salary out of the company and depending on how the company was going, building, this was done at the end of the first year that we were together. This was to be in addition to the salary which I had at the time on the books.

Mr. Moss. You had an agreement with Mr. Carter that you would not pay him a salary?

Mr. DUMONT. Yes, that was the original agreement, sir, at the time we sat down. We did not know where the company was going to go or what was going to happen.

Mr. Moss. How long after that agreement was made did you start violating it?

Mr. DUMONT. Well, sir; I don't feel we violated it.

Mr. Moss. Ignoring it.

Mr. DUMONT. We meant to have at the next board of directors meeting, we were going to vote this particular salary to Mr. Carter.

Mr. Moss. Did you?

Mr. DUMONT. No. It was not done, sir.

Mr. Moss. Have you?

Mr. DUMONT. Pardon?

Mr. Moss. Have you voted it?

Mr. DUMONT. No, it still has not been voted, sir, to my knowledge.

Mr. Moss. Are you a person of substantial means?

Mr. DUMONT. No, sir.

Mr. Moss. Is your business the only income-producing holding you have?

Mr. DUMONT. Yes, sir.

Mr. Moss. Three months after you organized it on a \$1,400 investment, you started paying Mr. Norm Prescott?

Mr. DUMONT. I believe that was a Christmas gift, sir.

Mr. Moss. No, no. You started paying him in 1958, you organized your company in September of 1957. In January of 1958 you paid him \$200; in February of 1958, you paid him a total of \$305; in March of 1958, you paid him \$350; in April, \$200.

Now, you were just getting started?

Mr. DUMONT. Yes, sir.

Mr. Moss. What were you paying him money for?

Mr. DUMONT. Well, he was very helpful to me in listening to new releases and I used to drop by his house—

Mr. Moss. Are you aware that is not what he told this subcommittee?

Mr. DUMONT. No, sir.

Mr. Moss. Are you aware that he appeared here and under oath testified that he took money for the express purpose of playing recordings?

Mr. DUMONT. No, sir.

Mr. Moss. You did not know that?

Mr. DUMONT. No, sir.

Mr. Moss. Would you say that he incorrectly testified to this subcommittee when he told us that?

Mr. DUMONT. Sir, why he felt I gave him the money—

Mr. Moss. That is not what I asked you. I asked you if he told us the truth. You can answer that "Yes" or "No."

Mr. DUMONT. Sir, how can I answer that question "Yes" or "No"?

Mr. Moss. Well, he said you gave it to him to play records. Did you or did you not?

Mr. DUMONT. Well, that is how he felt, sir.

Mr. Moss. I did not ask you that. I asked you what was the fact.

Mr. DUMONT. I felt, sir, I was giving him the money in appreciation for helping me pick out new records.

Mr. Moss. You start a business with \$1,400, a very difficult, very competitive business. What were your sales at this point? What

were your sales 3 months after you went into business? How many labels were you handling?

Mr. DUMONT. Maybe about 10 labels, sir.

Mr. Moss. About 10 labels?

Mr. DUMONT. Yes.

Mr. Moss. About what was the volume of your business?

Mr. DUMONT. About 10,000 a month, I guess.

Mr. Moss. About 10,000 a month. You operate on what—about a 10-percent margin?

Mr. DUMONT. Gross.

Mr. Moss. Ten or fifteen percent gross?

Mr. DUMONT. No. It is 23.

Mr. Moss. Twenty-three percent.

Mr. DUMONT. Gross.

Mr. Moss. How many employees did you have?

Mr. DUMONT. At that time about three or four, sir.

Mr. Moss. Three or four employees. About how much were you paying them?

Mr. DUMONT. My employees?

Mr. Moss. Yes. What was your payroll?

Mr. DUMONT. Oh, \$300 a week.

Mr. Moss. \$300 a week, \$1,200 a month, a little over \$1,200 a month?

Mr. DUMONT. Yes.

Mr. Moss. And you were getting about \$2,300 gross income and you had to pay for some sort of a business location?

Mr. DUMONT. Yes, sir.

Mr. Moss. Did you have a lease on that or a rental of some sort?

Mr. DUMONT. I was in a very small place, sir, my rent was only \$40 a month.

Mr. Moss. All right. You had other expenses. Were you actually making a profit?

Mr. DUMONT. Not too much.

Mr. Moss. Were you actually making a profit?

Mr. DUMONT. Well, I think I was breaking even.

Mr. Moss. You were breaking even and yet at this point you felt that you could afford giving \$200, \$200 to \$300 a month to a man out of sheer gratitude, for which you received nothing?

Mr. DUMONT. Sir, I think my volume at that time was probably better than 10,000 a month.

Mr. Moss. Well now, I did not say it was 10,000. You told me it was 10,000.

Mr. DUMONT. Yes.

Mr. Moss. I agree with you when you start thinking about it. It does look like a mighty foolish statement, does it not?

Mr. DUMONT. What that volume was—

Mr. Moss. Do I look so naive as to believe it? I assure you, I do not.

Mr. DUMONT. To believe my volume was 10,000?

Mr. Moss. No. To believe that on that volume you could suddenly afford to be so grateful to people who were doing nothing for you.

Mr. DUMONT. He was very helpful to me, sir.

Mr. Moss. All right. What did he do you you?

Mr. DUMONT. I would sometimes go by, drop by his house, and we would sit down and listen to 20 or 30 new records, sir.

Mr. MOSS. I have people drop by my house and do the same thing and I never paid them a dime, the lot of them. Was he a friend?

Mr. DUMONT. Yes, sir.

Mr. MOSS. How long had he been a friend?

Mr. DUMONT. Since I have been in the record business, sir.

Mr. MOSS. I said how long had he been a friend, not how long had you been in the record business.

Mr. DUMONT. Five or six years.

Mr. MOSS. Five or six years. Close, intimate friends?

Mr. DUMONT. Not close, intimate friends, sir.

Mr. MOSS. Not close and intimate?

Mr. DUMONT. No.

Mr. MOSS. You knew him?

Mr. DUMONT. Yes, sir.

Mr. MOSS. He was an acquaintance?

Mr. DUMONT. Well, we had dinner now and then.

Mr. MOSS. What were you doing when you first met him?

Mr. DUMONT. I was working for Records, Inc., as a sales promotion manager.

Mr. MOSS. Well, it was to your advantage, was it not, to cultivate him? I understand they had a practice of paying diskjockeys, too.

Mr. DUMONT. I guess they did, sir.

Mr. MOSS. Were you aware of that when you worked with them?

Mr. DUMONT. No, I wasn't, sir.

Mr. MOSS. Nobody every heard of this. This is a matter entirely of osmosis, everyone learns of it that way. You did not know about it until you started doing it. No one else here ever heard of it until they started doing it. It just happened.

Mr. DUMONT. I didn't know that Records, Inc., was involved in it, sir. I had heard about it at that time.

Mr. MOSS. You had heard about it?

Mr. DUMONT. Yes.

Mr. MOSS. How?

Mr. DUMONT. Talking to people in the trade.

Mr. MOSS. Who, in the trade? Who told you about it?

Mr. DUMONT. Just in talking with manufacturers, other distributors.

Mr. MOSS. Manufacturers told you about it? Did they recommend it as a—

Mr. DUMONT. Well, it came up in conversation.

Mr. MOSS. Well, it came up in conversation how?

Mr. DUMONT. I don't know how it came up, sir.

Mr. MOSS. You have no idea of what brought it up? You have no way of knowing how this happened?

Mr. DUMONT. Not that I can recall, sir.

Mr. MOSS. You can't recall how you learned of it, of this practice of payola? When did you decide to participate in it? Before you went into business? Did you sort of resolve that the minute you could, you would start writing checks?

Mr. DUMONT. No, sir.

Mr. MOSS. Was it when you found that you needed to write the checks to get your records played that you started doing it?

Mr. DUMONT. No, sir.

Mr. Moss. Why at this point, right at the very beginning of a business that is producing only enough to break even, did you feel you could afford to pay \$200 to Mr. Prescott? At that point did you determine to become regularly grateful to Mr. Prescott?

Mr. DUMONT. No, I didn't, sir.

Mr. Moss. Well, you were grateful on a large pay scale every month. Every single month you were grateful to him in just about the same amount.

Mr. DUMONT. I guess I was, sir.

Mr. Moss. There was no arrangement here at all?

Mr. DUMONT. No, sir.

Mr. Moss. You did not pay him because he took them out to record hops, did you?

Mr. DUMONT. No, sir, he didn't have record hops.

Mr. Moss. Mr. Prescott impressed me as having been a little more candid in his comments to this subcommittee.

In June you started becoming grateful to Joe Smith, did you not?

Mr. DUMONT. Yes, sir.

Mr. Moss. What happened there? Did he start dropping by your home or did you drop by his?

Mr. DUMONT. No, sir.

Mr. Moss. Did he start listening to your records?

Mr. DUMONT. No, sir. He listened to them before.

Mr. Moss. Well, if he was listening before, why did you delay so long becoming grateful to him?

Mr. DUMONT. I don't know why, sir, I just sent him a check in June.

Mr. Moss. What were your gross sales in 1958?

Mr. DUMONT. About \$500,000.

Mr. Moss. How many employees do you have?

Mr. DUMONT. Eleven.

Mr. Moss. How many of those are office employees?

Mr. DUMONT. Pardon.

Mr. Moss. How many are employed in your office?

Mr. DUMONT. You mean office help as opposed to salesmen or promotion men?

Mr. Moss. That is right.

Mr. DUMONT. Four.

Mr. Moss. Where do you keep the petty cash account?

Mr. DUMONT. In the office.

Mr. Moss. In what, cash register or in a vault?

Mr. DUMONT. No; it is in a small box.

Mr. Moss. In a locked vault?

Mr. DUMONT. No, sir.

Mr. Moss. Who has access to it?

Mr. DUMONT. Myself, the office manager, and the counterman.

Mr. Moss. Yourself, the office manager, and the counterman. And the promotion man?

Mr. DUMONT. Promotion man.

Mr. Moss. There is no key?

Mr. DUMONT. No, sir.

Mr. Moss. It is never locked?

Mr. DUMONT. There is a key but it is never locked.

Mr. Moss. It is never locked?

Mr. DUMONT. No, sir.

Mr. Moss. How much do you keep in it?

Mr. DUMONT. \$50 or \$60 floating—

Mr. Moss. You set up a petty cash account, you set it up for a certain amount. What amount did you set it up for?

Mr. DUMONT. \$50.

Mr. Moss. \$50. There was always \$40 in it on each of the Saturday occasions?

Mr. DUMONT. Yes, sir.

Mr. Moss. Then your promotion men had to pay out \$40, which you had receipted in advance, on these blank receipts you issued.

Mr. DUMONT. Yes, sir.

Mr. Moss. There was always \$40 in the cash box?

Mr. DUMONT. If there wasn't, sir, he probably took it out of his own pocket.

Mr. Moss. Did he take it out of his own pocket?

Mr. DUMONT. If there wasn't enough, sir, he may have. There were occasions when a lot of freight comes in that sometimes the office manager or myself or somebody around with money, if the cash box is short, that they will put it up and put a note in that, that the cash box owes them however much they have to put in.

Mr. Moss. Are you absolutely positive that the \$40 was paid to the persons named in each instance?

Mr. DUMONT. No, I am not absolutely positive.

Mr. Moss. Have you some serious doubts?

Mr. DUMONT. I have doubt, sir, yes, sir.

Mr. Moss. What do you think happened? Do you think the story Mr. Lishman recited as to the probable happenings was accurate?

Mr. DUMONT. I don't know, sir. I will find out.

Mr. Moss. It should not take you very long to find out whether the payment was ever made.

Mr. DUMONT. No, it will not, sir.

Mr. Moss. Because you must post that cash book fairly regularly if it only has \$50 in it, for the purposes of paying freight charges.

Mr. DUMONT. Pardon, sir.

Mr. Moss. I say if you are paying out for freight.

Mr. DUMONT. Yes, sir.

Mr. Moss. And if you are paying out \$40 at a crack, you ought to be able to check it rather quickly.

Mr. DUMONT. I can, these three or four incidents, sir, I can check it.

Mr. Moss. Mr. Chairman, I ask that the record be held open at this point and the information be received just as quickly as possible to this subcommittee.

Mr. MACK (presiding). Can you supply that information for the record, Mr. Dumont?

Mr. DUMONT. Yes, sir.

Mr. MACK. Without objection, it will be inserted at this point in the record.

(The material referred to was not supplied for the record.)

Mr. MACK. When can it be supplied, Mr. Dumont?

Mr. DUMONT. By early next week, sir.

Mr. MACK. Very well.

Mr. Moss. How do you build up promotion accounts with your manufacturers?

Mr. DUMONT. Certain manufacturers from time to time allow me to deduct a certain percentage for advertising and promotion, 3 percent, 5 percent, in addition to—

Mr. Moss. What does Epic do?

Mr. DUMONT. Epic Records?

They have no promotional allowance.

Mr. Moss. Well now, that is not what they tell us. I have asked each distributor who has appeared before this subcommittee how the cooperative advertising or promotion fund was established. I assumed that these companies were about as businesslike as companies with whom I used to do business, and under the date of January 29, 1960, Columbia Records Sales Corp. informs us that that is the fact. They accumulate for you at the rate of 1 percent from your own, that you put in on your billings and 1 percent put in by them. They accumulate then, at the rate of 2 percent of your total sales or purchases, I should say, and you can draw against that. You send in your forms for your cooperative advertising with the company.

Mr. DUMONT. Yes.

Mr. Moss. And you sent in, in connection with Mr. Lanin's appearance on November 11, 1958, seeking reimbursement of \$400?

Mr. DUMONT. Yes, sir.

Mr. Moss. For an expenditure made by you, in connection with a cooperative promotion with radio station WBZ. I am reading now from the letter on the letterhead of Columbia Records Sales Corp. The claim indicated that Lester Lanin was involved in the promotion but does not state in what fashion. The DAF claim was approved by them as proffered and in December, December 31, 1958, a credit was issued to Dumont in the amount of \$400, and Dumont's DAF fund was debited in that amount.

They continue:

We have no records indicating that Dumont requested us to reimburse it for any other expenditure made in connection with such promotion.

If you request any further information, we will be happy to cooperate with you.

Very truly yours,

W. G. WILKINS, *Controller*.

Is he telling me the truth?

Mr. DUMONT. Mr. Moss, I am not aware that Epic Records has a fund which I can draw against for advertising and promotion.

Mr. Moss. Let me read it to you:

You have requested that we outline to you the operations of our distributor aid fund (DAF). The following is a brief summary of its operation:

We and our record distributors each contribute a sum equal to 1 percent of the money paid to us by the distributor for his records purchased. This money is placed in a trust fund, and is used to reimburse the distributor when he expends money for legitimate advertising and promotional purposes. It is thus a cooperative advertising and promotional fund.

The usual procedure is for the distributor to make an advertising and/or promotional expenditure and then submit a DAF claim, in which he specifies what advertising and promotional activities he is seeking reimbursement for. He also provides proof that these activities have been undertaken. Upon examination of the DAF claim, if we find that the expenditure was for a legitimate advertising and/or promotional purpose, we debit the distributor's DAF trust fund and give the distributor a credit for the amount expended, as indicated in the approved DAF claim.

It should be noted—

and I ask that you listen carefully to the next few sentences—

that the distributor may only be reimbursed for advertising and promotional activities up to the maximum amount present in his DAF trust fund; that is, a total of 2 percent of his net annual purchase of records from us.

It should also be noted that this procedure outlined in the above is applicable both to our Columbia and Epic product.

You do not know a thing about it?

Mr. DUMONT. I did not know that they have any sort of a trust fund or an advertising fund which built up exclusively for me, sir. I do not know this.

Mr. Moss. You draw on it quite often; do you not?

Mr. DUMONT. Any charge-backs which I send to Epic, I always, if we are going to run an ad in the local newspaper, I will always call them first to get their OK on the phone. Say I am going to run an ad in the newspaper; it is going to cost \$300. Your share would be 50 percent of that, \$150, and I will pay \$150; and I ask is this OK, and they will get me on the phone—they will say, "OK, charge us back."

If I call up and say it is going to cost \$300 and they say, "No; that is a little heavy. We don't have that much in the account right now. Why don't you hold off?" or something like that.

Mr. Moss. Mr. Dumont, cooperative advertising between the distributors and manufacturers or distributors and retailers is one of the oldest means of building up funds for advertising, and has been used by practically all merchandisers for many, many years.

I know of no exception to it. And I have yet, in my own experience, in my own business, to find a businessman active and alert in charge of his business who was not fully conversant with all of the facts in his cooperative advertising allowance. Yet you disclaim any knowledge of it?

Mr. DUMONT. I disclaim, sir, any knowledge of knowing—

Mr. Moss. Well now, do you disclaim any knowledge of having failed to contact your fund for the additional \$600, you told us they had agreed to pay Mr. Lanin? They tell us you have not done so as of the 29th day of January 1960. You told us under oath that you had.

Mr. DUMONT. I have on the telephone, sir. I have asked them repeatedly.

Mr. Moss. You have asked them repeatedly?

Mr. DUMONT. Yes, sir.

Mr. Moss. Have you ever filled out, as you yourself indicated you must, a DAF claim form and forwarded that form to Epic for the \$600?

Mr. DUMONT. No; because, simply because I have never done it that way.

Mr. Moss. You have never done it that way?

Mr. DUMONT. I have never sent them—

Mr. Moss. You told Mr. Mack and you told Mr. Lishman that there was a regular form you filled out and sent in. Now you tell me you do not do it that way. How do you do it?

Mr. DUMONT. When I say I do not do it that way, sir, what I meant was that I do not fill out the form and simply send it in to them. I always contact them by phone first before I make out the form and get their OK to send it in. Because if I just went ahead and

ran an ad and then charged them back and they called me back and said, "Sorry, Mr. Dumont, we can't allow this." I always get my OK before I send it in to make sure I get the credit.

Mr. Moss. Then you would say that Mr. Wilkins, controller of Columbia Records Sales Corp., has incorrectly informed this subcommittee when he makes the statement: "We have no records indicating that Dumont requested us to reimburse it for any other expenditure made in connection with such promotion."

Mr. DUMONT. He is right, sir, I have not written it in on the form, sir.

Mr. Moss. You indicated that they were the ones who informed you that you were to pay the \$1,000 in the first place.

Mr. DUMONT. That is right, sir.

Mr. Moss. They indicate here a clear understanding, it would seem to me. I may be drawing a hasty conclusion from this, that the claim indicates that Lester Lanin was involved in a promotion but does not state in what fashion.

Mr. DUMONT. The claim that I sent in to them, they say does not say it?

I will produce a duplicate of my chargeback at which, if I remember correctly, and I am almost certain, it states on it, "Lester Lanin, WBZ block party, \$400."

I am almost certain that is the way it is. I will look it up and send the duplicate, sir.

Mr. Moss. That would not be inconsistent with what these people stated. It would only be inconsistent with what you yourself stated earlier. What they have stated here is supported by what you have just said, but it is not supported by what you said earlier.

Mr. DUMONT. What do you mean, what did I just say that—

Mr. Moss. You support it, they said, and the claim so indicates.

Mr. DUMONT. The \$600 we are talking about?

Mr. Moss. That Lester Lanin was involved in the promotion but does not state in what fashion. You said it was in connection with some sort of a block party.

Does it state his precise participation in the promotion? Earlier you indicated that the figure of \$1,000 was agreed upon by Epic.

Mr. DUMONT. Yes.

Mr. Moss. And that they, in effect, had directed you to pay Mr. Lanin.

Mr. DUMONT. Yes.

Mr. Moss. And that they would then reimburse you?

Mr. DUMONT. Yes.

Mr. Moss. Who directed you?

Mr. DUMONT. I believe at the time Mr. Charlie Shick was the then sales, national sales promotion manager. He has since left the company. A Mr. Al Shulman is now the general manager of Epic Records. He is aware of this entire situation.

Mr. Moss. Have you a balance with Epic now?

Mr. DUMONT. Oh, yes, I always run a fairly substantial balance with them.

Mr. Moss. I mean on your cooperative advertising.

Mr. DUMONT. I don't know. I didn't know there was any sort of a fund. I think a lot of Epic distributors are going to be surprised.

Mr. MOSS. You think a lot of the dealers are going to be surprised about that?

Mr. DUMONT. A lot of Epic distributors, yes, sir. That they have a certain fund they can draw against for advertising.

Mr. MOSS. If they are, sir, they certainly have changed methods of doing business since I left it.

Mr. DUMONT. I have no other record company, sir, no other record company that I represent has any such fund. Or at least that I am aware of.

Mr. MOSS. I have no more questions, Mr. Chairman.

Mr. MACK. Mr. Lishman, do you have any other questions?

Mr. LISHMAN. No.

Mr. MACK. Did you enter into any kind of an agreement that Lester Lanin records should be played over the radio station following the block party?

Mr. DUMONT. Not following the block party, sir.

Mr. MACK. Well, after you made the arrangements for the block party.

Mr. DUMONT. Yes, sir. When they announced for the listeners to write in for why their favorite charity should have Lester Lanin have a block party for them, they were going to play a cut or two from a Lester Lanin album, either before or after the announcement.

Mr. MACK. That was part of the agreement when you brought Lester Lanin in, is that correct?

Mr. DUMONT. Yes, sir.

Mr. MACK. Anything else?

Mr. MOSS. Who makes out the checks in your firm?

Mr. DUMONT. I do, sir.

Mr. MOSS. You do.

On October 15 you wrote a check to Dave Maynard for \$400; October 15, 1959.

Mr. DUMONT. Yes, sir.

Mr. MOSS. That is only about 4 months ago.

Mr. DUMONT. Yes, sir.

Mr. MOSS. What kind of an agreement did you have with Mr. Maynard? What were you paying him for?

Mr. DUMONT. I had no agreement with him, sir.

Mr. MOSS. What were you paying him for?

Mr. DUMONT. Exposing my records, testing new records at record hops.

Mr. MOSS. Could you tell me, then, why on the stub you have written "sales promotion," here on this 15th day of October?

Mr. DUMONT. Yes, sir.

Mr. MOSS. "Sales promotion, October and November."

Mr. DUMONT. Yes.

Mr. MOSS. "Sales promotion, October and November," advance payment. No agreement, no requirement, and yet you took the trouble to write on the check stub "Sales promotion for October and November."

You were buying nothing at this point?

Mr. DUMONT. No, sir.

Mr. MOSS. Pure gratitude?

Mr. DUMONT. Yes.

Mr. Moss. You know, I certainly hope that the Internal Revenue Service starts looking into some of these payments that were made in such great numbers for no good reason at all, and by so many of you people. According to the story you have told us, you never bought a thing and therefore I question if it is, in any manner at all, a legitimate business expense. On the basis of your testimony I think it should clearly be disallowed.

I might add that I do not believe your testimony.

That is all, Mr. Chairman.

Mr. MACK. Did you know Mr. Prescott quite well?

Mr. DUMONT. Yes, sir.

Mr. MACK. Was he a rather reliable person?

Mr. DUMONT. Yes, sir.

Mr. MACK. What kind of an agreement did you have with him concerning the exposing of your records?

Mr. DUMONT. I had no agreement with him, sir.

Mr. MACK. Well, did you just start sending him checks through the mail?

Mr. DUMONT. Yes, sir.

Mr. MACK. On the 9th of January you just sent him a check for \$200 without ever discussing the subject with him?

Mr. DUMONT. Yes, sir.

Mr. MACK. Then you continued to send him additional checks periodically without ever discussing the subject with him?

Mr. DUMONT. Yes, sir.

Mr. MACK. Did he ever say to you, "Thanks for the check you sent me last month"?

Mr. DUMONT. Yes, probably, sir; yes, sir.

Mr. MACK. Then you did discuss the subject with him?

Mr. DUMONT. No; it wasn't a discussion. He probably said thanks for the check, and that is about it.

Mr. MACK. You never explained the reason for sending him the checks?

Mr. DUMONT. I guess the first time he may have asked me what it was for and I said in appreciation for his time and help.

Mr. MACK. You think he understood what it was for?

Mr. DUMONT. I told him what it was for, sir.

Mr. MACK. You think that he understood what the money was for then?

Mr. DUMONT. Yes, sir.

Mr. MACK. Well, let me go back upon this. Do you think it was right to make these kind of payments?

Mr. DUMONT. In the light of what has happened in the last 2 or 3 months, sir, it has become very questionable.

Mr. MACK. Mr. Prescott said in his testimony: "I was ashamed of myself. I was ashamed of the industry, and I walked away from it for that reason."

Do you not agree with him on that, that it was something to be ashamed of?

Mr. DUMONT. I don't think he should have been ashamed of the money I gave him; no.

Mr. MACK. Was this not payola that you were giving to Mr. Prescott?

Mr. DUMONT. Well, I don't consider it as payola, sir.

Mr. MACK. What do you consider payola to be?

Mr. DUMONT. Payola to me is payments made for particular records to be played on the air a certain amount of times.

Mr. MACK. You said that payola was the talk in the trade. You made that statement?

Mr. DUMONT. Yes, I heard about it, sir.

Mr. MACK. Is it not a fact that these payments, in effect, were payola up until the time that this investigation started? Then suddenly they became appreciation payments or listening fees or something else; is that not correct?

Mr. DUMONT. No, sir.

Mr. MACK. Did you not pay for the gold platter?

Mr. DUMONT. Yes, sir.

Mr. MACK. Is it not a fact that the gold platter was played on the air 56 times a week?

Mr. DUMONT. I guess it was, sir.

Mr. MACK. Well, does that not fit into your broad term of payola?

Mr. DUMONT. I was told by Mr. Richmond that the \$75 was for mailing fees or handling fees.

Mr. MACK. Is \$75 not a little high for a mailing fee?

Mr. DUMONT. It sure is, sir.

Mr. MACK. It was testified under oath before this subcommittee that the actual mailing cost is 5 cents per record.

Mr. DUMONT. Yes, sir.

Mr. MACK. And so that is maybe a little high for mailing fees.

Mr. DUMONT. Yes, sir; it is.

Mr. MACK. Did you give exclusive rights to WHDH to play certain and specific records? I believe Bob Clayton was the diskjockey.

Mr. DUMONT. I don't believe so, sir.

Mr. MACK. I would like to read you part of the testimony. Mr. Lishman asked:

Were not the distributors told by Mr. Clayton and WHDH that if they did not give WHDH the exclusive performance rights on these specific records, WHDH would penalize them by refusing to play any of their records?

Mr. Prescott said: "Definitely."

Mr. DUMONT. No, sir; I have never given them exclusive rights on the record or the only copy of a record.

Mr. MACK. Not even for a limited period of time?

Mr. DUMONT. Not that I can remember, sir.

Mr. MACK. Then you would agree that Mr. Prescott would have a fair understanding of the purpose of the money?

Mr. DUMONT. Yes; I told him what it was for.

Mr. MACK. I would like to quote from Mr. Prescott's testimony, page 11, he said:

And because of the present output of records and the fierce competition that exists within the industry, it is a matter of who can play what when there is a limited amount of play on the air and so now bribery, payola, has become the prime function of this business, to get the record on the air at any cost and to dispose of it because if you do not you cannot sell it. You cannot get individual income.

That seems to explain pretty well Mr. Prescott's feeling of why the money was being paid. You do not disagree with him on that, do you?

Mr. DUMONT. I disagree with him on that, sir.

Mr. MACK. Do you not think that the person receiving the money ought to understand why, for what purposes it was being paid?

Mr. DUMONT. Yes, sir.

Mr. MACK. I would think that pretty well explains the situation. Anything else? Any other questions?

Mr. LISHMAN. No other questions.

Mr. MACK. Thank you for your testimony.

The committee will stand adjourned until 2 o'clock this afternoon. (Whereupon, at 12:45 p.m., the hearing was recessed, to reconvene at 2 p.m.)

AFTERNOON SESSION

(The hearing resumed at 2:30 p.m., Representative Harris presiding.)

The CHAIRMAN. The committee will come to order.

Mr. Smith, there are some photographers here who desire to expend a few more rolls and bulbs. Do you object to it?

Mr. SMITH. I beg your pardon, sir. I did not hear that.

The CHAIRMAN. Do you object to these cameras?

Mr. SMITH. No, sir.

The CHAIRMAN. Will you be sworn.

Do you solemnly swear the testimony you give to this committee to be the truth, the whole truth and nothing but the truth, so help you God?

Mr. SMITH. I do, sir.

TESTIMONY OF JOSEPH SMITH; ACCOMPANIED BY RICHARD C. O'HARE, ATTORNEY

The CHAIRMAN. Will you state your name for the record, please, sir?

Mr. SMITH. Joseph Smith.

The CHAIRMAN. What is your address, Mr. Smith?

Mr. SMITH. Lewton Lower Falls, Mass., sir.

The CHAIRMAN. What is your business or profession?

Mr. SMITH. Radio announcer, sir.

The CHAIRMAN. I intended for the record to show at the outset of his testimony that he has his attorney here with him to advise him of his constitutional rights, and would you identify yourself for the record.

Mr. O'HARE. Richard C. O'Hare, 1016 Investment Building, Washington, D.C.

The CHAIRMAN. Mr. Lishman, you may proceed with your questions.

Mr. LISHMAN. By what station are you employed?

Mr. SMITH. WILD, sir.

Mr. LISHMAN. Who is the licensee of that station?

Mr. SMITH. Nelson B. Noble.

Mr. LISHMAN. What is your salary?

Mr. SMITH. At present, sir?

Mr. LISHMAN. Yes, sir.

Mr. SMITH. \$117 per week, sir.

Mr. LISHMAN. What other sources of income do you have?

Mr. SMITH. I do record hops, sir, and I would consider that as the only other source of income I now have, sir.

Mr. LISHMAN. Do you have any interest in any music publishing company?

Mr. SMITH. No; I do not, sir.

Mr. LISHMAN. Have you ever had an interest in a music publishing company?

Mr. SMITH. Yes, sir.

Mr. LISHMAN. What was the name of that company?

Mr. SMITH. Dominion Music Publishing Corp. of New York. I was the general professional manager, I was not in any way the owner.

Mr. LISHMAN. Have you had any conversations with your employer respecting what is commonly called payola?

Mr. SMITH. No; I cannot say that I have, sir.

Mr. LISHMAN. Did you have a conversation with Mr. Nelson Noble respecting payments received by you from outsiders?

Mr. SMITH. No, sir.

Mr. LISHMAN. Did Mr. Nelson Noble inform you that in connection with inquiries from the FCC that he was not going to require you to give him an affidavit?

Mr. SMITH. Yes, sir.

Mr. LISHMAN. Did Mr. Noble explain why he was not going to require you to give an affidavit?

Mr. SMITH. No, sir.

Mr. LISHMAN. He just told you that?

Mr. SMITH. Yes, sir.

Mr. LISHMAN. Did he tell you what the purpose of the proposed affidavit would be?

Mr. SMITH. Yes, sir; he did.

Mr. LISHMAN. What was the purpose?

Mr. SMITH. It was in regard—he did not give me the specific wording, sir, but he mentioned it was in the general area of, "Have you ever received any outside moneys or gifts from anyone other than the radio station?"

Mr. LISHMAN. Did Mr. Noble ask you that question?

Mr. SMITH. No; he did not, sir.

Mr. LISHMAN. Did you ever tell Mr. Noble that you had received money from outside sources?

Mr. SMITH. No, sir.

Mr. LISHMAN. Mr. Smith, I will hand you two sheets which contain figures prepared by Mr. Keelan, an accountant on loan to this subcommittee from the GAO. These purport to show, according to figures taken from the books of various record distributors in Boston, that you received certain sums of money. Do these sheets correctly reflect the amounts actually received by you?

[Document handed to witness.]

Mr. SMITH. Sir, I would say this is, to the best of my knowledge, correct.

Mr. LISHMAN. Mr. Chairman, I would like to have this schedule of two pages entitled "Schedule of Payments to Joe Smith for the 3-Year Period 1957-59," placed in the record at this point.

The CHAIRMAN. Mr. Smith, you have had occasion to look this over?

Mr. SMITH. Yes, sir, I have.

The CHAIRMAN. And it is a true copy?

Mr. SMITH. Yes, Mr. Chairman, I believe it is, to the best of my recollection, sir, it checks with my record.

The CHAIRMAN. Let it be received.

(The schedule referred to follows:)

BOSTON RECORD DISTRIBUTING COMPANIES

Schedule of payments to Joe Smith for 3-year period, 1957-59

Date	Check No.	Source	Account	Amount	Total
1957					
Feb. 19	13294	Music Suppliers, Inc.	Advertising	\$50	\$50
Mar. 25	13443	do	do	50	50
May 2	13579	do	do	420	420
June 6	13708	do	do	50	50
13	13769	do	do	450	450
Aug. 30	(1)	do	do	30	30
Sept. 5	14040	do	do	100	100
16	14105	do	do	200	200
16	14109	do	do	100	100
Oct. 2	14161	do	do	150	150
18	14240	do	do	200	200
Dec. 2	14397	do	do	250	250
2	14398	do	do	50	50
19	14505	do	do	100	100
Total				2,200	2,200
1958					
Dec. 17	16084	Music Suppliers, Inc.	Advertising	100	100
1959					
Nov. 16	17450	do	do	30	30
1958					
June 16	(2)	Dumont Record Distributing Corp.	Unknown	100	100
Nov. 19		do	do	100	100
Total				200	200
1959					
Jan. 6		Dumont Record Distributing Corp.	Unknown	50	50
July 6		do	do	175	175
Aug. 7		do	do	125	125
Sept. 4		do	do	100	100
Oct. 15		do	do	100	100
Total				550	550
1957					
Apr. 1	4793	Mutual Distributors, Inc.	Promotion	25	25
Dec. 23	5471	do	do	50	50
Total				75	75
1957					
Dec. 17	5443	Mutual Distributors, Inc.	Advertising	100	100
1957					
Jan. 27	1,968	Records, Inc.	Unknown	500	500
1958					
Jan. 27	2,581	do	do	100	100

SUMMARY

Source	Account	1957	1958	1959	Total
Music Suppliers, Inc.	Advertising	\$2,200	\$100	\$30	\$2,330
Dumont Record Distributing Corp.	Unknown	None	200	550	750
Mutual Distributors, Inc.	Promotion	75	None	None	75
Do	Advertising	100	None	None	100
Records, Inc.	Unknown	500	100	None	600
Total		2,875	400	580	3,855

¹ Petty cash.

² Not listed.

Source: of Audit of Music Suppliers and Mutual Distributors, Inc.; audit working papers; canceled checks Records, Inc.

Mr. LISHMAN. Mr. Smith, will you look at the second page of this exhibit.

Mr. SMITH. Yes, sir.

Mr. LISHMAN. The last part, under "Summary."

Mr. SMITH. Yes, sir.

Mr. LISHMAN. Is it correct that for the period 1957-59 as shown on the schedule, you received the sum of \$2,033 from Music Suppliers, Inc.?

Mr. SMITH. Yes, sir; that is correct.

Mr. LISHMAN. And is it true, that according to this schedule those payments were charged to advertising?

Mr. SMITH. Yes, sir.

Mr. LISHMAN. Is it correct, that during this period you received from Dumont Record Distributing Corp. the sum of \$75?

Mr. SMITH. Yes, sir.

Mr. LISHMAN. Was that charged to an account unknown?

Mr. SMITH. Yes, sir.

Mr. LISHMAN. Is it true, that you received from Mutual Distributors, Inc., \$75 in that period?

Mr. SMITH. Yes, sir.

Mr. LISHMAN. Was that charged to promotion?

Mr. SMITH. That is what he says here, sir.

Mr. LISHMAN. Did you also receive \$100 from Mutual Distributors?

Mr. SMITH. Yes, sir.

Mr. LISHMAN. And was that charged to advertising?

Mr. SMITH. According to this, sir.

Mr. LISHMAN. You also received \$600 from Records, Inc., is that right?

Mr. SMITH. Yes, sir.

Mr. LISHMAN. And was that charged to an account unknown?

Mr. SMITH. Again according to this record; yes, sir.

Mr. LISHMAN. And that is the breakdown, by companies, for the total amount of \$3,855 received by you?

Mr. SMITH. Yes, sir.

Mr. LISHMAN. In addition to the amounts that you have testified to as being received by you, did you receive additional sums from any of these four record distributing companies?

Mr. SMITH. No, sir.

Mr. LISHMAN. Did you receive other considerations or gifts from any of these four record distributing companies?

Mr. SMITH. No, sir; I believe these figures to be inclusive.

Mr. LISHMAN. Did you receive a suit of clothes from any of these?

Mr. SMITH. Yes, I did, sir.

Mr. LISHMAN. Which one?

Mr. SMITH. Dumont Records.

Mr. LISHMAN. Yes. Was that in the form of a gift certificate?

Mr. SMITH. Yes, sir.

Mr. LISHMAN. At the Andover Shop?

Mr. SMITH. Yes, sir.

Mr. LISHMAN. Did you receive gift certificates, in addition to that?

Mr. SMITH. I do not believe so, sir. I cannot recall any other gift certificates.

Mr. LISHMAN. Now, the sums you have testified to, you received from record distributing companies, is that correct?

Mr. SMITH. Yes, sir.

Mr. LISHMAN. Did you ever receive any sums from record manufacturers?

Mr. SMITH. Yes, sir.

Mr. LISHMAN. While you were a diskjockey at WILD?

Mr. SMITH. Since I have been at WILD, yes, sir, I have.

Mr. LISHMAN. Yes. Did you receive any sums from record manufacturing companies before you were at WILD?

Mr. SMITH. Yes, sir; I have.

Mr. LISHMAN. Where were you before you were with WILD?

Mr. SMITH. I was at station WMEX for 1 year, sir, and at WEZE in Boston for a period of 4 years, sir, and before that at WARD in Johnstown, Pa., for 4 years, sir, and before that at WSSV in Petersburg, Va., for 6 months, sir.

Mr. LISHMAN. Where were you a diskjockey in 1955?

Mr. SMITH. Both in Johnstown, Pa., sir, and in Boston at radio station WEZE, which was then WVDA, sir.

Mr. LISHMAN. Did you receive any payments of money, by cash or check, from Roulette Records during the period 1955 to 1959?

Mr. SMITH. Yes, I did, sir.

Mr. LISHMAN. How much did that come to?

Mr. SMITH. To the best of my recollection, sir, and according to my records, I would say \$1,500 over that 4-year period, sir.

Mr. LISHMAN. Who paid you the money from Roulette Records?

Mr. SMITH. The manufacturer of Roulette Records, Inc., sir, of New York.

Mr. LISHMAN. Who was that? What man?

Mr. SMITH. I believe the checks were signed by a man named Joseph Kolsky, sir, who is president or vice president.

Mr. LISHMAN. Is it a fact that during this period you received at least \$400 from Gone Records?

Mr. SMITH. Yes, sir.

Mr. LISHMAN. Who was the principal officer of Gone Records?

Mr. SMITH. Mr. George Goldner, sir.

Mr. LISHMAN. Where is he located?

Mr. SMITH. In New York, sir. I am fairly certain the address is 1650 Broadway.

Mr. LISHMAN. Do you have an apartment in New York?

Mr. SMITH. No, I do not, sir.

Mr. LISHMAN. Have you ever had one?

Mr. SMITH. Yes, I have, sir.

Mr. LISHMAN. During this period did you receive \$500 from United Artists Records?

Mr. SMITH. I would say it was \$600, sir.

Mr. LISHMAN. From whom in United Artists Records did you receive this?

Mr. SMITH. Mr. Lester Lees.

Mr. LISHMAN. And United Artists Records also have Dale Records?

Mr. SMITH. No, sir.

Mr. LISHMAN. Is that a separate company?

Mr. SMITH. Yes, sir.

Mr. LISHMAN. How much did you get from Chess Records during this period?

Mr. SMITH. I received one wedding gift, sir, for \$500.

Mr. LISHMAN. And that is all?

Mr. SMITH. Yes, sir.

Mr. LISHMAN. During this period what did you receive from Atlantic Records?

Mr. SMITH. I received one wedding gift, sir, for \$100.

Mr. LISHMAN. Who was the principal in Chess Records?

Mr. SMITH. Philip and Leonard Chess are the coowners.

Mr. LISHMAN. Where is that located?

Mr. SMITH. In Chicago, sir.

Mr. LISHMAN. Who is the principal in Atlantic Records?

Mr. SMITH. I know two gentlemen, sir, one is named Jerry Wexler, and the other defies my spelling, sir, A. H. Medurdigan.

Mr. LISHMAN. Did you receive money from co-ed Records?

Mr. SMITH. Yes, I did, sir.

Mr. LISHMAN. How much did you receive from Co-ed?

Mr. SMITH. May I check here, sir, for just a moment?

Mr. LISHMAN. Yes.

Mr. SMITH. \$700, sir.

Mr. LISHMAN. Who is the principal of Co-ed Records?

Mr. SMITH. Mr. Marvin Cane.

Mr. LISHMAN. Do you know the name of his principal associate?

Mr. SMITH. I believe his employer is a Mr. George Paxton.

Mr. LISHMAN. Did you receive any money, either by check or in cash from any other record manufacturers in addition to the ones you have already mentioned?

Mr. SMITH. Yes, sir, I did.

Mr. LISHMAN. Will you please name those record companies?

Mr. SMITH. That record company, sir, is Herald Ember Records. It is one record company.

Mr. LISHMAN. How much did you receive from them?

Mr. SMITH. \$100, sir.

Mr. LISHMAN. When did you receive that?

Mr. SMITH. 1957.

Mr. LISHMAN. Do you know who the principal officer of that company is?

Mr. SMITH. A Mr. Silver, sir.

Mr. LISHMAN. Have you ever received any payments, either in cash or by check, from any other record distributing company besides the four that you have already testified to?

Mr. SMITH. No, sir.

Mr. LISHMAN. For what purpose did the record distributors pay you the sums of money that you admit receiving?

Mr. SMITH. Sir, I cannot tell you the intentions of the record distributors or manufacturers. I can only answer you, sir, as to what my dealings were on receiving money. I do not know what reasons they had.

Mr. LISHMAN. Well, why did you receive it?

Mr. SMITH. Sir, I felt that they were expressions of gratitude for records I had played on the air which had, in turn, made money for them. I had never requested, nor solicited, nor demanded, nor in any way hinted that I required any moneys to play any records, sir.

Mr. LISHMAN. Was any of this money received by you in appreciation for your services at record hops?

Mr. SMITH. I beg your pardon, sir, will you give me that question again, sir?

(Question read by reporter.)

Mr. SMITH. No, sir.

Mr. LISHMAN. This was all in appreciation for your services in exposing records on the air, is that correct?

Mr. SMITH. I don't know, sir. I cannot tell you their intentions in paying me the money, sir.

Mr. LISHMAN. Well, is that the way you felt about this situation?

Mr. SMITH. Sir, that is the way I felt about it, yes, sir.

Mr. LISHMAN. I notice that the payments you received from Music Suppliers, varies in amounts from \$50 to \$450, and on some occasions, \$250. How was the amount fixed each time?

Mr. SMITH. There was no fixed amount, sir.

Mr. LISHMAN. Well, I notice on June 13, 1957 you were paid \$450 in one lump sum. What was the purpose of that payment?

Mr. SMITH. Sir, that was a payment made through Music Suppliers by one of their labels, Dale Records, sir.

Mr. LISHMAN. What arrangement did you have with Dale Records, Mr. Smith?

Mr. SMITH. The arrangement that Dale Records had, sir, was that I was invited to share in the royalties of records sold in the Greater Boston area on their label.

Mr. LISHMAN. Yes.

Mr. SMITH. Any and all records on the Dale Records label, sir. I was to share in the royalties, and the payment of \$450 constitutes a royalty statement, sir.

Mr. LISHMAN. Yes. What was that royalty? Was it to be a sum equal to one or two—

Mr. SMITH. It was, I believe, 4 or 5 cents per record sold in the area, sir.

Mr. LISHMAN. With whom did you make that arrangement?

Mr. SMITH. It was made, a verbal arrangement was made, sir. It was first suggested to me by a Mr. Frank Abramson who was, I think, in charge of Dale Records, who heretofore had been associated with a music publishing firm with which I had had much contact, sir.

We had become friendly over the years. He told me he intended to start a record company and invited me to share in the royalties of the record company.

However, sure, I assured him that I did not need to share in any royalties of any record company, sir. That is records would be judged, as all records were judged. That I would not play his records if I felt they were not up to the standards I had set for my own program, sir, and I made no agreement to play any records at any time, sir.

Mr. LISHMAN. Who was the principal of Dale Records?

Mr. SMITH. Mr. Frank Abramson, sir.

Mr. LISHMAN. Did Sammy Kaye have an interest in that record company?

Mr. SMITH. I believe he is the owner, sir, but he does not operate it. Mr. Abramson operates the Dale Co. on his behalf.

Mr. LISHMAN. This was an oral arrangement?

Mr. SMITH. Yes, sir.

Mr. LISHMAN. Did you have an arrangement with any other record company whereby you would receive a royalty on each copy of a record sold?

Mr. SMITH. Yes, sir. You have before you, as was requested by Mr. Kelly, a copy of the royalty arrangement I had with Co-ed Records, which entitled me to 2 cents per record for all their records sold in the Greater Boston area. You have two copies, and a later copy, dated later, which entitled me to 1 cent a record on all records sold.

Mr. LISHMAN. I would like to hand you this letter from Co-ed Records, Mr. Smith, dated January 8, 1959. Is it a true and correct copy of a letter you received and does it correctly represent the agreement you had with Co-ed Records, respecting the payments to you of a sum equal to 2 cents on each and every record sold and paid for in your territory?

(Document handed to witness.)

Mr. SMITH. Yes, sir.

Mr. LISHMAN. Will you please read that letter into the record?

Mr. SMITH. "Dear Joe."

Mr. LISHMAN. It is on the letterhead of Co-ed?

Mr. SMITH. Do you want the entire thing?

Mr. LISHMAN. To show for the record—it is on the letterhead of Co-ed Records.

Mr. SMITH. Yes, sir. It is on the letterhead of Co-ed, and it is addressed to me at my former address in New York, sir.

"Re: Co-ed No. 508, 'Moonlight Serenade.'"

"Dear Joe:

"In accordance with our verbal understanding, we agree to pay you on the above song a sum equal to 2 cents on each and every record sold and paid for in your territory.

"Very truly yours, Co-ed Records, Inc., Marvin Cane, Vice President."

Mr. LISHMAN. Did you play the Co-ed No. 508, "Moonlight Serenade"?

Mr. SMITH. Sir, I never played Co-ed Record 508, "Moonlight Serenade."

Mr. LISHMAN. You did not. Did you play any Co-ed Records?

Mr. SMITH. Yes, I did, sir.

Mr. LISHMAN. Could you name some of the Co-ed Records played by you?

Mr. SMITH. Sir, there are only two Co-ed Records which to the best of my knowledge I have ever played. One was called "Sixteen Candles" and the other was called "Count Every Star."

Mr. LISHMAN. Did you have a similar arrangement with respect to "Sixteen Candles"?

Mr. SMITH. Yes, I did, sir.

Mr. LISHMAN. And for how much a copy was your royalty on "Sixteen Candles"?

Mr. SMITH. Two cents per record, sir.

Mr. LISHMAN. When did you make that arrangement?

Mr. SMITH. On "Sixteen Candles" or with Co-ed Records?

Mr. LISHMAN. On "Sixteen Candles."

Mr. SMITH. When the record was released, sir.

Mr. LISHMAN. When was that?

Mr. SMITH. I believe the record was released sometime in the fall of 1958, sir. I may not be quite correct. It is either in the fall—I think it was in the fall of 1958.

Mr. LISHMAN. With whom did you make that arrangement?

Mr. SMITH. It was in the same form as the letters you have in evidence there, sir. I just do not have a copy of them.

Mr. LISHMAN. Was it made with Co-ed?

Mr. SMITH. Yes, sir.

Mr. LISHMAN. Was Marvin Cane, the vice president—

Mr. SMITH. Yes, sir. They made the agreement with me, sir. I did not make an agreement with them.

Mr. LISHMAN. When were you paid your royalties on "Sixteen Candles"?

Mr. SMITH. I believe the royalties were paid sometime around March of 1959, sir.

Mr. LISHMAN. At that time was "Sixteen Candles" still owned by Marvin Cane's company?

Mr. SMITH. It was on Co-ed Records, sir. It was their record.

Mr. LISHMAN. Do you know who owned the copyright on "Sixteen Candles"?

Mr. SMITH. Yes, sir.

Mr. LISHMAN. Who?

Mr. SMITH. Sea Lark Music. Is it Sea Lark Music? I think that is one of the firms, sir. I am not certain.

Mr. LISHMAN. I show you this paper and ask you if it refreshes your recollection.

Mr. SMITH. I have never seen this paper before, sir. I don't know anything about it.

Mr. LISHMAN. Do you know what it is?

Mr. SMITH. It is obviously the transfer of a copyright.

Mr. LISHMAN. Yes. The transfer of the copyright of "Sixteen Candles," the record you have been talking about; is that correct?

Mr. SMITH. Yes, sir.

Mr. LISHMAN. And who was the transferee named in that paper?

Mr. SMITH. The January Corp.

Mr. LISHMAN. Do you know the principal of the January Corp.?

Mr. SMITH. Not for certain, not for a certainty, sir.

Mr. LISHMAN. Is it not a fact, that the basis on which you received the royalties from these two records was that you were a diskjockey capable of being able to air Co-ed records?

Mr. SMITH. Once again, sir, I cannot assess the intentions of anyone else but myself, sir.

Mr. LISHMAN. We have had two records on which you received royalty; one at 1 cent a copy, and one at 2 cents a copy, is that correct?

Mr. SMITH. Yes, sir.

Mr. LISHMAN. "Moonlight Serenade?"

Mr. SMITH. Yes, sir.

Mr. LISHMAN. What was your royalty on "Sixteen Candles"?

Mr. SMITH. 2 cents per record, sir.

Mr. LISHMAN. Did you have royalty arrangements on any other record?

Mr. SMITH. I had a royalty arrangement, sir, on each and every record released by the Co-ed Records Co.

Mr. LISHMAN. How many were there of such records?

Mr. SMITH. I would approximate about a dozen, sir.

Mr. LISHMAN. A dozen. Did you receive 2 cents per copy sold in your territory on all of those?

Mr. SMITH. No. There were some that were 1 cent a copy, sir.

Mr. LISHMAN. Was there one that was 5 cents a copy?

Mr. SMITH. No, sir.

Mr. LISHMAN. Were there any that were in excess of 2 cents a copy?

Mr. SMITH. Co-ed Records?

Mr. LISHMAN. Yes.

Mr. SMITH. No, sir.

Mr. LISHMAN. Did you have royalty arrangements with any other record company to receive a royalty on records sold in your territory?

Mr. SMITH. I have put into the record, sir, about Dale Records.

Mr. LISHMAN. What was the royalty on that?

Mr. SMITH. I said it was either 4 or 5 cents. I am not certain, sir.

Mr. LISHMAN. When did you learn who had the copyright on "Sixteen Candles"?

Mr. SMITH. I believe I read it in one of the trade papers in there that the January Corp., had acquired the copyright of the song, "Sixteen Candles," sir. It was not of a great deal of interest to me, so I don't recall having paid a great deal of attention to it.

Mr. LISHMAN. You mentioned you thought it was in the Lark?

Mr. SMITH. Sea Lark, sir.

Mr. LISHMAN. Sea Lark.

Mr. SMITH. I thought that was the firm, but obviously I was—

Mr. LISHMAN. Whose company is that?

Mr. SMITH. I do not know for certainty whose company it is.

Mr. LISHMAN. Whose company do you think it is?

Mr. SMITH. Dick Clark.

Mr. LISHMAN. Who do you think has the January Corp?

Mr. SMITH. Dick Clark.

Mr. LISHMAN. So, in effect, you were getting royalties on records on which another diskjockey owned the copyright?

Mr. SMITH. I don't know that he did, sir. I don't know that he is a principal in January Corp. or Sea Lark Music.

Mr. LISHMAN. I think we may state for the record that he was at that time.

Mr. SMITH. In that case, I was, sir.

Mr. LISHMAN. Mr. Smith, have you ever engaged in the business of personal management of entertainers or recording artists?

Mr. SMITH. Have I ever engaged in the business of managing?

Mr. LISHMAN. Yes.

Mr. SMITH. Not actively, no, sir.

Mr. LISHMAN. Well, have you ever managed an entertainer or a recording artist?

Mr. SMITH. I have had a personal management contract with one or two entertainers, sir, yes, sir.

Mr. LISHMAN. Would you please name those entertainers?

Mr. SMITH. Yes, sir. There was a singing group for which, for a short time I owned—I did not own, I was comanager, called the G-Clefs, and I was comanager with a boy named Dwinell.

Mr. LISHMAN. Did he record songs?

Mr. SMITH. Yes, he did, sir.

Mr. LISHMAN. And while you were a diskjockey, did you play some of his recordings?

Mr. SMITH. He only made one recording, sir.

Mr. LISHMAN. Did you like it?

Mr. SMITH. Yes, I did, sir.

Mr. LISHMAN. Of what other persons were you the manager?

Mr. SMITH. That is all, sir—there was one other boy, sir, that never made a record. His name was Riley, Bob Riley. For a short time I was a manager in 1957, I believe, sir. He never recorded and I never at any time took any active managing interest in any of these people, sir.

Mr. LISHMAN. Do you know a man named Johnny Mann?

Mr. SMITH. Yes, sir, I had overlooked that.

Mr. LISHMAN. Was his real name not Madruga?

Mr. SMITH. Yes, sir, Madruga. I had an interest in him, too.

Mr. LISHMAN. What was he? A singer?

Mr. SMITH. Yes, sir, he made one record.

Mr. LISHMAN. Did you play that?

Mr. SMITH. Yes, I did, sir.

Mr. LISHMAN. Did you attend the diskjockey convention in Miami?

Mr. SMITH. Yes, sir. Mrs. Smith and myself attended the convention.

Mr. LISHMAN. Were you the guest of one of the record companies?

Mr. SMITH. No, sir.

Mr. LISHMAN. Were you the guest of any record distributing company?

Mr. SMITH. No, sir.

Mr. LISHMAN. I have no further questions, Mr. Chairman.

The CHAIRMAN. Mr. Mack.

Mr. MACK. Mr. Smith, as I understand it, you did not receive payola payments. You just received royalties?

Mr. SMITH. From Co-ed Records, sir, and Dale Records, I received royalties; yes, sir.

Mr. MACK. Well, you also received checks from Dumont Distributing Co., did you not?

Mr. SMITH. Yes, sir.

Mr. MACK. Those were not for royalties?

Mr. SMITH. No, sir.

Mr. MACK. What were those for?

Mr. SMITH. Sir, I can once again repeat, I do not know the intention of Dumont Distributors in giving me these checks. I can only tell you that I accepted it as an act, something of an act of gratitude for records that I had played for him.

Mr. MACK. Mr. Dumont testified this morning that he was limited financially and that he was not in a position to contribute money to anyone without reason. I concluded that he got value received from you. Would you say that he had?

Mr. SMITH. Sir, I never at any time asked, requested or demanded or suggested.

Mr. MACK. I know, I understand that.

Mr. SMITH. I played Mr. Dumont's records, sir. He had some records that I did play. In the normal discharge of my duties, sir, I play many records for many distributors and many manufacturers. His were included. If he felt that what I had done had benefitted him to the extent he wanted to show his gratitude with a check, sir, I accepted it as such, with never any strings attached or commitments for further play or further aid.

Mr. MACK. You felt that he had gotten his money's worth?

Mr. SMITH. I felt he had got his money's worth? I never thought of it in that way at all, sir. I never considered that he got his money's worth or not, sir. That is up to him.

Mr. MACK. You would have accepted the money even if you did not feel that you were entitled to it?

Mr. SMITH. I never feel I am entitled to anything, sir. If the gentleman in question feels that I have done something for him, and he feels that he would like to show his gratitude, by sending me a gift or a check, sir, that is wholly his business and his matter. I cannot assess his intentions.

Mr. MACK. And you felt it was in appreciation for what you had done?

Mr. SMITH. Yes, I certainly do, sir.

Mr. MACK. Are you still receiving those appreciation checks?

Mr. SMITH. No, sir; I am not.

Mr. MACK. But you are still working as a diskjockey?

Mr. SMITH. I am, sir; yes, I am.

Mr. MACK. Well, have you not been wondering why you have not received those checks?

Mr. SMITH. No, sir, I never have. I have never come to expect any checks from anybody, so therefore I don't wonder why I didn't receive them.

Mr. MACK. I thought perhaps that the man, Don Dumont, might not appreciate it any longer. Might that be the reason for not receiving them?

Mr. SMITH. I cannot, once again, assess his intentions, sir.

Mr. MACK. I have no further questions.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS of Texas. Did you get an appreciation check every week from Dumont?

Mr. SMITH. No, sir.

Mr. ROGERS of Texas. When did you get the checks?

Mr. SMITH. I cannot say they came at any regular interval, sir, or any regular periods. From time to time—

Mr. ROGERS of Texas. Did they come pretty regularly?

Mr. SMITH. No, sir, not regularly, I would not say so. At intervals with a note just saying "Thank you."

Mr. ROGERS of Texas. How much were they for? I mean, were they for a like amount most of the time?

Mr. SMITH. No, no, sir. They weren't. They were for, according to the record here, \$50, \$175, \$125, \$100, and \$100, sir.

Mr. ROGERS of Texas. It ranged from a high amount of from what to what?

Mr. SMITH. From \$175 down to \$50.

Mr. ROGERS of Texas. None below \$50?

Mr. SMITH. No, sir.

Mr. ROGERS of Texas. Well, did he have an order with you for a certain amount of appreciation each week?

Mr. SMITH. No, again, sir; I do not know why he—I cannot point my finger and say this is why he sent me a check, sir.

Mr. ROGERS of Texas. I understand that, and I am wondering if you would if you could.

You got the checks from him, and they had a little note with them saying "Thank you"?

Mr. SMITH. Yes, sir.

Mr. ROGERS of Texas. What was he thanking you for?

Mr. SMITH. Sir, if I may preface my answer, in the normal discharge of my duties, sir, my program is one that has somewhat of an impact on record sales. I play normally 60 to 75 records during a day, 60 or 75 records for various manufacturers and distributors, which may, in turn, earn them money, sir. If some of these manufacturers or distributors feel that they would like to show their gratitude or I have done something to earn their gratitude, I have accepted it as such. I have probably played more Columbia records than I have played records for Mr. Dumont and never received a thank you or a check from Columbia records.

Mr. ROGERS of Texas. They are not very appreciative, are they?

Mr. SMITH. I don't say that, sir.

Mr. ROGERS of Texas. You didn't say—

Mr. LISHMAN. May I interrupt there, Mr. Rogers?

Did you ever receive any checks from the franchised distributor of a Columbia record?

Mr. SMITH. No, sir.

Mr. ROGERS of Texas. Where did you get the Columbia records from?

Mr. SMITH. Where did I get them from?

Mr. ROGERS of Texas. Yes.

Mr. SMITH. From the Columbia records distributor, sir.

Mr. ROGERS of Texas. And you say he never gave you any money?

Mr. SMITH. No, sir.

Mr. ROGERS of Texas. No gifts?

Mr. SMITH. Small gifts at Christmastime, sir. I think a desk calendar one time, value, retail, \$11.

Mr. ROGERS of Texas. That was not very much appreciation, was it?

Mr. SMITH. Sir, I don't require appreciation. I do my work for my employer.

Mr. ROGERS of Texas. I am not talking about whether you require it or not. You are the one who used the word "appreciation." I did not use it, and I do not think it is right. I do not think it is a proper term to be used.

Mr. SMITH. I am sorry, sir.

Mr. ROGERS of Texas. But the fact of the matter is, you are saying that you did not get money from all of the others. You just got it from a few. Is that right?

Mr. SMITH. No, sir. I said that I do not get them from everybody, sir. From time to time—

Mr. ROGERS of Texas. Percentagewise, how many did you get them from? You played records there, we will say, for 15 different distributors. How many of those people sent you money?

Mr. SMITH. According to the records here and my records here, sir, four.

Mr. ROGERS of Texas. Not according to the records. How many sent you money? Four of them?

Mr. SMITH. Four record distributors, sir.

Mr. ROGERS of Texas. Well, did you do more for them than you did for the others?

Well now, you are the one who knows.

Mr. SMITH. I did not do so.

Mr. ROGERS of Texas. But they were just more appreciative of your activities than the others?

Mr. SMITH. That is up to them, sir. I don't know what they felt.

Mr. ROGERS of Texas. They were appreciative to the extent that they sent you money to show their appreciation.

Mr. SMITH. They sent me money, sir. Why, again, I cannot tell you.

Mr. ROGERS of Texas. Did you ever send a note back and say "You are welcome"?

Mr. SMITH. From time to time, when I saw these people, I thanked them, sir.

Mr. ROGERS of Texas. Well now, you got a note that says "Thank you" and it had a check with it for \$175. Did it occur to you, "Well, what are they thanking me for? Maybe I ought to say, 'You're welcome,' or maybe I ought to say, 'What are you thanking me for, \$175 worth?'"

Mr. SMITH. Sir, I cannot tell you why I am thanking them. I can tell you that I accepted it as a gift, and why they sent it to me, I cannot tell you, sir.

Mr. ROGERS of Texas. Now, Mr. Smith—

Mr. SMITH. Yes, sir.

Mr. ROGERS of Texas. You say that you received it as a gift. Did you report it as earned income?

Mr. SMITH. Yes, sir.

Mr. ROGERS of Texas. If it was a gift, you did not have to report it as income. The Government owes you some money.

Mr. SMITH. Sir, I believe that I would not—I know I would not receive that gift if I were not connected with the business with which I am associated. When my wife gives me a gift, I do not report that, sir, but she does not give me a gift because I am radio announcer.

Mr. ROGERS of Texas. I understand that, but you paid income taxes on this as earned income; did you not?

Mr. SMITH. Yes; I did, sir.

Mr. ROGERS of Texas. Although you say you were considering it as a gift?

Mr. SMITH. I certainly was, sir, in connection with my work.

Mr. ROGERS of Texas. Are you planning to make a claim against the Government to get back the taxes you paid on these gifts?

Mr. SMITH. Sir, I want no more truck with the Government after today, I assure you, sir. [Laughter.]

Mr. ROGERS of Texas. You do not want any more truck with this sort of business, either, do you, Mr. Smith?

Mr. SMITH. Sir, I can only tell you, and I am very cognizant of the fact that I am under oath before this important subcommittee—when the news was released that this subcommittee was to look into the matter of gifts, gratuities or payola back in November, I have had a good long while, sir, to probe my conscience and ask myself if in any way I have been compromised or if I have compromised my employers or anyone around me.

Sir, I am not rationalizing, and I am aware, as I say, that I am under oath, and with all the honesty and sincerity and candor I can muster, I can tell you, sir, I have never played a record or made a statement or committed an act that I would not otherwise have made or played or committed with or without any financial thank yous or any pressures whatsoever.

Mr. ROGERS of Texas. That is your opinion; is it not?

Mr. SMITH. That is all I can say, sir. That is all I have.

Mr. ROGERS of Texas. Do I understand now that you have probed your conscience and you have lost sleep and you are worried?

Mr. SMITH. I certainly did, sir.

Mr. ROGERS of Texas. And weighed this thing out very carefully?

Mr. SMITH. I certainly did, sir.

Mr. ROGERS of Texas. If there was not anything wrong with it, why did it take you so long to weigh it out? Why could you not make a clear view of this thing, whether it was right or wrong in the first place? Why did you have to wait for so long?

Mr. SMITH. Pardon me, sir.

Mr. ROGERS of Texas. Go ahead.

Mr. SMITH. Somebody obviously thinks it is wrong; otherwise this important subcommittee would not be sitting here.

Mr. ROGERS of Texas. Well, you certainly are right when you say somebody does; I do myself.

Mr. SMITH. Well, sir, if it is the opinion of public opinion, and the opinion of the Congress of the United States, sir, that accepting gifts while an employee of a radio-television station is wrong or illegal, sir, I am certainly not—

Mr. ROGERS of Texas. You are qualifying what you did. There is a little different idea about what was going on. You call it gifts; other people call it something else.

But let us move on from that for just a minute. Did you get any records through the mail?

Mr. SMITH. Yes, sir.

Mr. ROGERS of Texas. Mailed to you?

Mr. SMITH. Yes, sir.

Mr. ROGERS of Texas. Did they have checks attached to them?

Mr. SMITH. No, sir.

Mr. ROGERS of Texas. Did you get any rock and roll records?

Mr. SMITH. Yes, sir.

Mr. ROGERS of Texas. Were those sent through the U.S. mails?

Mr. SMITH. Yes, sir.

Mr. ROGERS of Texas. Were they marked "educational"?

Mr. SMITH. I think all records sent through the mail are labeled "educational material," sir.

Mr. ROGERS of Texas. And that included rock and roll?

Mr. SMITH. Yes, sir.

Mr. ROGERS of Texas. Is that educational, to put on that record?

Mr. SMITH. Sir, I didn't put it on, and I didn't stamp it as such.

Mr. ROGERS of Texas. I know. Now you say all of them are marked "educational"?

Mr. SMITH. Most of them, I believe, are now.

Mr. ROGERS of Texas. What amount of postage was paid on those records?

Mr. SMITH. I can't recall, sir.

Mr. ROGERS of Texas. Have you had any discussion as to whether or not, records stamped "educational" are sent through the mails cheaper than it would go otherwise?

Mr. SMITH. No, sir.

Mr. ROGERS of Texas. But the ones you did get were marked "educational"?

Mr. SMITH. As I say, I think most of the records sent through the mail. They are sent to me at the radio station and are usually opened before I get there, sir, so that once in a while, I see the envelopes and I notice "educational material" over the last year or 6 months has been stamped on most of the record envelopes.

Mr. ROGERS of Texas. As I said a minute ago, that would include rock and roll records?

Mr. SMITH. All records, sir.

Mr. ROGERS of Texas. Did it ever occur to you what the educational properties of a rock and roll record might be?

Mr. SMITH. No, sir, I have never analyzed it in that way. I didn't stamp on "educational material."

Mr. ROGERS of Texas. You mean by that, you do not think they are very educational?

Mr. SMITH. No, sir.

Mr. ROGERS of Texas. I believe that is all, Mr. Chairman.

The CHAIRMAN. Mr. Moss.

Mr. Moss. I understand, Mr. Smith, that you worked in the community of Petersburg, Va. Is that where you started your work in radio?

Mr. SMITH. Yes, I did, sir.

Mr. Moss. In 1950?

Mr. SMITH. Right, sir.

Mr. Moss. And then you were in Johnstown, Pa.?

Mr. SMITH. Yes, sir.

Mr. Moss. What was your rate of compensation when you started with WSSV?

Mr. SMITH. \$55 a week, sir.

Mr. Moss. \$55 a week. Was that your only income?

Mr. SMITH. Yes, sir.

Mr. Moss. And then you went with WARD in Johnstown, Pa.?

Mr. SMITH. Yes, sir.

Mr. Moss. At what rate of compensation?

Mr. SMITH. \$6,000 a year, sir, or \$7,000.

Mr. Moss. \$6,000 a year.

And then from Johnstown you associated with WVDA, now WEZE, Boston?

Mr. SMITH. Yes, sir.

Mr. Moss. What was your rate of compensation then?

Mr. SMITH. \$200 a week, sir.

Mr. Moss. \$200.

And then with WMEX?

Mr. SMITH. Yes, sir.

Mr. Moss. Where did you first start getting payments?

Mr. SMITH. The first gift I received, sir, in the form of cash, was in 1956 or 1957, sir. 1957, WVDA.

Mr. Moss. W what?

Mr. SMITH. VDA, sir.

Mr. Moss. That is the one that became WEZE?

Mr. SMITH. Yes, sir.

Mr. Moss. Do you recall the sum total you received in 1957?

Mr. SMITH. Overall income, sir?

Mr. Moss. Outside sources of income, other than that paid by your employer at WEZE.

Mr. SMITH. Would you pardon me just a moment, sir. I can give you—in 1957, sir, I earned on record hops \$4,115; on amounts received from record companies and local distributors, \$3,700, sir.

Mr. Moss. \$3,700 from record companies and distributors?

Mr. SMITH. Local distributors, yes, sir.

Mr. Moss. In 1958 were you with WEZE and WMEX?

Mr. SMITH. Yes, sir.

Mr. Moss. What was your total outside income at that time?

Mr. SMITH. From record hops, \$1,250; and from record companies and distributors, \$1,160, sir.

Mr. Moss. You are now with WILD?

Mr. SMITH. Yes, sir.

Mr. Moss. What is your rate of compensation now?

Mr. SMITH. Right now, sir, it is \$117.50 a week.

Mr. Moss. This is a drop back. What were your earnings with WMEX?

Mr. SMITH. At WMEX, sir, I was on a union minimum because my show was being recorded from out of Boston. I was living in New York at the time, sir, and recording a show, which amounted to a total of the year, sir, of \$1,650.

Mr. Moss. For the entire year?

Mr. SMITH. Yes, sir. Because my—that was not my main source of income, sir.

Mr. Moss. What was your main source of income?

Mr. SMITH. As general professional manager of Dominion Music Publishing Corp., sir.

Mr. Moss. Dominion Music Publishers?

Mr. SMITH. Dominion Music Publishers.

Mr. Moss. Is that still operating?

Mr. SMITH. I have no connection with it, sir. It still operates, though.

Mr. Moss. What were your duties at Dominion?

Mr. SMITH. To find material from new songs brought to me, and to try to get them recorded with recording companies.

Mr. Moss. How long were you in that business?

Mr. SMITH. One year, sir; close to a year.

Mr. Moss. Was that the year of 1958?

Mr. SMITH. 1958; yes, sir.

Mr. Moss. Then you returned to Boston?

Mr. SMITH. WILD.

Mr. Moss. WILD.

Now, you had some royalty arrangements with Co-ed Records?

Mr. SMITH. Yes, sir.

Mr. Moss. Do I understand correctly that under these arrangements you were to be paid for all recordings sold in your territory?

Mr. SMITH. That was the arrangement, sir; yes.

Mr. Moss. That was the arrangement. At the rate of 2 cents each, unless specifically negotiated at a lower rate?

Mr. SMITH. Yes, sir.

Mr. Moss. And it was so negotiated at a lower rate in how many instances?

Mr. SMITH. I believe there was a break period around April of last year, when it went to 1 cent from 2 cents.

Mr. Moss. Was it 1 cent on all recordings or just on that one title?

Mr. SMITH. Yes, sir—no, all recordings, 1 cent.

Mr. Moss. How long did it remain 1 cent?

Mr. SMITH. The last payment I received from Co-ed Records, sir, was a royalty check of \$50 in July of 1959, sir.

Mr. Moss. July of 1959. Were these payments made directly from Co-ed or through a distributor?

Mr. SMITH. Co-ed Records, sir.

Mr. Moss. On the Dale Records you indicated a payment through a distributor.

Mr. SMITH. Yes, sir.

Mr. Moss. What was your territory?

Mr. SMITH. The territory encompassed by the distributor, I believe, sir: most of Massachusetts, part of Maine, and New Hampshire, I would imagine, sir.

Mr. Moss. Who was the distributor for Co-ed Records?

Mr. SMITH. Dumont Records.

Mr. Moss. Dumont Records. And so your territory and Dumont's territory were the same?

Mr. SMITH. Yes, sir.

Mr. Moss. What was your territory on Dale Records?

Mr. SMITH. The distributor was Music Suppliers of New England, sir. Whatever territory encompassed by them was encompassed by me, sir.

Mr. Moss. Now, would you relate the circumstances which brought about the agreement with Dale Records.

Mr. SMITH. Would I relate them, sir?

Mr. Moss. Yes.

Mr. SMITH. A gentleman named Frank Abramson, who had been in the music publishing business, and who I had know for several years—

Mr. Moss. I apologize. I want to move over to Co-ed first.

Mr. SMITH. You want to go to Co-ed first, sir?

Mr. Moss. Yes.

Mr. SMITH. I am sorry. I was living in New York at the time, and Marvin Cane, who is the vice president of Co-ed Records, contacted me and informed me that he was starting a record company and he would like to pay me a royalty of 2 cents a record on all records sold

in my territory. I told Mr. Cane that I had never accepted any money from him in the past and I didn't require any money from him in the future. That I play my records and base my program lists on other standards other than money, sir, or pressures.

He told me, however, that there were allowances made for royalties on records sold in the area, sir.

I told him that there was no need, and he sent me the records with the contract, sir. I never signed any agreement. He said as per our verbal agreement in the letter, sir.

Mr. Moss. Well, was there any negotiation?

Mr. SMITH. No, sir.

Mr. Moss. As to the amount you were to be paid?

Mr. SMITH. No, sir.

Mr. Moss. Or as to the territory which would be assigned you?

Mr. SMITH. No, sir.

Mr. Moss. You must have discussed territory.

Mr. SMITH. No, sir.

Mr. Moss. You had an understanding of what it was?

Mr. SMITH. Sir, the entire matter made very little difference to me. The fact that of the 12 or 13 records released by the Co-ed Co., I only played 2 of them.

Mr. Moss. I didn't ask that.

Mr. SMITH. There were no negotiations as to territory.

Mr. Moss. And I do not want any answers to anything I have not asked you.

Mr. SMITH. I am sorry, sir.

Mr. Moss. I asked you if you had had a discussion, that you must have had, in order to arrive at what the territory would be?

Mr. SMITH. There was never any discussion, sir.

Mr. Moss. How did you know what the territory was going to be?

Mr. SMITH. I did not know, sir.

Mr. Moss. How do you know now?

Mr. SMITH. I assume that it is in the area covered by the local distributor, sir.

Mr. Moss. How do they render payment to you? Do they send you any kind of a record of sales?

Mr. SMITH. Yes, sir, they did.

Mr. Moss. Then your check was for so much per record sold, is that it?

Mr. SMITH. Yes, sir.

Mr. Moss. Did they give you an accounting?

Mr. SMITH. Yes, sir.

Mr. Moss. Have you ever rendered any kind of a service at all for this royalty?

Mr. SMITH. No, sir.

Mr. Moss. Do you own any interest in the recording?

Mr. SMITH. Do I own any interest in the recording? No, sir. Other than that I received a royalty of 2 cents on each record sold in my area.

Mr. Moss. No understanding of any kind except that these people, over your protests, insisted upon giving to you a royalty on each and every record they sold?

Mr. SMITH. Sir, I received royalty payments on records I never played.

Mr. Moss. Again, I did not ask you that.

Mr. SMITH. The answer is, yes, sir.

Mr. Moss. I said sold. They expected nothing from you and you expected nothing from them excepting a check?

Mr. SMITH. I do not know what they expected of me, sir. I know I expected nothing of them, sir.

Mr. Moss. Now on Dale Records, will you tell me the story of Mr. Abramson?

Mr. SMITH. Sir, Mr. Abramson is another man whom I have known in the music business for several years. He has run the music publishing firm of Sammy Kaye Orchestra and Sammy Kaye himself. He informed me they would be starting a record company and basically what he said, was what was later said by Marvin Cane, that he would like to include me in, in the royalties of the record company.

Mr. Moss. Do you protest this?

Mr. SMITH. I told him I did not require or expect any money, sir. I did protest, in effect.

Mr. Moss. Did he tell you who was going to be the distributor?

Mr. SMITH. Beg pardon, sir?

Mr. Moss. Did he tell you who the distributor would be?

Mr. SMITH. Yes; he did, sir.

Mr. Moss. And he told you what your territory would be?

Mr. SMITH. No, he did not, sir.

Mr. Moss. How did you know what it would be?

Mr. SMITH. I assumed, sir, that it was in the area covered by the distributor.

Mr. Moss. What did the accounting show when you were paid?

Mr. SMITH. There was never any accounting on the Dale Records.

Mr. Moss. Never any accounting?

Mr. SMITH. No, sir.

Mr. Moss. How many checks have you received from royalties on Dale Records?

Mr. SMITH. Two checks, sir.

Mr. Moss. Two checks. How much?

Mr. SMITH. Totaling \$870 from Music Suppliers; sir, in 19——

Mr. Moss. Both paid through Music Suppliers?

Mr. SMITH. Yes, sir.

Mr. Moss. When did you make this agreement?

Mr. SMITH. That was in 1957, sir.

Mr. Moss. Is this \$420 one of the checks?

Mr. SMITH. Yes, sir.

Mr. Moss. It was a royalty payment?

Mr. SMITH. Yes, sir.

Mr. Moss. It says advertising.

Mr. SMITH. I didn't write advertising.

Mr. Moss. Did it show on the books of Music Suppliers?

Mr. SMITH. Respectfully, sir——

Mr. Moss. Do we have the check, a photostat of that check?

Mr. KEELAN. I do not think we have that check with us here. Mr. Keelan who examined the books of the corporation is here.

Mr. Moss. That was a voucher-type check?

Mr. KEELAN. Mr. Moss, it was just an ordinary check like all the rest of the checks, and it was charged to the advertising account.

Mr. MOSS. Was that noted on the face of it?

Mr. KEELAN. I did not look at it.

Mr. MOSS. Some of them were?

Mr. KEELAN. I did not see the face of the check.

Mr. MOSS. What was the next check?

Mr. SMITH. June 13, 1957, sir.

Mr. MOSS. June 13. What was the amount of it?

Mr. SMITH. \$450, sir.

Mr. MOSS. \$450. I notice that is also charged to advertising.

Mr. SMITH. Again, sir, I do not know what it was charged for. I understand it was payment of royalties for Dale Records.

Mr. MOSS. Was this a written agreement?

Mr. SMITH. No, sir.

Mr. MOSS. No written agreement?

Mr. SMITH. No, sir.

Mr. MOSS. You were just to get 4 cents per record?

Mr. SMITH. Either 4 or 5 cents, sir, I cannot recall now.

Mr. MOSS. You reluctantly accepted this money?

Mr. SMITH. I did not reluctantly accept it, sir. I reluctantly accepted the agreement.

Mr. MOSS. That is what I said, was it not?

Mr. SMITH. I respectfully, sir, I thought you said reluctantly accepted the check.

Mr. MOSS. What is the difference?

Mr. SMITH. Sir, the agreement.

Mr. MOSS. The agreement was the thing that made it possible to get the check?

Mr. SMITH. Yes.

Mr. MOSS. And you were reluctant to have the agreement but not the money. Is that correct?

Now, you never had any kind of an understanding at any time with any of these record companies or distributors as to why you were being paid?

Mr. SMITH. Absolutely not, sir.

Mr. MOSS. Did it not strike you as odd that people were so eager to give you money? Have you ever had an experience, other than in this particular field of activity, where everyone was running around trying to give you money?

Mr. SMITH. Sir, I have never been in any other field other than this industry.

Mr. MOSS. Have you heard of anyone else who has the same problem as you have of avoiding money?

Mr. SMITH. I beg your pardon, sir?

Mr. MOSS. Have you friends in any other field of activity?

Mr. SMITH. Yes, sir.

Mr. MOSS. Do they seem to have the same difficulty you have of having to work hard to avoid people who want to give them money?

Mr. SMITH. I don't know, sir.

Mr. MOSS. You seem to get it from everyone you come in contact with. What was the benefit derived by you from the three management agreements you had with artists?

Mr. SMITH. I never received any moneys at all, sir.

Mr. MOSS. What did you expect to get from them?

Mr. SMITH. I had hoped to be associated with artists, sir, that could conceivably become successful artists.

Mr. MOSS. You tried to promote them?

Mr. SMITH. I never had an opportunity to try to promote them, sir.

Mr. MOSS. I think you characterized it as nonactive management.

Mr. SMITH. Yes, sir.

Mr. MOSS. What is nonactive management?

Mr. SMITH. Well, sir, the arrangement was that if they—they came to me, asking me if I wanted to manage them. I said, "I can't do very much for you now. If you come up with some material, you have talent, we will try to record you or do something to further your career." But nothing ever came of it.

Mr. MOSS. Who was the other part of this comanagement team?

Mr. SMITH. On which particular artist, sir?

Mr. MOSS. Well, let us take each one of them. You tell us.

Mr. SMITH. Yes, sir. With Phil Dwinell, it was Bob Clayton and myself.

Mr. MOSS. Is Bob Clayton another diskjockey?

Mr. SMITH. Yes, sir.

Mr. MOSS. Who has a half-hour program or a Saturday evening program in Boston?

Mr. SMITH. He has a radio and television program, yes sir.

Mr. MOSS. I think we had some experience with him this morning in testimony with respect to guest stars on his program. Mr. Dumont presigned certain receipts, which in turn were given to some of the artists appearing on this program. Did any of your appear on his program, any of those that you were managing with him?

Mr. SMITH. I am not certain, sir. I cannot recall, sir.

Mr. MOSS. If they appeared on his program, in order to satisfy the requirements of the various unions, would it have been necessary to pay them a fee?

Mr. SMITH. I don't know anything about that, sir.

Mr. MOSS. You have no knowledge of that at all?

Mr. SMITH. No, sir.

Mr. MOSS. All right. Mr. Dwinell was managed by you and Mr. Clayton.

Mr. SMITH. Yes, sir.

Mr. MOSS. Was Mr. Clayton an active manager or an inactive manager?

Mr. SMITH. Inactive, sir.

Mr. MOSS. He did not have a chance with two inactive managers.

Mr. SMITH. No, sir, he married and moved to New York and lost interest in the music industry. [Laughter.]

Mr. MOSS. Well, let us take the next one.

Mr. SMITH. Yes, sir. The next one, the G-Clefs, sir. They were a vocal group, comanaged by Albert Valenti and myself.

Mr. MOSS. What was the business of Albert Valenti?

Mr. SMITH. Beg pardon?

Mr. MOSS. What was Albert Valenti's business?

Mr. SMITH. He was in show business as a manager. He was the active—

Mr. MOSS. He was a manager?

Mr. SMITH. Yes, sir.

Mr. Moss. This group had the benefit of active management?

Mr. SMITH. Yes, sir.

Mr. Moss. Did they get anywhere?

Mr. SMITH. I believe they did, sir, yes, they did.

Mr. Moss. What happened to your management?

Mr. SMITH. I never received any moneys from them, sir. They worked, but their work was balanced off by their expenses, sir.

Mr. Moss. Well, did you have a contract with them?

Mr. SMITH. Did I have a contract with them?

Mr. Moss. Yes.

Mr. SMITH. Yes, I did, sir.

Mr. Moss. Do you still have a contract with them?

Mr. SMITH. No, sir.

Mr. Moss. Did you cancel the contract?

Mr. SMITH. Yes, sir.

Mr. Moss. Formally?

Mr. SMITH. Yes, sir.

Mr. Moss. Did you send it back to them, or was there an agreement?

Mr. SMITH. It was just agreed and we all tore up our contract.

Mr. Moss. And you never received any money at all?

Mr. SMITH. Not one cent, sir.

Mr. Moss. Let us take the third one.

Mr. SMITH. The third one was a boy named Riley whom I managed myself.

Mr. Moss. Actively or inactively?

Mr. SMITH. Actively, but to no avail, sir. That was terminated by a formal agreement.

Mr. Moss. Did he record?

Mr. SMITH. Not while I had anything to do with him, sir.

Mr. Moss. You did not make any money on Riley?

Mr. SMITH. No, sir.

Mr. Moss. Was the objective of these management agreements to try to make money?

Mr. SMITH. Certainly, sir.

Mr. Moss. What interested you then, was to make money by whatever means were available?

Mr. SMITH. Legitimate show business means; yes, sir.

Mr. Moss. I do not know how to characterize these things, these payments. They were so spontaneous as to defy description.

Anyway, when all of these people decided to be grateful to you, you never at any time had any conferences with them, any agreements to do anything in any way of value for them?

Mr. SMITH. No, sir, I did not.

Mr. Moss. Did you ever advise them?

Mr. SMITH. No, sir, I did not.

Mr. Moss. Never told them that you thought certain records were good, had good prospects, or were of no value?

Mr. SMITH. No, sir.

Mr. Moss. Of course, you realize that the distributors who have testified indicated that they did get this valuable advice from you in some instances?

Mr. SMITH. I don't know that, sir.

Mr. Moss. But you never gave it?

Mr. SMITH. No, sir.

Mr. Moss. I am glad to have that on the record.

Did you listen to their recordings?

Mr. SMITH. Certainly, sir.

Mr. Moss. Did you listen to all the recordings received at your station?

Mr. SMITH. I cannot say that I listened to all of them, sir; most of them, I would say, sir.

Mr. Moss. Well, can you say that you did not listen to all of them?

Mr. SMITH. Yes, sir.

Mr. Moss. You did not listen to all of them. It would have been just as easy to say it the other way.

About what percentage did you listen to?

Mr. SMITH. 85 to 90 percent, sir.

Mr. Moss. 85 to 90 percent. How many did you receive each week?

Mr. SMITH. About 200 records per week, sir.

Mr. Moss. About 200 a week and you listened to about 170 or 180?

Mr. SMITH. Yes, sir.

Mr. Moss. Of those records you did not listen to, were there any labels represented by these people who were grateful to you?

Mr. SMITH. Some were, yes, sir.

Mr. Moss. Some were. In other words, they did not even get from you a listening service?

Mr. SMITH. I have no listening service, sir.

Mr. Moss. Again, that is refreshing. We have been told that they paid very handsomely for listening service. They were able to get that without having to pay them.

Very clearly you did not do anything. You did not play for them, you did not listen to them, and you did not advise them. You just took their money.

Mr. SMITH. No, sir.

Mr. Moss. Is that correct?

Mr. SMITH. Sir, I did nothing for them that I would not be doing otherwise.

Mr. Moss. I did not ask you that.

Mr. SMITH. Sir, I did not.

Mr. Moss. You did not do anything?

Mr. SMITH. No, sir.

Mr. Moss. Being so certain of that, I am inclined to agree with the very able gentleman from Texas, Mr. Rogers, that you should have reported all of this as gifts and not as income, earned income, at least. You received an advantage and it would be perfectly legitimate for you to so treat this income.

Those are all the questions I have, Mr. Chairman.

The CHAIRMAN. Mr. Smith, you may be excused, and thank you for your appearance here.

Mr. SMITH. Thank you, sir.

The CHAIRMAN. Mr. Irving Lewis.

Mr. Lewis, do you solemnly swear that the testimony you give to this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. LEWIS. I do.

TESTIMONY OF IRVING LEWIS

The CHAIRMAN. Will you state your name for the record?

Mr. LEWIS. My name is Mr. Irving Lewis.

The CHAIRMAN. Your address?

Mr. LEWIS. 1740 Grand Avenue in New York City.

The CHAIRMAN. Your profession or occupation?

Mr. LEWIS. I am the assistant executive secretary of the American Federation of Television & Radio Artists in New York City.

The CHAIRMAN. Will you give the subcommittee a brief background of your organization, what it is, and what purpose it serves?

Mr. LEWIS. Yes.

If I may, first, though I would like to make a statement.

I am appearing voluntarily, without subpoena, in order to assist this subcommittee in arriving at a determination as to the honesty and ethics of the people who are appearing here with respect to payola.

The CHAIRMAN. On behalf of the subcommittee let me thank you for your cooperation, Mr. Lewis.

Mr. LEWIS. Thank you, sir.

I am an attorney admitted to practice in the State of New York, and have been so, for over 20 years.

I have been associated with the American Federation of Television & Radio Artists for 7 years. For the past 5 years I have been the assistant executive secretary.

I don't know what other qualifications you would like to have from me, but I would be very happy to answer any questions you might wish to ask as to my qualifications before this subcommittee.

The CHAIRMAN. We were interested in something about your organization. What is your organization?

Mr. LEWIS. Our organization is affiliated with the American Federation of Labor and CIO—Congress of Industrial Organizations.

We represent performers who appear in radio, television, phonograph recordings, electrical transcriptions for commercial purposes, and taped commercials.

We negotiate wages and working conditions in the area in which we have representation.

The CHAIRMAN. Mr. Lishman, you may proceed.

Mr. LISHMAN. Mr. Lewis, in your capacity as executive secretary of AFTRA, have you received numerous complaints in the year 1959 from artists who have appeared on various television shows and other shows throughout the country?

Mr. LEWIS. Mr. Lishman, before I answer the question, may I make a correction, please?

Mr. LISHMAN. Yes.

Mr. LEWIS. I am the assistant executive secretary of the New York local. I am not the executive secretary.

Now, I will answer your question.

Mr. LISHMAN. Yes, sir.

Mr. LEWIS. Yes, I have received numerous complaints from artists who have appeared on television shows in various areas throughout the United States who have not received payment for their television show appearance.

Mr. LISHMAN. Is there a union scale for artists who appear on performances?

Mr. LEWIS. That is quite a broad statement.

Mr. LISHMAN. I am asking the question.

Mr. LEWIS. The areas that we represent the performers, yes.

Mr. LISHMAN. Does that scale vary in different areas?

Mr. LEWIS. Yes.

Mr. LISHMAN. Do you know what the scale is in the Boston area?

Mr. LEWIS. Yes, I do.

Mr. LISHMAN. What is it?

Mr. LEWIS. The rate for a 1-hour television program for a soloist is \$40. The rate for a 1½-hour program is \$50.

Mr. LISHMAN. How does that compare with the rate, let us say, in the New York area?

Mr. LEWIS. The rate on a 1-hour show in New York is \$129 for a soloist.

Mr. LISHMAN. During the year 1959 did you receive numerous complaints from the artists who had appeared on the Bob Clayton Show in Boston?

Mr. LEWIS. Yes, I have.

Mr. LISHMAN. About how many such complaints did you receive?

Mr. LEWIS. I would say that I received in the neighborhood of 15 to 20 complaints during the year of 1959.

Mr. LISHMAN. What was the nature of those complaints?

Mr. LEWIS. The nature of the complaint was that they appeared on the show and they had not been paid for said appearance.

Mr. LISHMAN. Did they give their names?

Mr. LEWIS. No, sir. They refused to give their names.

Mr. LISHMAN. Why?

Mr. LEWIS. Well, I would like the subcommittee to understand that this is a very delicate industry, delicate to this extent: the artist is very much concerned when he makes a complaint that he remain anonymous in order that no problems beset him later.

Very often there are sanctions employed against an artist who does make a complaint to the union, and he finds he is unable to get or to be gainfully employed.

We try to search out these complaints. We try to obtain the names of the performers. We attempt to guarantee them anonymity. But the artist is very difficult to obtain and, therefore, he will not supply us with his name.

Does that answer your question?

Mr. LISHMAN. Does the fearfulness of the artist, in your opinion, grow out of the fact that he is afraid of reprisals?

Mr. LEWIS. There is no question about it.

Mr. LISHMAN. In other words, he is fearful that if he should give his name to a legitimate complaint, that he has been deprived of compensation, that the odds are against his ever appearing on another program?

Mr. LEWIS. That is his fear usually.

Mr. LISHMAN. From your knowledge of the industry would that be a justifiable fear?

Mr. LEWIS. In a great many instances, yes.

Mr. LISHMAN. Mr. Lewis, I am going to show you a Thermo-Fax copy of a letter dated August 13, 1959, written by you to Mr. Bob Segal of Boston and ask you if this is a correct copy of the letter you sent to Mr. Segal?

[Handing document to witness.]

Mr. LEWIS. Yes; it is.

Mr. LISHMAN. Would you read that letter into the record, please?

Mr. LEWIS. Yes. Do you want the heading? Do you want the complete letter?

Mr. LISHMAN. Yes, sir.

Who was Mr. Segal?

Mr. LEWIS. Bob Segal is an attorney in Boston. He is also the executive secretary of the Boston local of AFTRA.

Mr. LISHMAN. Yes, sir.

Mr. LEWIS. His territory, his jurisdiction, is actually New England, all of New England.

Mr. LISHMAN. Would you please read the letter into the record?

Mr. LEWIS. This is addressed to Mr. Bob Segal, Esquire, executive secretary, Boston Local, AFTRA, 11 Beacon Street, Boston, Mass.:

Dear Bob—

Mr. LISHMAN. What is the date of that letter?

Mr. LEWIS. August 13, 1959.

Mr. LISHMAN. Yes, sir.

Mr. LEWIS (reading):

DEAR BOB: It has come to the attention of AFTRA in New York that performers are appearing on the "Bob Clayton Show" at WIOH-TV and are not receiving payment for their performances.

As you know, all performers who appear on so-called diskjockey shows on TV and who mime their records, are required to be paid AFTRA fees for their performances.

We have had an increasing number of complaints with respect to the "Bob Clayton Show" in your area. Therefore, we are asking that you obtain a list of all the performers who have appeared during the months of July and August of 1959 with the amounts that were paid for their appearances. Will you please indicate in your letter to me whether or not these fees are at least your local fees.

In the event we require additional information, I am quite certain that you are in a position to supply it.

Cordially and fraternally,

AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS,
IRVING LEWIS, *Assistant Executive Secretary.*

Mr. LISHMAN. What is the word "mime"?

Mr. LEWIS. "Mime"?

Mr. LISHMAN. What is that?

Mr. LEWIS. The word "mime" means a synchronization of the music with the movement of the lips; when an artist—I have to give it to you just a little bit differently.

Mr. LISHMAN. Is that what is known as a lip synch, or a lip synchronization?

Mr. LEWIS. That is exactly right; "lip synch" and "mime" are synonymous terms.

Mr. LISHMAN. Is there a controversy as to whether an artist, who merely engages in lip synch, is entitled to the union scale?

Mr. LEWIS. There is no question in my mind that the artist is entitled to it. I don't think there is any question in the minds of any executive secretary in AFTRA that they are.

Mr. LISHMAN. Did you receive an answer to this letter to Mr. Segal of August 13?

Mr. LEWIS. No; I did not, although I did speak to Mr. Segal on the phone and ask him what had happened with respect to the "Bob Clayton Show," and he told me at that time he was having some difficulty in getting an agreement with Bob Clayton to the effect that this information would be supplied.

Mr. LISHMAN. What kind of difficulty was he having?

Mr. LEWIS. Well, the big difficulty was he had been unable to meet with Bob Clayton; that was the first difficulty.

Mr. LISHMAN. Wasn't Mr. Bob Clayton, in effect, a shop steward, for AFTRA in Boston?

Mr. LEWIS. Of my own knowledge, I do not know that—I do know that he was working at WHDH.

Mr. LISHMAN. What did Mr. Segal indicate to you that he would do in following up your inquiry?

Mr. LEWIS. He told me that he had several meetings scheduled with Mr. Clayton, but for one reason or another he was unable to fulfill these commitments.

Some of the reasons were, first, that Mr. Segal was on vacation; second, his wife was extremely ill; and third, that Bob Clayton himself was on vacation.

Mr. LISHMAN. Did you write a followup letter to Mr. Segal under date of September 8, 1959?

Mr. LEWIS. I am certain that that is the date.

Mr. LISHMAN. I will hand you a Thermo-Fax copy of what appears to be a letter addressed by you under the date of September 8, 1959, to Bob Segal, and ask you if this is a true and correct copy of that letter? (Handing document to the witness.)

Mr. LEWIS. Yes, it is.

Mr. LISHMAN. Would you please read that letter into the record?

Mr. LEWIS. I will.

SEPTEMBER 8, 1959.

BOB SEGAL, Esq.,
Executive Secretary, Boston Local, AFTRA,
Boston, Mass.

DEAR BOB: I have had no answer to my letter which I sent to you on August 13, 1959, regarding the "Bob Clayton Show."

I am sure that you are still working on this; however, I do have another problem on this show, and that is that the artists are now being asked to sign releases in the amount of \$40 which is supposedly received from WHDH-TV in payment for their appearance on the "Bob Clayton Show." The artist is told that the release must be signed before he can appear on this show.

I am enclosing a copy of a letter that was sent to a Mr. Howard Kaye of Coral Records from Frank Holland of Mutual Distributors, Inc., and a copy of the release form which the artist is required to sign.

I would suggest very strongly that you insist that the checks for the performers come to your office for distribution. We have that arrangement in New York with the Dick Clark show, the Alan Freed show, and all other shows that we suspect are not paying the performers properly, under our precedent in AFTRA to make this demand.

Sincerely,

AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS,
IRVING LEWIS, Assistant Executive Secretary.

Mr. LISHMAN. Did you get any response to this letter from Mr. Segal?

Mr. LEWIS. Yes, I did get a response from the letter. Do you want me to go any further?

Mr. LISHMAN. Yes, sir. What was the nature of the response?

Mr. LEWIS. The nature of the response was that Mr. Segal had had a meeting with Mr. Clayton and had come to some agreement. The agreement was attached to the letter which was sent to me.

Mr. LISHMAN. I hand you a Thermo-Fax copy of a paper and ask you to identify it.

(Handing document to the witness.)

Mr. LEWIS. This was a receipt that the artist was required to sign after, or prior to the time he appeared on the Bob Clayton show.

Do you want me to read it?

Mr. LISHMAN. I will give you the letter that accompanied that. Can you identify the second piece of paper handed you?

Mr. LEWIS. Yes.

Mr. LISHMAN. What is that?

Mr. LEWIS. This was a letter that was given to me by a manager of a performer who had appeared on the Bob Clayton show. It was given to me with a release form which the artist was required to sign.

Mr. LISHMAN. Will you please read that letter?

Mr. LEWIS. I will.

AUGUST 26, 1959.

Mr. HOWARD KAYE,
Coral Records,
New York, N.Y.

DEAR HOWIE: Bob Clayton is requesting the various artists who have appeared on his TV show lately to sign the attached form in order to satisfy the local musician's union.

Please have Romance Watson sign the form and mail to Bob Clayton, WHDH-TV, 6 St. James Avenue, Boston, Mass.

Thank you for your cooperation.

Best regards,

MUTUAL DISTRIBUTORS, INC.,
FRANK HOLLAND.

Mr. LISHMAN. Will you read the form of receipt which was enclosed which the artist was supposed to sign?

Mr. LEWIS. I hereby acknowledge receipt of \$40 from WHDH-TV in payment for my appearance on Bob Clayton's Boston Ballroom Saturday night August 8.

Countersigned by:

_____,
Artist.

Mr. LISHMAN. Where did you obtain these letters?

Mr. LEWIS. These letters were given to me by the manager of the artist, Romance Watson.

Mr. LISHMAN. What is that manager's name?

Mr. LEWIS. The manager's name is Yolande Gregory.

Mr. LISHMAN. Were you informed as to any money accompanying this receipt sent to the artist for his signature?

Mr. LEWIS. I was told unequivocally that no money accompanied this receipt.

Mr. LISHMAN. Did the artist sign the receipt?

Mr. LEWIS. The artist refused to sign the receipt.

Mr. LISHMAN. Do you know whether or not the artist was subsequently paid through Mutual Distributors as a result of the efforts of AFTRA?

Mr. LEWIS. I can't answer with respect to Mutual Distributors. I can answer with respect to the payment.

Mr. LISHMAN. Yes.

Mr. LEWIS. The artist was definitely paid through the efforts of AFTRA.

Mr. LISHMAN. I am going to hand you a Thermo-Fax copy of another letter, dated October 29, 1959, addressed to Mr. Segal from you and ask you if this is a true and correct copy?

(Handing document to the witness.)

Mr. LEWIS. Yes.

Mr. LISHMAN. Will you please read that letter into the record?

Mr. LEWIS. I will.

OCTOBER 29, 1959.

Mr. ROBERT M. SEGAL,
*Executive Secretary, AFTRA, Boston Local,
11 Beacon Street, Boston, Mass.*

DEAR BOB: We are continuing to receive complaints from performers who appeared on the Bob Clayton show in Boston. The complaints are varied; however, they all lead to the same conclusion, in that they all state that they do not actually receive a fee for their performance on the Clayton show. They are required to sign releases which indicate they have been paid, but actually no money is paid to them.

We urge very strongly that you insist upon all checks, for performers who appear on the Clayton show, to go through your office, and that you distribute the checks to the various locals of AFTRA in which the performer is a member.

In addition, solely for your information, Internal Revenue has contacted the AFTRA office, in order to obtain whatever information or knowledge we might have with respect to television diskjockeys, in order to determine whether or not these performers are properly paying income taxes or otherwise abiding by the various statutes.

Will you please let me know promptly what steps you have taken to bring this situation under control.

Cordially,

AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS,
IRVING LEWIS, *Assistant Executive Secretary.*

Mr. LISHMAN. Mr. Chairman, I would like to have placed in the record these letters addressed by Mr. Lewis of AFTRA to Mr. Bob Segal, the first letter dated September 8, 1959, which he has identified and read. The text doesn't need to be incorporated.

The CHAIRMAN. Aren't these the letters that have just been read into the record?

Mr. LISHMAN. Yes, but I would like to have these preserved in the record with the letterhead showing that they are from the American Federation of Television and Radio Artists.

The CHAIRMAN. Let the letters be inserted in the record, including the other information, as requested by Mr. Lishman.

Mr. LISHMAN. I would like to have the same thing apply to each of the other things.

The CHAIRMAN. Let it be received in the record.

(The documents referred to follow :)

AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS,
New York, N.Y., August 13, 1959.

Mr. BOB SEGAL,
Executive Secretary, Boston Local, AFTRA,
Boston, Mass.

DEAR BOB: It has come to the attention of AFTRA in New York that performers are appearing on the "Bob Clayton Show" at WIIIDH-TV and are not receiving payment for their performances.

As you know, all performers who appear on so-called diskjockey shows on TV and who mime their records, are required to be paid AFTRA fees for their performances.

We have had an increasing number of complaints with respect to the "Bob Clayton Show" in your area. Therefore, we are asking that you obtain a list of all the performers who have appeared during the months of July and August of 1959 with the amounts that were paid for their appearances. Will you please indicate on your letter to me whether or not these fees are at least your local fees.

In the event we require additional information, I am quite certain that you are in a position to supply it.

Cordially and fraternally,

IRVING LEWIS,
Assistant Executive Secretary.

AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS,
New York, N.Y., September 8, 1959.

BOB SEGAL, Esq.,
Executive Secretary, Boston Local, AFTRA,
Boston, Mass.

DEAR BOB: I have had no answer to my letter which I sent to you on August 13, 1959, regarding the "Bob Clayton Show."

I am sure that you are still working on this; however, I do have another problem on this show, and that is that the artists are now being asked to sign releases in the amount of \$40 which is supposedly received from WIIIDH-TV in payment for their appearance on the "Bob Clayton Show." The artist is told that the release must be signed before he can appear on this show.

I am enclosing a copy of a letter that was sent to a Mr. Howard Kaye of Coral Records from Frank Holland of Mutual Distributors, Inc. and a copy of the release form which the artist is required to sign.

I would suggest very strongly that you insist that the checks for the performers come to your office for distribution. We have that arrangement in New York with the "Dick Clark Show," the "Alan Freed Show," and all other shows that we suspect are not paying the performers properly, under our precedent in AFTRA to make this demand.

Sincerely,

IRVING LEWIS,
Assistant Executive Secretary.

AUGUST 26, 1959.

Mr. HOWARD KAYE,
Coral Records,
New York, N.Y.

DEAR HOWIE: Bob Clayton is requesting the various artists who have appeared on his TV show lately to sign the attached form in order to satisfy the local musician's union.

Please have Romance Watson sign the form and mail to Bob Clayton WIIIDH-TV, 6 St. James Avenue, Boston, Mass.

Thank you for your cooperation,

Best regards,

MUTUAL DISTRIBUTORS, INC.,
FRANK HOLLAND.

AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS,
New York, N.Y., October 29, 1959.

Mr. ROBERT M. SEGAL,
Executive Secretary,
AFTRA, Boston Local,
Boston, Mass.

DEAR BOB: We are continuing to receive complaints from performers who appear on the "Bob Clayton Show" in Boston. The complaints are varied; however, they all lead to the same conclusion, in that they all state that they do not actually receive a fee for their performance on the "Clayton Show." They are required to sign releases which indicate they have been paid, but actually no money is paid to them.

We urge very strongly that you insist upon all checks, for performers who appear on the "Clayton Show," to go through your office, and that you distribute the checks to the various locals of AFTRA in which the performer is a member.

In addition, solely for your information, Internal Revenue has contacted the AFTRA office, in order to obtain whatever information or knowledge we might have with respect to television diskjockeys, in order to determine whether or not these performers are properly paying income taxes or otherwise abiding by the various statutes.

Will you please let me know promptly what steps you have taken to bring this situation under control.

Cordially,

IRVING LEWIS,
Assistant Executive Secretary.

Mr. LISHMAN. Did you receive complaints from artists appearing on television shows, who, although they had signed the required form of receipt, had not, in fact, received the money mentioned in the receipt?

Mr. LEWIS. Yes, I have.

Mr. LISHMAN. How many of such complaints did you receive?

Mr. LEWIS. I would say that there were approximately a half dozen. I don't think that there were more than that.

Mr. LISHMAN. Did you hear the testimony of Donald Dumont today?

Mr. LEWIS. I heard a portion of it, sir.

Mr. LISHMAN. Did you hear Mr. Dumont's testimony concerning the \$40 paid by Dumont to Buddy Shepherd, Peter Vardas, Steve Clayton, and Kini Kai?

Mr. LEWIS. Yes, I did.

Mr. LISHMAN. Are you familiar with those artists?

Mr. LEWIS. No, I am not, sir.

Mr. LISHMAN. Are they among the artists who have complained to you that they did not receive the \$40 mentioned in the receipt?

Mr. LEWIS. Again I should like to point out to you, sir, that when the artist calls, he will not, he or she, will not give her name. The only artist who ever complained, in which I did receive his name, was Romance Watson.

Mr. LISHMAN. And he was subsequently paid?

Mr. LEWIS. Oh, yes.

Mr. LISHMAN. Did you receive any complaints from artists who had appeared on the Bob Clayton show?

Mr. LEWIS. Oh, yes.

Mr. LISHMAN. Did you receive them from artists appearing on other shows?

Mr. LEWIS. Oh, yes.

Mr. LISHMAN. What other show?

Mr. LEWIS. We received them continually from artists who had appeared on the Alan Freed show in New York, on the Grant show in Washington, on the Buddy Dean show.

Mr. LISHMAN. Is that the Milt Grant show in Washington?

Mr. LEWIS. That is right. On the Buddy Dean show in Baltimore and the, I think it is called the Jim Gallant show in New Haven.

Mr. LISHMAN. How about the Dick Clark show in Philadelphia?

Mr. LEWIS. Actually I did not receive complaints from artists who had not been paid on the Dick Clark show in Philadelphia, and there is a good, very good reason for it.

Mr. LISHMAN. Why is that?

Mr. LEWIS. If I might state the reason, I think it might reflect some credit on our organization.

Mr. LISHMAN. Yes, sir.

Mr. LEWIS. Prior to the time that the Dick Clark show went on in Philadelphia, there were meetings held with our executive secretary in Philadelphia, who was in very close communication with me in New York.

He told me what the nature of the program was, the format, and how the individuals were to be paid on the show.

I insisted at that time that in the event we were to agree on the format which Clark contemplated, that all check to performers were required to be paid through the AFTRA office in Philadelphia, and thereafter distributed to the various locals throughout the country, who would then distribute it to the members or the people who are performers appearing in their area.

Mr. LISHMAN. Do you know whether AFTRA ever threatened to place WHDH on their unfair list because of the practices you have described?

Mr. LEWIS. I have no idea whether or not they have, Mr. Lishman. I am associated solely with the New York local in New York. This would become—

Mr. LISHMAN. Did you get a report from Mr. Segal to that effect?

Mr. LEWIS. I have no true recollection of that.

Mr. LISHMAN. I have no further questions, Mr. Chairman.

The CHAIRMAN. Mr. Mack?

Mr. MACK. I have no questions.

The CHAIRMAN. Mr. Springer?

Mr. SPRINGER. No questions.

The CHAIRMAN. Mr. Moss?

Mr. MOSS. No questions.

The CHAIRMAN. Mr. Lewis, thank you very much for your cooperation and testimony here today.

Mr. LEWIS. My pleasure, sir.

In the event you require my services or the services of anyone in our organization, I hope you feel free to call on us.

The CHAIRMAN. Thank you very much; you are very kind.

You may be excused.

The CHAIRMAN. Mr. Bob Clayton. Mr. Clayton, do you mind these cameras?

Mr. CLAYTON. No, I don't

The CHAIRMAN. Will you be sworn, please, sir.

Do you solemnly swear the testimony you give to this subcommittee to be the truth, the whole truth, nothing but the truth, so help you God?

Mr. CLAYTON. I do.

The CHAIRMAN. Have a seat, sir.

Mr. CLAYTON. Thank you.

TESTIMONY OF ROBERT CLAYTON

The CHAIRMAN. Will you state your name for the record?

Mr. CLAYTON. Robert Clayton.

The CHAIRMAN. Your residence?

Mr. CLAYTON. 59 Gulliver Street, Milton, Mass.

The CHAIRMAN. What is your profession or occupation?

Mr. CLAYTON. I conduct a radio and television show.

The CHAIRMAN. You may proceed, Mr. Lishman.

Mr. LISHMAN. Mr. Clayton, are you a diskjockey on WHDH-TV?

Mr. CLAYTON. Yes, I conduct a 3½-hour radio show for them daily except Sunday.

Mr. LISHMAN. You also conduct a radio program?

Mr. CLAYTON. I am sorry, I did not hear you, sir.

Mr. LISHMAN. Are you also a DJ on WHDH, Inc.?

Mr. CLAYTON. Radio? Well, I said I conducted a 3½-hour radio show for them every day but Sunday.

Mr. LISHMAN. And you also broadcast on WHDH-TV?

Mr. CLAYTON. Once a week, Saturday afternoon from 1 to 2:30 p.m.

Mr. LISHMAN. What is the name of the show?

Mr. CLAYTON. They are both shows the same, Boston Ballroom.

Mr. LISHMAN. Have you in the past sponsored or managed any artists?

Mr. CLAYTON. Yes, I have.

Mr. LISHMAN. Recording artists?

Mr. CLAYTON. Yes, sir; I have.

Mr. LISHMAN. Have you, in the past, had an interest in a recording company?

Mr. CLAYTON. Yes, sir; I have.

Mr. LISHMAN. What was that company-

Mr. CLAYTON. First it was Pilgrim Records.

Mr. LISHMAN. Was Mr. Cecil Steen of Records, Inc., your partner in that company?

Mr. CLAYTON. He was one; yes, sir.

Mr. LISHMAN. And that company has been liquidated?

Mr. CLAYTON. Yes, it is.

Mr. LISHMAN. Have you ever taken any sums of money from any record distributor in the Boston area?

Mr. CLAYTON. I have accepted Christmas gifts, always at Christmas time.

Mr. LISHMAN. Mr. Clayton, you have just been handed a schedule entitled "Boston Record Distributing Companies' Schedule of Payments Made To Bob Clayton for the 3-Year Period 1957-59."

Mr. CLAYTON. Yes, sir.

Mr. LISHMAN. Does this schedule correctly reflect money received by you from Music Suppliers, Inc., during that period?

Mr. CLAYTON. Yes. I received a gift of \$200 in 1958, in the 3-year period, yes, \$200.

Mr. LISHMAN. Does it show, according to this schedule, that it was charged to advertising on the books of Music Suppliers?

Mr. CLAYTON. Yes, sir; but it wasn't on the check that I got. It came in a Christmas envelope and a man delivered it and said, "Merry Christmas."

Mr. LISHMAN. Who delivered it?

Mr. CLAYTON. Harry Weiss. He had a few envelopes and he brought it up, but it wasn't charged to advertising when I got it.

Mr. LISHMAN. Is there another item of \$86 which Music Suppliers paid to you?

Mr. CLAYTON. That is a repayment of money that I had actually advanced for them. I don't know why it appears as promotion, and I don't know what their bookkeeping tactics are, but—

Mr. LISHMAN. It is a fact that this schedule purports to show that they called this payment promotion on their books.

Mr. CLAYTON. Well, I can't speak for their books, Mr. Lishman. It was a return of money that I had put out for a group of artists who came to town on a Friday night. They didn't have money.

None of the Music Suppliers men were with them, and they asked me for the loan of some money. I obtained two rooms for them at the Statler-Hilton, which, I think, came to \$36, gave them \$50 in cash, and I later apprised Music Suppliers of that, and they returned it to me, and I think the artists recorded for one of the labels owned by Jack Gold, who probably reimbursed them, but that was money that I laid out to tide these fellows over the weekend, and it was a reimbursement. It was not a promotion.

Mr. LISHMAN. You say these were artists of Jack Gold?

Mr. CLAYTON. Yes, sir; they were.

Mr. LISHMAN. Was Jack Gold connected with Music Suppliers, Inc.?

Mr. CLAYTON. They distributed his label at that time, Mr. Lishman.

Mr. LISHMAN. Is it correct that you received \$100 from Dumont Record Distributing Corp.?

Mr. CLAYTON. Yes; since they have been in existence in 1958. He said he brought up a Christmas gift; yes.

Mr. LISHMAN. That was charged on their books to an account unknown, according to this schedule?

Mr. CLAYTON. I don't know—well, I see the word "unknown."

Mr. LISHMAN. According to this schedule.

Mr. CLAYTON. Yes.

Mr. LISHMAN. Did you also receive another \$100 from Mutual Distributors?

Mr. CLAYTON. Well, \$100 from Mutual in the 3-year period; yes, once.

Mr. LISHMAN. And was that listed as advertising, according to their books?

Mr. CLAYTON. It is on their books.

Mr. LISHMAN. Yes, sir.

So, for the period 1957-59 you received \$486 from the record distributors mentioned, of which \$86, you state, was reimbursement for expense money that you incurred in connection with artists?

Mr. CLAYTON. That is true.

Mr. LISHMAN. Did you receive any other sums of money in check or by cash from these or any other record distributors in the Boston area?

Mr. CLAYTON. No, sir.

Mr. LISHMAN. Did you ever receive any money in the form of checks or cash from any other record companies whether or not in the Boston area?

Mr. CLAYTON. Yes, sir. I think in 1959, I think there were two instances where I advanced money to artists and was reimbursed by the record company.

Mr. LISHMAN. How much did that amount to?

Mr. CLAYTON. In one case I advanced \$160 on my check, January some time in 1959, to a recording group known as the Hi-Lo's for Mr. Mitch Miller, and he repaid me \$150 out of the \$160. I lost \$10, but I wasn't going to bother about it.

Mr. LISHMAN. What was the other one?

Mr. CLAYTON. The other instance I advanced \$200, it was sometime in the summer of 1959, to the group known as the Platters.

I advanced them \$200 on behalf of Mercury Records, and I received a check back from Mercury Records in 1959, which was on the stub, the stub of which was marked "reimbursement."

Mr. LISHMAN. Did you receive—

Mr. CLAYTON. I have them both checks.

Mr. LISHMAN. Yes, sir.

Did you ever receive money in the form of cash or check from any other record manufacturers or record distributors other than the ones that have already been named?

Mr. CLAYTON. No; that is the total dealings, my financial dealings, with the record companies.

Mr. LISHMAN. Did you ever receive gifts other than in the form of money from any record distributor?

Mr. CLAYTON. Yes; I think in 1958, I think that Mutual—a record player and then, of course, artists, they send in gifts at Christmas time, but I don't think they are in amounts that go beyond \$50 or \$25 or, I mean they are wallets, and except for Perry Como's gifts, which are not expensive, but usually conversation pieces—

Mr. LISHMAN. Did you ever receive any gifts other than money from record manufacturers?

Mr. CLAYTON. Gifts—no.

Mr. LISHMAN. Did you ever receive any appliances for your house from any record company?

Mr. CLAYTON. No—well, yes, in—I received a color television set from Mr. Lee Hartstone.

Mr. LISHMAN. Who is he?

Mr. CLAYTON. He is associated with London Records, and this was, I can tell you the circumstances if you wish—

Mr. LISHMAN. Yes, sir.

Mr. CLAYTON. He was—I had known Lee Hartstone since 1943. He was in Boston, and he was in Boston one evening and we had dinner, and we were talking about things, and the subject of television came

up, and I was talking about the fact that I was going to buy a color television set, and Mr. Hartstone said—I told him where I was going to get it, and I thought I could get some kind of a discount.

Mr. LISHMAN. Is Mr. Hartstone a member of the family that owns Mutual Distributors?

Mr. CLAYTON. Yes, but he is president of London Records right now, and his brother George is connected with Mutual, living on the coast.

They have another brother who runs a music store, and at that time, that is how it came up, and Lee said, "Listen, I can get it better than anyone else. Let me get it for you." And he did, and that was it.

Mr. LISHMAN. Did you ever receive any money in the form of cash or check from any artists?

Mr. CLAYTON. Never.

Mr. LISHMAN. Or from any manager of an artist?

Mr. CLAYTON. Never.

Mr. LISHMAN. Are you responsible for the programming of records played on the air at your station?

Mr. CLAYTON. I am responsible for the programming of my program; and I—

Mr. LISHMAN. Where do you get the records the station uses for this purpose?

Mr. CLAYTON. Every new record, single release, is usually sent to the station, and a copy marked "promotional," and in those promotional copies they come in a white label which is separate from the company's label, which indicates no royalties are paid, and so all new records are sent free. All stations are serviced with new records, and that is where they come from, either brought up by the distributor or by—they are sent in by the manufacturer or they may come in from the publisher, but you may get three or four copies of a new record.

Mr. LISHMAN. Do you have recording artists appearing on any of your shows?

Mr. CLAYTON. Yes, I do.

Mr. LISHMAN. Quite often?

Mr. CLAYTON. Well, now—my radio; yes, I do. On my television show every week, sir.

Mr. LISHMAN. Sometimes you have more than one artist appear on the same program?

Mr. CLAYTON. Most of the time more than one.

Mr. LISHMAN. Most of the time only one?

Mr. CLAYTON. More than one.

Mr. LISHMAN. More than one.

Does WHDH-TV or WHDH AM and FM have a budget for such talent?

Mr. CLAYTON. No, sir.

Mr. LISHMAN. Why not?

Mr. CLAYTON. Well, I am not in the management. I mean—

Mr. LISHMAN. Does WHDH-TV expect to have talent appear on these programs for nothing?

Mr. CLAYTON. Sir, I—you will have to ask me, I hope you will ask me, questions that concern me personally, so I will not speak for the management of WHDH. I am an employee.

Mr. LISHMAN. This is your show.

Mr. CLAYTON. This is my show.

Mr. LISHMAN. Who engages the talent appearing in your shows?

Mr. CLAYTON. We don't engage them, sir.

Mr. LISHMAN. Who does?

Mr. CLAYTON. We are continually flooded by requests of recording artists, their managers, their record companies, to expose them on a record show which has been transferred to television, and there is—

Mr. LISHMAN. Well, are you aware of the fact that these artists who appeared on your show have made complaints that they haven't been paid?

Mr. CLAYTON. I am aware of only one.

Mr. LISHMAN. Who?

Mr. CLAYTON. That was Mr. Romance Watson's case, called to my attention by Mr. Segal.

Mr. LISHMAN. Do you remember having any conversations with Romance Watson?

Mr. CLAYTON. Yes, when he came up to the show was the one and only time in my life I ever saw him.

Mr. LISHMAN. What did he say to you?

Mr. CLAYTON. He told me he was glad I liked his record, and he was glad I was playing it, and he was glad to be on the program. He was a very good performer, and we had some conversation, and that was the end of it.

Mr. LISHMAN. Did he ask to be paid \$40?

Mr. CLAYTON. No, sir; he did not. I never made arrangements to pay any of the artists.

Mr. LISHMAN. Do you know of any arrangements that were made with Coral Records to pay Romance Watson this \$40 for appearing on your show?

Mr. CLAYTON. Yes, sir. Mr. Segal said that Romance Watson hadn't been paid. I gave Coral Records the information that he had not been paid, and Coral Records sent on a check.

Mr. LISHMAN. Were you at any time connected with AFTRA in an official position?

Mr. CLAYTON. In an official position?

Mr. LISHMAN. Yes.

Mr. CLAYTON. Last month the members of my—the employees of WIIIDH elected me shop steward, last month.

Mr. LISHMAN. Did you participate in the discussions with Frank Holland of Mutual Distributors or Henry Jerome of Coral Records regarding the nonpayment of the artist Watson who had appeared on your program?

Mr. CLAYTON. I called it to their attention, and they said he would be paid.

Mr. LISHMAN. Did you direct that a form be sent to him for his signature indicating that he had, in fact, been paid for appearing on your show?

Mr. CLAYTON. I didn't direct the form to be sent. I told every one of the record distributors that the union was asking for evidence that they had been paying the artists. The union was never under the impression, so far as I knew in Boston, that WIIIDH was paying any of these artists.

I never gave the union that impression. It was, from the outset, Mr. Lishman, my understanding that the record companies would pay him. I never asked an artist to sign a receipt for me or to WHDH-TV.

Mr. LISHMAN. Well, Mr. Clayton, were you here during the testimony of Mr. Irving Lewis?

Mr. CLAYTON. I certainly was.

Mr. LISHMAN. Did you hear him read the letter to Mr. Howard Kaye of Coral Records or to Mr. Holland of Mutual Distributors, Inc., which indicates:

Bob Clayton is requesting the various artists who have appeared on his TV show lately to sign the attached form in order to satisfy the local musician's union.

Is that correct or incorrect?

Mr. CLAYTON. I wasn't requesting. I was asking him to get the evidence that the artists had been paid by the record companies, that is all.

Mr. Segal called and said could I get evidence for him that the artist had been paid.

Now, we had not been paying them, Mr. Lishman, and it was my understanding that the record companies were paying them so, therefore, I called the record companies and told them just exactly that. It was right from the outset my understanding that the record companies were paying the artist, and I conveyed this to Mr. Segal of AFTRA, and whenever anyone complained that they hadn't been paid I passed that information on to the record companies.

So when they told me that somebody hadn't been paid or Mr. Watson hadn't been paid, I so informed Mr. Holland. He called Mr. Segal and said he would send in a check, and he did.

Mr. LISHMAN. Did AFTRA ever threaten to put an unfair tag on your station?

Mr. CLAYTON. They did, sir.

Mr. LISHMAN. They did?

Mr. CLAYTON. Yes; because there is nothing in our contract that covers a performance of a record artist on a show or attempting to lip synch, and what AFTRA was doing was attempting to make a record performance in which an artist appeared for a minute or 2 minutes or a minute and a half, put that under the clause which stated that a performer who worked on a show that was an hour long and sang should get X number of dollars, and this was a matter of dispute between the station and AFTRA, and a matter of contractual relations, as a matter of fact, discussion at our last local board meeting.

Mr. LISHMAN. What is the position of AFTRA about this matter?

Mr. CLAYTON. I can only speak for our local board. Mr. Segal—I am sorry, I got off the point. I did not answer your question; I did not answer your question.

Mr. Segal called me and said, "Bob," he says, "we have got to, whether we agree to this or not—but the national office is pressing me, and unless we make some arrangement whereby the artist will have to be paid directly, we will have to declare your program unfit."

I said to him, "I have no authority to spend any of WHDH's money. Mr. McGrath is the managing director, and he is out of town, and when he gets back I will take it up with him later."

Some time later Mr. McGrath came back, and I reported this convention, and he said, "We will be paying the artist directly under the threat of that."

Mr. LISHMAN. Did you ever have a discussion with Mr. McGrath about the absence of a budget for talent on Station WHDH-TV?

Mr. CLAYTON. Well, sir, on the whole station? The absence of a budget for talent? I am not sure I understand your question.

Mr. LISHMAN. Well, when you were being threatened to be placed on an unfair list—

Mr. CLAYTON. It only concerned my show.

Mr. LISHMAN (continuing). Did you go to the manager and discuss the situation?

Mr. CLAYTON. Yes; it concerned only my program, sir, not WHDH.

Mr. LISHMAN. Didn't it also involve the fact that the station itself had no budget whatsoever to pay talent because they felt they could, in effect, compel them to appear free?

Mr. CLAYTON. That is not true.

Mr. LISHMAN. Well, did you have a discussion with Mr. McGrath about the lack of a budget for talent on this station?

Mr. CLAYTON. No, sir.

Mr. LISHMAN. Wasn't this your show?

Mr. CLAYTON. Yes; it was.

Mr. LISHMAN. What was the name of the show?

Mr. CLAYTON. Boston Ballroom, Bob Clayton's Boston Ballroom.

Mr. LISHMAN. And you had talent that appeared there regularly?

Mr. CLAYTON. Yes, sir.

Mr. LISHMAN. And none of that talent was ever paid by the station?

Mr. CLAYTON. No, sir. Well, not ever.

Mr. LISHMAN. When was it paid by the station?

Mr. CLAYTON. It is being paid by the station and has been since November 28.

Mr. LISHMAN. Since when?

Mr. CLAYTON. November 28, 1959. That is a guess, but I think it is the last Saturday in November, sir.

Mr. LISHMAN. Why did you commence paying the talent in November 1959?

Mr. CLAYTON. Because Mr. Segal stated to me on the telephone, and asked me to convey to Mr. McGrath, who was out of town, that—why they started to pay was a station policy. I conveyed a message to Mr. McGrath that Mr. Segal stated that unless this arrangement were made AFTRA would declare my program unfair, and so I conveyed that message to Mr. McGrath.

Mr. LISHMAN. Don't you think that you occupy a position where you have a conflict of interest? As a shop steward of AFTRA, you must sustain the union position that lip synch is a performance under which the artist is entitled to compensation, and the station position that lip synch is not a performance and, therefore, the artist is not entitled to compensation.

Mr. CLAYTON. No, sir. I do not feel that I have a conflict of interest because whether or not an artist is entitled to compensation, of

course, is a contractual matter, of course, within the station and AFTRA, and as to the amount of compensation, the local board at its last meeting in Boston unanimously felt that it should be revised drastically downward because it was not envisioned in the original contract that a lip synch would be involved, and I do not—I enforce the AFTRA policy at WHDH as it relates to the men whom I represent, only since January.

The men at WHDH voluntarily prepared a clause in which they suggested that some revisions be made regarding record performers or the fact that this was a separate and distinct type of performance be taken into consideration.

Mr. LISHMAN. I have no other questions, Mr. Chairman.

The CHAIRMAN. Mr. Mack, any questions?

Mr. MACK. What is the policy of the station now with regard to paying these artists?

Mr. CLAYTON. I don't know what the policy—the station issues checks to the artists.

Mr. MACK. Evidently then, it is agreed that they should be paid?

Mr. CLAYTON. Certainly, I cannot speak for what the management does. The fact that they issue checks, I would say, does not indicate that they agree.

Mr. MACK. Prior to last November they did not issue checks; is that correct?

Mr. CLAYTON. Yes; that is correct, sir.

Mr. MACK. Mr. Clayton, when was the first time that you had heard the word "payola" in your industry?

Mr. CLAYTON. Well, sir, Mr. Mack, there is a magazine called the Variety in our trade, and it delights in coining words. I think it is a magazine that is famous for the phrase "Hix Nix Pix," which sounds like Greek, but they were describing the fact that movies were not using—were not doing well in rural area, and they were saying "Hix Nix Pix" and they coined the phrase "diskjockey," too, I think, and somewhere in the pages of this magazine I think I read articles by Abel Green in which they were describing what was carried on from the old days of trying to get band leaders or other people to play your records and your songs, rather, on the networks, that there was something new, and that diskjockeys were accepting money for things like this, and they dubbed it "payola." I think that was the first time I ever remembered seeing that word.

Mr. MACK. When was that?

Mr. CLAYTON. Well, I would say it was in the fifties. I mean, sometimes—I don't read it as regularly as I used to—but I remember reading it in there, and it struck me as another one of—that is the first time I have ever seen the word, was in that magazine.

Mr. MACK. You knew what they meant at the time?

Mr. CLAYTON. Well, they described it. They said that this was something that they felt people should be on the watch for, and I agree.

Mr. MACK. It was probably rumored in your industry from that point on, is that correct?

Mr. CLAYTON. Yes, I would say that it was; yes, sir.

Mr. SPRINGER. Would the gentleman yield for a question?

Mr. MACK. I would be delighted to.

Mr. SPRINGER. Did you attend the last diskjockey convention?

Mr. CLAYTON. Yes, sir; I did.

Mr. SPRINGER. What hotel did you stay at?

Mr. CLAYTON. I stayed at the Americana.

Mr. SPRINGER. One of the national magazines, I don't recall which, described the theme of the convention as "booze, babes, and bribes."

Mr. CLAYTON. Yes, sir.

Mr. SPRINGER. Would you say that that was the significant thing at the convention?

Mr. CLAYTON. I would say it was significant and bad, and bad newspaper reporting, and biased reporting. I was at the convention, and I attended every single business meeting, of which there were many.

I brought back notes to my employer, voluminous notes of very serious panel discussions.

I have heard an awful lot about this convention, and I went down as a legitimate representative employee of my station who paid my own way, and I attended a morning session and an evening discussion.

It is very popular, I know, to deride diskjockeys and to make fun of them, but I have spent 17 years of my life at it, and I consider myself a reputable member of my community, and I try very hard to live up to the standards I think I have, and at that meeting—

Mr. SPRINGER. Just one further question, then. Do you believe that the convention was conducted with the degree of decorum that it ought to have had?

Mr. CLAYTON. No, sir. I think they made many mistakes in good sense and decorum and I think conventions are what you make out of them.

I went down and brought back some valuable information, and I listened to reports by very important people in our industry, heads of the networks. There was a panel discussion every morning and afternoon, for those who wanted to attend it. That is what I went down there for, and I cannot judge my fellow man or be responsible for him, but I went down for that. I brought back notes that are that high, which make interesting, and I think, intelligent reading, on some of the problems in our industry. I handed it in to my employer, and that is what I was sent down for, and I think I did the best job that I could.

Mr. SPRINGER. I thank the gentleman.

Mr. MACK. Along that same line, didn't some of the record companies provide some sort of entertainment, like dinners for the evening, and breakfasts the next morning?

Mr. CLAYTON. Well, this was not really a convention in the sense of the word that the diskjockeys organized it. There was a radio chain which was more seminars, and I think, I don't know how that worked. I know when we went in you had, you received a book which entitled you to a breakfast, which one record company sponsored, because it was—and a banquet, I think in the evening, and that was the last one which former Governor of Tennessee Frank Clement, I think, spoke, and then there was one dance.

Everything else you bought and paid for yourself, and I think—it would say right on the thing, breakfast sponsored by the Columbia Record Co., and we had breakfast, and that was it.

But there were quite a few music men, not diskjockeys, at this convention, that is, I don't want to keep talking on and on, but I feel a little strongly that—about something that hurts me, and that hits me personally.

Mr. MACK. This subcommittee has received certain testimony which indicated that the record companies spent considerable sums of money, and part of it was for entertainment.

Mr. CLAYTON. I would think they spent money, Mr. Mack. What they spent on me was I had a luncheon, a dinner, and I think there was a barbecue of some kind where they had—Capital Records made a recording—and that was the substance of what I got out of it. But there were quite a few other men.

I remember the dean, perhaps, of American Diskjockeys, Martin Block, looking around the room, and turning to me and he said, "Never were so many musicmen entertained by so many musicmen," and we saw reports about 2,500 diskjockeys—I didn't see that many but, of course, I didn't count.

I met, renewed acquaintances with some others and brought back this information. I would say on the breakfast sponsored by Columbia Records, as I would say, whatever it cost them to have—

Mr. MACK. I was speaking of the convention generally. It was your understanding that considerable entertainment was provided at the convention.

Now, I inquired about payola.

Mr. CLAYTON. Yes, sir.

Mr. MACK. One diskjockey testified that it had existed in the trade since 1947. You indicated it has been rumored in your industry since 1950 or thereabouts?

Mr. CLAYTON. That is it.

Mr. MACK. Did you realize that you could have been getting Christmas presents in January and February as well as December?

Mr. CLAYTON. Well, sir; I think so, but I may have thought about it. But—

Mr. MACK. You knew it was in existence?

Mr. CLAYTON. I thought it existed, but I was more concerned with building a permanent career in a field that—

Mr. MACK. I understand. But you did know that it existed in the industry since 1950?

Mr. CLAYTON. Well, yes; I mean I knew, as I told you, that I had read it there, and I had heard about it.

Mr. MACK. And you did have other opportunities to receive gifts other than at Christmas time?

Mr. CLAYTON. I stopped having opportunities after, I would say—I don't think anybody has offered me any opportunity other than a gift at Christmas time since 1956 or 1957, or 1955, I would say. The only occasion I remember was some record company, and I do not remember the name or I would tell you, but I don't have the letter, the station has it, sending a record which was accompanied by a letter that said—

enclosed, please find check for \$25 for your trouble in listening to this record—and so on.

But since I was being, I thought, more than adequately paid by my station for listening to the records, in the first place, I brought it to Mr. McGrath, and he returned the check with a statement that the letter was—that we didn't have any listening fees or anything like that, but the record was being put in the library for whatever attention its musical merit deserved, or something like that.

That was in 1956, and is the last instance I can recall of any opportunity that was offered to me.

Mr. MACK. What is your salary with the station as a diskjockey?

Mr. CLAYTON. I would be glad to give you the information, Mr. Chairman. May I ask if this is pertinent to make public? I would be delighted to give you the information. It is not secret. It is personal and private between me and the employer.

Mr. MACK. Mr. Chairman, if the witness is going to hesitate about this, I certainly won't insist on it.

Mr. CLAYTON. I would like to give it to you.

Mr. MACK. If you would like to give it to us, fine, but more important than that is any income received by you in addition to your salary.

Mr. CLAYTON. Oh, I see. I do one record hop every week for a church in Boston, for which I receive \$50 except for 10 weeks in the summer, I think, and the church keeps the proceeds. That is my other income.

Mr. MACK. And in addition there are your Christmas gifts and the other small contributions listed strictly as gifts, is that correct? They were not—

Mr. CLAYTON. They were until the Internal Revenue man said they weren't, and I never won an argument with them, so I changed it.

Mr. MACK. You changed it?

Mr. CLAYTON. I had to, sir. I think they are gifts. I don't see what else you can call a gift when a man comes up to you at the end of the year and says, "Here is \$100," in a Christmas envelope, and I have never done anything, accepted anything else from him. To me that is a gift.

Mr. MACK. Is your salary a little higher than the going rate?

Mr. CLAYTON. Yes, it is.

Mr. MACK. Yes. Would that have any bearing on why some of the other diskjockeys accepted sums throughout the entire year?

Mr. CLAYTON. I don't think so, sir. I think it is a matter of the individual. I believe it is a matter of the individual and the station where you work, the image of the station, the caliber.

Mr. MACK. What is your opinion of these people who were accepting gifts throughout the year?

Mr. CLAYTON. Well, I don't have any opinion about other people, sir. I do—I think I have enough—I try very hard to—my opinion of myself is the most important thing to me, and I don't like to see anything happen to hurt an industry in which I have spent so much time.

Mr. MACK. It would not be fair to say that, you did not take these gifts because you thought it was wrong then?

Mr. CLAYTON. Certainly not, certainly not. I didn't think a gift of \$100 from a man who had been in business was wrong, a gift of \$100 was wrong.

Mr. MACK. Would it be fair to say that the reason you didn't take the gift was because nobody offered them to you?

Mr. CLAYTON. You mean other gifts? I think it would be wrong for me, sir. I don't know about anybody else. It would be wrong for me to accept any money from a record company while I was employed by a radio station who was paying me to listen to records, use my best judgment to play what I think the people want to hear as determined by what they say to me or what I find out is selling in the stores, and I was being paid for that and for my own conscience it would be wrong to accept anything to do that, but I cannot speak for anybody else.

Mr. MACK. Well, that is the reason I brought the subject of salary up in the first place.

Mr. CLAYTON. But I started off at the same \$55 a week as everybody else, and all through 1946, 1947, and through 1950 I was making \$105 a week.

Mr. MACK. And you did not receive—

Mr. CLAYTON. In 1955, too.

Mr. MACK. You did not receive royalties?

Mr. CLAYTON. Royalties; no, sir.

Mr. MACK. Did you have an interest in any record company?

Mr. CLAYTON. Well, yes. I mentioned to Mr. Lishman—this is not a stable business where you work—I organized with Mr. Steen and a Mr. Ween a record company.

I went to my employer. I never engaged in an outside activity that they did not know of. I told them we were investing \$500 each in what we hoped would be a good record company, called Pilgrim Records, and I showed him the corporation agreement in which I was investing this money, and we made, I think two or three records.

I got my money back, and I don't know how much more, but it was maybe two or three or four hundred dollars more, and then the company went out of business.

Mr. MACK. And you also served as manager to some of these artists?

Mr. CLAYTON. Yes. I mentioned the names of Cindy Lord, and that, I think, I mentioned Bob Dini; I did manage them; I tried to.

I was only a diskjockey then—this was 6 or 7 years ago, and finally I found out you can't do much.

But Mrs. Serabian, who was Cindy Lord's mother, and we gave her the name "Lord"—called me one day, and I don't know if you are interested in the details of this, because I am sure you are running short of time—anyway, she brought her to me, and she was 15 years old.

Mr. MACK. I am only interested in knowing—

Mr. CLAYTON. I thought she had a very good voice.

Mr. MACK. Whether you played her record on your show.

Mr. CLAYTON. Of course, I did. Yes, I told them the story, that this mother had brought this girl to me, and I thought she had a good voice, and MGM Records thought so, too.

They issued a few records of hers, but none of them sold enough to pay back the royalties, because when you make a record they debit you first for the—

Mr. MACK. I am just guessing now, but I imagine that some of the diskjockeys who testified before this subcommittee, who admitted taking these gifts, received less money than you do. Don't you think that has any bearing on this?

Mr. CLAYTON. Sir, I am not—I don't think that I can tell what causes one human being to do something, whether he—

Mr. MACK. If the Herald-Traveler or your program manager, whoever the manager of the station is—

Mr. CLAYTON. Yes, sir.

Mr. MACK. Cuts your salary in half tomorrow, or did so a year ago, do you think you would have resorted to receiving payola?

Mr. CLAYTON. I can only say that I never have in 17 years, and I was earning less. I wouldn't want to be a holier than thou anybody and say that I wouldn't do it. I don't believe—

Mr. MACK. There is no question in your mind but what it was wrong?

Mr. CLAYTON. It was wrong for me.

Mr. MACK. Well, I think you could make it a little more conclusive and say it is wrong.

Mr. CLAYTON. Mr. Mack, I cannot say it was wrong for so-and-so to do something.

Mr. MACK. Is that because he is not getting as large a salary as you are getting? Is that the reason you think it is not right for you?

Mr. CLAYTON. No, sir. I think it is a matter of individual principle, and how he feels about the industry, and his obligations to it regardless of how much he is earning.

Mr. MACK. I have no further questions.

The CHAIRMAN. Mr. Moss?

Mr. Moss. Mr. Clayton, who arranged the appearance of the artists on your show?

Mr. CLAYTON. Well, I usually get called by record companies, publishers, managers, local people, and from the many, many calls that I get, try to pick out—and I listen to the records and I try to narrow them down to the four or five that I can use.

Mr. Moss. You make the determination then that you will permit certain ones to go on your show?

Mr. CLAYTON. Yes, sir.

Mr. Moss. Did you assume that they were being paid?

Mr. CLAYTON. By the record companies; yes, sir.

Mr. Moss. Was that indicated in your discussion with the record companies?

Mr. CLAYTON. Yes, sir; at least I indicated it.

Mr. Moss. Have you any knowledge of the circumstances of the receipts which were issued by Dumont Records or given Dumont Records? Were they supposed to pay some of the talent?

Mr. CLAYTON. Every record company was supposed to take care of whatever talent—

Mr. Moss. No, I didn't ask you that. I asked you if Dumont Records was supposed to take care of some of the talent.

Mr. CLAYTON. I would like to see the receipts, sir, or the names and the dates.

Mr. Moss. Well, we can even arrange that. Will you get the receipts?

Mr. LISIMAN. They were put in the record this morning. We will find copies of them.

Mr. Moss. I can give you the dates. August 1, 1959—

Mr. LISIMAN. We have photostatic copies of them now being handed the witness.

Mr. Moss. Fine. Kini Kai, and on the same date an artist by the name of Dennis.

Mr. CLAYTON. I think those receipts must be the ones, if they were in August.

Some receipts were obtained, as I say, at the request of Bob Segal of the local union, whom I had told the record company was paying for the talent that was appearing on the show, and he said he would like to have some evidence of this, and I called the record companies, communicated it to them, and this, I think, if it was in July and August, this was one of them.

I never asked an artist to sign a receipt to me.

Mr. Moss. You never asked them to sign a receipt?

Mr. CLAYTON. No, sir. I would give the forms to the record company representatives.

Mr. Moss. Do you recall who the record company representative was in this instance?

Mr. CLAYTON. Well, it would have to be Bert Johnson, if he brought the people up.

Mr. Moss. Was it?

Mr. CLAYTON. Yes, it would have to be. I mean, when I say—when you asked me was it, I would say that Bert Johnson is the contact man or the promotion man for Dumont Records, and the stations, and he usually brings up talent, and I assumed he was. I don't remember.

Mr. Moss. Did Dumont represent the record manufacturers who handle—

Mr. CLAYTON. Yes, that is true.

Mr. Moss. Who handled each of these?

Mr. CLAYTON. Yes, he did, Mr. Moss.

Mr. Moss. You have no knowledge as to whether or not these people were actually paid?

Mr. CLAYTON. No, sir; I do not.

Mr. Moss. But at this time there was no budget for talent on your program?

Mr. CLAYTON. No, sir.

Mr. Moss. Did your station expect you to produce this talent as part of your show?

Mr. CLAYTON. I don't know—did my station expect it? I don't know what they expected. I told them I would put on a television show, diskjockey television show, and they gave me the time in which to do it.

Mr. Moss. Do you have a producer?

Mr. CLAYTON. Do I have a producer?

Mr. Moss. Do you have a producer?

Mr. CLAYTON. I have a director on the show.

Mr. Moss. You have a director?

Mr. CLAYTON. Yes.

Mr. Moss. Who is in charge of programing on your station? Are they expecting you to bring live talent on your diskjockey show?

Mr. CLAYTON. I was assigned 1 hour and a director to put on a diskjockey show, which I arranged with high schools.

I made all the arrangements, that is all I was given, an hour to put on the show.

First I was given actually a 3-week trial basis; the show was put on for 3 weeks, and so announced.

Mr. MOSS. Is he a pretty good income producing man?

Mr. CLAYTON. I wouldn't know about the revenue.

Mr. MOSS. Well, do you have a lot of commercials?

Mr. CLAYTON. No, sir.

Mr. MOSS. Is it sponsored?

Mr. CLAYTON. No, sir.

Mr. MOSS. It is not sponsored?

Mr. CLAYTON. No, sir. It has not been.

Mr. MOSS. Are commercials sold more frequently than at 15-minute station breaks on the show?

Mr. CLAYTON. No, sir—well, there are commercials in the middle.

Well, you said pretty good revenue, and larger commercials; that is not true.

Mr. MOSS. What hour of the day is your show?

Mr. CLAYTON. Well, originally it was on from 8 to 9 between and opposite Perry Como and Perry Mason.

Mr. MOSS. That is a pretty good time.

Mr. CLAYTON. It is a pretty good time opposite Perry Como, Perry Mason? I mean, they were pretty bad competition, but we were on from 8 to 9, and we didn't have any commercials.

Mr. MOSS. Is that hour higher or lower on your station rate card than usual?

Mr. CLAYTON. I don't have—I don't sell the time, Mr. MOSS, but I don't know what you mean by lower.

Mr. MOSS. You have no knowledge of rates?

Mr. CLAYTON. No.

Mr. MOSS. You don't know whether it produces revenue?

Mr. CLAYTON. I don't know what the rates are of the three television stations in Boston; I really don't.

Mr. MOSS. You have a network affiliation there?

Mr. CLAYTON. Yes, sir; we are affiliated with ABC.

Mr. MOSS. How about your radio show?

Mr. CLAYTON. Radio is independent. It is an independent operation.

Mr. MOSS. Do you have live guests on your radio show?

Mr. CLAYTON. Occasionally.

Mr. MOSS. Any of these that we have—

Mr. CLAYTON. Oh, yes. If they come in before, if they are in on a Friday, because the show is—

Mr. MOSS. Is the method for arranging that appearance the same?

Mr. CLAYTON. I did not hear you.

Mr. MOSS. Is the method for arranging for their appearance on radio the same as on the television show?

Mr. CLAYTON. Well, yes. If they are in town they go on. We interview them.

Mr. MOSS. Are they supposed to be paid for the radio interview?

Mr. CLAYTON. No, sir. The union requires no pay. It has never been—we just talk, and there is no requirement for a fee, Mr. MOSS.

Mr. MOSS. It is only on the television show that they must be paid, is that correct?

Mr. CLAYTON. The union's position is that appearance on a television show in which the artist appears for 1 minute or 2 minutes and pantomimes the record, in which the microphone is off and a record is playing on a turntable, although there is no specific arrangement or coverage for that in the contract between AFTRA and the stations, should be governed by the same rates as that for a live artist who appeared for the whole hour and sang.

Mr. Moss. The listening audience doesn't really know the difference, do they?

Mr. CLAYTON. No—well, it isn't a matter of whether they pantomime or whether they don't; it is the fact that originally those rates were made in—they have never been altered, the contract between the unions and the station. I am not speaking against my interest, I am a member of AFTRA myself, and I have an interest in the union, and they have an interest, and I pay dues to them.

Mr. Moss. Well, do the regulations or the rules of the contract for the moment call for payment?

Mr. CLAYTON. No, that is the dispute, Mr. Moss. It is an honest dispute.

Mr. Moss. Is the reason for using the pantomime gimmick an attempt to circumvent the requirement for live talent?

Mr. CLAYTON. No, because the union has interpreted it as being the same whether they pantomime or don't, sir.

According to the union's interpretation they require the same fees whether the artist pantomimes or whether they don't.

Mr. Moss. Do you think people should be paid when they appear on the show?

Mr. CLAYTON. I think if you go out and seek out an artist to appear on your television program that he should be paid.

I think that when a record company and record artists go on a national promotion tour and on radio we play their records and interview them, and they appear on television to promote their records, and they are brand new and unknown as they are to come on the show, that it is a mutually advantageous thing, similar to a record show, and if they should be paid at all they should be paid by the record company promoting them, and not a station being required to pay \$50 apiece for six or seven artists for a show, and this question was taken up at the last meeting of our local board of AFTRA.

And the men, we discussed it as union members, and this is a matter of record which I am telling you—

Mr. Moss. How many live shows are produced in the Boston area on television?

Mr. CLAYTON. I don't think I would want to guess, Mr. Moss.

Mr. Moss. What is the makeup then of your membership of AFTRA? What is the makeup of the membership of your local of the American Federation of Television and Radio Artists?

Mr. CLAYTON. It is made up of all artists who perform in front of a radio mike or television cameras.

Mr. Moss. In your local, the Boston area—

Mr. CLAYTON. Yes; that is true.

Mr. Moss (continuing). What is the dominant type of artist?

Mr. CLAYTON. Well, I think far more perform in radio than in television, but I wouldn't begin to know.

The thing I have only become shop steward since January in connection with the problems. At the last election the men had, I was informed I had been elected shop steward. That was sometime in January.

Mr. Moss. But you never, at any time, paid any of the people?

Mr. CLAYTON. I never paid them.

Mr. Moss. You never agreed to pay them?

Mr. CLAYTON. And I never agreed to pay them; and I never sought to indicate that they had been paid by me, and I would like to state simply here one other thing.

I heard Mr. Irving Lewis read a receipt which said "from WHDH-TV," and that is the first time that I have ever heard of a receipt that had the words "from WHDH-TV."

I never prepared such a receipt or asked for one that had those words. I haven't seen it. I heard him read it, and if anyone sent one out like that, I have no knowledge of it, and I swear under oath I had no knowledge of any receipt.

Mr. LISHMAN. May I interrupt? I believe the testimony was to the effect that this was a form of receipt that was requested by Mr. Clayton.

Mr. CLAYTON. I heard him say from WHDH-TV.

Mr. Moss. Well, is this true—

Mr. LISHMAN. Wait a minute. May I reread the letter which the witness—

Mr. Moss. Is this the August 26 letter?

Mr. LISHMAN. Enclosing the form of receipt.

Mr. Moss. Yes.

Mr. LISHMAN. I will read the letter, it has already been read once.

Bob Clayton is requesting the various artists who have appeared on his TV show lately to sign the attached form in order to satisfy the local musician's union.

Please have Romance Watson sign the form and mail it to Bob Clayton, WHDH-TV, 6 St. James Avenue, Boston, Mass.

Thank you for your cooperation.

Best regards,

MUTUAL DISTRIBUTORS, INC.,
FRANK HOLLAND.

Mr. CLAYTON. I wasn't referring to that exactly. I mentioned that has been in answer to my—

Mr. LISHMAN. These forms apparently were mailed back to you.

Mr. CLAYTON. Yes; and I sent them to Mr. Segal.

I heard Mr. Irving Lewis say something about "from WHDH-TV."

Mr. Moss. Well, I will tell you I am not going to yield further. I am not interested in whether or not you agree with Mr. Lewis.

Mr. CLAYTON. I didn't—fine.

Mr. Moss. It is no concern to me whatsoever.

Have you had great difficulty in taking care of all of the voluntary checks that have been offered to you in order to—

Mr. CLAYTON. I am awfully sorry, Mr. Moss, I just really did not hear you.

Mr. Moss. Well, have you had any experience as a diskjockey in avoiding the taking of money?

Mr. CLAYTON. I have not had any experience—you mean any time since I have been in business?

Mr. Moss. Well, you indicated on one occasion a \$25 check came attached—

Mr. CLAYTON. In 1958.

Mr. Moss (continuing). Attached to a recording.

Mr. CLAYTON. Yes, sir.

Mr. Moss. Is that the only instance when you received a check in the mail?

Mr. CLAYTON. Yes, sir.

Mr. Moss. You haven't had any of these distributors or record companies mailing you money out of gratitude?

Mr. CLAYTON. I have never received checks from them except the four that are in evidence here.

Mr. Moss. Do you have a good show on a large station?

Mr. CLAYTON. It is on a large station. I like to think it is a good show.

Mr. Moss. I assume it is on a large station and in a large community, and it must have an appeal, and you play many recordings?

Mr. CLAYTON. Yes; I do.

Mr. Moss. About how many records would you play in a day?

Mr. CLAYTON. I would say maybe 15 in an hour, at least, and I am on 3½ hours, 5 days a week.

Mr. Moss. Do you—

Mr. CLAYTON. Six days a week.

Mr. Moss. Do you play labels that are carried by Music Suppliers, Inc.?

Mr. CLAYTON. Oh, yes; I do.

Mr. Moss. Records, Inc., and Dumont?

Mr. CLAYTON. Yes, Mr. Moss.

Mr. Moss. Have you had to send back any checks to these gentlemen, checks mailed out with a "Thank you" on it?

Mr. CLAYTON. No, Mr. Moss.

Mr. Moss. I just can't understand their oversight. They have given checks to all the other DJ's up there in your area, and they have overlooked you. Don't you feel left out?

Mr. CLAYTON. Is that a question?

Mr. Moss. I was just interested in whether or not you felt that way about it. You have heard some of this testimony?

Mr. CLAYTON. Yes, I have.

Mr. Moss. None of your colleagues in Boston, and none of them ever made any arrangements. The money just started arriving, as a show of gratitude; but nobody is grateful to you, and I cannot understand it.

Mr. CLAYTON. I have been in the business 17 years, sir, and these people know me. I cannot tell you anything about why they didn't send me any money or what would happen if they did.

Mr. Moss. You have never been puzzled about it?

Mr. CLAYTON. I have never been puzzled. I do my best to run the best show I know how, and I am not interested in any other income except what I earn from my station and my legitimate outside activities I mentioned to you.

Mr. Moss. Mr. Clayton, have you ever had an exclusive agreement, or an agreement with a distributor, requiring you to play only his records for a given period of time?

Mr. CLAYTON. Are you referring to something particular?

Mr. MOSS. I am asking you if you ever have?

Mr. CLAYTON. This goes back 10 years now.

Mr. MOSS. All right. I would be interested in going back 10 years.

Mr. CLAYTON. Well, if you are interested, back in 1950, in that vicinity, in those days, every once in awhile a distributor would—not only a distributor but manufacturers or people I know, that would—send records in that had not been released, because they would like them on my show.

Mr. MOSS. How long have you been with WHDH?

Mr. CLAYTON. Since 1943.

Mr. MOSS. All your experience in 17 years has been with that station?

Mr. CLAYTON. I have never worked anywhere else.

Mr. MOSS. Have you insisted on any exclusive arrangements?

Mr. CLAYTON. Never; I never have. I never have even asked for one.

Mr. MOSS. To your knowledge, did your station have any recordings on an exclusive basis?

Mr. CLAYTON. I had them on my show, they were given to me, and they said—

Mr. MOSS. Since 1950?

Mr. CLAYTON. Well, I would say since 1950. That was done in 1950, 1951, something like that.

Mr. MOSS. When was the last time that you recall a case where you had an exclusive on your program?

Mr. CLAYTON. It has been done since then. The last one I had was maybe for a day or two. I think a new record Bill Haley, I think, I had.

Mr. MOSS. And you never insisted on it?

Mr. CLAYTON. No, sir; I never insisted on an exclusive.

Mr. MOSS. Did you ever request it?

Mr. CLAYTON. Request it? I never requested an exclusive.

Mr. MOSS. Did you ever threaten or infer that if you did not get an exclusive arrangement that you would not play the recordings?

Mr. CLAYTON. That is a lie.

Mr. MOSS. I didn't ask you that.

Mr. CLAYTON. I never did threaten.

Mr. MOSS. Did you ever infer?

Mr. CLAYTON. No, I never inferred it either.

Mr. MOSS. It isn't necessary for you to characterize it in that fashion at all. I am not interested in what you regarded it; I want to know what the facts are.

Mr. CLAYTON. Well, the facts are that I never inferred it.

Mr. MOSS. All right.

Have you ever received any gifts from any record company or record distributor?

Mr. CLAYTON. No.

Mr. MOSS. Those are all the questions I have, Mr. Chairman.

The CHAIRMAN. Mr. Mack?

Mr. MACK. Mr. Clayton, you are employed by WHDH; is that correct?

Mr. CLAYTON. Yes, that is correct, Mr. Mack.

Mr. MACK. Are the programs normally listed in the Boston newspapers?

Mr. CLAYTON. I don't know.

Mr. MACK. You have never checked?

Mr. CLAYTON. I wouldn't know.

Mr. MACK. In the 17 years that you have worked for the radio station?

Mr. CLAYTON. I couldn't tell you what radio programs are listed in any Boston papers. I know it is on the radio in Boston.

Mr. MACK. You don't know whether they list them in the newspapers there or not?

Mr. CLAYTON. No, I don't.

Mr. MACK. Isn't that amazing, then, in 17 years?

Mr. CLAYTON. Do I know if they list radio programs?

Mr. MACK. Yes.

Mr. CLAYTON. Yes, I know there is a radio page that lists radio programs.

Mr. MACK. Seventeen years, if I understand you correctly, and you never looked at the radio programs?

Mr. CLAYTON. Well, I have looked at the radio page.

Mr. MACK. Do you think that your station is listed in the Boston newspapers?

Mr. CLAYTON. Do I think it is listed in the Boston newspapers?

Mr. MACK. Yes.

Mr. CLAYTON. I think so.

Mr. MACK. But you have never actually checked to see?

Mr. CLAYTON. Checked the Boston papers to see if my station was listed?

Mr. MACK. Yes.

Mr. CLAYTON. No, sir.

Mr. MACK. In 17 years you haven't checked?

Mr. CLAYTON. No; I have never checked the papers to see if my station was listed, no.

Mr. MACK. Had you ever looked at the papers to see if your top 10 tunes were listed?

Mr. CLAYTON. My top 10? I know what they are. I usually send in once a week to the Boston Traveler a list that is, in my opinion, the top 10.

They asked me, they said, they would like to have a list of what I think are the 10 most popular records in Boston, and I make them up and send them in to them.

Mr. MACK. You don't conduct any kind of a poll? You just send in the 10 records which, in your opinion, are the 10 best records?

Mr. CLAYTON. That is right; and it says, "Bob Clayton's" for whatever it is worth, my opinion.

Mr. MACK. Well, I have heard that the Boston Herald which, I understand owns your station—

Mr. CLAYTON. Yes, sir.

Mr. MACK (continuing). Does not list in their radio program logs at least one other radio station in Boston.

Have you ever heard anything like that?

Mr. CLAYTON. I have heard it. I heard testimony, I heard Mr. Bill Givens say it here.

Mr. MACK. But you don't know whether that is a fact or not?

Mr. CLAYTON. No, I don't.

Mr. MACK. And is it a fact that you do not know their reason for not listing other schedules.

Mr. CLAYTON. That I certainly would not know.

Mr. MACK. It was my understanding that the reason they did not list the programs schedules of these other stations was due to the lack of room.

Mr. CLAYTON. Sir, do I understand that you are asking me to explain the Herald Traveler's reason for not doing something?

Mr. MACK. I asked you if you knew.

Mr. CLAYTON. No; I don't.

Mr. MACK. You don't know; and you indicated also that you had not read the radio program schedules in the newspapers of Boston for 17 years?

Mr. CLAYTON. I didn't say I never read the papers for 17 years; the programs. I meant to say I very rarely look on the radio page.

Mr. MACK. So you are not able to answer my question?

Mr. CLAYTON. No; Mr. Mack, I am not.

Mr. MACK. That is all.

The CHAIRMAN. Mr. Clayton, I was quite interested in your testimony, in the information and description you have given. I think you have been examined about as carefully on all of these subjects as one could expect.

There is one thing I have a little viewpoint on and I would like to inquire about. I refer to the convention in Miami.

What you have said in your description of the convention interests me. You described your part in it, and the good that you received out of it, and the reports you took back with you.

Then you characterized the bad part, and I agree with you. In general anything that has a sting to it, will get a lot more attention than the good it can accomplish.

Did I understand you to say that 2,700 diskjockeys were reported to have attended the convention, and that some attendees were not diskjockeys?

Mr. CLAYTON. I don't know how many people were at this convention down there, but all the people at the convention were certainly not diskjockeys.

I would guess, and it is certainly a guess, that more than half the people at the convention were not diskjockeys. I don't know how many diskjockeys were there. We never could find out.

A group of us, who have serious ideas about the diskjockeys' place in American life, as it stands now or as a purveyor music, were getting together, and we tried to find out.

The CHAIRMAN. Who is Storz?

Mr. CLAYTON. Well, I think it is—he is the owner of a chain of radio stations.

The CHAIRMAN. And that is the source of the diskjockey convention?

Mr. CLAYTON. Well, I think they sponsored—they made the arrangements for the appearance. Now, I hope I have the right name.

The CHAIRMAN. That seems to be the information I have, too.

It seems to me, then, if they sponsored it, they should have been largely responsible for the program and the conduct at the convention.

Mr. CLAYTON. I agree. It was mishandled, and I think it received a bad press. The good that was done was far exceeded by the possibilities of sensationalism that the bad provided. It could have been run much better. As a result of that convention, a group of diskjockeys got together, and we tried, and are trying, to organize an association that we feel will have standards of ethics and be dedicated to what radio broadcasting should represent, a competitive—

The CHAIRMAN. Is that the group in California?

Mr. CLAYTON. Yes, sir; and I am one of the founders of it, and one of the original organizers of the group.

The CHAIRMAN. Is that the group which extended me the honor of inviting me to meet with them?

Mr. CLAYTON. Yes; Mr. Harris.

The CHAIRMAN. Well, I appreciate it.

Mr. CLAYTON. It was a group—I received a copy of the letter that they wrote to you in an effort to show that it is 1 or 2 or 3 or 10, whatever it is, that there are all kinds of people in every kind of business, and trying to show you that, another facet of radio work.

The CHAIRMAN. How many diskjockeys would you say are in radio and television?

Mr. CLAYTON. Well, I would have to guess only from what I read in the papers. I would say in America today there are possibly 3,000 young men or old men like me, playing records as a chief means of livelihood.

The CHAIRMAN. Wouldn't you say that the large part or the large majority of those approximately 3,000 were people who were honest and conscientious and sincere in their work in trying to provide a service to the general public?

Mr. CLAYTON. It is my honest and sincere opinion that they are, and also the men who have been in it for a great length of time, who go way back in the major cities on the major stations, fall into that category, too.

The CHAIRMAN. You have described to this subcommittee this afternoon, along with everyone else who has appeared before the subcommittee, the principle of payola which has gone throughout the industry for the last several years. Everyone seems to have heard about it and knows of its existence, but it is pretty difficult to get down to the actual facts and an admission in their own minds as to what was going on.

But the thing I want to inquire about here and now—

Mr. CLAYTON. Yes, sir.

The CHAIRMAN. Yesterday there was a story in the paper about one of the agencies indicating they had information that some 200 diskjockeys throughout the Nation had been engaging in such practices.

You have said that you got bad publicity from the Miami convention.

Here you have, approximately, 3,000 diskjockeys who are on the air, and are in, I suppose, every community of the United States; isn't that true?

Mr. CLAYTON. I would say it is.

The CHAIRMAN. Well, if the diskjockey organization, as such, has received such a bad press, or a stain, so to speak, by all of this—indeed, the whole broadcasting industry has—I do not think they should be

castigated as an industry. Those who are engaged in these practices should be the ones exposed. That is what we are engaged in seeking out, those who would corrupt the whole industry. If that be true, why do not you and the other 2,800 diskjockeys or whatever the figure might be, make it a public service to let the American people know the truth?

Who has a greater opportunity and media to present the truth and the facts than you, who are broadcasting?

Mr. CLAYTON. Well, Mr. Harris, I tell you in all sincerity I think that is a question that I would be happy to answer, if you will just give me 1 minute.

It is impossible—we are on the air and engaged in a competitive, what is known as, a rating struggle like 15, 16 stations in a market.

It is difficult to go on the air and crusade to the people who don't have that much interest in my business. The man is interested in selling tires or automobiles or whatever.

I cannot appeal to the public to root out the people in my business that I feel are contaminating it.

The CHAIRMAN. Well, you can take 5 minutes.

Mr. CLAYTON. I can only ask that the diskjockeys get together, a group of us, as I did at the convention, get up on the floor, when it came my turn, or meeting, to speak on the subject of too many releases, and even in that story that blasted us, they saw fit to report the one thing, to ask the industry if they would stop it, and I think that it can be, and I think that this committee has, and the unfortunate part of it is, and one statement I can make is, I don't think that it means anything in the music that is heard.

The people in the final analysis decide always in this country what they want to buy, what they want to hear.

The CHAIRMAN. Well, I can say to you, Mr. Clayton, that I wholeheartedly disagree with you, based on the information we have received here.

There is no question in my mind but that a lot of these so-called hit tunes and questionable records, insofar as acceptable music is concerned, would never have reached the top had it not been for the various unusual ways of getting them there.

Mr. CLAYTON. Mr. Chairman, I don't have any—it is a point that I certainly don't mean to be disrespectful or become argumentative about.

The CHAIRMAN. Of course, you are entitled to your opinion.

Mr. CLAYTON. I want to defend my profession and the work I put into it.

The CHAIRMAN. You have a right to defend your profession, and I am trying to help you. That is the reason I say you can take 5 minutes to build up and advertise a great new suburb in Florida, somewhere down Biscayne Bay; or you can take other time, and tell about a lot of other things that are going on that people are interested in. Nevertheless you still do not seem to take enough time, even though it would take 30 seconds here and there, to let the American people know that the majority and core of your organization is honest, and is performing a public service.

But not that; not that. My experience has been that every time you try, or any who are in that field, try to discuss this, it is passed

off as some comical performance or some slur, instead of trying to get the truth over to the people.

Now, you are a man who has come here and has explained yourself and defended your own organization, and I commend you for it. But instead of trying to show the American people the facts and what you really have in mind as honest service, all that is done is to slur those investigating unacceptable activities.

Mr. CLAYTON. The remarks are made by comics, and I think they are not funny, to me.

I don't enjoy my son, being in school, hearing the slurring remarks. I want him to be proud of his father. They are not funny to me.

I would like to, when I go on the air, have the people continue to have confidence in me, in the records I have played in the last 14 years, and it has been my experience, Mr. Harris, that no matter how much you play a record or how much money you pour into it, if the people don't like it, they will not buy it, and I can tell which records are on for any other reason—

The CHAIRMAN. Mr. Clayton, do you know Mr. Norm Prescott?

Mr. CLAYTON. I don't any more.

The CHAIRMAN. Well, I can appreciate that comment. But you know who he is?

Mr. CLAYTON. I do know who he is.

The CHAIRMAN. Yes.

He told this subcommittee the other day that he could take any record, never heard of before, so long as it was acceptable and not profane and make a hit out of it in a certain length of time.

Mr. CLAYTON. He tried, and he couldn't do it, and it did not help his position in radio, because if you do not play what the people want to hear, but what you think you could make—

The CHAIRMAN. I had a man who works in one of the offices here on Capitol Hill, who was a diskjockey, I believe in your State of Illinois, Mr. Mack. He was a diskjockey for a good many years. He told me that he got out at the wrong time, that he got out when all this payola was coming back into fashion. He said,

Give me 6 weeks on any record, and in my experience of 14 years, I will make a hit tune out of it in the community where I operate.

Mr. CLAYTON. I can do that, sir. I have tried to the extent that I take an artist like Cindy Lord, and I speak honestly, I think she has a beautiful voice, had a nice voice when she was 15 years old, and I thought she made a nice record of "Cherry Pink," and "Apple Blossome Light," and I think you and Mr. Moss and Mr. Mack would enjoy hearing it, and I am sure we would not agree on all records, but you would enjoy that, and I played it for the people, and they didn't like it, and I threw it away.

I took another record by Johnny Mathis of "Wonderful, Wonderful," and I played it, and it was a success, and when I told Mitch Miller, I called him, and I told him that I thought that Johnny Mathis was going to be a star, he was delighted. But I got that response from the people, not because I decided it.

I would have loved to see Cindy become popular and have her mother not be unhappy, although she is still—but I cannot decide—

The CHAIRMAN. I can recall when Frank Sinatra was coming into

fame, before he got to be such a star, that he had this program where he appeared. I attended a performance in New York one time where he appeared at one of the theaters, and I personally saw all of these little bitty girls down on the front seats, and when he came out, starting to yelling and screaming.

We heard all his kind of performance, and so forth. Do you think that was not a planned performance?

Mr. CLAYTON. Yes, I do. The pepole screaming, you mean?

The CHAIRMAN. Yes.

Mr. CLAYTON. Plants? I don't know if they were put there to scream.

The CHAIRMAN. They were brought there for that purpose.

Mr. CLAYTON. But I do know—well, I know that young people today, you bring certain stars into town, and the girls don't have to be, you know—they scream because they are youngsters and they get excited, and their tastes may not be ours, and I think it is important to play for them at home.

The CHAIRMAN. When it is all good and wholesome, why, I think it is all right.

Mr. CLAYTON. I try to keep it that way.

The CHAIRMAN. But when this type of music, if you call it music, that is anything but wholesome, is forced onto them at that age, I think it is the worst possible service that the medium could be used for.

Mr. CLAYTON. May I call one thing to the attention of the Chair?

The CHAIRMAN. Yes.

Mr. CLAYTON. About radio, and that is the rating services. I am sure you must have heard of rating services, too.

The CHAIRMAN. Yes; I have heard about that. We have heard some of it recently, and we are going to hear some more of it, too, as time goes on.

Mr. CLAYTON. May I say to the Chair I don't know anything about how, exactly how, they work.

I know, although I have been in it 17 years, I know they take polls in various ways, but I do know that that is what determines what you hear on the radio, because any market where there are four or five or six stations fighting, their rate card is adjusted to their rating, when a new station comes in and starts to play a certain kind of music, and that kind of music increases its rating tremendously, you will find other stations seeking to copy it just as with automobile manufacturers.

I don't know whether those ratings are correct. I find I have to maintain my rating in order to make a living with the station and, therefore, the ratings are the most influence on the kind of music you hear. Whether they are accurate or not, I don't know.

The CHAIRMAN. Yes; that is true, and we are trying to find someone that was actually asked by these rating bureaus if they were watching the show or heard a particular record.

Mr. CLAYTON. Mr. Moss might hear my show and say that that was an awful record that I played, but I am only trying to cater or play what I think the people will want to hear because maybe some stations that are playing all of this music all day are beginning to creep up on me on ratings, and it is just my job to be competitive.

Mr. Moss. Mr. Chairman, if I may ask a question, would you explain to me the phenomena of television wherein a community of three stations exists; one has a Western, and the rating shows that that show is getting a lot of attention. The next week they have all got Westerns.

Mr. CLAYTON. Yes.

Mr. Moss. And then ratings are taken. All the programs are Westerns.

Mr. CLAYTON. That is right.

Mr. Moss. Everyone called by the rating service has a Western on, if they have the set turned on, so you have gotten into a circle here.

Mr. CLAYTON. Yes.

Mr. Moss. There is no opportunity to express a preference.

Mr. CLAYTON. That is right.

Mr. Moss. You are a captive.

Mr. CLAYTON. Well, Mr. Moss, if I can explain it—

Mr. Moss. As a result, we end up today with radio frequently. I can assure you, and this is one of the things that gives me conviction to buy Mr. Harris' position, that it has improved in the last few months. I can listen to radio once in a while now.

But on radio you had this raucous—I don't know how you can describe it properly—and on TV you have violence. So I think if many people did what I did, they have secured for themselves a good stereo hi-fi, and enjoy themselves.

Mr. CLAYTON. But, please see the viewpoint of the competitor.

You said you were a businessman, and I don't defend television, I mean only from the standpoint of radio, see it from the standpoint of a competitor.

He puts on an educational type of television thing or something at certain times, and somebody else puts on a western, and all his advertisers leave them, and everyone else, and the salesman comes in and they say, "We can't sell your time."

He is in a position of either being a public-spirited citizen and making a charity out of his operation—

Mr. Moss. I think those advertisers are finally going to be proven the most wasteful men in business, because they are buying total exposure without any gage of the buying potential of the market they are appealing to. The important thing, when you are advertising, is the buying response you get, not those who listen to you.

You can have a hundred listen and two that buy, and the two that buy might be the two that turn it off, too.

Mr. CLAYTON. You would make a very good radio salesman. [Laughter.]

The CHAIRMAN. Mr. Lishman?

Mr. LISHMAN. Mr. Clayton, without asking you exactly what it is, you receive a rather substantial salary, do you not?

Mr. CLAYTON. Yes, sir.

Mr. LISHMAN. Is it a fact that the so-called payola you might receive is in the form of free services of talent on your shows furnished by record manufacturers and others?

Mr. CLAYTON. No, sir; it is not a fact.

Mr. LISHMAN. Well, doesn't that help you to command a much greater salary than you otherwise could?

Mr. CLAYTON. No, sir.

Mr. LISHMAN. Your station is able to operate without having a budget for talent, is that correct?

Mr. CLAYTON. Sir, the station will be able to operate whether I have a television show or not.

Mr. LISHMAN. Well, instead of giving you checks they give you free talent.

Mr. CLAYTON. They do not give me checks or free talent. The talent—

Mr. LISHMAN. I didn't say checks. I said instead of checks you get free talent.

Mr. CLAYTON. No, sir; I get nothing out of it, because I present the same thing I do on radio, Mr. Lishman, and it is a question, that is, one that bears some honest discussion.

Every diskjockey is not a dishonest person, who is out to get money.

Mr. LISHMAN. I am not entering into that.

Mr. CLAYTON. Well, you implied that, sir.

There are some diskjockeys who are in the business to present entertainment and to earn a living from it. I present on my television show what I do on my radio show.

The CHAIRMAN. Any other questions?

Mr. MACK. Mr. Chairman, I don't want to prolong this at all.

Mr. CLAYTON. Mr. Lishman, I apologize.

Mr. LISHMAN. That is all right.

The CHAIRMAN. Mr. Mack?

Mr. MACK. Mr. Chairman, I was just interested in this top 10 in the Boston newspaper that I understand doesn't have room enough to print the program of competing radio stations.

My question is, How do people know this rating system that you have is not rigged? We have heard some testimony about records appearing on these top 40 lists that have never been played before. I mention this because you minimize the importance of playing certain records and listing certain records. Mr. Chairman, I think it is terribly important, when you list 10 records in the newspapers, that most people who are fans of yours are convinced that those are the 10 records, 10 top records, in the city of Boston.

So I get back to the original question, and that is how can you tell which are the top 10 records?

Mr. CLAYTON. Mr. Mack, it appears, as far as space in the paper, it appears once a week in a page, once a week.

Mr. MACK. I understand they don't run the competing radio station one a week.

Mr. CLAYTON. I don't know anything about competing radio stations and programs in the paper, Mr. Mack.

Mr. MACK. The point is, they must think it is important or they wouldn't put it in.

Mr. CLAYTON. They put it in because they think it is of interest to some people to know what I think.

One thing is missing, it doesn't say Boston's official top 10. It just says Bob Clayton's Top Ten.

Mr. MACK. You are the only person collecting those 10 records?

Mr. CLAYTON. Yes. It is, in my opinion, those are the 10 popular records in the city of Boston. I don't send a list in to Billboard or in

to Cash Box. I don't send a list in to any trade papers. I do not influence listenings.

Mr. MACK. I only have an opportunity to read the Boston Traveler on very rare occasions.

Mr. CLAYTON. There are some good things in it.

Mr. MACK. On this occasion, I see that it says, "Boston's Top Ten Tunes," in the headlines.

Mr. CLAYTON. I don't know, they have changed it then. The last time I saw it, it said, "Bob Clayton's Top Ten." I am glad to see that. I have got to get my name back in it.

Mr. MACK. This one happens to say February 4, 1960. It happens to say "Boston's Top Ten Tunes."

Mr. CLAYTON. Well, it shouldn't.

Mr. MACK. That is very misleading.

Mr. CLAYTON. It should say, "Bob Clayton's Top Ten."

Mr. MACK. That is all.

Mr. CLAYTON. And I will see that it is changed, too.

Mr. MACK. Do you have that much influence in the newspaper?

Mr. CLAYTON. Well, the use of my name, I might, I may have some influence. Let me say—

Mr. MACK. You think you can have enough influence to get them to print the program of a competing radio station?

Mr. CLAYTON. Do I have any influence like that?

Mr. MACK. Do you have that much influence?

Mr. CLAYTON. I don't think I have that much influence. I have influence where my name is concerned. I am going to try to exert some influence to get my name back in the top of that.

Mr. MACK. Mr. Clayton, you had better look into the fact that there may be publishing someone else's name as being the top 10.

Mr. CLAYTON. I had better look into it.

The CHAIRMAN. Thank you very much. You may be excused.

Mr. CLAYTON. Thank you.

The CHAIRMAN. Mr. Irwin B. Goldstein.

I might say for the benefit of the subcommittee and for the information of those who are interested, that this will be the last witness.

Are you Mr. Goldstein?

Mr. GOLDSTEIN. Yes, sir.

The CHAIRMAN. Do you object to the cameras?

Mr. GOLDSTEIN. No, sir.

The CHAIRMAN. Please be sworn, sir. Do you solemnly swear the testimony you give this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God.

Mr. GOLDSTEIN. I do.

TESTIMONY OF IRWIN B. GOLDSTEIN

The CHAIRMAN. Have a seat. State your name for the record, please.

Mr. GOLDSTEIN. Irwin Goldstein.

The CHAIRMAN. And your residence?

Mr. GOLDSTEIN. 11 Archer Drive, Natick, Mass.

The CHAIRMAN. What is your business?

Mr. GOLDSTEIN. I am general manager of Mutual Distributors, Inc.
The CHAIRMAN. Talk up a little bit; it is very hard to hear you.

Mr. GOLDSTEIN. I am general manager of Mutual Distributors, Inc.
The CHAIRMAN. You may proceed, Mr. Lishman.

Mr. LISIMAN. What is the business of Mutual Distributors, Inc.?

Mr. GOLDSTEIN. We distribute phonograph records, sir.

Mr. LISIMAN. Who are the principals in that company?

Mr. GOLDSTEIN. Mr. George D. Hartstone is president, and Mr. Leo C. Hartstone is treasurer, and Robert S. Hartstone, clerk.

Mr. LISIMAN. Are you associated with any other record manufacturing or distributing company?

Mr. GOLDSTEIN. Yes; I am.

Mr. LISIMAN. What company?

Mr. GOLDSTEIN. A Los Angeles corporation called Hart Distributors, Inc.

Mr. MOSS. I can't hear a thing, Mr. Chairman.

Mr. GOLDSTEIN. I am sorry, sir. A Los Angeles corporation, Hart Distributors, Inc., and Stone Distributors, Inc., in San Francisco.

Mr. LISIMAN. And they are record distributors?

Mr. GOLDSTEIN. Yes, sir.

Mr. LISIMAN. Did Mutual ever pay money for records handled by it, selected as the gold platter of the week by station WMEX in Boston?

Mr. GOLDSTEIN. No, sir.

Mr. LISIMAN. What is that?

Mr. GOLDSTEIN. No, sir. We never paid money to have a record selected as the gold platter of the week. We did pay expenses for a record—

The CHAIRMAN. May I ask everyone to be as quiet as possible in the room. There is continual moving around here. I am asking the cooperation of everyone. It is very difficult to hear this witness, and with so much talking and moving about, we cannot understand what he is saying.

Mr. LISIMAN. Mr. Goldstein, I will rephrase the question.

Mr. GOLDSTEIN. Thank you, sir.

Mr. LISIMAN. Did a representative of WMEX call Mutual, or call you, and tell you that you could have one of your labels chosen as the gold platter of the week?

Mr. GOLDSTEIN. I would not get those calls, sir, but people in my employ would.

Mr. LISIMAN. Are you aware of such a call?

Mr. GOLDSTEIN. Yes, sir.

Mr. LISIMAN. I will hand you a schedule compiled from the books of Mutual Distributors, Inc., by Mr. Keelan, an accountant working for the subcommittee, and ask you if this correctly shows the amounts that were paid to WMEX, by Mutual, to compensate it for selecting a label distributed by you as the gold platter of the week. I will start with the third item on that schedule.

Mr. GOLDSTEIN. Yes, sir.

Mr. LISIMAN. Is it correct that on May 19, 1959, Mutual paid \$50 to WMEX in order to have that station select one of Mutual's labels chosen as the gold platter?

Mr. GOLDSTEIN. I am sorry, sir, the record had already been selected. The \$50 was expenses in connection with it being distributed, being sent out to listeners.

Mr. LISHMAN. It had already been selected, and this was to compensate WMEX for the selection of that record?

Mr. GOLDSTEIN. No, sir. It was for the handling and mailing of the record.

Mr. LISHMAN. Well, on June 19, 1959, did Mutual pay \$10 to WMEX?

Mr. GOLDSTEIN. Yes, sir.

Mr. LISHMAN. Is it correct that on that occasion one of your labels was selected as the gold platter of the week?

Mr. GOLDSTEIN. I assume so, sir.

Mr. LISHMAN. Now, what was that \$10 payment for?

Mr. GOLDSTEIN. I would assume it was in connection with the gold platter of the week, sir.

Mr. LISHMAN. Was that for handling charges?

Mr. GOLDSTEIN. Yes, sir.

Mr. LISHMAN. How do you explain that at one time it cost \$50 for that purpose, and the next time it only cost \$10?

Mr. GOLDSTEIN. I can't explain that, sir.

Mr. LISHMAN. These payments were a month apart.

Mr. GOLDSTEIN. Yes, sir.

Mr. LISHMAN. You have no explanation?

Mr. GOLDSTEIN. No, sir.

Mr. LISHMAN. But the \$10 was paid?

Mr. GOLDSTEIN. There seems to be a schedule here taken from my books and records; yes, sir.

Mr. LISHMAN. Now, on August 21, 1959, did Mutual pay another \$10 to WMEX in connection with the gold platter?

Mr. GOLDSTEIN. I am trying to recall if there were any other reasons why we would have given WMEX checks, and there are none.

The CHAIRMAN. Will you talk a little louder?

Mr. GOLDSTEIN. I am sorry. Any check drawn by Mutual Distributors to WMEX is in connection with the gold platter of the week.

Mr. LISHMAN. Isn't it correct, that in your books you carried these expenditures as an account for gold platter or do I have to put the accountant on the stand who took this from your books?

Mr. GOLDSTEIN. No, sir; he took these from my books in my presence and with my permission.

Mr. LISHMAN. Then it is correct, that these charges I am reading were charged to gold platter?

Mr. GOLDSTEIN. They were charged to—you mean on my check stubs, sir, or my bookkeeping?

Mr. LISHMAN. Yes.

Mr. GOLDSTEIN. Yes, probably.

Mr. LISHMAN. I don't want "probably." I am asking whether or not it is a fact. If you cannot answer the questions we will have a witness to testify.

Mr. GOLDSTEIN. I probably charged these off to advertising and promotion, sir.

Mr. LISHMAN. But was the word, or were the words, "gold platter" on your books?

Mr. GOLDSTEIN. No, sir; I don't think so.

Mr. LISHMAN. The accountant informs me it is taken right from your books.

Mr. GOLDSTEIN. That is right, sir.

Mr. LISHMAN. The words "gold platter."

Mr. GOLDSTEIN. I am not questioning the fact that these were in connection with the gold platter, but I doubt that the words "gold platter" appear in my books anyplace, but I will admit that they are in connection with the gold platter of the week.

Mr. LISHMAN. Is it correct that on October 9, 1950, you paid WMEX \$25 in connection with the gold platter?

Mr. GOLDSTEIN. Yes, sir.

Mr. LISHMAN. And on March 5, 1959, another \$25 in connection with the gold platter?

Mr. GOLDSTEIN. Yes, sir.

Mr. LISHMAN. On March 23 you paid another \$25 to WMEX in connection with the gold platter?

Mr. GOLDSTEIN. Yes, sir.

Mr. LISHMAN. On March 27 you paid \$25 in connection with the gold platter?

Mr. GOLDSTEIN. Yes, sir.

Mr. LISHMAN. What were all these payments for?

Mr. GOLDSTEIN. I am told they were for the handling and mailing of records to listeners.

Mr. LISHMAN. Who told you that?

Mr. GOLDSTEIN. My promotion and sales department requested the checks at those times.

Mr. LISHMAN. Did Mutual Distributors, Inc., make payments to diskjockeys and station librarians in Boston in the years 1957 to 1959?

Mr. GOLDSTEIN. In 1957 there were Christmas items. In 1958 there was a Christmas item; and in 1959 there were none, sir.

Mr. LISHMAN. Well, do you have any records with you?

Mr. GOLDSTEIN. No, I don't, sir.

Mr. LISHMAN. Is it a fact, that in 1957 you paid to diskjockey Joe Smith \$175?

Mr. GOLDSTEIN. I don't have a schedule, sir.

Mr. LISHMAN. I will hand you a schedule which was taken from your books, and ask you if these amounts that I am going to ask you about are correct or incorrect.

Do those schedules show, when you total the component parts, that in 1957 you paid Joe Smith \$175?

Mr. GOLDSTEIN. Yes, sir.

Mr. LISHMAN. Did you pay Norman Prescott \$100 in 1957?

Mr. GOLDSTEIN. Yes, sir.

Mr. LISHMAN. \$100 in 1957?

Mr. GOLDSTEIN. Yes, sir.

Mr. LISHMAN. Did you pay Robert Clayton \$100 in 1957?

Mr. GOLDSTEIN. Yes, sir.

Mr. LISHMAN. Did you pay Alan Dary \$100—

Mr. GOLDSTEIN. Yes, sir.

Mr. LISHMAN (continuing). In 1957?

Mr. GOLDSTEIN. Yes, sir.

Mr. LISHMAN. Did you pay Lou Goldberg \$50?

- Mr. GOLDSTEIN. Yes, sir.
- Mr. LISHMAN. Did you pay Gene Edwards \$50?
- Mr. GOLDSTEIN. I don't recall the name—yes, sir; it is on the schedule.
- Mr. LISHMAN. Did you pay Ed Penney \$50?
- Mr. GOLDSTEIN. Yes, sir.
- Mr. LISHMAN. Robert Merman \$50?
- Mr. GOLDSTEIN. Yes, sir.
- Mr. LISHMAN. Arnold Ginsburg \$50 in 1957?
- Mr. GOLDSTEIN. Yes, sir.
- Mr. LISHMAN. And another \$100 in 1959?
- Mr. GOLDSTEIN. Yes, sir.
- Mr. LISHMAN. What was the \$100 in 1959 for?
- Mr. GOLDSTEIN. \$100 in 1959 was at the request of one of my manufacturers.
- Mr. Moss. Was what?
- Mr. GOLDSTEIN. At the request of a manufacturer.
- Mr. LISHMAN. Who was the manufacturer?
- Mr. GOLDSTEIN. United Artists, sir.
- Mr. LISHMAN. What were the arrangements concerning this?
- Mr. GOLDSTEIN. The arrangements were made between my United Artists sales manager, Mr. Scherrer, and, I believe, the name at United Artists was Lou Krefitz.
- Mr. LISHMAN. What was this \$100 for?
- Mr. GOLDSTEIN. It was \$50. I believe the check was drawn around mid-October, early to mid-October, 1959, and it was for September and October of 1959 at \$50 per month.
- Mr. LISHMAN. For what?
- Mr. GOLDSTEIN. To make Mr. Ginsburg aware of United Artists releases so that he would be sure to hear them, be sure to listen to them.
- Mr. LISHMAN. Well, I have before me a photostatic copy of the canceled check dated October 2, 1959, to the order of Arnie Ginsburg from Mutual Distributors, Inc., and a photostatic copy of his endorsement on the back, bearing the notation "September and October" on the left-hand side of the check. Is that the check that you referred to?
- Mr. GOLDSTEIN. Yes, sir.
- Mr. LISHMAN. Will you look at this check and see if it is a true copy of the check that was actually paid?
- Mr. GOLDSTEIN. It is, sir.
- Mr. LISHMAN. Did you pay William Mawlowe \$50 in 1957?
- Mr. GOLDSTEIN. Yes, sir.
- Mr. LISHMAN. Did you pay Fred Cole \$50 in 1957?
- Mr. GOLDSTEIN. Yes, sir.
- Mr. LISHMAN. Dave Maynard \$50 in 1957?
- Mr. GOLDSTEIN. Yes, sir.
- Mr. LISHMAN. Stan Richards \$50 in 1957?
- Mr. GOLDSTEIN. Yes, sir.
- Mr. LISHMAN. Arnold Rosen \$50 in 1957?
- Mr. GOLDSTEIN. Yes, sir.
- Mr. LISHMAN. Paul Flanagan \$50 in 1957?
- Mr. GOLDSTEIN. Yes, sir.
- Mr. LISHMAN. Emil Anderson, the same?
- Mr. GOLDSTEIN. I think that should be Ernie.

Mr. LISHMAN. Ernie, is that right?

Mr. GOLDSTEIN. Yes, Ernie Anderson.

Mr. LISHMAN. Did you pay Ray Leonard \$50?

Mr. GOLDSTEIN. Yes.

Mr. LISHMAN. Did you pay Oceana Imports Co. \$396 in 1957?

Mr. GOLDSTEIN. Yes, sir.

Mr. LISHMAN. What was that for?

Mr. GOLDSTEIN. That was for several items this company was handling which I distributed as Christmas presents both to dealers and diskjockeys, sir.

Mr. LISHMAN. Did you purchase gift certificates from Louis of Boylston Street?

Mr. GOLDSTEIN. Yes, sir.

Mr. LISHMAN. Totaling \$400 in 1958?

Mr. GOLDSTEIN. Yes, sir.

Mr. LISHMAN. Now, for the 3-year period that we have just gone through with respect to the persons named, is it a fact that payments made by Mutual Distributors totals \$2,121?

Mr. GOLDSTEIN. It appears to be correct, sir; yes.

Mr. LISHMAN. Were those all the payments made by Mutual Distributors to persons, either to or for diskjockeys or station personnel of radio stations or television stations in Boston?

Mr. GOLDSTEIN. Yes, sir.

Mr. LISHMAN. You made no other payments of any kind to any radio station personnel or TV station personnel during this period?

Mr. GOLDSTEIN. No, sir. The WMEX checks do not appear on this schedule.

Mr. LISHMAN. No.

Mr. GOLDSTEIN. And also a check to WHIL for some advertising.

Mr. LISHMAN. Did you make any gifts in addition to payments of money to any of the diskjockeys in the Boston area?

Mr. GOLDSTEIN. Yes, sir.

Mr. LISHMAN. To whom did you make such gifts?

Mr. GOLDSTEIN. I don't have the list with me, sir. They are available.

Mr. LISHMAN. What?

Mr. GOLDSTEIN. I don't have the list with me, but they are available.

Mr. LISHMAN. I will show you a list. Do you recognize these three pages as containing a list of diskjockeys and broadcasting station personnel in Boston, to whom Mutual Distributors made gifts?

Mr. GOLDSTEIN. Yes, sir; these appear to be.

Mr. LISHMAN. Is it correct that these lists are broken down into four classes; namely, class A, class B, class C, and class D?

Mr. GOLDSTEIN. Yes, sir.

Mr. LISHMAN. I notice this is a Christmas gift list?

Mr. GOLDSTEIN. Yes, sir.

Mr. LISHMAN. And represents presents either in cash, or by check, or in material things to these diskjockeys and others referred to?

Mr. GOLDSTEIN. Yes, sir.

Mr. LISHMAN. Why did you make four classifications for these various personalities?

Mr. GOLDSTEIN. I made this list up with the help of my sales and promotion department.

Mr. LISHMAN. Was it made up in consideration of the order of their comparative importance to helping the sale of records which you distribute?

Mr. GOLDSTEIN. Yes, sir. I would say the size of the station and the importance of the individual show had something to do with this classification.

Mr. LISHMAN. I notice in class A there are only two diskjockeys.

Mr. GOLDSTEIN. Yes, sir.

Mr. LISHMAN. Bob Clayton and Norm Prescott. Were they put in class A because you felt they were the most important diskjockeys in the Boston area?

Mr. GOLDSTEIN. My sales department obviously felt that during the year just past that these two had probably done more for us than the others and, therefore, should be scaled higher than the normal run of people.

Mr. LISHMAN. What did each one of these gentlemen in the class A schedule receive?

Mr. GOLDSTEIN. I can't say, not knowing whether this is 1957 or 1958, as affecting my answer. This appears to be—

Mr. LISHMAN. This is 1958.

Mr. GOLDSTEIN. Yes, sir; it must be 1958; I am sorry.

Mr. LISHMAN. According to this, Bob Clayton received \$100; is that correct?

Mr. GOLDSTEIN. No, sir.

Mr. LISHMAN. Well, it says \$100 after his name. What did he get?

Mr. GOLDSTEIN. In fact, Mr. Clayton received in 1958 a portable stereo phonograph.

Mr. LISHMAN. What was the value of that?

Mr. GOLDSTEIN. It had a list price of, I am guessing now, I would guess about \$100 to \$119, and a cost to me of approximately \$65 to \$70.

Mr. LISHMAN. How about Norm Prescott as a class A recipient, what did he get?

Mr. GOLDSTEIN. Norm Prescott, in fact, received a check for \$100, which is on this schedule.

Mr. LISHMAN. Yes, sir.

Now, in class B we have Alan Dary, Bill Givens, Arney Ginsburg, Mel Miller, Joe Smith, Lou Goldberg, Stan Richards, Al Lindgren, and Dick Mitchel.

Mr. GOLDSTEIN. Yes, sir.

Mr. LISHMAN. How did you measure what they should receive in the way of Christmas gifts?

Mr. GOLDSTEIN. Well, we were actually giving gifts this year, and by gift I mean a physical present which we would have to go out and shop for. Before we did it we wanted to have a rough idea of how many we needed in each classification. Two of these people are, sir, dealers, not diskjockeys.

Mr. LISHMAN. Now, apparently you had two people in your class A gift recipient list, and you have nine people in your class B gift recipient list; is that correct?

Mr. GOLDSTEIN. Yes, sir.

Mr. LISHMAN. We come to class C on your gift recipient list. In order to save time I will just point out that there were 56 people on

this class C Christmas gift list. Are all the people on the class C list either diskjockeys, station librarians, or personnel employed by radio stations?

Mr. GOLDSTEIN. Yes, sir; they appear to be.

Mr. LISHMAN. Is it correct that there are 56 of them on that list?

Mr. GOLDSTEIN. I will accept that total, sir.

Mr. LISHMAN. How much, in value, did you use for the class C recipient?

Mr. GOLDSTEIN. I notice on the right hand side, sir, that two of these were marked "travel kit." The travel kit that I gave away a few of that year cost me—again I am guessing—less than \$10.

Mr. LISHMAN. Do you recall what you gave Bill Marlowe in that year?

Mr. GOLDSTEIN. No, sir.

Mr. LISHMAN. Or Dave Maynard?

Mr. GOLDSTEIN. No, sir.

Mr. LISHMAN. Do you recall what you gave any of these 56 persons, other than these two travel kits?

Mr. GOLDSTEIN. This was 1957, sir. I don't recall.

Mr. LISHMAN. 1957.

Mr. GOLDSTEIN. But I have the information in my desk.

Mr. LISHMAN. Now we come to the class D recipients. Is it correct there are 64 names on this list as class D recipients?

Mr. GOLDSTEIN. I will accept that total, sir.

Mr. LISHMAN. Were all the persons listed employees of radio station licensees?

Mr. GOLDSTEIN. They appear to be, sir.

Mr. LISHMAN. And what was the value of the class D gift?

Mr. GOLDSTEIN. This would have been a token present. I doubt if it had a value of a dollar and a half, sir.

Mr. LISHMAN. Yes.

Mr. Chairman, I would like to have these four schedules, showing classes A, B, C, and D, Christmas gift list of Mutual Distributors, placed in the record.

The CHAIRMAN. Let it be received as having been identified.

(The document referred to follows:)

MUTUAL DISTRIBUTORS, INC.

"A" CHRISTMAS GIFT LIST

Bob Clayton, \$100
Norman Prescott

Al Lindgren, \$50

"B" CHRISTMAS GIFT LIST

Alan Dary
Bill Givens
Arnie Ginsberg
Mel Miller, \$50

Joe Smith
Lou Goldberg
Stan Richards
Dick Mitchell

"C" CHRISTMAS GIFT LIST

Fred B. Cole, WHDH	Lad Carlton
Hank Forbes	Howie Leonard, WLOB
Bill Marlowe, WBZ	Mike Norton, WPOR
Carl De Suse	Frank Sweeney, WLAM
Dave Maynard	Jim Winters, WABI
Arnie Rosen	Tru Taylor, WSAR
Phil Christie	Chuck Stevens, WRIB
Don Parker, WMEX	Sherm Strickhauser, WICE
Dan Donovan	Jim Holt, WICE
Jim Fitzgerald, WORL	Ken Garland, WHIM
Larry Welch	Jay Dunn, WHIM
Ed Penney, WTAO	Jim Mendes, WICE
Ken Wayne	Tal Hood, WFGM
Bob Wilson, WCOP	Jack Chadderton, WLYN
Mark Foster	Ken Wilson, WHDM
Tom Evans	Gene Sheldon, WORL (travel kit)
Budd Kelly	Jim Pansuello, WHDH (travel kit)
Bill Clark	Jack McDermott
Tedd O'Hara, WILD	George Fennell
John Scott	Bob Walsh
Dottie Katchedorian, WNAC	Don Masters
Dick Smith, WORC	Harry Downey, WICC
Milt Krey	Ivor Hugh, WCCC
Bob Breyer	Del Raycee, WPOP
Don Zimmerman, WNEB	Jim Gallant, WNHC TV
Tiny Markel, WAVZ	Lou Dennis, WBRY
Gordon Baker, WSPR	George Lasette, WTRY
Duane Wadsworth, WKBR	Paul Flanagan, WPTR

"D" CHRISTMAS LIST

Bill Brown, WNEB	Pat Budrow, WMEX
George Downey	Bill Bradley, WILD
Frank Miller	Peg McDonald, WNAC
Charlie Mansfield, WHAV	Roy Leonard, WNAC
John Bassett, WBZ	Lynn Loveland, WEEI
Bob Leonard, WICE	Johnny Towne, WLYN (Mail)
Morning Man, WICE	Morning Man, WLYN
Nancy Bloomenthal, WHDH	Receptionist, WORC
John McClellan, WIIDH	Evening Man, WROC
Al Merrill, WHDH	Rud Clavin, WORC
Norm Nathan, WHDH	Don Spencer, WORC
Donnie Oppenheim, WHDH	Dick Oliver, WAAB
Ray Dorey, WIIDH	Marty Sidman, WKBR
Jess Kane, WIIDH	Bill Morrissey, WKBR
Sid Pike, WHDH	Norm Bailey, WFEA
Jean TV assistant, WIIDH	Gene LaVerne, WFEA
Janice (Ken Wilson assistant)	Roy Allard, WFEA
Libby (Bob Clayton's secretary)	Chuck, WFEA
Jim Deering, TV assistant	Bob Edgerley, WGIR
Switchboard girl, WBZ	Donn Tibbetts, WGIR
Hank Lundquist, WBZ	Bob Perry, WC
John Grubbs, WBZ	4, WSMN
Midge, WBZ	Bertha Porter, WDRC
Len Libman, WTAO	Jim Peters
Tom Connolly, WXHR	Chuck Brinkman
Billy Dale, WTAO	Barbara Spina
Gene Coldsy, WHIL	Bob Crager
Girls at WHIL	Earl Pudney
Aurora, WBOE	W— Howard
Ruth, WBOE	Bill Pope
Gerry Burns, WORL	Jeff Davis
Hank Elliot, WORL	Vince Lawford

Mr. LISHMAN. For what purpose did you make the payment of cash and these Christmas gift lists to the radio station personnel named?

Mr. GOLDSTEIN. In appreciation, sir.

Mr. LISHMAN. In appreciation of what?

Mr. GOLDSTEIN. Services and considerations they had rendered us in the past year.

Mr. LISHMAN. By that you mean they had been exposing labels which were distributed by your company?

Mr. GOLDSTEIN. Yes, sir. The stations had played them. We probably felt as though we were getting a fair share of the air time available.

Mr. LISHMAN. In connection with the \$100 check for Mr. Ginsburg, you acted as a conduit from United Artists to Mr. Ginsburg?

Mr. GOLDSTEIN. That is correct, sir.

Mr. LISHMAN. Did Mutual Distributors pay Romance Watson?

Mr. GOLDSTEIN. Yes, sir.

Mr. LISHMAN. And did they pay Romance Watson \$40?

Mr. GOLDSTEIN. Yes, sir.

Mr. LISHMAN. Does the check you paid Watson have the notation "Bob Clayton TV Show?"

Mr. GOLDSTEIN. Yes, sir; it does.

Mr. LISHMAN. Who was Romance Watson?

Mr. GOLDSTEIN. An artist for Coral Records, sir.

Mr. LISHMAN. Did he appear as an artist on the "Bob Clayton Boston Ballroom?"

Mr. GOLDSTEIN. I was told he had, sir.

Mr. LISHMAN. Why did Mutual make this payment to Mr. Watson who was an entertainer on the Bob Clayton show?

Mr. GOLDSTEIN. At the factory's request, sir.

Mr. LISHMAN. At whose request?

Mr. GOLDSTEIN. At Coral Records' request.

Mr. LISHMAN. At Coral Records' request?

Mr. GOLDSTEIN. Yes, sir.

Mr. LISHMAN. Why didn't Coral Records send this check to Mr. Watson?

Mr. GOLDSTEIN. I am told it was a matter of expediting the check to the union headquarters in Boston.

Mr. LISHMAN. Was the \$40 representative of the union scale he was entitled to for having appeared on the Bob Clayton show?

Mr. GOLDSTEIN. I don't know, sir.

Mr. LISHMAN. Do you know why Mr. Clayton of Station WHDH didn't make the payment directly?

Mr. GOLDSTEIN. No, sir.

Mr. LISHMAN. To this artist who had appeared on their show?

Mr. GOLDSTEIN. No, sir.

Mr. LISHMAN. Why should a record distributor make such payments?

Mr. GOLDSTEIN. It was very peculiar, sir. I hadn't any payments like that previously nor since.

Mr. LISHMAN. Well, didn't you inquire into this?

Mr. GOLDSTEIN. At the time I was asked to write that check I was told that it would be covered by a credit from Coral.

Mr. LISHMAN. Well, doesn't this amount to making a payment to the station itself to relieve the station of its obligation to pay talent which appeared on one of its programs?

Mr. GOLDSTEIN. No, sir. The check was made payable to Romance Watson.

Mr. LISHMAN. That is not responsive to the question.

Isn't that the equivalent of relieving the station itself from having to pay the talent which appeared on one of its shows?

Mr. GOLDSTEIN. I never thought of it at the time I wrote the check, sir. I was told to write a check and that it would be covered by a factory credit. I handled it on the books as an exchange item.

Mr. LISHMAN. Is Mutual Distributors the exclusive distributor for London Records?

Mr. GOLDSTEIN. Yes, sir.

Mr. LISHMAN. Is Mr. George Hartstone, president of Mutual, a person who has an interest in London Records?

Mr. GOLDSTEIN. Not to my knowledge, sir.

Mr. LISHMAN. Is he employed by London Records?

Mr. GOLDSTEIN. Not to my knowledge, sir.

Mr. LISHMAN. Do any of the other principals in Mutual Distributors have an interest in London Records?

Mr. GOLDSTEIN. Not to my knowledge, sir; not that I am aware of.

Mr. LISHMAN. Isn't London Records Mutual's largest account?

Mr. GOLDSTEIN. My largest supplier; yes, sir.

Mr. LISHMAN. You have two promotion men; is that correct?

Mr. GOLDSTEIN. Yes, sir.

Mr. LISHMAN. What are their names?

Mr. GOLDSTEIN. Right now they are named Richard Benthale and Allen Altman.

Mr. LISHMAN. Is it a fact that Mr. Benthale handles the London line exclusively at a salary of \$100 a week, \$110 a week?

Mr. GOLDSTEIN. He had been an exclusive London man up until a short while ago, sir.

Mr. LISHMAN. How long ago?

Mr. GOLDSTEIN. Within 60 days, sir.

Mr. LISHMAN. Within 30 days.

Mr. GOLDSTEIN. Between 30 and 60, sir. It is beyond 30 days.

Mr. LISHMAN. And is Allen Altman the promotion man who handles other lines?

Mr. GOLDSTEIN. Yes, sir.

Mr. LISHMAN. And is his salary \$90 a week?

Mr. GOLDSTEIN. Yes, sir.

Mr. LISHMAN. Does Coral Records contribute \$50 of that?

Mr. GOLDSTEIN. Yes, sir.

Mr. LISHMAN. Did you ever make any payments to diskjockeys or other radio station personnel on behalf of London Records?

Mr. GOLDSTEIN. No, sir.

Mr. LISHMAN. Who is the president of London Records?

Mr. GOLDSTEIN. I don't know, sir.

Mr. LISHMAN. Who is Leon Hartstone?

Mr. GOLDSTEIN. Leon Hartstone is a treasurer of Mutual Distributors, Inc.

Mr. LISHMAN. Who is George Hartstone?

Mr. GOLDSTEIN. President of Mutual Distributors.

Mr. LISHMAN. Who is Robert Hartstone?

Mr. GOLDSTEIN. Clerk of Mutual Distributors.

Mr. LISHMAN. Is there a Lee Hartstone?

Mr. GOLDSTEIN. Lee Hartstone is Leon Hartstone, sir.

Mr. LISHMAN. Is he connected with Mutual Distributors?

Mr. GOLDSTEIN. Yes, sir.

Mr. LISHMAN. Is he also connected with London Records?

Mr. GOLDSTEIN. Yes, sir.

Mr. LISHMAN. What position does he hold in London Records?

Mr. GOLDSTEIN. I believe I have seen his name on the factory correspondence as vice president in charge of sales.

Mr. LISHMAN. So one of the officials or employees of Mutual is also an official, vice president, of London Records?

Mr. GOLDSTEIN. Yes, sir.

Mr. LISHMAN. Which is in turn, distributed by Mutual?

Mr. GOLDSTEIN. That is correct, sir.

Mr. LISHMAN. And it is Mutual's largest account?

Mr. GOLDSTEIN. Yes, sir.

Mr. LISHMAN. I have no further questions, Mr. Chairman.

The CHAIRMAN. Mr. Mack, do you have any questions?

Mr. MACK. Yes.

Who told you to write the check to Romance Watson?

Mr. GOLDSTEIN. Coral sales manager, sir, Mr. Frank Holland.

Mr. MACK. Frank Holland?

Mr. GOLDSTEIN. Yes, sir.

Mr. MACK. I have one other question. I would like to ask, what did Bob Clayton do for you that Dave Maynard did not do?

Mr. GOLDSTEIN. I really couldn't answer that, sir. The scaling of my Christmas list—

Mr. MACK. One is a class A and the other one is in class C.

Mr. GOLDSTEIN. Well, we certainly wouldn't want to give a girl who opens a door, who answers a telephone or treats a promotion man kindly, the same kind of a gift I would want to give a diskjockey who was on the air.

Mr. MACK. You indicated you gave Bob Clayton \$100 because he had done something for you.

Mr. GOLDSTEIN. Yes, sir. He had given our product normal consideration and air time during the previous year.

Mr. MACK. Now then the others? He had done more than the others?

Mr. GOLDSTEIN. No, sir; no.

Mr. MACK. I misunderstood you then.

Mr. GOLDSTEIN. No, I am sorry. The scaling of the Christmas list was intended to have some relation to the power of the station.

Mr. MACK. The power, it is a combination of the power of the station and the power of the individual, is that it?

Mr. GOLDSTEIN. Positively, sir. An hour of air time from one jockey was certainly not the same value as from another.

Mr. MACK. I see. And that is the basis used by you in selecting Christmas presents. The ones in the high category got the larger sums, and those in the lower category got the smaller sums?

Mr. GOLDSTEIN. Yes, sir. I would have to say that.

Mr. MACK. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Mr. Goldstein. You may be excused.

Mr. GOLDSTEIN. Thank you.

The CHAIRMAN. This will conclude this series of hearings, and the subcommittee will adjourn until further announcement by the Chair.

(Whereupon, at 6:05 p.m., the subcommittee recessed to reconvene subject to the call of the Chair.)

RESPONSIBILITIES OF BROADCASTING LICENSEES AND STATION PERSONNEL

FRIDAY, MARCH 4, 1960

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON LEGISLATIVE OVERSIGHT,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The special subcommittee met, pursuant to recess, at 10 a.m., in the caucus room, Old House Office Building, Hon. Oren Harris (chairman of the special subcommittee) presiding.

Present: Representatives Harris, Mack, Flint, Moss, Bennett, Springer, and Devine.

Also present: Robert W. Lishman, counsel; Beverly M. Coleman, principal attorney; James P. Kelly, investigator; Herman Clay Beasley, chief clerk; and Jack Marshall Stark, minority counsel.

The CHAIRMAN. The subcommittee will come to order.

Mr. Chairman, will you be sworn, please, sir?

Do you solemnly swear the testimony you give to this subcommittee to be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. KINTNER. I do.

The CHAIRMAN. Have a seat.

The subcommittee has met this morning to hear a further report from the Federal Trade Commission with reference to Commission actions concerning the administration of the laws relating to certain alleged deceptive practices in broadcasting.

On February 3, I directed a letter to Hon. Earl W. Kintner, Chairman of the Federal Trade Commission, with reference to these hearings. I think that letter should go into the record at this point.

I received a reply from Mr. Kintner advising that he would be available at such time as the subcommittee desired. I do not have a copy of that letter with me.

Mr. KINTNER. We will supply a copy of it, Mr. Chairman.

The CHAIRMAN. It will be included in the record at this point.

(The documents referred to follow:)

FEBRUARY 3, 1960.

HON. EARL W. KINTNER,
Chairman, Federal Trade Commission,
Washington, D.C.

DEAR MR. KINTNER: Commencing February 8 the subcommittee will hold hearings pertaining to:

(a) Payments to licensees and employees thereof to obtain the broadcasting of material for the commercial advantage of the payer, without having any announcement made of such payments;

(b) Unfair advantages obtained by manufacturers, distributors and others through the use of licensed facilities for the broadcasting of hidden commercials and presentation of material intended to deceive the viewing and listening public; and

(c) The extent to which station licensees are delegating control to others of the type of material broadcast.

Since October 12, 1959, when you testified at our hearings, we are informed that the Federal Trade Commission has been inquiring into matters involving the foregoing problems. We would appreciate receiving from you at your earliest convenience a report outlining the nature and scope of such activities and any findings or determinations you may have made.

Sincerely yours,

OREN HARRIS,
Member of Congress, Chairman.

FEBRUARY 23, 1960.

HON. EARL W. KINTNER,
*Chairman, Federal Trade Commission,
Washington, D.C.*

DEAR MR. CHAIRMAN: With further reference to my letter to you of February 3, the Special Subcommittee on Legislative Oversight has scheduled your appearance for 10 a.m., Friday, March 4, and will receive the report of your Commission at that time.

With kind regards,
Sincerely yours,

OREN HARRIS
Member of Congress, Chairman.

FEDERAL TRADE COMMISSION,
Washington, February 25, 1960.

HON. OREN HARRIS,
Chairman, Special Subcommittee on Legislative Oversight, House Interstate and Foreign Commerce Committee, Washington, D.C.

DEAR CHAIRMAN HARRIS: I refer to your letter of February 23, 1960. Please be advised that I will appear at 10 a.m., Friday, March 4, 1960, to testify before your Special Subcommittee on Legislative Oversight and at that time will submit a Commission report on the matter outlined in your letter of February 3, 1960.

With kindest regards and best wishes, I am,
Sincerely yours,

EARL W. KINTNER, *Chairman.*

TESTIMONY OF EARL W. KINTNER, CHAIRMAN; ACCOMPANIED BY HARRY A. BABCOCK, EXECUTIVE DIRECTOR; DANIEL J. McCauley, GENERAL COUNSEL; SHERMAN HILL, DIRECTOR, BUREAU OF INVESTIGATION; SAMUEL WILLIAMS, CHIEF PROJECT ATTORNEY; MASON BRAY, PROJECT ATTORNEY; ALVIN BERMAN, ASSISTANT GENERAL COUNSEL; FRANK McALEER, ASSISTANT TO GENERAL COUNSEL; AND CHARLES SWEENEY, CHIEF OF RADIO AND TELEVISION BRANCH, FEDERAL TRADE COMMISSION

The CHAIRMAN. Your name is Mr. Earl W. Kintner?

Mr. KINTNER. That is right, sir.

The CHAIRMAN. You are Chairman of the Federal Trade Commission?

Mr. KINTNER. That is correct.

The CHAIRMAN. Mr. Kintner, do you have a statement that you are prepared to make at the outset?

Mr. KINTNER. I do, Mr. Chairman; and not knowing the extent of the information which you members of the subcommittee might wish

to elicit here today, I have brought with me various senior officials of the Commission who are prepared to answer questions also.

The CHAIRMAN. I think it would be appropriate at this point, Mr. Chairman, if you were to have them identified for the record.

Mr. KINTNER. Very well, sir.

On my extreme right, Mr. Harry A. Babcock, our Executive Director; and next to me, our General Counsel, Mr. Daniel J. McCauley, Jr.

We have with us Mr. Sherman Hill, the Director of the Bureau of Investigation; Mr. Samuel L. Williams, chief project attorney, Bureau of Investigation; Mr. Mason Bray, project attorney, Bureau of Investigation; Alvin L. Berman, Assistant General Counsel; Frank McAleer, assistant to the General Counsel; and Charles Sweeny of our radio and television branch.

Mr. Chairman, I wish to present on behalf of the Federal Trade Commission a report concerning payola and related practices in the broadcasting industry. This report is concurred in by my colleagues of the Commission.

This report is made in response to Mr. Harris' letter of February 3, 1960, in which he requested this Commission to furnish a report concerning the nature and scope of the Commission's activities in connection with the investigation of certain practices relating to the broadcasting industry, as well as any findings or determinations we may have made. The subparagraphs in his letter which set forth the matters in which the Subcommittee on Legislative Oversight is currently interested will be discussed seriatim.

(a) Payments to licensees and employees thereof to obtain the broadcasting of material for the commercial advantage of the payor, without having any announcement made of such payments;

this is from your letter, Mr. Chairman, the quotation.

The expression "payola" became a colloquialism shortly after this subcommittee had obtained information concerning its likely prevalence in the broadcasting industry in the exposure of records. Concurrently with this, we received an application for complaint with respect thereto. We began investigations immediately into this practice which involves the promotion and exposure of records by disk-jockeys and other broadcasting media personnel at the instance of record manufacturers and distributors. Sixty "payola" complaints have been either issued or directed by the Commission against record manufacturers and distributors. Consent orders have been entered into and accepted by the Commission in 16 of these cases. These "payola" complaints allege that the record manufacturers and distributors have given money or other valuable considerations to disk-jockeys and other employees of licensed radio and television stations for the purpose of exposing the respondents' records on programs broadcast over the stations. It is charged that the concealment of such payments is a deceptive act within the meaning of section 5 of the Federal Trade Commission Act since listeners are misled into believing that the recordings played are selected strictly on their merits or public popularity.

The Commission has docketed approximately 95 additional investigations involving other record manufacturers and distributors for similar "payola" practices.

Our investigational files in the 60 cases where complaints have been issued or approved reveal that payments have been made by manufacturers or distributors to 255 diskjockeys or other employees of broadcast licensees in more than 56 cities in 26 States. In addition, these files indicate that at least 7 station licensees have received similar payments. We have furnished both the names of the personnel and the stations to the Federal Communications Commission. We have also been cooperating with the Internal Revenue Service by making information in our files available to that agency.

The principal form of payola by record manufacturers and distributors is a direct money payment by cash or check. Depending upon the broadcast appeal of a particular diskjockey and the popularity of his show, these payments may vary from sporadic small or large amounts to weekly or monthly payments on a regular basis from several record manufacturers and distributors. In the Philadelphia, Boston, New York, Cleveland, and Chicago areas, record manufacturers and distributors made cash payments running into thousands of dollars.

In addition to the classic form of payola described above, our investigational files reveal other valuable and substantial considerations passing from the record manufacturers to employees of station licensees. For example, at least one record manufacturer entered into an arrangement with a diskjockey whereby the latter received royalties on all records which were sold by the manufacturer. Other manufacturers have paid for advertisements appearing in so-called hit sheets which are published by some diskjockeys. In some instances, manufacturers have paid diskjockeys for the listing of their records in these so-called hit sheets.

Another colloquialism which may be linked with payola is a practice known as a "washout." This term describes an arrangement whereby various recording artists will appear on a radio or television program which may be produced by a diskjockey. Under the union rules of the American Federation of Television and Radio Artists, recording artists must be paid the minimum union scale for all such appearances. Record manufacturers and distributors have entered into arrangements whereby diskjockeys or their production companies have been reimbursed for the appearance fees paid by the diskjockeys to the appearing artist.

Similarly, record manufacturers, under another version of the "washout" arrangement, have furnished the services of recording artists at record hops which are conducted by diskjockeys. Usually the diskjockey retains all profits from such hops or shares the profits with a sponsoring organization. From the information in our investigational files, it is a rare occasion that the diskjockey will pay the appearance fees of the artist upon whom, in many instances, the financial success of the record hop will depend.

Most record manufacturers furnish free records to distributors based upon certain minimum purchases. The manufacturers whose distribution practices we have examined usually furnish 300 free records for every 1,000 purchased. There is some indication that certain record manufacturers may be aware that their distributors will resell free records at list prices through recognized channels of distribution and use the proceeds to defray the cost of cash payments or payola to diskjockeys.

Payola, be it in sophisticated or unsophisticated form, may be passed on to employees of licensed radio or television stations in as many ways as the ingenuity of the participants may devise. For example, our files reveal that expensive and costly gifts such as jewelry, automobiles, fur stoles, and color television sets—complete with service contracts—may be given to diskjockeys or their wives by record manufacturers or distributors.

Also, manufacturers may arrange for a diskjockey to own an interest in their company, in labels which they distribute, or in concerns which press the manufacturer's records from master recordings.

Further, a manufacturer or distributor may make mortgage loans on the diskjockey's home, or arrange for a diskjockey to have an interest in a music publishing firm whose songs the manufacturer may record, and so on, as the imagination of the parties may conceive.

From your letter, I quote :

(b) Unfair advantages obtained by manufacturers, distributors and others through the use of licensed facilities for the broadcasting of hidden commercials and presentation of material intended to deceive the viewing and listening public;

As you are doubtless aware, the Commission has had since 1956 an established unit within its Bureau of Investigation to monitor radio and television advertisements. During the past three fiscal years, the Commission has issued 500 orders to cease and desist against deceptive advertising claims made in all interstate media.

The prohibitions of an order, of course, are not limited to the media in which the false claims were initially made. To this extent, therefore, all orders in the field of misleading advertising must be considered as effectively eliminating the outlawed claims on radio or television commercials. The recent contempt proceedings brought against P. Lorillard & Co. illustrate the continuing restraint of a final order against an advertiser regardless of the media of dissemination.

P. Lorillard & Co. was fined \$40,000 on January 14, 1959, for violations of a Commission order which had been affirmed and enforced by the U.S. Court of Appeals for the Fourth Circuit on December 29, 1950. Some of the advertising claims which were found violative of the 1950 decree were disseminated on television commercials.

Since October 30, 1959, the Commission has issued seven formal complaints against misleading demonstrations of products on television commercials. We have numerous cases under investigation which relate to false, misleading, and deceptive advertising claims on television commercials.

The practice of hidden commercials or surreptitious payments to persons connected with television programs plugging products other than those of the sponsoring company is another practice in the broadcasting field which came to the attention of the Commission during the course of your November hearings.

Following a review of the testimony before this subcommittee, we made a preliminary investigation to determine the method and extent that this activity, known as "plugola," may be prevalent in the broadcasting media. As a result of such investigation, we have docketed for formal investigation the plugola practices of eight firms which appear to solicit a cross section of American industry to buy hidden plugs of commercials on regularly sponsored television programs.

In soliciting clients for hidden plugs, one such firm has assured its prospective clients that the hidden commercials would consist of:

- (a) Visual and audio identification;
- (b) Some 15 to 20 words of descriptive copy delivered simultaneously with the visual identification;
- (c) Copy prepared and written by the person paying for the plug;
- (d) Advance notice of the dates on which all plugs will appear; and
- (e) A recording of the broadcast plugs.

It appears that the cost of these hidden commercials varies from \$200 to \$275 per plug, and that they are planted through television writers, prop men, producers, entertainers, directors, cameramen, etc.

Turning to your point (c) which I quote:

The extent to which station licensees are delegating control to others of the type of material broadcast.

Most of the practices referred to above under subparagraphs (a) and (b) could be construed as either a delegation of control or an avoidance of responsibility by station licensees for the material which may be broadcast through their facilities. This Commission has not undertaken any investigation to determine the extent of such delegation except insofar as our current investigations of payola, plugola, or false and deceptive television commercials may relate to this type of activity.

We recognize that the Commission has broad jurisdiction to proceed against any person who may be engaged in unfair or deceptive acts or practices in commerce. It is our firm intention to consider the degree of responsibility that either an advertiser, an advertising agency, or the disseminating media may have had in participating in any unfair or deceptive acts within the meaning of our statute. In appropriate cases, the Commission will not hesitate to name as respondents in its proceedings all persons who have been responsible for the deceitful or unfair act or practice.

It is apparent that this Commission could spend a substantial portion of its appropriation to clean up, in its entirety, the payola and plugola practices which have come to its attention since your November hearings. For this reason, we subscribe to the recommendation set forth in the subcommittee's interim report and we favor the enactment of legislation which would provide criminal penalties for practices generally described in this report as payola or plugola.

Mr. Chairman, that concludes my formal statement submitted on behalf of the Federal Trade Commission.

The CHAIRMAN. Thank you very much, Mr. Kintner, for your report on the action and activities of your Commission in regard to these matters about which we are inquiring. Furthermore, I would like to compliment the Commission on the work that it is undertaking, as so well explained throughout this report.

I do not want to suggest anything that would not be appropriate in connection with your work, but you mentioned there were 60 payola complaints that have been issued, or directed by the Commission, against record manufacturers and distributors.

Would it be appropriate to ask you to file with the subcommittee a list of those in which complaints have been filed against?

Mr. KINTNER. I have such a list with me this morning, and I would be glad to file it with the subcommittee.

The CHAIRMAN. I notice—

Mr. KINTNER. Some of these, there are perhaps nine of them, that have not been officially released because they are not released to the public until service has been effected, but I am very happy to file this list with the subcommittee this morning.

The CHAIRMAN. That is my reason for stating that I do not want to ask for any information that would not be appropriate at this time. I fully realize that an agency with the responsibility of the Federal Trade Commission must have an opportunity to act before making it public.

I noticed you said some actions were issued and some were directed by the Commission.

Now, those that have been directed, I do not assume you are including directed actions in the list?

Mr. KINTNER. Yes, I have. The ones that have been issued, there are 51 in number, have already been served and released to the public.

There are nine, however, whose issuance has been directed, and these nine complaints are in process of service and have not been publicly announced by the Commission.

The CHAIRMAN. Well, I would assume you would not want those made public until—

Mr. KINTNER. We would prefer they not be made public until service is effected.

The CHAIRMAN. I think you had better mark those when you let us have them—

Mr. KINTNER. I believe they are distinguished—they are not.

The CHAIRMAN. Yes, Mr. Bennett.

Mr. BENNETT. Mr. Kintner, do you have a reason for not making these public prior to—

Mr. KINTNER. The reason for not making them public is simply this: Those we file complaints against have an understandable feeling against finding out they have been sued for the first time by reading the newspapers, and there are slip-ups. We know that.

Sometimes Uncle Samuel does not get it mailed out as soon as we calculate he will, and the news may be released. But we are trying to hold those slip-ups to a minimum, and to make sure that the respondent accepts service and knows about the complaint before it is finally released to the public.

Mr. BENNETT. That is a matter of public relations with the man you are proceeding against?

Mr. KINTNER. Yes, sir; and also a matter of basic fairness.

Mr. BENNETT. Is that the only reason? I mean, there is no danger of jeopardizing your case or anything like that?

Mr. KINTNER. Oh, no, no; that is correct; and it is a matter of basic fairness, too.

This total of complaints is changing almost hourly. We have a great many in the pipeline and, every time the Commission meets formally to consider matters, there are a certain number of payola complaints on the docket, either complaints or settlements.

The CHAIRMAN. Now, I must say that there are two or three things I want to clarify before I give the other members an opportunity to ask questions. I do not want to jump up in front here.

I observe also, Mr. Kintner, in your statement that the Commission has docketed approximately 95 additional investigations.

One of the main purposes of our responsibility, as directed by the House, is to make a study and find out something about the procedures.

For my own information, what do you mean by docketing an investigation?

Mr. KINTNER. By that, Mr. Chairman, we simply mean that we have formally entered those matters for investigation. We have assigned them—

The CHAIRMAN. You assign a docket number to a case when you start investigating?

Mr. KINTNER. Yes. We have assigned them a number, each of those cases a number, for investigational purposes, and they are in the process of being investigated at various stages of such docketing.

The CHAIRMAN. I assume you mean by docketing, you do not mean in the sense of docketing as though a proceeding had been instituted?

Mr. KINTNER. No. They are not docketed in the sense that they are formal proceedings. But they are docketed in the sense that once listed and so docketed, they must be carried through to a final conclusion, whether that results eventually in a cease-and-desist order or a dismissal of the matter, or a failure to take any further action for lack of jurisdiction or other reasons.

The CHAIRMAN. I have noticed that all of these are against record manufacturers and distributors. From your investigation do you find such payments are limited entirely, or practices are limited entirely, to record manufacturers and distributors in connection with broadcasting of records and so forth?

Mr. KINTNER. So far as records are concerned, they are.

Of course, I mentioned this plugola practice which we are just getting into.

The CHAIRMAN. Yes, that is right.

You stated that you found, from your investigation, there were 255 diskjockeys or other employees of broadcast licensees—

Mr. KINTNER. Mr. Chairman, that is only with respect to the 60 formal complaints that we have issued to date. It does not cover the diskjockeys and others who may be involved in the remainder of the matters docketed for investigation and from which complaints may flow.

As we secure these names of stations and diskjockeys and employees involved, and issue complaints, as we issue complaints and secure these names from our files, we transmit them to the Federal Communications Commission under arrangements which we have with them.

The CHAIRMAN. Is there any reason why a list of these 255 diskjockeys could not be supplied to the subcommittee?

Mr. KINTNER. Mr. Chairman, if you request such a list we will supply it.

We would prefer that it not be publicly released, although this is a matter which lies within your discretion, of course; your judgment.

The CHAIRMAN. I fully realize that. My reason for approaching it this way is in an effort to take every precaution that I can to prevent its being made public when it should not be made public.

But, on the other hand, we do want to obtain as much information as it is appropriate for you to give.

Mr. KINTNER. We will supply that list.

The reason for my making this expression to you on this point is that quite obviously a lot of this information is ex parte. It may not have been properly verified, there may be errors, and we would not want to have spread on the record allegations against a person without there being ample opportunity for that person to defend himself.

And, furthermore, many of the cases involving these names have not been settled yet, and we may need this information for use in the trial of the case.

The CHAIRMAN. In view of the fact that it would be extremely helpful to the subcommittee for procedure in its current investigation, I am going to ask that you submit one copy, and one copy only, for the subcommittee's information.

Mr. KINTNER. We will be very happy to do so, Mr. Chairman.

The CHAIRMAN. I think, perhaps, it would be best to have you deliver that to me personally.

Mr. KINTNER. I will be glad to do that, sir. I am always happy to chat with you for as much time as you can find.

The CHAIRMAN. Well, thank you very much.

Of course, I will make it available to other members of the subcommittee for their convenience. At this time the data will be received off the record, until and unless the subcommittee takes other action.

I observed that there were several proceedings in your statement, that is, a total number of 16 cases, where consent decrees have been entered.

I assume, that after the filing of your proceedings, you work with the party against whom consent decree proceedings have been brought; that is, a consent decree which would be filed in your records?

Mr. KINTNER. That is right. That is a longstanding procedure at the Trade Commission.

The CHAIRMAN. That is, once you file a consent decree, it becomes public, does it not?

Mr. KINTNER. Yes, indeed; and the order entered—

The CHAIRMAN. Do you have a list of those?

Mr. KINTNER. Yes, we will supply a list of consent settlements up to date. I can supply that at the time I bring you the list—

The CHAIRMAN. Yes.

Mr. KINTNER (continuing). Of the diskjockeys involved, and will do so.

The CHAIRMAN. Yes.

Mr. KINTNER. This settlement involves issuance of an order which has the same force and effect in law as one issued after a lengthy trial, and hence we think that procedure is very definitely in the public interest.

The CHAIRMAN. Yes. Well, I would appreciate having that information, too.

Now, I noticed also in your statement that at least seven station licensees have received similar payments.

Have proceedings been brought against them or any of them?

Mr. KINTNER. We have not brought proceedings against the station owners or against their employees, including the diskjockeys who have received payola.

We have, however, given that information concerning the station licensees to the Federal Communications Commission.

The CHAIRMAN. Yes. Your proceedings are against those who made the payments?

Mr. KINTNER. Yes, sir. We felt that it would be most practicable and in the public interest to proceed at the source of the payments and, hence, we have issued our complaints against the record manufacturers and distributors who were making the payments.

The CHAIRMAN. Has the information concerning the seven licensees been made public?

Mr. KINTNER. No, sir; not by us.

The CHAIRMAN. I see. Would you supply that information for the subcommittee and deliver it to me under the same conditions as the list of the diskjockeys?

Mr. KINTNER. Yes, indeed, Mr. Chairman.

The CHAIRMAN. I believe those are all the preliminary questions I have at the moment.

Mr. Lishman, do you have anything you want to ask?

Mr. LISIIMAN. After the members.

The CHAIRMAN. Mr. Bennett?

Mr. BENNETT. Mr. Kintner, I share the chairman's view, and I join in his statement complimenting you for the efforts you have made in the last few months to get to the bottom of this scandalous practice that has been going on for some time.

Mr. KINTNER. Thank you, sir; and I might add, if you don't mind, that we are trying to do that in all areas of our work, and while some of our other efforts may not be quite as spectacular so far as news is concerned, I think they are just as effective.

Mr. BENNETT. I have no doubt about that, either.

I wanted to ask about this man Hess who, I guess, was the first person who really called public attention to this practice.

When he was here I asked him a number of questions about the so-called under-the-table payments that he made to various programs to get his store plugged without having anybody know that it was a plug.

Have you or your staff read the testimony that Hess gave?

Mr. KINTNER. Yes, sir.

Mr. BENNETT. Have you done it—

Mr. KINTNER. We analyzed, I did not personally, but the staff analyzed that testimony as a prelude to our investigation of the plugola practice.

Mr. BENNETT. Well, have you looked into any of the specific contributions that he made; the specific programs?

Mr. KINTNER. As far as I am advised, we have not. What we have done is to again go to what appears to be the big companies in the area engaged—

Mr. BENNETT. Big what?

Mr. KINTNER. The so-called big companies, those engaged in full time plugola activity and openly advertising the fact, to ascertain what the practice is. In other words, again we are trying to go to the source of the matter.

Mr. BENNETT. Well, this practice of giving \$1,000 or \$5,000 to somebody associated with a program, either a producer or a performer,

seems to me to be equally as reprehensible as this diskjockey business. In fact, in some cases more so.

Mr. KINTNER. Well, we thought so, that that was quite possible and that is why we scheduled these eight investigations into the industry practice.

Mr. BENNETT. Are you going to go specifically into the Hess thing? I would like that on the record, because it seems to me it is highly important in that it covers a variety of things.

Now, the diskjockey thing is primarily associated with music, a record company, but in the area that Hess is talking about, you go into a much broader field of practices which, to me, seem to be improper.

Mr. KINTNER. Well, Mr. Bennett, I have no doubt that as a part of our overall investigation, we will necessarily be obliged to go into the factual situation that you have been discussing.

Mr. BENNETT. Would that include plugola to news columnists?

Mr. KINTNER. If we discover any, yes, sir. And I am told that in older days that this may have been a practice. Other members of the press inform me it is not prevalent today. But if we discover such evidence, we will, of course, schedule an investigation.

Mr. BENNETT. I know that Hess mentioned at least one of the network programs to which he had made payments. I cannot think of which it was now, but our record will show.

Mr. KINTNER. Well, I can tell you, we have already interviewed certain network officials concerning this practice.

Mr. BENNETT. I asked one of the networks, either CBS or NBC, I think, and I referred to Hess' testimony, and referred to the program and asked them to investigate it, asked the president of the network to investigate and let the subcommittee know the results.

So far as I can ascertain, we are still waiting for a report from that network; is that right, Mr. Lishman?

Mr. LISHMAN. I believe Mr. Coleman—

Mr. COLEMAN. I delivered to Mr. Bennett's office the other day the material we got from Mr. Stanton of CBS in reply. I think there is still some to be received from Mr. Hess himself.

Mr. BENNETT. Then we do have some. I have not seen it yet but I regard that as very important because it not only concerned individual stations but Hess' charges went to network programing as well.

Mr. KINTNER. Mr. Bennett, in preparing for this appearance today, and in reading background material, I read last night one Commission interview report dated mid-January, of an interview with a network official on the so-called plugola practice, so our people have been on top of this and are making inquiry into the practice on a rather broad scale.

Mr. BENNETT. Have you reached a point where you would say anything about what your investigation has indicated?

Mr. KINTNER. No more than we have indicated in this report this morning. We have gone as far as we can in delineating the, safely delineating the, practices that we find so far as our investigation now goes.

Mr. BENNETT. I wanted to ask you about a very prominent diskjockey and see what you have done about him. Have you conducted any investigation with respect to Dick Clark?

Mr. KINTNER. Yes, sir, Mr. Bennett. We were aware of certain allegations in that area concerning Mr. Dick Clark early in our payola investigation, and have conducted some investigation of Mr. Clark's activities.

Mr. BENNETT. As a matter of fact, his name, as I recall it, was the first of a diskjockey to be mentioned, following Hess' testimony here before the subcommittee. It was shortly after that.

Mr. KINTNER. I believe that is correct.

Mr. BENNETT. I mean his name was first in the area of possible disk-jockey abuses. He is the only diskjockey, as I understand it, who has a network program, a national program.

Mr. KINTNER. As far as we know, that is correct, and we are aware that he is engaged or has engaged in a great many activities, and we fully intend to explore all those activities in connection with our investigation before it is completed.

Mr. BENNETT. Do you have his files and records, and the records of his companies, the various companies, the record-producing companies that it has been alleged he was interested in?

Mr. KINTNER. No, sir; Mr. Clark, I believe, has been under subpoena by this subcommittee and we were in a situation where we both were attempting to look at his records at the same time, and we have concluded that it would be fairer to all parties concerned, perhaps, to await this subcommittee's examination of those records before we required the records to be delivered to us for examination and consideration in connection with any formal proceedings that we may wish to bring.

Mr. BENNETT. Do you have information to the effect that Clark owned substantial interests in various record companies, whose records were being played on his program?

Mr. KINTNER. To put it bluntly, we have some information that Mr. Clark may have been somewhat integrated in his operation. [Laughter.]

Mr. BENNETT. And integrated with a record company?

Mr. KINTNER. I believe that is a fair comment, sir.

Mr. BENNETT. But you would say the integration went further than that?

Mr. KINTNER. That is possible, sir.

Mr. BENNETT. I have information to the effect that Clark has a 100-percent interest in a company called the Arch Music Co., Inc.

Mr. KINTNER. That name is not unfamiliar with us, sir.

Mr. BENNETT. That he has a 100-percent interest in another corporation called the January Corp.

Mr. KINTNER. We are aware of that, too, sir.

Mr. BENNETT. And a 100-percent interest in an enterprise called Sealark Enterprise, Inc.

Mr. KINTNER. We are aware of that, too, sir.

Mr. BENNETT. And a 100-percent interest in a record corporation called the Globe Record Corp.

Mr. KINTNER. We are aware of that, too, sir.

Mr. BENNETT. He has a 50-percent interest allegedly in the Swan Record Corp.

Mr. KINTNER. We are aware of that allegation, too, sir.

Mr. BENNETT. And that he has got a 25-percent interest in Bao Music.

Mr. KINTNER. This allegation is also known to us.

Mr. BENNETT. And a 50-percent interest in the Mallard Pressing Corp. and the Anita Pressing Corp. a sister company of Swan.

Mr. KINTNER. We know that, too, sir.

Mr. BENNETT. And a 33⅓-percent interest in the Chips Distributing Corp.

Mr. KINTNER. We have filed a complaint against Chips. I do not know whether Mr. Clark owns these enterprises at the present time.

Mr. BENNETT. No. I understand he has divested himself since these hearings commenced—that he has divested himself or agreed to divest himself of all of these.

Mr. KINTNER. We have some indication of this fact.

Mr. BENNETT. I am speaking of his ownership in these companies or his alleged ownership before these hearings were underway.

Mr. KINTNER. Well, your sources of information appear to be quite accurate, sir.

Mr. BENNETT. And that—

The CHAIRMAN. Would the gentleman yield?

Mr. BENNETT. Yes.

The CHAIRMAN. Yes. The source of the information is quite accurate because it is contained in an affidavit which our investigators obtained from Mr. Dick Clark. It is a part of our records and is being used in connection with a study of the activities in the investigation of Dick Clark's business practices. They total 17. As a matter of fact, the American Broadcasting Co. first developed and obtained knowledge of these practices, and credit must be given them for obtaining the affidavit. The Federal Trade Commission has a copy of it just as we have, and it is being used now in connection with that whole investigation.

Mr. KINTNER. Yes, Mr. Chairman, that is why we are likewise aware of all these facts. We recognize this information as coming from the ABC affidavit.

Mr. BENNETT. Mr. Chairman, you mentioned that the subcommittee—does the subcommittee have an affidavit from Dick Clark apart from an affidavit somebody else took from him? I understood not.

The CHAIRMAN. The major affidavit referred to, which the subcommittee has, is the affidavit which was obtained from Dick Clark by the American Broadcasting Co. The books, to which Mr. Kintner referred, are those the staff of this subcommittee have had an opportunity to go over and to see. Later the Federal Trade Commission went in to look at the books. Then Mr. Paul Porter, lawyer for the Dick Clark enterprises, or Dick Clark himself, made a complaint because they needed these books and records in order to prepare Mr. Clark's case in connection with the hearing that is to come up.

Mr. BENNETT. What hearing?

The CHAIRMAN. The hearings contemplated by this subcommittee. The gentleman is spreading it all on the record at this moment before the case is fully developed. I think we ought to let the whole matter come out in proper order.

Mr. BENNETT. Mr. Chairman, I just want to be careful about the facts. I am not spreading anything on the record. It is well known; most of it has been published in the newspapers. Some of it I admit

has not, but it is information that has come to me, and, frankly, I am quite concerned about the fact that the subcommittee has not yet called Clark. He is the outstanding diskjockey in this business. We have called a lot of peanut diskjockeys here for a couple of weeks. This man is obviously very seriously involved in payola.

The CHAIRMAN. I do not think the gentleman from Michigan would suggest that we call Mr. Clark or anyone else until the investigation of that particular matter is completed and the subcommittee is ready for it.

Mr. BENNETT. Well, we have plenty of information upon which to question Mr. Clark. I do not think we need wait until we get a Federal case prepared before we call him down here to find out what he was doing. I think as a result of having him here before the subcommittee we might very well elicit some information that would be helpful in the future investigation.

I hope, Mr. Chairman, that Mr. Clark will be called at the earliest possible time because I think his activities pinpoint more than any other one thing the evils of payola.

The CHAIRMAN. It would seem to the Chair that the gentleman would have taken some other occasion to mention it to the Chair.

Mr. BENNETT. The gentleman has taken several occasions to ask the Chair.

The CHAIRMAN. I do not believe the Chair remembers any single instance when such inquiry was made.

Mr. BENNETT. The last time I made it was in the presence of the gentleman from California and he joined in my request.

Mr. Moss. Mr. Chairman, if the gentleman will yield very briefly, I hope the chairman will not schedule the Clark case for hearing until the staff has fully completed the investigation now underway. I think it would be most unfortunate for us to prematurely launch this particular hearing—it is a very complex one—until we have fully developed it, and it would be most unwise. I compliment the chairman for his insistence upon a full investigation in this instance.

Mr. BENNETT. It is not any more complex than any other diskjockey case is complex, and I think it is time we got Clark down here and asked him some questions. I have a lot of questions I would like to ask him.

Mr. Moss. So have I.

Mr. BENNETT. It would aid the investigation rather than hinder it. In addition to this, in addition to payola, so-called, by music companies, in addition to Clark's other stockholdings in these companies, there is also evidence available, I think it has been in the papers, some of it at least, of taking expensive rings and necklaces, fur coats and other things—

Mr. KINTNER. We have allegations of that type in our files.

Mr. BENNETT (continuing). From people. So that in this instance there is even more evidence available than there were in the cases of many of these smalltime operators that we have been fooling around with. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Mack.

Mr. MACK. I have no questions.

The CHAIRMAN. Mr. Springer.

Mr. SPRINGER. Mr. Chairman, without necessarily revealing any names, have your investigators made any investigation of any alleged payola in the city of Chicago?

Mr. KINTNER. Yes, indeed. We have issued some complaints, formal complaints, involving payola in the city of Chicago.

Mr. SPRINGER. Could you tell me who those complaints have been issued against?

Mr. KINTNER. If you will give us a minute here for a member of the staff to check this, we might be able to tell you.

Mr. SPRINGER. All right, I will wait. I would like to have it on the record.

These are all in the city of Chicago.

Mr. KINTNER. Yes, indeed. Complaints have been issued against the M.S. Distributing Company, and Milton T. Salstone and M. G. McDermott, president and vice-president, respectively, 1700 South Michigan Boulevard, Chicago, Ill., an independent distributor. This is our complaint docket No. 7745. That has been served and is public information.

And then complaint against two affiliated independent distributors—James H. Martin, Inc., and Music Distributors, Inc., at 2419 and 1343 South Michigan Boulevard, Chicago, Ill., respectively. Also cited is their sole owner and president, James H. Martin. That is our docket No. 7738, and that is also public.

Third, a complaint and our docket No. 7723, against three affiliated distributors located at 2121 South Michigan Boulevard, Chicago, Ill., and these distributors are the Chess Record Corp., the Argo Record Corp., and the Checker Record Co., and Leonard and Phil Chess, they are president and secretary-treasurer, respectively. These complaints have been publicly announced.

Mr. SPRINGER. Yes.

Mr. KINTNER. And a further complaint against Garmisa Distributing Co., Inc., 2011 South Michigan Boulevard, Chicago, Ill. Leonard Garmisa and Edward Yalowitz, president and vice-president of that. And a Garmisa, Inc., of Milwaukee, Wis., and Myron J. Schultz, treasurer of the latter company, the Milwaukee company.

Then there is a further complaint against Vee Jay Records, Inc., James Bracken and Ewart G. Abner, Jr., president-treasurer and executive vice-president, respectively, 1449 South Michigan Boulevard, Chicago, Ill., our docket No. 7767, which has been made public.

And further, Allstate Record Distributing Co. and Paul J. and Peggy M. Glass, president-treasurer and vice-president-secretary, respectively, of that company, 1450 South Michigan Boulevard, Chicago, Ill. The company also is known as Allstate Record Distributing, as I just stated, and that is our docket No. 7763, and that charge has been made public.

There may be more, and if so, we will furnish them for the record, the names and details for the record, at this point.

(The data referred to were furnished for the record in a letter from Mr. Kintner which appears on p. 666.)

Mr. SPRINGER. Now, have the ones you are going to supply already been made public?

Mr. KINTNER. We will only supply those complaints which we have formally issued for this record.

Mr. SPRINGER. Right. Now, have citations been issued against all of those firms and individuals mentioned?

Mr. KINTNER. That is correct. The complaints have been served, and public announcement has been made of the issuance of the complaints in all instances that I have mentioned.

Mr. SPRINGER. All right. Let me ask you this further: First, do you enter your citation first and then an order later?

Mr. KINTNER. That is correct.

Mr. SPRINGER. You have not entered an order in these cases?

Mr. KINTNER. As far as I am aware, Mr. Springer, there have not been any consent orders issued in these complaints. Out of the 60, either formally issued or authorized for issuance by the Commission, we have received 16 consent orders to date.

Mr. SPRINGER. How many consent orders have you received in Chicago?

Mr. KINTNER. As far as I am aware, none.

Mr. SPRINGER. Then all of these cases you have mentioned thus far are contested cases presently; is that correct?

Mr. KINTNER. As far as I am aware. If I find upon checking our files that an order, a consent order, has been entered in one of these cases, I will advise you so that the information may be inserted in the record at this point. But as far as I am now aware, these will be contested cases.

Mr. SPRINGER. All right. Now, will there be formal hearings?

Mr. KINTNER. There certainly will be if they are contested cases. Of course, the respondents in question have the privilege of entering into negotiations under our rules of practice with us, if they wish, and some may do so.

Mr. SPRINGER. Do you mean in the negotiations they admit their guilt?

Mr. KINTNER. They consent to the issuance of an order.

Mr. SPRINGER. They consent to the issuance; that is what you call entering into negotiations, is that correct?

Mr. KINTNER. That is right.

Mr. SPRINGER. Exclusive of these cases, could you give the subcommittee, without naming any names, approximately how many cases are pending for investigation which have not been docketed in the Chicago area?

Mr. KINTNER. We will have to supply that. We do not have the information here today.

Mr. SPRINGER. May I ask you this, Mr. Kintner: I am not asking you for five or six but approximately how many?

Mr. KINTNER. About three more, as far as we are aware.

Mr. SPRINGER. That are presently in the process of being investigated but have not been docketed; is that correct?

Mr. KINTNER. They have been docketed, Mr. Springer, but the investigation has not been completed.

Mr. SPRINGER. I see.

Mr. KINTNER. They are in process of investigation.

Mr. SPRINGER. Are there any others in the Chicago area in the process of being investigated, other than approximately those three?

Mr. KINTNER. I know of no others. Of course, our experience in

investigating this situation is that one case leads to another, so that we are constantly getting new leads.

Mr. SPRINGER. Are there any licensees in the Chicago area at the present time subject to investigation? Without naming any of them.

Mr. KINTNER. We have not been investigating the licensees. If we receive information in connection with our investigation of the record companies or distributors that licensees are involved, we transmit that information to the Federal Communications Commission.

Mr. SPRINGER. Then my next question is: Have you referred any licensee investigation cases coming to the attention of your Commission to the FCC for further action?

Mr. KINTNER. I will have to check that. In the Chicago area?

Mr. SPRINGER. In the Chicago area.

Mr. BABCOCK. None.

Mr. KINTNER. None.

Mr. SPRINGER. As a preliminary question, Mr. Chairman, if it showed in the Chicago area that there were personnel of licensees guilty of payola, would that be subject to your jurisdiction?

Mr. KINTNER. It would be subject to our jurisdiction, but we have proceeded under the assumption that we could best eradicate the practice by going to the source and securing orders against those making the payments.

The names of those involved, diskjockeys, station employees, station licensees, we have turned over to the Federal Communications Commission as we issue the complaint in each instance.

Mr. SPRINGER. How many cases of investigation, that have come to the attention of your Commission, have you referred to the FCC involving licensee personnel?

Mr. KINTNER. If I may refer to my statement, there were 7 station licensees, and 255 diskjockeys or other employees of broadcast licensees in 56 cities and 26 States, and this involves only the first 50-odd formal complaints that we have issued.

Mr. SPRINGER. Perhaps you misunderstood me. My question was this: How many cases which have been uncovered as a result of your investigation involving licensee personnel have been referred to the FCC? And I am limiting it only to the Chicago area and I am asking you approximately now.

Mr. KINTNER. We would have to examine our list and calculate how many names of those in the Chicago area we have turned over to the Federal Communications Commission. We know that we have turned over some names.

Mr. SPRINGER. You have turned over some names of licensee personnel that have come out of your investigation to the FCC?

Mr. KINTNER. All that came to our attention involving the Chicago area cases we have turned over to the Federal Communications Commission, and these are the cases that I referred to earlier.

Mr. SPRINGER. Are there any other classes of people or firms in the Chicago area which are presently under investigation, other than licensee personnel and record companies?

Mr. KINTNER. You mean in connection with the payola practice?

Mr. SPRINGER. Right.

Mr. KINTNER. We think not, the consensus is, no.

Mr. SPRINGER. Then, to make this conclusive, the only classes subject to investigation that have come to your attention have been licensee personnel and record companies in the Chicago area?

Mr. KINTNER. That is correct, sir. To the best of my knowledge. If we find it is incorrect, we will advise you for the record at this point.

Mr. SPRINGER. How many cases approximately have you investigated in the Detroit area?

Mr. KINTNER. One case, I am advised by the staff.

Mr. SPRINGER. Has a citation been issued in that case?

Mr. KINTNER. No, sir. It has not; it is currently under investigation.

Mr. SPRINGER. And that is the only case that your agency has in the Detroit area?

Mr. KINTNER. In the Detroit area.

Mr. BENNETT. Will you yield?

Mr. SPRINGER. Yes, I will yield.

Mr. BENNETT. Were there not two diskjockeys in the Detroit area discharged, or who resigned, as a result of this? Maybe not necessarily diskjockeys, but librarians or somebody associated with a station. I had the impression there was more than one.

Mr. KINTNER. Mr. Bennett, our investigations have concerned record distributors and record manufacturers, and, of course, any one of those cases may involve a fairly large number of diskjockeys and station employees. And at various points in the country.

Mr. BENNETT. When you are speaking of just one in Detroit, were you just talking about one investigation of the whole matter or just one—

Mr. KINTNER. We are speaking about one record manufacturer—

Mr. BENNETT. Or diskjockey?

Mr. KINTNER (continuing). Or distributor under investigation and this could involve various diskjockeys, not only in that area but in other areas of the country—

Mr. BENNETT. Has that been publicly announced?

Mr. KINTNER (continuing). And payola, for example, could be made in Detroit from New York.

Mr. BENNETT. I realize that. But is this a Detroit record manufacturing company that you are speaking of, a distributor?

Mr. KINTNER. A distributor, Mr. Bennett, and we have not announced the complaint. We have not issued it as far as I am aware.

Mr. SPRINGER. Is that all?

Mr. BENNETT. Yes.

Mr. SPRINGER. Mr. Chairman, in order that the record may be clear, it is my understanding, from your testimony thus far in this hearing, that you believe it is within your jurisdiction presently in the FTC to proceed against the payer; is that right?

Mr. KINTNER. That is correct. Because it is most effective. We also have jurisdiction to proceed against the payee.

Mr. SPRINGER. You would also have jurisdiction to proceed against licensee or licensee personnel, would you not?

Mr. KINTNER. Yes, indeed.

Mr. SPRINGER. But you believe the way to end the practice is to get a cease-and-desist order against the person paying?

Mr. KINTNER. We have to determine what is the most effective way to spend our enforcement dollar, and we thought, after careful consideration, that this was the most effective way to eradicate the practice.

Mr. SPRINGER. Mr. Kintner, I do want to say this: I think the sign of good administration is enforcement when the knowledge arrives. I realize that in all areas of the Government you might have things that are happening which nobody may know. But I think the sign of good administration is that when knowledge comes, enforcement takes place, and I think in your agency you have tried to enforce as promptly as you had knowledge.

That is all.

Mr. KINTNER. Thank you, sir.

The CHAIRMAN. Mr. Mack, do you have any questions?

Mr. MACK. I have no questions at this time.

The CHAIRMAN. Mr. Moss.

Mr. Moss. Yes.

Mr. Kintner, how much cooperation are you receiving from the Federal Communications Commission in these investigations?

Mr. KINTNER. We are receiving very good cooperation. We recently formalized that cooperation still further by, and through, an exchange of letters between myself and Acting Chairman Rosel Hyde, providing for the exchange of information which our respective agencies receive in this payola area.

Mr. Moss. What was the date of this—

Mr. KINTNER. We had, prior to that understanding, transmitted to the FCC the names of the diskjockeys and stations involved in payola, and for years prior to that we also transmitted our complaints and orders when they involved broadcasting media.

Mr. Moss. What was the date of the formalizing arrangements?

Mr. KINTNER. I have that here. The first arrangement, formal arrangement, we had was in 1957, and that has previously been spread on the record of this subcommittee.

The last formal exchange that we had was February 17 and 18, 1960.

Mr. Moss. Is the 1957 agreement in the same general area as the 1960 agreement?

Mr. KINTNER. The 1960 agreement is more specific in that it applies only to this payola investigation that we each were making, and provides for their making available to us, and our making available to them, such information on payola as is disclosed by our respective investigations.

Mr. Moss. Prior to the formalizing of an arrangement, what type of liaison was maintained between the two Commissions?

Mr. KINTNER. We had staff contact at various points. A formal arrangement which is described in our minutes of January 10, 1957, has been made a part of the record of this subcommittee. It is fairly lengthy. I could read it.

Mr. Moss. Well, you operated under the 1957 agreement prior to the formalizing of the 1960 agreement?

Mr. KINTNER. Yes.

Mr. Moss. Last month?

Mr. KINTNER. Yes, indeed; this was a general agreement.

Mr. MOSS. Did that require you to supply the information on payola, plugola, or washout practices, or did you initiate that on your own?

Mr. KINTNER. Well, we construed the general arrangement we have that, in accordance with the spirit of that arrangement, we should supply them the names of the diskjockeys.

Mr. MOSS. On your initiative?

Mr. KINTNER. Beg pardon?

Mr. MOSS. Was the supplying of the names on the initiative of the Federal Trade Commission?

Mr. KINTNER. Yes; we sent it to them.

Mr. MOSS. You had not received a specific request from the Federal Communications Commission that you supply them with the names?

Mr. KINTNER. As far as I know; that is correct. They had just initiated their own investigation, and they have since supplied us with certain information disclosed by their investigation.

Mr. MOSS. When did they start supplying the information to you in this specific area?

Mr. KINTNER. I believe since our—I think material, I am advised that material was sent over in January of this year.

Mr. MOSS. Starting in January of this year.

Mr. KINTNER. Which was about a month before our last formal agreement.

Mr. MOSS. When did the Federal Trade Commission start a specific study of these practices?

Mr. KINTNER. Early in November, shortly after I received a letter of complaint addressed to me personally, and I think dated about November 2, from a record manufacturer who offered to supply some names, dates, and places, and we docketed that for investigation, and were out in the field, I think, within a matter of 10 days or something less than 2 weeks in a formal field investigation on that matter.

Mr. MOSS. Do you feel that these practices are quite widespread?

Mr. KINTNER. Yes; indeed. Our investigation, and the complaints we have issued, have indicated that the practices are widespread.

Mr. MOSS. Would you characterize a statement that they are widespread as being an overstatement or a canard?

Mr. KINTNER. Mr. Congressman, I do not want to get into that fight; it is not mine.

Mr. MOSS. I did not ask you that. I am asking you, would you characterize it in such a fashion, Mr. Chairman?

Mr. KINTNER. I would prefer to say that and agree with you that the practice is widespread.

Mr. MOSS. You would not deliberately then, indulge in overstatement or canards?

Mr. KINTNER. Well, I would not—

Mr. MOSS. I would not.

Mr. KINTNER. I would not like to indulge in either, sir. I try to be fair.

Mr. MOSS. You would perhaps reluctantly agree with me that it is, in theory, an overstatement or a canard?

Mr. KINTNER. That is just possible; yes, sir.

Mr. MOSS. Do you feel that the Federal Trade Commission has adequate authority to deal with this practice?

Mr. KINTNER. We have suggested that there be a criminal statute. We think that since this is in the nature of a fraudulent practice, that it is properly amenable to correction by criminal law, although we are going to continue to do our best to eradicate the practice through our civil procedures.

Mr. Moss. In making that recommendation, you are concurring both with the recommendations of this subcommittee and the recommendations of the Attorney General of the United States.

Mr. KINTNER. And the recommendations of the Federal Communications Commission. I believe this is one point in which we are all in agreement.

Mr. Moss. So other than that point, you feel that your authority is adequate?

Mr. KINTNER. It is for the purpose of handling this practice in a civil case.

Mr. Moss. Have you had any great difficulty in developing a matter of investigation, the evidence upon which you could have acted?

Mr. KINTNER. No, sir; the cases have been relatively easy to make.

Mr. Moss. Relatively easy.

Mr. KINTNER. But we have moved on them very vigorously, and—

Mr. Moss. Now you are indulging in the practice of monitoring telecasts and broadcasts; is that right?

Mr. KINTNER. That is correct, sir, and we have since 1956.

Mr. Moss. Do you regard this as a practice which tends to undermine the independence of broadcasting or advertising?

Mr. KINTNER. No, sir; we regard it as a proper policing function on the part of our agency.

Mr. Moss. And because of the plugola practices it is necessary that you monitor, other than just advertising; is that correct?

Mr. KINTNER. No; we are making no attempt to do anything except to monitor the commercial portions of the program which we conceive to be our primary job.

Mr. Moss. You do not monitor the program itself?

Mr. KINTNER. That is correct; except we may get into this practice through our plugola investigation. But that is a sneaked-in commercial.

Mr. Moss. If it is felt to be necessary in order to have proper cognizance of the practices of plugola, would you be at all hesitant to monitor?

Mr. KINTNER. Not at all, if monitoring is required to detect the sneaked-in commercial, we shall have to do it.

Mr. Moss. If it is required for regulation, you will do it in the performance of the discharge of your responsibility?

Mr. KINTNER. For the discharge of our responsibilities, yes, sir. Whatever is necessary. And I personally hope that the industry will engage in a fair amount of monitoring.

Mr. Moss. Do you know whether payola, as it has developed to be used in broadcasting, is also used in the retailing end, in the retail merchandising end, of recordings?

Mr. KINTNER. We know that practice in retailing is a push-money practice. It is an old form of commercial bribery which we have known throughout the history of the Federal Trade Commission.

Mr. Moss. Well, have you determined whether these same companies practicing payola also employ the push-money tactic?

Mr. KINTNER. Well, payola is the modern manifestation of push-money.

Mr. Moss. It is a refinement.

Mr. KINTNER. Yes, indeed.

Mr. Moss. But do they, to your knowledge, still use the push-money techniques in the merchandising of this same product, that of the recordings?

Mr. KINTNER. We believe they do, sir. We do not have documentation for this, but we feel sure that they may be doing so.

Mr. Moss. Mr. Chairman, I think those are all the questions I have.

However, Mr. Chairman, before I wind up, I would like to say, Mr. Kintner, I find the views you have expressed here today much more in keeping with those I hold than when you last appeared before the subcommittee. I want to compliment you and the Federal Trade Commission for what I regard as an excellent job in this field. I think it took a little while to start moving, but once you started to move, you moved in fine fashion. I just wish we had the same evidence of the same energy in some of the other Commissions. Thank you.

Mr. KINTNER. I thank you, sir. Of course, I must say, in all fairness, we are dealing with a different practice than I was discussing when I was here before. But it does not matter to me where the leads come from, whether they are developed here in Congress or whether they come to us from complaints from the public. We intend to take care of them, and as promptly as we can consistent with our appropriation. We are not proud about where we get information or who prods us, whether it is the public, the Congress or whatever, or the businessman. When we get the information, we will try to take care of the situation.

The CHAIRMAN. Mr. Devine.

Mr. DEVINE. Mr. Chairman, do you use any particular yardstick in distinguishing between what would be called promotional advertising allowance as distinguished from the so-called push-money that at least borders on, if it is not, commercial bribery?

Mr. KINTNER. We have, as one of our areas of responsibility, the enforcement of the Robinson-Patman anti-price-discrimination law, and section 2(d) of that statute covers the matter of promotional advertising allowances.

We find that some businessmen violate that section of the law, by making advertising allowances, or by granting advertising or promotional allowances to favored customers, and we, under that law are obliged to make sure that competing customers are treated fairly.

If an allowance be granted to one competing customer, that it be granted to another on a proportional basis.

Mr. DEVINE. I do not think you have been quite specific on where the line of distinction is, or how you distinguish it, Mr. Chairman.

Mr. KINTNER. I am speaking, of course, of legitimate promotional allowances and legitimate advertising allowances. And when such legitimate allowances are granted by a manufacturer or other businessman to his customers, they must be granted to competing customers on a proportionately equal basis.

Mr. DEVINE. What you would consider fair treatment?

Mr. KINTNER. If you are going into the matter of amenities, of granting of gifts, and so forth, this is another area all together.

Mr. DEVINE. I appreciate that.

Getting back to some of your earlier remarks, Mr. Chairman, when you refer to a case as having been docketed, is that not actually an administrative function within the department, in effect, where you get a complaint you assign it over to an investigator, you assign an investigator to it and it is in the process of investigation where it has not reached the point of filing a charge?

Mr. KINTNER. That is wholly accurate.

Mr. DEVINE. Perhaps I may be overly sensitive about investigative techniques. Our chairman asked you for a list of some 200 persons that are presently under investigation by your agency. Do you feel that the revealing of this information might hinder your investigation?—May I add I was happy that the chairman specifically asked that this list be given to him personally.

As a former investigator with an agency that I considered the finest in the world, we were quite sensitive about revealing any information about anything until the investigation was completed, and I ask you now, are you concerned about turning this list over?

Mr. KINTNER. I am not concerned about turning the list over. But I am, I would be concerned if it were publicly released, because this might constitute trial by the press, and trial on an ex parte basis, in that the information has not been verified or tested by the trial court process.

Mr. DEVINE. You would probably be equally concerned if an investigation, an additional investigation, other than yours, was conducted concerning these same persons that you are investigating, would you not?

Mr. KINTNER. Well, I cannot express any concern there. This is a matter for your subcommittee to determine, whether or not an investigation should be made under the circumstances. I will say that with respect to some of this information which we are turning over to Mr. Harris that the cases are pending before the Commission, have not been tried, may have to be tried, and we may need to use some of that investigative information in our trial.

Mr. DEVINE. Of course, as I say, I am happy that the chairman specifically requested that you give the information to him personally.

Have you run into any—

Mr. KINTNER. We have confidence, I might say, confidence that Mr. Harris will not misuse this information or impede our cases in this regard.

Mr. DEVINE. I am sure the members of the subcommittee agree with you on that.

Mr. KINTNER. But it is good to bring out the point, I think, because it is an important point.

Mr. DEVINE. Yes, it is.

Have you run into any duplication or interference in any of your investigations in this field?

Mr. KINTNER. By whom?

Mr. DEVINE. Any other agency of the Government, including this subcommittee.

MR. KINTNER. There has been duplication, and I believe in one area our respective investigators got a little irritated because they were both trying to get at the books of the same company at the same time, but these matters can be ironed out and have been between our General Counsel and Mr. Lishman.

MR. DEVINE. Do you feel that any activity on the part of any other investigative agency or agency of the Government has hindered investigations that your agency has legitimately made?

MR. KINTNER. As far as I am aware, no. We make our investigations come hell or high water, according to the responsibility laid upon us by the statute, and if we run into any temporary interference, we try to iron it out. And if we cannot iron it out, we are apt to go ahead and investigate anyway.

MR. DEVINE. You mentioned earlier, Mr. Chairman, that you did not care what the source of your information was; that your agency is apt to get any information in this field. I was wondering if you had made a request of the staff of this subcommittee for any information in our files for items which would be within your jurisdiction?

MR. KINTNER. Yes, sir; we sent a letter up here some time ago to the chairman of the subcommittee inviting the subcommittee to submit to us any information which indicates a violation of our statute, so that we might enter the matter for formal investigation and for issuance of complaint.

We wish to work with the subcommittee in every respect, and that was why, when the subcommittee had Mr. Clark under subpoena, we chose not to aggravate that situation by attempting to have his records at the same time the subcommittee investigators had access to those records; and there is an element of fairness in there in that Mr. Clark might find it somewhat difficult to supply information at the same time to two people, two different agencies.

MR. DEVINE. Yes. I know it is not an uncommon practice in Government and elsewhere that two or three or more agencies are investigating the same thing and perhaps competing for information.

MR. KINTNER. We try to minimize the hardship on the person being investigated by either securing the information from one of the agencies investigating the matter or by arranging to secure the information at a little later time.

MR. DEVINE. I think that covers my questions. Thank you, sir.

MR. KINTNER. We have liaison arrangements with other Government agencies where we have concurrent or ancillary jurisdiction, and those arrangements are primarily to iron out just that type of situation so that the taxpayer is not unduly burdened, and yet the Government gets the needed information.

MR. DEVINE. Thank you.

THE CHAIRMAN. Mr. Flynt.

MR. FLYNT. No questions, Mr. Chairman.

THE CHAIRMAN. Mr. Lishman, do you have some questions?

MR. LISHMAN. I have one or two questions of a general nature.

MR. CHAIRMAN, is it correct that under current consent order procedure there is no finding of fact made?

MR. KINTNER. That is correct. The order is interpreted in relation to the allegations of the complaint.

Mr. LISHMAN. Was there a time, though, when the Commission did incorporate findings of fact in this consent order procedure?

Mr. KINTNER. That is correct. Several years ago.

Mr. LISHMAN. Was that a practice that had long continued up until the time it was discontinued?

Mr. KINTNER. Not too long. It has not been too many years ago when we refused to enter any consent orders, to entertain any consent orders, and then we started experimenting with the procedure and we first developed a procedure whereby findings of fact were incorporated in the consent settlement, and then after further experimentation, we determined that if the complaint were precisely enough drawn that the order could be interpreted in light of the complaint, and I believe the agreement so provides in each instance, that the order may be interpreted in relation to the allegations of the complaint.

Mr. LISHMAN. Do you recall the reasons for giving up the past practice of having findings of fact in a consent order? Were there any reasons noted by the Commission when it decided to eliminate findings of fact?

Mr. KINTNER. As far as my memory serves me, one of the considerations was to cut down the area of negotiation, to confine it largely to the remedy to be taken, the order to be entered. Counsel tended to quibble extensively over the nature of any findings, and we concluded finally if the order could be construed in light of the ex parte charges in the complaint, this would be sufficient, and I think the procedure has worked very well.

Mr. LISHMAN. Yes, sir. About what percentage of Commission cases are settled by consent order?

Mr. KINTNER. I would estimate 75 to 80 percent of all of our formal cases, our complaints, are settled in that fashion.

Mr. LISHMAN. Do you know whether there have been any cases where a hearing examiner or the Commission has decided that the practices alleged were of such a nature that it was felt that findings of fact should appear in the record and a request to negotiate a consent order was consequently denied without having these findings of fact in the record?

Mr. KINTNER. Well, I cannot think of a specific case, but certainly this would be a valid reason, if there were such circumstances, for refusing to enter into a consent settlement. It is a matter of grace on the part of the Commission, and if the Commission determines that the public interest would be better served by litigation and formal findings, then it may refuse to accept or entertain a consent settlement.

Mr. LISHMAN. Are there very many cases where a proposed consent order is rejected by the Commission and remanded to the hearing examiner?

Mr. KINTNER. A surprisingly large number.

Mr. LISHMAN. I am thinking of a situation—

Mr. KINTNER. We give these consent settlements very careful scrutiny, that I can assure you, and sometimes our trial staff is understandably a bit nettled that we reject these wonderful settlements they think they worked out, but we have to discharge our responsibilities as heads of the agency, and we try to do it very carefully, and sometimes we pick up points that counsel has not had under consideration in negotiating a settlement.

Mr. LISHMAN. Well now, I notice that you are proceeding against both record distributors and manufacturers. Suppose you had a contested case involving a complaint alleging a misdeed of a record distributor who had been engaged in payola, and there are no findings of fact in the consent order, and later on you have proceedings against the manufacturer, who also was engaged in payola in the same field. Now, would the counsel for the Commission have any difficulty in introducing evidence which would, in effect, contradict—

Mr. KINTNER. Not at all.

Mr. LISHMAN. What went on in the first consent order? I think you see what I am getting at. I know of a particular case.

Mr. KINTNER. Yes, sir.

Mr. LISHMAN. Where that may happen and that is why I am asking how the consent order would be adapted to fit that type of situation.

Mr. KINTNER. You would have the same situation, I think, of convicting a defendant of larceny, where the receiver had pleaded guilty of receiving. We do not introduce these findings of fact in one case into a record in a related case. We build ab initio the record in each case.

Mr. LISHMAN. Has the Commission encountered any difficulty in enforcing the consent order?

Mr. KINTNER. We do not force consent orders, Mr. Lishman. We just invite the respondents to come in and negotiate. We hope that they will consent, and if we do our investigative job properly, and have the goods, have the evidence, we think that in itself invites consent.

Mr. LISHMAN. After the consent order has been entered do you have difficulty in enforcing the consent order?

Mr. KINTNER. No more difficulty in enforcing a consent order than we do in our litigated orders, so far as I am aware.

Mr. LISHMAN. Well, is it not true that in a consent order where you have no findings, that the respondent, in effect, has not admitted that he has been guilty of anything?

Mr. KINTNER. He has, however, waived all intervening procedures, and I think that most courts would take a dim view of his welching on his bargain.

Mr. LISHMAN. Now, in negotiating a consent order, may a respondent go to a compliance attorney of the Commission and discuss with him the terms of the proposed consent order in advance of meeting—

Mr. KINTNER. Yes, that often occurs, where the terms of an order are under consideration, and a matter of negotiation between our trial attorneys, and the counsel for respondent, and the parties will get into a discussion over what adjustment may be required by a particular term of the order, and the best way to ascertain that is to consult the assistant general counsel in charge of compliance, and this is sometimes done.

Mr. LISHMAN. I have no further questions, Mr. Chairman.

The CHAIRMAN. Mr. Kintner, when I asked you to supply the subcommittee with certain information, I overlooked a request that you

supply the subcommittee, if possible, with the 56 cities stated in your statement—

Mr. KINTNER. I believe that will show on the information.

The CHAIRMAN. That will show on the information?

Mr. KINTNER. Which we will supply you.

The CHAIRMAN. Yes.

I wanted to call special attention to that and ask for the information. It has come to the attention of the Chair that some considered that the subcommittee selected only two places, namely Boston and Cleveland, for study in the course of the hearings. There seems to be a feeling that there might be some connotation, that only in those two markets had there been such practices engaged in. I wanted the record to show the subcommittee's attention—

Mr. KINTNER. It was 56 cities.

The CHAIRMAN. Is not necessarily to investigate any and every instance in the United States. It would be utterly impossible. We have a limited staff and limited funds for such purposes. Our purpose is as it was in the so-called quiz show programs, to determine if there was a set pattern, and then we can accomplish our purpose. Here there was a much broader responsibility, of course, because we had to proceed on the specific instances called to your attention.

Mr. KINTNER. We hope on our part it would not be necessary to sue everyone that has been engaged in this practice; that with the bringing of the complaints that we have issued and those currently under investigation that the whole industry will abandon the practice.

The CHAIRMAN. Well, I share that hope with you, Mr. Chairman, I should say.

How many investigators do you have?

Mr. KINTNER. 116, Mr. Chairman, and we hope to secure a few more, if the Congress looks well toward our appropriations, and is charitably inclined.

The CHAIRMAN. That is what I had in mind by asking for the information. I wanted to see if I could develop whether or not you, as Chairman of the Commission, and others, feel you have sufficient funds to do this job?

Mr. KINTNER. We have asked for about a 10-percent increase in our appropriation, and if we were to get this, translated in terms of manpower, it would mean 75 to 100 additional people, and if we get the money, we intend to put the bulk of those people into our investigative field force where they are very badly needed.

The CHAIRMAN. That is included in your budget?

Mr. KINTNER. Yes, indeed. Our hearing has been held before Mr. Thomas' subcommittee and the subcommittee was, we thought, quite understanding of our problem. We hope the Congress will be as a whole.

The CHAIRMAN. Well, I join you in that hope, too.

Mr. KINTNER. And the Senate, as well.

The CHAIRMAN. You feel if you could get the appropriation you have requested you would then have sufficient funds to do the job as you see it now?

Mr. KINTNER. Well, Mr. Chairman, an agency of Government never has enough money, but we think that if we got this amount

of money that we could reasonably absorb it, train personnel, and use it to substantially cut back our backlog.

The CHAIRMAN. Well, I think I would have to take issue with you on that. I think an agency of the Government can very well have enough money—

Mr. KINTNER. I am speaking—

The CHAIRMAN. Perhaps if the agencies of the Government, sometimes, would be a little more realistic as to what their actual needs are instead of always saying they could use a lot more, we might have better luck in getting the attention of the Appropriations Committee and the Congress itself.

Mr. KINTNER. Mr. Harris, I personally agree with you, and I think that my agency would agree with you. We are trying to use our manpower more efficiently, and we think we are. I personally feel that that is a part of the answer to the problems of governmental agencies to constantly be on the lookout for ways in which personnel can be more efficiently used, for ways in which delay can be cut down, and I can assure you, sir, in all sincerity, that I have, since I have become Chairman, and I think this applies to my predecessors, devoted considerable thought and effort to just that project.

But at the same time we do, there comes a time when you cannot create too much more efficiency, and then you have to have more personnel, and we are always receiving more and more assignments from the Congress of laws to enforce, and that creates a greater need.

The CHAIRMAN. Yes, I can very well understand that.

If there are no further questions, thank you very much, you and your staff, for your appearance here and for giving this very encouraging report.

Again I compliment you for the very fine job you are doing in this field.

Mr. KINTNER. We thank you, sir, and for your courtesy and that of the subcommittee.

The CHAIRMAN. Just a moment. The subcommittee has not concluded this. Please close the door.

Mr. KINTNER. We thank you, sir, for your courtesy and we thank the subcommittee for its courtesy this morning.

The CHAIRMAN. Thank you very much for your appearance here this morning.

Mr. KINTNER. Thank you.

(The following material was later received from Mr. Kintner:)

FEDERAL TRADE COMMISSION,
OFFICE OF THE CHAIRMAN,
Washington, March 17, 1960.

HON. OREN HARRIS,
Chairman, Special Subcommittee on Legislative Oversight,
House Interstate and Foreign Commerce Committee,
Washington, D.C.

DEAR CHAIRMAN HARRIS: This is in response to requests by members of the Subcommittee on Legislative Oversight that the subcommittee be furnished, for the record, certain additional information with respect to matters raised during the course of my testimony on March 4, 1960.

At page 1169 of the record you requested that copies of our correspondence with you concerning the Commission report on payola and my scheduled appearance before the subcommittee be furnished. There are attached hereto as exhibits A and B copies of such correspondence.

At page 1180 of the record you requested a list of the 60 record manufacturers and distributors against whom the Commission had issued payola complaints. Attached hereto as exhibit C is a list of such companies. All of the 60 complaints have been served on respondents and are matters of public information.

In response to your request set forth at page 1187 of the record, there is attached hereto as exhibit D a list of the cases in which consent orders have been approved and publicly released. Respondents in three additional cases have entered into such consent orders but this information has not yet been released by the Commission.

At pages 1201-1206, I listed the payola complaints issued against record manufacturers or distributors located in Chicago, Ill. No additional payola complaints have issued against Chicago concerns but we have three other Chicago record manufacturers or distributors under investigation. None of the Chicago firms against whom complaints have issued have entered into consent orders which have been accepted by the Commission. The Commission has turned over to the Federal Communications Commission the names of 15 employees of 8 station licensees in the Chicago area as recipients of payments from one or more of the respondents in the 60 cases listed in exhibit C.

At page 1208 of the record I advised that one Detroit firm was under investigation for its payola practices. Upon verification, it was determined there is a payola investigation of a second Detroit concern. In addition to these two pending Detroit investigations, the Commission's Cleveland field office has been instructed to follow any leads relating to Detroit record manufacturers or distributors, which may come to its attention during the course of the two pending Detroit investigations.

You requested (at pp. 1185-1186 of the record) that you be furnished one copy of a list of the station licensees and the employees thereof who have received payments from the respondents involved in the 60 payola complaints. This information consists of an alphabetical listing of all employees, with a further listing indicating the station licensees accepting payola and the employees of station licensees by (a) call letters, (b) location, (c) network, where no further information is available and (d) name, where no further information is available. I am personally delivering this list to you at this time.

The Commission endorses my views with respect to the release of any of the names on this list and approves the release to you with the understanding that the list of names be treated as confidential. We are confident that you will take every precaution to assure that it will be held in the strictest confidence.

By direction of the Commission.

EARL W. KINTNER, *Chairman*.

EXHIBIT A

FEBRUARY 9, 1960.

HON. OREN HARRIS,
*Chairman, Special Subcommittee on Legislative Oversight,
Committee on Interstate and Foreign Commerce,
House Office Building, Washington, D.C.*

DEAR CHAIRMAN HARRIS: This is to acknowledge receipt of your letter dated February 3, 1960, in which you requested a report from the Commission pertaining to certain practices enumerated in your letter as subparagraphs (a), (b) and (c).

During our recent conference with you and members of your staff which dealt with some aspects of the topics set forth in your letter, it was indicated that representatives of the Commission would be likely to be called upon to testify before the end of the hearings currently being held. It is anticipated that a reply to your letter of February 3, 1960, will be ready for submission to the subcommittee by that time.

With best personal wishes, I am,
Sincerely yours,

EARL W. KINTNER, *Chairman*.

EXHIBIT B

FEBRUARY 25, 1960.

HON. OREN HARRIS,
*Chairman, Special Subcommittee on Legislative Oversight,
 House Interstate and Foreign Commerce Committee,
 Washington, D.C.*

DEAR CHAIRMAN HARRIS: I refer to your letter of February 23, 1960. Please be advised that I will appear at 10 a.m., Friday, March 4, 1960, to testify before your Special Subcommittee on Legislative Oversight and at that time will submit a Commission report on the matter outlined in your letter of February 3, 1960.

With kindest regards and best wishes, I am,
 Sincerely yours,

EARL W. KINTNER, *Chairman.*

EXHIBIT C

Docket	Respondent	Location
7668	Edward S. Barsky, Inc., et al	Philadelphia.
7669	Chips Distribution Co., Inc.	Do.
7670	David Rosen, Inc., et al.	Do.
7671	London Records, Inc.	New York.
7672	Universal Record Distributing Corp., et al.	Philadelphia.
7673	Bernard Lowe Enterprises, Inc., et al.	Do.
7674	Sparks Music Distributors, Inc., et al.	Do.
7675	Main Line Cleveland, Inc., et al.	Cleveland.
7676	Radio Corp. of America.	New York.
7676	Duke Records, Inc., et al.	Houston.
7680	Marnel Distributing Co., Inc., et al.	Philadelphia.
7691	Edward S. Cohn trading as Lesco Distributors.	Do.
7692	Main Line Distributors, Inc., et al.	Do.
7694	Fury Records, Inc., et al.	New York.
7695	Laurie Records, Inc., et al.	Do.
7696	Class Record Sales, et al.	Los Angeles.
7703	Dosnat Distributing Corp., et al.	New York, Cleveland and Detroit.
7710	Roulette Records, Inc., et al.	New York.
7711	Atlantic Recording Corp., et al.	Do.
7712	Action Records, Inc., et al.	Do.
7723	Chess Record Corp., et al.	Chicago.
7724	Jamie Record Co.	Philadelphia.
7725	Alpha Distributing Co.	New York.
7738	James H. Martin, Inc., et al.	Chicago.
7744	United Telefilm Records, Inc., et al.	New York.
7745	M. S. Distributing Co., et al.	Chicago.
7746	A & I Record Distributing Co., Inc., et al.	Cincinnati.
7752	A-1 Record Distributors, Inc., et al.	New Orleans.
7760	All South Distributing Corp., et al.	Do.
7761	Superior Record Sales Co., Inc.	New York.
7762	Raymond Rosen & Co., Inc., et al.	Philadelphia.
7763	Allstate Record Distributing Co., et al.	Chicago.
7764	Fame Records, Inc.	New York.
7765	Time Records, Inc.	Do.
7766	Gone Recording Corp.	Do.
7767	Vee-Jay Records, Inc.	Chicago.
7768	Ideal Record Products, Inc.	New York and Newark.
7774	Records, Inc.	Boston.
7775	Music Suppliers, Inc., et al.	Do.
7776	Dumont Record Distributing Corp.	Do.
7777	Herald Music Corp., et al.	New York.
7778	Am-Par Record Corp., et al.	Do.
7781	Garnison Distributing Co., Inc., et al.	Chicago and Milwaukee.
7784	Fargo Records.	New York.
7791	Record Merchandisers, Inc., et al.	St. Louis.
7792	King Records, Inc., et al.	Cincinnati.
7793	Volkwein Brothers, Inc., et al.	Pittsburgh.
7794	Midwest Distributing Co., et al.	St. Louis.
7795	Commercial Music Co.	Do.
7796	Eric Music Distributing Co., et al.	San Francisco.
7797	Bigtop Records, Inc., et al.	New York.
7798	State Record Distributors, Inc., et al.	Cincinnati and Indianapolis.
7799	Interstate Supply Co., et al.	St. Louis.
7800	Roberts Record Distributing Co., Inc., et al.	Do.
7801	Ric Records, Inc., et al.	New Orleans.
7802	Astor Records, Inc.	Pittsburgh.
7803	Mutual Distributors, Inc., et al.	Boston.
7804	United Artists Records, Inc.	New York.
7805	All-State New Jersey, Inc., et al.	Newark.
7808	Ace Records, et al.	Jackson, Miss., and New Orleans.

EXHIBIT D

CONSENT ORDERS ACCEPTED BY THE COMMISSION

Docket

7669-----	Chips Distributing Co., Inc.
7670-----	David Rosen, Inc., et al.
7671-----	London Records, Inc.
7672-----	Universal Record Distributing Corp., et al.
7674-----	Sparks Music Distributors, Inc., et al.
7675-----	Main Line Cleveland, Inc., et al.
7676-----	Radio Corp. of America
7691-----	Marnel Distributing Co., Inc., et al.
7693-----	Main Line Distributors, Inc., et al.
7695-----	Laurie Records, Inc., et al.
7696-----	Class Record Sales, et al.
7746-----	A & I Record Distributing Co., Inc., et al.
7762-----	Raymond Rosen & Co., Inc., et al.

The CHAIRMAN. The Chair has received a request, which he feels is appropriate, from the Westinghouse Co., who had some witnesses here in connection with the investigation of a few days ago. They request that they be permitted to extend or include in the record a statement further explaining their practices and policies in the operation of their station with regard to their dealings with their personnel.

Mr. Moss. Mr. Chairman.

The CHAIRMAN. Mr. Moss.

Mr. Moss. Mr Chairman, are they asking to include in our record material which we have not seen?

The CHAIRMAN. Well, I have not seen it yet.

Mr. Moss. Then I would make a reservation on that, and reserve the right to object to that request until I have had an opportunity to review it.

The CHAIRMAN. The Chair wanted for inclusion in the record at this time the request that the statement be received. We will accept the statement and, once we have had the opportunity to look it over, we then can determine if it should go in the record.

The subcommittee will adjourn until 2 o'clock this afternoon, at which time the Federal Communications Commission will be here to give its report.

(Whereupon, at 12 noon, the hearing was recessed, to reconvene at 2 p.m.)

AFTERNOON SESSION

The CHAIRMAN. The subcommittee will come to order.

Mr. Doerfer, do you object to these cameras?

Mr. DOERFER. No, I do not.

The CHAIRMAN. Mr. Doerfer, will you be sworn, please, sir?

Do you solemnly swear the testimony you give to this subcommittee to be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. DOERFER. I do.

The CHAIRMAN. Have a seat, please, sir.

TESTIMONY OF JOHN C. DOERFER, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION; ACCOMPANIED BY JOHN FITZGERALD, GENERAL COUNSEL; AND HAROLD G. COWGILL, CHIEF, BROADCAST BUREAU, FCC

The CHAIRMAN. You are Mr. John C. Doerfer?

Mr. DOERFER. I am.

The CHAIRMAN. Chairman of the Federal Communications Commission?

Mr. DOERFER. I am.

The CHAIRMAN. You appear here this afternoon on behalf of the Commission?

Mr. DOERFER. I do.

The CHAIRMAN. Pursuant to a letter of February 3 from me to you, as Chairman of the Federal Communications Commission, asking that you bring to the subcommittee the report on certain problems with which the subcommittee was engaged in its study and investigation. I think in order that the record may be complete, I will let the letter go in the record at this point.

If I remember correctly, you advised me personally that you would be standing by and ready at any time the subcommittee wanted you, but I am not sure that I got a reply. Did I?

Mr. DOERFER. Yes, we have a reply dated February 5, 1960, but in addition to that, there was a telephone conversation that I would be ready.

The CHAIRMAN. Yes. Let your reply then go in the record with this letter so it can be complete.

(The correspondence referred to follows:)

FEBRUARY 3, 1960.

HON. JOHN C. DOERFER,
*Chairman, Federal Communications Commission,
Washington, D.C.*

DEAR Mr. DOERFER: Commencing February 8 the subcommittee will hold hearings pertaining to:

(a) Payments to licensees and employees thereof to obtain the broadcasting of material for the commercial advantage of the payor, without having any announcement made of such payments;

(b) Unfair advantages obtained by manufacturers, distributors, and others through the use of licensed facilities for the broadcasting of hidden commercials and presentation of materials intended to deceive the viewing and listening public; and

(c) The extent to which station licensees are delegating control to others of the type of material broadcast.

Since October 10, 1959, when you testified at our hearings, we are informed that the Federal Communication Commission has been inquiring into matters involving the foregoing problems. We would appreciate receiving from you at your earliest convenience a report outlining the nature and scope of such activities and any findings or determinations you may have made.

Sincerely yours,

OREN HARRIS,
Member of Congress, Chairman.

FEBRUARY 5, 1960.

HON. OREN HARRIS,
*Chairman, Subcommittee on Legislative Oversight of the Committee on Inter-
 state and Foreign Commerce, House Office Building, Washington, D.C.*

DEAR CONGRESSMAN HARRIS: In reply to your letter of February 3, please be advised that on February 5, 1960, the Commission took the following actions. It approved rulemaking placing greater responsibility upon the licensee with respect to internal checks to detect payola and deceptive practices. It also approved some proposed legislation which as soon as it clears the Bureau of the Budget will be forwarded to your committee. Press releases covering the above actions are attached.

The writer will keep you advised with respect to further developments as per your request.

Sincerely yours,

JOHN C. DOERFER, *Chairman.*

FEBRUARY 23, 1960.

HON. JOHN C. DOERFER,
*Chairman, Federal Communications Commission,
 Washington, D.C.*

DEAR MR. CHAIRMAN: With further reference to my letter to you of February 3, the Special Subcommittee on Legislative Oversight has scheduled your appearance for 2 p.m., Thursday, March 3, and will receive the report of your Commission at that time.

With kind regards.

Sincerely yours.

OREN HARRIS,
Member of Congress, Chairman.

THE CHAIRMAN. Mr. Doerfer, do you have a statement you wish to make at the outset?

MR. DOERFER. Yes, I do.

THE CHAIRMAN. You may proceed.

MR. DOERFER. Mr. Chairman and members of the committee, my name is John C. Doerfer, and I am Chairman of the Federal Communications Commission. Since my last appearance before this committee, a number of actions have been taken by the Commission that are within the scope of this committee's investigation.

On November 9, 1959, the Commission initiated a general inquiry with respect to programing to determine, among other things, whether the general standards heretofore laid down by the Commission for the guidance of broadcast licensees in the selection of programs and other material intended for broadcast are currently adequate; whether the Commission should, by the exercise of its rule making power, set out more detailed and precise standards for such broadcasters; whether the Commission's present review and consideration in the field of programing and advertising are adequate, under present conditions in the broadcast industry; and whether the Commission's authority under the Communications Act of 1934, as amended, is adequate, or whether legislation should be recommended to Congress.

This phase of the proceeding was heard by the Commission en banc between December 2, 1959, and February 1, 1960, and consumed 19 days in actual hearings. Over 90 witnesses, including many

leaders in broadcasting and a large number of civic and educational leaders, have appeared to explore the problems involved, make suggestions and otherwise contribute from their background and experience to the solution of these problems. Several additional statements were submitted for the record.

This proceeding was only concluded on February 1 and consisted of 3,775 pages of transcript plus 1,000 pages of exhibits. The Commission will make every effort to expedite its consideration of the recommendations offered and will take such definitive action as the Commission determines to be warranted. However, the Commission did feel that some remedial action was warranted in the interim period.

As you know, in our letter to your committee of September 16, 1959, the Commission has taken the position that it has authority and responsibility to consider overall programing operations of broadcast licensees—that its authority with respect to programing must be exercised on an overall basis due to the proscriptions of section 326 relative to censorship. Further, the Commission pointed out in that letter that in fulfilling its obligation to operate in the public interest, a broadcast station is expected to exercise reasonable care and prudence with respect to its broadcast material in order to assure that no matter is broadcast which will deceive or mislead the public.

However, in view of the extent of the problem which has become apparent, we have concluded that some proposed amendments to our rules and some proposed legislation will provide a basis for some substantial improvements.

Accordingly, on February 5, we adopted a notice of proposed rulemaking to deal with fixed quiz and other nonbonafide contest programs involving intellectual skill. These rules would prohibit the broadcasting of such programing unless accompanied by an announcement which would in all cases describe the nature of the program in a manner to sufficiently apprise the audience that the events in question are not in fact spontaneous or actual measures of knowledge or intellectual skill.

Announcements would be made at the beginning and end of each program. Moreover, the proposed rules would require a station, if it obtained such a program from networks, to be assured that the network program has an accompanying announcement of this nature. This, we believe, will go a long way toward preventing any recurrence or problems such as those encountered in the recent quiz show programs.

We have also felt that this sort of conduct should be prohibited by statute. Accordingly, we have approved some language for a proposed amendment to title 18 of the United States Code. This proposal is designed to make it a crime for anyone to willfully and knowingly participate or cause another to participate in or cause to be broadcast a program of intellectual skill or knowledge where the outcome thereof is prearranged or predetermined.

Without the above-described amendment, the Commission's regulatory authority is limited to its licensing function. The Commission cannot reach networks directly or advertisers, producers, sponsors, and others who, in one capacity or another, are associated with

the presentation of radio and television programs which may deceive the listening or viewing public.

It is our view that this proposed amendment to title 18 will help to assure that every contest of intellectual skill or knowledge that is broadcast will be in fact a bona fide contest. Under this proposal, all those persons responsible in any way for the broadcast of a deceptive program of this type would be penalized. Because of the far-reaching effects of radio and television, we believe such sanctions to be desirable.

PAYOLA

On December 2, 1959, the Commission addressed a letter to all 5,249 of its broadcast licensees, which asked these questions:

1. Since November 1, 1958, what matter, if any, has been broadcast by any of your stations for which service, money, or any other valuable consideration has been directly or indirectly paid, or promised to, or charged, or accepted by your station or stations, or anyone in your employ, or independent contractor engaged by you in furnishing programs, from any person, which matter at the same time so broadcast has not been announced or otherwise indicated as paid for or furnished by such person?

2. What internal controls and procedures have you established to provide you with information concerning the remuneration, other than that paid by you, that has been or may be received by individuals in connection with participation in the preparation and presentation of programs broadcast by your station?

The responses to these questionnaires were required to be filed by February 5.

The Commission's staff has completed a preliminary review of the responses filed by broadcast licensees and permittees in answer to the Commission's December 2, 1959, questionnaire concerning unannounced sponsorship of broadcast material.

At this time, it appears that substantial questions obtain as to whether the requirements of section 317 of the Communications Act and the rules promulgated thereunder have been met. At this point, industry practices and conduct appear to fall within four broad areas:

(a) Free records—records received by broadcast stations at substantially reduced rates:

(b) Promotion of "record hops";

(c) Junkets given to station personnel in exchange for "news" or other broadcast exposure of a particular product, place, or event and transportation and accommodations given to performers and/or guests on broadcast programs in exchange for "plugs," and so forth;

(d) "Trade-outs," the obtaining of prizes to be awarded to listeners in exchange for "plugs" for the donor and so-called "sneaky commercials."

Our agency is not staffed for extensive field investigation. However, in view of the information now before us, we have initiated field investigations looking toward three specific problems. In those cases where it appears that station licensees, as distinguished from employees, have engaged in practices which appear to contravene the provisions of section 317, we have begun some field investigations.

Those investigations have been commenced where we have received information which raises questions as to whether the response sup-

plied by the licensee was forthright; and where it is alleged that programs are designed to give "plugs" for which the licensee is not paid and which are not announced as advertising.

The Commission's staff has been instructed that any applications for additional facilities, renewal of station license, or transfer of broadcast stations filed by existing licensees must not be acted upon without a check against the "payola" information in the Commission's files. The licenses of all of the New England radio stations expire April 1, and the renewal applications of those stations are now before the Commission.

An examination of the responses to the Commission's inquiry of December 2, 1959, the testimony before your committee, and other pertinent information indicates prima facie that four Boston stations and some of their employees have received payment for the purpose of having certain recorded material broadcast over the stations' facilities without appropriate announcements having been made.

The above facts raise questions as to whether the licensees of these stations have complied with the provisions of section 317 of the Communications Act and section 3.119 of the Commission's rules concerning the logging of broadcast material; as to whether the use of the above-mentioned recorded material by the stations constituted an abdication by the licensees of their responsibility to select the stations' programming material; and as to whether the licensees have engaged in activities bearing adversely upon their character qualifications and as to whether the licensees have misrepresented to the Commission facts as to the above operations or have failed to disclose pertinent information with respect thereto or were lacking in candor in responding to the Commission's December 2, 1959, inquiry.

The Commission, by letter of February 29, 1960, pointed out these questions to the licensees of the above-mentioned stations, as required by section 309(b) of the Communications Act, when the Commission is not able to make a finding that the public interest would be served by granting the application for renewal of license. Copies of these letters have been transmitted to your committee and to the Department of Justice.

More than half of the stations responding to the Commission's inquiry have mentioned the fact that they receive records free of charge from record manufacturers or distributors. Almost all of these stations state that the fact that the records are received free does not affect their judgment as to which records are to be played on the air. They state that many of these records are produced by small record companies and are not solicited by the station. The predominant practice of these stations is to play any record received if they consider it "airworthy" but not to announce the source from which or terms on which it was received.

A small number of stations state that they believe that they are complying with the requirement that an announcement be made indicating receipt of valuable consideration by announcing the name of the recording company issuing the record when a free record is played on the air.

It is apparent from the responses filed that stations in the large metropolitan areas receive virtually all of their recordings without charge. Stations in medium-sized markets subscribe to "record services" whereby the various record manufacturers supply their new releases as issued for a fixed annual charge—substantially less than the wholesale price of the recordings.

The stations in very small markets have indicated that they are unable to obtain records, even on a paid "record service" subscription basis, because the manufacturers do not feel that their potential audiences are large enough to justify the expenditure of funds to supply them with free or reduced-charge records.

Stations in the major markets have indicated that they not only receive individual copies of records for air use without charge but, in addition, receive quantities of individual records. A common term used to describe these quantities of free records is "freebies." No station responding to the Commission's inquiry has admitted selling "freebies," but a number of stations in large markets have admitted giving away these "freebies" over the air to listeners as prizes.

This committee is, of course, fully familiar with "record hops." The Commission's questionnaires indicate that this form of entertainment is conducted in many major metropolitan areas and in some of the smaller communities as well. The extent of participation by diskjockeys in this practice apparently varies considerably from that of a promotional interest or master of ceremonies to guest appearances.

A few stations and networks have reported that certain of their personnel have been given trips, and in some instances meals and accommodations, on the occasion of the introduction of a new product, the scheduling of a special event, the inauguration of a new service, and so forth, or in connection with a "remote" broadcast origination.

In almost all of these cases, it is impossible to tell from the information before the Commission whether these junkets were provided with the understanding that the product, place, or event would be given broadcast exposure, or whether the junket was provided in the hope that the person receiving it would consider the matter "news-worthy" and decide to provide broadcast coverage.

A large number of stations in all types and sizes of markets state that they have received various objects bearing advertising for cigarette companies, flour manufacturers, and so forth, to be awarded to listeners as prizes on local broadcast contests. Some of the network-originated programs have also received free of charge the "prizes" given away on their programs. These are usually worth a substantial sum of money. In some instances, not only is the "prize" received without charge by the network or program producer, but an additional "promotion" charge is made for mentioning or describing the prize on the air.

There has been some use of commercial spot announcements on both radio and television—billed in accordance with standard procedures and rates and properly logged—without a sponsorship identification announcement in connection with the spot announcement.

On radio, these take the form of the playing of an instrumental version of a commercial jingle—associated exclusively with the sponsor to whom the copyrighted musical jingle belongs. Similar presentations with appropriate visual accompaniment are made on TV.

In the light of the foregoing information, the Commission proposed on February 5 that a new section be added to the Commission's rules which would require the licensee of radio broadcast stations to adopt appropriate procedures to prevent the practice of payola amongst his employees.

We have also approved on February 11 the language of a proposed amendment to title 18 which would impose criminal penalties for failure to announce sponsored programs, such as payola and others, involving hidden payments or other considerations. This proposal looks toward amending the United States Code to provide fines up to \$5,000 or imprisonment up to 1 year, or both, for violators.

It would prohibit the payment to any person or the receipt of payment by any person for the purpose of having as a part of the broadcast program any material on either a radio or television show unless an announcement is made as a part of the program that such material has been paid for or furnished. The Commission now has no direct jurisdiction over the employees of a broadcast station with respect to this type of activity. The imposition of a criminal penalty appears to us to be an effective manner for dealing with this practice.

Accordingly, we have recommended that title 18 of the United States Code be amended as set forth above.

In view of our mutual interest with the Federal Trade Commission and in order to avoid duplication of effort, we have arrived at an arrangement whereby any information obtained by the FCC which might be of interest to FTC will be called to that Commission's attention by our staff. Similarly, FTC will advise our Commission of any information or data which it acquires in the course of its investigations which might be pertinent to matters under consideration by the FCC. All of the data received from Federal Trade Commission is being correlated with the responses to the Commission's "payola" questionnaires and any data brought out in the hearings conducted by your committee.

On Wednesday, March 2, 1960, the Commission adopted proposed rule changes which would enable it to make occasional use of shorter term licenses in the case of any broadcast station which it does not feel is entitled to a regular 3-year renewal and which merits closer observation during a shorter period of operation. It believes that this would not only have a bettering effect on the performance of the station involved but would also have a beneficial influence on broadcast stations generally.

Under section 307(d) of the Communications Act, the Commission has authority to grant broadcast licenses for a period of not more than 3 years. However, its rules provide for normal 3-year licenses. Accordingly, it proposes to amend section 3.34, 3.218, 3.518, and 3.630 of the rules relating to the license period for AM, FM, and TV stations:

Licenses for broadcast stations ordinarily will be issued for a period of three years and, when regularly renewed, at three-year intervals thereafter: *Provided, however,* That, if the Commission finds that the public interest, convenience, and necessity will be served thereby, it may issue either an initial license or a renewal thereof for a lesser term * * *.

This will afford the Commission greater flexibility in administering its licensing authority which may prove helpful in correcting some

of the troublesome practices which are alleged to exist in broadcasting.

I now offer copies of the following documents for the record:

1. Supplemental order in docket No. 12782 initiating a general program inquiry before the Commission en banc.
2. The Commission's notice of proposed rulemaking to amend part 3 of the Commission's rules to deal with fixed quiz and other non-bona-fide contest programs involving intellectual skill, adopted February 5, 1960.
3. The Commission's public notice of its proposed legislation to amend title 18 of the United States Code to provide criminal penalties for both fixed "quiz" shows and "payola," dated February 11, 1960.
4. Copies of "309(b) letters," dated February 29, 1960, addressed to radio stations WMEX, WILD, WORL, and WHIL.
5. Copies of letter dated February 29, 1960, transmitting 309(b) letters to the Department of Justice.
6. The FCC public notice of January 21, 1960—further FCC actions regarding payola and related matters.
7. The Commission's Notice of Proposed Rulemaking in the matter of amendment of sections 3.119, 3.289, 3.654, and 3.789 of the Commission's rules to require the licensee of radio broadcast stations to adopt appropriate procedures to prevent the practice of payola by his employees, adopted February 5, 1960.
8. The Commission's public notice of further liaison between the FCC and FTC, dated February 18, 1960, and attachments, which consist of the Commission's letter to the Chairman of the FTC dated February 17, 1960, and his response to the FCC dated February 18, 1960.
9. FCC notice of rulemaking proposing shorter license terms for broadcast stations, adopted March 2, 1960.

Mr. Chairman, these are offered for the record.

The CHAIRMAN. Without objection the enclosures suggested will be included in the record at this point.

(The documents referred to follow:)

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION, WASHINGTON, D.C.

DOCKET NO. 12782

IN THE MATTER OF STUDY OF RADIO AND TELEVISION NETWORK BROADCASTING

SUPPLEMENTAL ORDER FOR INVESTIGATORY PROCEEDING

At a session of the Federal Communications Commission held at its offices in Washington, D.C. on the 9th day of November 1959;

Whereas, on February 26, 1959, after a substantial preliminary inquiry, the Commission by its Order (FCC 59-166) and Public Notice (FCC 59-168) directed that inquiry be made pursuant to Section 403 of the Communications Act of 1934, as amended, to determine, among other things, the policies and practices pursued by the network licensees and others in connection with the production, selection, licensing, and supervision of programs for television exhibition and the effect of such policies and practices on the public interest, and that a public investigatory proceeding be instituted for that purpose; and

Whereas, pursuant to said Order, such inquiry is continuing and public hearings have been and will be held with regard to certain phases of the network television program selection process; and

Whereas, in the course of such inquiry and from other sources, information has been reported to the Commission which tends to show that certain practices have been carried on by broadcast licensees and employees of such broadcast licensees and other persons in connection with the selection, supervision and

broadcast to the public of programs and other material, which practices appear to be contrary to the public interest; and

Whereas, under the Communications Act and the policies promulgated by the Commission thereunder, the selection, supervision and broadcast to the public of programs and other material including advertising is the primary responsibility of the licensed broadcaster subject to the duty of such broadcaster so to exercise and responsibility as to serve the public interest in terms of the needs and interests of the community which such broadcaster is licensed to serve; and

Whereas under the provisions of the Communications Act of 1934, the Commission is empowered and directed to grant applications for construction permits, station licenses, and modifications or renewals thereof for radio and television broadcast stations only after the Commission has made a determination that the public interest, convenience, or necessity will be served thereby and, in making such determination, one of the relevant factors considered by the Commission includes the policies and practices pursued and carried on by the applicant in the exercise of his responsibility to select, supervise, and broadcast programs and other material including advertising which meet the public interest and the needs and interests of the community served by such broadcaster; and

Whereas this Commission has from time to time in its decisions and otherwise laid down certain general standards for the guidance of licensed broadcasters in the exercise of such responsibility, nevertheless, in view of recent information concerning certain program practices, it is desirable to review the extent of the Commission's authority in connection with programming, in the light of the censorship prohibitions of Section 326 and certain court decisions, to determine whether or not legislation should be recommended to the Congress; and

Whereas such general standards have been recognized and accepted by networks, licensees, and other components of the industry and have in their essentials been adopted and set forth in codes and rules of conduct issued by various groups within the industry; and

Whereas such general standards include such concepts as decency, propriety, fairness, and balance in connection with the presentation of broadcast material to the public; and

Whereas many or most of such standards were laid down by the Commission prior to the advent and development of television broadcasting; and

Whereas the rapid development and expansion of television network broadcasting has had a direct and important impact on radio broadcasting and has, in large measure, altered and changed the nature and character of the policies and practices pursued by many radio broadcasters affecting the type and content of programs and other material broadcast to the public and has also affected the use of radio as an advertising medium; and

Whereas, coincident with the expansion and development of television, there has been a large increase in the number of licensed radio and television broadcasters which has greatly increased and complicated the problem of proper and adequate review by the Commission of the policies and practices pursued by its broadcast licensees; and

Whereas in view of the foregoing, and in order to enable it properly to exercise its duties and responsibilities in connection with the program and advertising material broadcast to the public through the facilities of licensed broadcasters, the Commission has determined that inquiry should be made and that information and data should be obtained regarding the policies and practices pursued by radio and television licensees and others affecting the program and other material broadcast to the public: now therefore,

IT IS ORDERED, That the inquiry and investigatory proceeding instituted pursuant to the Commission's Order of February 26, 1959 (FCC 59-166), be and is hereby amended and enlarged to determine the policies, practices, mechanics, and surveillance pursued and carried out by networks, station licensees, and others in connection with the acquisition, ownership, production, distribution, selection, sale, and licensing of programs for radio and television exhibition and the policies and practices pursued by networks, station licensees, and others in connection with the selection, presentation, and supervision of advertising material for broadcast to the public and the reasons and necessity in the public interest for said policies and practices, and that in such inquiry information and data be obtained relevant to the following questions:

1. whether and the extent to which policies and practices being pursued by some broadcast licensees in the field of programming and advertising are inimical to the public interest;

2. whether and the extent to which the general standards heretofore laid down by the Commission for the guidance of broadcast licensees in the selection and broadcast of programs and other material to the public are adequate in view of the changed and changing conditions in the broadcast industry;

3. whether and the extent to which the Commission should, by the exercise of its rulemaking power, set out more detailed and precise standards for the guidance of broadcasters in the exercise of their responsibility;

4. whether and the extent to which the Commission's present policies and procedures in the review and consideration of the performance of its broadcast licensees in the field of programming and advertising is adequate, in view of the greatly increased number of such licensees; and

5. whether the Commission's authority under the Communications Act of 1934, as amended, is adequate for these purposes or whether legislation should be recommended to the Congress.

FEDERAL COMMUNICATIONS COMMISSION,
MARY JANE MORRIS, *Secretary*.

Released November 10, 1959.

B
FCC 60-112
83665

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION, WASHINGTON 25, D.C.

DOCKET NO. 13390

IN THE MATTER OF AMENDMENT OF PART 3 OF THE COMMISSION'S RULES TO ADD REQUIREMENTS FOR ANNOUNCING THAT QUIZ PROGRAMS OR OTHER CONTESTS OF INTELLECTUAL SKILL OR KNOWLEDGE HAVE BEEN PREARRANGED

NOTICE OF PROPOSED RULEMAKING

1. Notice is hereby given of proposed rulemaking in the above-entitled matter.

2. It has become apparent that the results of many "quiz" programs which have been presented over broadcast stations have been prearranged despite the fact that they have been presented as spontaneous and genuine contests of knowledge. The presentation of such programs has deceived the listening audience and is therefore contrary to the public interest. Accordingly, the Commission believes it should adopt rules designed to preclude such deception in the future.

3. Attached hereto as an appendix is a suggested rule for television stations, but it is pointed out that it is proposed to adopt similar rules for all broadcast services.

4. Any interested party who is of the view that the proposed amendment should not be adopted, or should not be adopted in the form set forth herein, may file with the Commission on or before March 1, 1960, a written statement or brief setting forth his comments. Comments in support of the proposed amendment may also be filed on or before the same date. Comments or briefs in reply to the original comments may be filed within 10 days from the last day for filing said original comments.

5. Authority for the adoption of the amendment proposed herein is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended.

6. In accordance with the provisions of Section 1.54 of the Commission's Rules, an original and 14 copies of all statements, briefs, or comments shall be furnished the Commission.

FEDERAL COMMUNICATIONS COMMISSION,
MARY JANE MORRIS, *Secretary*.

Attachment.

Adopted February 5, 1960.

Released February 8, 1960.

SEPARATE STATEMENT OF COMMISSIONER ROBERT E. LEE

Due to the necessity of my presence at an interagency meeting, I was unavoidably absent when the Commission considered this matter. Had I been able to be present, I would have concurred in the action taken.

APPENDIX

SEC. 3. *Quiz Programs and Other Contests of Intellectual Skill or Knowledge: Announcement.*—(a) No television broadcast station shall broadcast any program in which the appearance of a bona fide game, contest, or competition of intellectual skill or knowledge is of significance if the licensee knows, or in the exercise of reasonable diligence should know, that the outcome of such event has been in fact prearranged, or participants or contestants have been provided with information, instructions or any other communication for the purpose of influencing the outcome, by any person acting in behalf of the licensee or in behalf of any producer, sponsor or advertising agency associated with the program, unless the prearrangement is disclosed by an appropriate announcement.

(b) The announcement provided for in subsection (a) shall clearly and fully describe the nature of the prearrangement, or assistance rendered to the contestant or contestants, in such manner that the audience will be apprised that the program is not in fact a spontaneous or genuine contest of intellectual skill or knowledge. Such announcement shall be made at the beginning and the end of such program.

(c) No license shall be granted to a television broadcast station having any contract, arrangement or understanding, express or implied, with a network organization unless the station has received satisfactory assurance from the network organization that any program of the type described in subsection (a) will be accompanied by announcements in compliance with subsections (a) and (b) of this section.

Public Notice—B
84251

FEDERAL COMMUNICATIONS COMMISSION
Washington 25, D.C.

February 11, 1960

REPORT No. 3490—BROADCAST ACTION

The Commission en banc, by Commissioners Hyde (Acting Chairman), Bartley, Lee, Craven, Ford and Cross, took the following action on February 10:

FCC DRAFTS PROPOSED LEGISLATION TO PROVIDE CRIMINAL PENALTIES FOR FIXED
"QUIZ" SHOWS AND "PAYOLA"

In conformity with its announcement of February 4, the Commission adopted proposed legislation, for submission to Congress, which would impose criminal penalties for (1) deceptive broadcast practices, such as fixed "quiz" shows, and (2) failure to announce sponsored programs, such as "payola" and others involving hidden payments or other considerations. These proposals look toward amending the United States Code to provide fines of up to \$5,000 or imprisonment up to one year, or both, for violators.

The specific proposals are:

Deceptive Broadcast Practices.—Add a new Section 1344 to Chapter 63 of Title 18 of the Code to read:

"Whoever shall wilfully and knowingly offer, devise, produce, sponsor, or present, or cause to be offered, devised, produced, sponsored, or presented, or whoever shall wilfully and knowingly participate, or shall wilfully and knowingly cause any other person to participate in any program which is broadcast by any radio or television station operating pursuant to a license required by any law of the United States for which any money or other thing of value is given, awarded, or promised as a prize in a test or contest of intellectual skill or knowledge and which is offered or presented as a bona fide test or contest with knowledge that the outcome of such test or contest is prearranged or predetermined for the purpose of misleading or deceiving the public, shall be fined not more than \$5,000 or imprisoned not more than one year, or both."

The proposed statute is designed to make it a crime for anyone to wilfully and knowingly participate or cause another to participate in, or cause to be broadcast a program of intellectual skill or knowledge where the outcome

thereof is prearranged or predetermined, and where the program is actually broadcast.

While the Commission has regulatory authority with respect to interstate and foreign radio broadcasting, the jurisdiction of the Commission over deceptive broadcast practices does not extend beyond its broadcast licensees and the Commission cannot reach networks directly or advertisers, producers, sponsors, and others who in one capacity or another are associated with the presentation of a radio or television program which may deceive the listening or viewing public. The Commission has issued a Notice of Proposed Rulemaking (Docket 13390) to amend its rules to curb deceptive practices in quiz programs and other contests of intellectual skill or knowledge by imposing certain requirements on its broadcast licensees with reference to such programs.

The Commission feels that the proposed criminal statute will help to assure that every contest of intellectual skill or knowledge that is broadcast will be, in fact, a bona fide contest. The public acceptance of radio and television quiz shows wide spread but the commercial motives or methods of some persons who produced, sponsored or were in some other way connected with the broadcast of quiz shows led to various forms of "rigging" or "controlling" the outcome of the contest. The result has been wide spread disillusionment on the part of the viewing public. The existing statutory authority of the Commission in this area is ineffective in reaching beyond the broadcast licensee, who in many instances may be hundreds or even thousands of miles away from the origination of the program and may have no knowledge of the deceptive nature of the program or the means to acquire it. Thus, the Commission believes it desirable that the Congress enact a criminal statute which would penalize those persons responsible in any way for the broadcast of a deceptive program of the type provided. Because of the interstate character of radio and television broadcasting, the Commission feels the Congress could appropriately impose criminal sanctions against this practice.

Announcement of Sponsored Programs.—Add a new Section 1345 to Title 18 of the Code to read :

"Any person who broadcasts, or knowingly permits or causes to be broadcast, over a radio station for which a license is required by any law of the United States, any matter for which service, money, or any other valuable consideration is directly or indirectly paid, or promised to, or charged or accepted by, such person from any other person without making at the time such matter is so broadcast an appropriate announcement that such matter is paid for or furnished, as the case may be, by such other person, shall be fined not more than \$5,00 or imprisoned not more than one year, or both."

The Commission is greatly concerned over a surreptitious advertising practice known as "payola" (undercover payment to a broadcast station or its employees for "plugging" records or other products without an appropriate announcement that such records or products have been paid for or furnished).

Insofar as a broadcast licensee of the Commission is concerned, a violation of Section 317 which called for application of Section 501 of the Communications Act would make it a criminal offense for the licensee to broadcast material as a result of payment of money or other valuable consideration without an appropriate sponsorship announcement. These sections, however, do not apply to employees of a station who receive payments, promises of payment or other valuable consideration, but only the licensee. Of course, these two sections of the Communications Act have no application whatsoever to those who make the payment or promises to pay in exchange for the clandestine advertising of their products.

It is the view of the Commission that a criminal statute providing the fine or imprisonment, or both, would be a substantial and effective deterrent to this undesirable practice. It would prohibit the payment to any person or the receipt of payment by any person for the purpose of having as a part of the broadcast program any material on either a radio or television show unless an announcement is made as a part of the program that such material has been paid for or furnished.

As previously stated, the Commission has no jurisdiction over the employees of a broadcast station with respect to this type of activity, nor does it appear that such jurisdiction is warranted. The imposition of a criminal penalty would appear to be an effective manner of dealing with this practice.

The Commission has issued a Notice of Proposed Rulemaking (Docket 13389) which would require all licensees to adopt appropriate procedures to prevent the broadcasting of any matter over their station unless a sponsorship announcement was made.

However, the Commission does not feel that its regulatory authority with respect to interstate and foreign radio broadcasts is sufficient to cope with the practice known as "payola" and, therefore, will recommend that Congress adopt a statute that would impose criminal sanctions against this practice.

FCC 60-177
84570
8420

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., February 29, 1960.

RICHMOND BROTHERS, INC.,
Radio Station WMEX,
70 Brookline Avenue,
Boston, Mass.

GENTLEMEN: This is with reference to your application for renewal of license of station WMEX, Boston, Mass. (BR-833).

The Commission has before it for consideration your replies of December 25, 1959, and February 5, 1960, to its inquiry of December 2, 1959, concerning unannounced sponsorship of broadcast material; volume 4 of the report of proceedings conducted by the Special Subcommittee on Legislative Oversight of the Committee on Interstate and Foreign Commerce of the House of Representatives and the testimony of your officers, directors, and employees taken on February 15, 1960, which is contained therein; and other information relating thereto.

It appears from the above that payments or other consideration have been received by employees of station WMEX and by the station itself for the purpose of having certain recorded material broadcast over the station's facilities and for other purposes without appropriate announcements having been made; that the above facts raise questions as to whether the licensee of station WMEX has complied with the provisions of section 317 of the Communications Act and section 3.119 of the Commission's rules; as to whether the licensee has complied with section 3.111 of the Commission's rules concerning the logging of broadcast material; as to whether the above-mentioned activities constituted an abdication by the licensee of its responsibility to select the station's programming material; as to whether the licensee has engaged in activities bearing adversely upon its character qualifications; and as to whether the licensee has misrepresented to the Commission the facts with respect to the above operations, or has failed to disclose pertinent information with respect thereto or was lacking in candor in responding to the Commission's December 2, 1959, inquiry.

A review of your application reveals the following discrepancies:

(1) The composite week's transmitter logs do not contain entries to show the readings of the tower base current meters made at any time. Your attention is directed to the terms of the station license which provides that when the phase monitor sample currents are logged each hour in lieu of the base currents the base currents should be read and logged at least once daily. The logs should show the actual base current readings and the time the readings were made.

(2) The above logs show that the remote base meters are apparently read and logged each 30 minutes, whereas the license specifies that the phase monitor sample currents may be read and logged in lieu of the base currents provided the base currents are read and logged at least once daily.

Commission records do not show that station WMEX has been authorized to make changes in the operating specifications of the license to cover the use of remote base meters in place of phase monitor sample current meters. It is pointed out that the method of once-weekly calibration of remote base meters and once-weekly reading of the tower base meters (in accordance with the provisions of sec. 3.39 of the Commission's rules) is not an acceptable substitute for the more stringent special provisions contained in your license. (The additive calibration errors introduced by two or more remote meters

whose calibration is not rechecked at least once daily, are such that the base current ratios may deviate widely from the 5-percent limit imposed by sec. 3.57(b) of the Commission's rules.)

In the event that it is your intention to modify the specifications of your license in such a manner as to show the remote base current ratio and a once-weekly reading of the tower base meter, it is requested that with your reply to this letter you file a tabulation of the base current, remote base current, phase indication and common point meter readings recorded once daily over an unbroken period of 30 days. The report containing the above readings, submitted as a record of the directional antenna stability, should show the name or names of the persons making the entries and the time the indicating instruments were observed. The selected observation time should be approximately the same each day.

A review of section IV of your renewal application shows that no time was devoted to agricultural, educational, or talk programs and that 0.5 percent of time was devoted to religious programs during the composit week. It appears that your station's programing consists primarily of recorded music interspersed with newscasts and a nightly program from 10:05 p.m. to 1 a.m. which you describe as a live presentation consisting entirely of talk, comment, and discussion. It is noted that such programing is not consistent with the representations made to the Commission in the application for assignment of license (BAL-2674) which was granted on July 18, 1957. In that application you represented that the following percentages of time would be devoted to the various types of programs: Entertainment, 52.5 percent; religious, 4 percent; agriculture, 1.5 percent; education, 5 percent; news, 26 percent; discussion, 8 percent; and talks, 3 percent.

In exhibit 3 to your renewal application, you state that immediately following the acquisition of control of the station, the licensee found it necessary to review the program service from that previously rendered so as to better serve the public interest. It was determined that a music and news format would afford greater flexibility for meeting community needs as they arise and that these needs would better be served by frequent and brief announcements than by formal programs of longer duration. However, you did not explain how it was determined that the music and news format affords greater flexibility for meeting the community needs.

You submitted a list of public service programs carried by your station which you allege relates to the community needs in the fields of religion, agriculture, education, civic and charitable affairs. However, a review of the program logs indicates that these programs are, for the most part, spot announcements and short statements on behalf of the organizations listed.

A review of exhibit No. 1 to the application, a balance sheet as at December 1, 1959, shows stockholders equity-capital stock in the amount of \$64,500, whereas the ownership report (form 323) shows 20 shares of no par stock issued and outstanding at a stated value of \$6,168 per share.

In light of the above, the Commission is unable to determine at this time that a grant of the subject application for renewal of license would serve the public interest. It appears, therefore, said application must be designated for hearing.

This letter is being written to you in accordance with the provisions of section 309(b) of the Communications Act of 1934, as amended, which requires that before any application be designated for hearing, the applicant must be informed as to why a grant without hearing cannot be made and be afforded an opportunity to reply. The purpose if this is to give the applicant an opportunity to inform the Commission of any reason why it believes the application should not be designated for hearing. Any reply you wish to make should be filed in triplicate within 30 days from the date of this notice. Upon receipt of any such reply, the Commission will determine whether the matters mentioned above have been resolved and whether it can grant your application without a hearing. If it is unable so to find, it will designate your application for hearing on the issues then obtaining. In the absence of a reply from you concerning the matters discussed above, your application will be subject to dismissal pursuant to the provisions of section 1.312 of the Commission's rules.

By direction of the Commission :

MARY JANE MORRIS, *Secretary.*

FCC 60-178

84571

8420

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., February 29, 1960.

The NOBLE BROADCASTING CORP.,
Radio Station WILD,
Boston, Mass.

GENTLEMEN: This is with reference to (1) your application (BR-1406) for renewal of license of station WILD, Boston, Mass. and (2) your application (BTC-3357) for transfer of control of the Noble Broadcasting Corp. to Franklin Broadcasting Co.

The Commission has before it for consideration: (1) your replies, dated December 21, 1959, February 15 and 19, 1960, respectively, to the Commission's letter dated December 2, 1960, concerning unannounced sponsorship of broadcasting material; (2) volumes 3 and 7 of the transcript of testimony before the Special Subcommittee on Legislative Oversight of the Committee on Interstate and Foreign Commerce of the House of Representatives, at hearings held February 10 and 19, 1960; (3) other information relating thereto.

It appears from the above that payments or other considerations have been received by employees of station WILD and by the station itself for the purpose of broadcasting matter without appropriate announcements having been made. The above facts raise questions as to whether the licensee of station WILD has complied with section 317 of the Communications Act and section 3.119 of the Commission's rules; as whether the licensee has complied with section 3.111 of the Commission's rules concerning the logging of broadcast material; as to whether the above-mentioned activities constituted an abdication by the licensee of its responsibility to select the station's programming material; as to whether the licensee has engaged in activities bearing adversely on its character qualifications; and as to whether the licensee has misrepresented to the Commission facts with respect to the above operations, or has failed to disclose pertinent information, or was lacking in candor in responding to the Commission's December 2, 1959 inquiry.

A review of exhibit A to your renewal application, a balance sheet as at October 31, 1959, shows (1) current liabilities in the amount of \$78,745 exceed current assets by \$60,950. (2) capital stock and earned surplus deficit of \$47,912, and (3) 100 shares of no-par stock issued and outstanding in the amount of \$50,000, whereas the ownership report (form 323) shows 100 shares of no par stock at a stated value of \$250 per share. No showing has been made outlining the plan for liquidating the liabilities, financing the continued operation of the station and reconciling capital stock as shown on the balance sheet with the form 323.

The program log analysis, section IV of your renewal application, indicates that certain representations with respect to programming are not consistent with the representations made in the application for assignment of license (BAI-3224, granted Nov. 19, 1958), and there are questions raised with respect to the operation of station WILD during the past license period. The current renewal application shows that the following percentages of time were devoted to the various types of programs during composite week: Entertainment, 92.89 percent; religious, 1.16 percent; agricultural, 0 percent; educational, 0; news, 5.19 percent; discussion, 0.19 percent; and talks, 0.57 percent. In the assignment application you represented that time would be devoted to the various types of programs as follows: Entertainment, 82.6 percent; religious, 1.3 percent; agricultural, 0.7 percent; educational, 0.3 percent; news, 9.9 percent; discussion, 1.3 percent; and talks, 4.9 percent.

In exhibit D to the renewal application, you state that "station WILD has endeavored to provide a diversified program schedule which serves the public interest." You list as examples of your operation in the public interest the programs "The World at 8:15," a daily 15-minute news commentary; and "Newsmen at Work," a 15-minute program on Sunday dealing with current civic happenings. You state, further, that the station presents interviews as the occasion arises, documentary programs from time to time, and editorial comments throughout the year. However, you failed to submit examples of these types of programs which allegedly were presented. It appears that your station's programming consists almost entirely of recorded music interspersed with spot announcements and short newscasts.

In light of the above, the Commission is unable, at this time, to find that a grant of the above application for renewal of license would serve the public interest. It appears, therefore, that said application must be designated for hearing.

This letter is being written to you in accordance with the provisions of section 309(b) of the Communications Act of 1934, as amended, which requires that before any application be designated for hearing, the applicant must be informed as to why a grant without hearing cannot be made and be afforded an opportunity to reply. The purpose of this is to give the applicant an opportunity to inform the Commission of any reason why it believes the application should not be designated for hearing. Any reply you wish to make should be filed in triplicate within 30 days from the date of this notice. Upon receipt of any such reply, the Commission will determine whether the matters mentioned above have been resolved and whether it can grant your application without a hearing. If it is unable so to find, it will designate your application for hearing on the issues then obtaining. In the absence of a reply from you concerning the matters discussed above, your application will be subject to dismissal pursuant to the provisions of section 1.312 of the Commission's rules.

With respect to the application for transfer of control, Commission action thereon will be deferred pending resolution of the above matters.

By direction of the Commission:

MARY JANE MORRIS,
Secretary.

FCC 60-189
84573
8420

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., February 29, 1960.

PILGRIM BROADCASTING Co.,
Radio Station WORL, Boston Mass.

GENTLEMAN: This is with reference to: (1) your application (BR-2585) for renewal of license of standard broadcast station WORL, Boston, Mass.; (2) your application (BTC-3373) for transfer of control of Pilgrim Broadcasting Co.; and (3) your application (BAL-3790) for assignment of license of station WORL.

The Commission has before it the above-referenced applications; your reply of December 18, 1959, to the Commission's inquiry of December 2, 1959, concerning unannounced sponsorship of broadcast material; volumes 1 and 7 of the report of proceedings conducted by the Special Subcommittee on Legislative Oversight of the Committee on Interstate and Foreign Commerce of the House of Representatives, containing the testimony of Harry Carter, president of Music Suppliers, Inc., taken on February 17, 1960, and Donald Dumont, president of Dumont Record Distributing Co., taken on February 19, 1960; and other information relating thereto.

It appears from the above that payments or other consideration have been received by employees of station WORL and by the station itself for the purpose of having certain recorded material broadcast over the station's facilities without appropriate announcements having been made. The above facts raise questions as to whether the licensee of station WORL has complied with the provisions of section 317 of the Communications Act and section 3.119 of the Commission's rules; as to whether the licensee has complied with section 3.111 of the Commission's rules concerning the logging of broadcast material; as to whether the use of the above-mentioned recorded material by the station constituted an abdication by the licensee of its responsibility to select the station's programing material; as to whether the licensee has engaged in activities bearing adversely upon its character qualification; and as to whether the licensee has misrepresented to the Commission facts with respect to the above operations, or has failed to disclose pertinent information with respect thereto or was lacking in candor in responding to the Commission's December 2, 1959, inquiry.

In view of the above, the Commission is unable to conclude at this time that a grant of your renewal application would serve the public interest. It appears, therefore, that said application must be designated for hearing.

This letter is being written to you in accordance with the provisions of section 309(b) of the Communications Act of 1934, as amended, which requires that before any application be designated for hearing, the applicant must be informed as to why a grant without hearing cannot be made and be afforded an opportunity to reply. The purpose of this is to give the applicant an opportunity to inform the Commission of any reason why it believes the application should not be designated for hearing. Any reply you wish to make should be filed in triplicate within 30 days from the date of this notice. Upon receipt of any such reply, the Commission will determine whether the matters mentioned above have been resolved and whether it can grant your application without a hearing. If it is unable so to find, it will designate your application for hearing on the issues then obtaining. In the absence of a reply from you concerning the matters discussed above, your application will be subject to dismissal pursuant to the provisions of section 1.312 of the Commission's rules.

With respect to the applications for transfer of control and assignment of license, Commission action thereon will be deferred pending resolution of the above matters.

By direction of the Commission :

MARY JANE MORRIS, *Secretary.*

FCC 60-188
84572
8420

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., February 29, 1960.

CONANT BROADCASTING Co., INC.,
Radio Station WHIL,
Medford, Mass.

GENTLEMEN: This is with reference to (1) your application for renewal of license of station WHIL (BR-2706), Medford, Mass.; (2) the application of Simon Geller for a construction permit for a new standard broadcast station at Gloucester, Mass. (BP-11667); and (3) the Commission's letter dated December 14, 1959, to you, to Geller, and to other interested parties indicating that the Commission at that time was unable to conclude that a grant of Geller's application would serve the public interest.

The Commission has before it for consideration: (1) your reply, filed on January 4, 1960, to the Commission's letter of December 2, 1959, concerning unannounced sponsorship of broadcast material; (2) volumes 6 and 7 of the transcript of testimony before the Special Subcommittee on Legislative Oversight of the House Committee on Interstate and Foreign Commerce, at hearings held February 18 and 19, 1960; (3) other information relating to the foregoing matters; and (4) a petition filed by Simon Geller on January 4, 1960, alleging, among other things, that you broadcast, on a regularly scheduled basis, horseracing programs direct from the tracks and broadcast a nightly program of racing information during certain seasons of the year. No mention of these matters is contained in your opposition to said petition.

It appears from the above that payments or other consideration have been received by employees of station WHIL and by the station itself for the purpose of broadcasting matter without appropriate announcements having been made. The above facts raise questions as to whether you have complied with section 317 of the Communications Act, and section 3.119 of the Commission's rules; as to whether you have complied with section 3.111 of the Commission's rules concerning the logging of broadcast material; as to whether the above activities contemplated an abdication by you of your responsibility to select the station's programing material; as to whether you have engaged in practices bearing adversely on your qualifications to be a broadcast licensee; as to whether you misrepresented to the Commission the facts with respect to the above operation, or have failed to disclose pertinent information with respect thereto, or were lacking in candor in responding to the Commission's December 2, 1959, inquiry; and as to whether you have broadcast programs containing horseracing information in a manner and to a degree contrary to the public interest.

In light of all of the above, the Commission is unable to find at this time that a grant of the subject application for renewal of license would serve the public interest. Accordingly, it appears that your application must be designated for hearing.

This letter is being written to you in accordance with the provisions of section 309(b) of the Communications Act of 1934, as amended, which requires that before any application be designated for hearing, the applicant must be informed as to why a grant without hearing cannot be made and be afforded an opportunity to reply. The purpose of this is to give the applicant an opportunity to inform the Commission of any reason why it believes the application should not be designated for hearing. Any reply you wish to make should be filed in triplicate within 30 days from the date of this notice. Upon receipt of any such reply, the Commission will determine whether the matters mentioned above have been resolved and whether it can grant your application without a hearing. If it is unable so to find, it will designate your application for hearing on the issues then obtaining. In the absence of a reply from you concerning the matters discussed above, your application will be subject to dismissal pursuant to the provisions of section 1.312 of the Commission's rules.

By direction of the Commission :

MARY JANE MORRIS, *Secretary.*

FCC 60-190
84568

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., February 29, 1960.

MALCOLM R. WILKEY, Esq.,
*Assistant Attorney General,
Criminal Division,
Department of Justice,
Washington, D.C.*

DEAR Mr. WILKEY: I have your letter of February 18, 1960, referring to a New York Times report of the Legislative Oversight Committee payola hearings.

The Commission has followed the proceedings of the Legislative Oversight Committee closely. The transcripts of those hearings have been studied by the Commission's staff on a daily basis and the information so obtained is being correlated with the responses to the Commission's payola questionnaire and the data obtained from Federal Trade Commission. Thus far, the data available to the Commission indicates that five stations may have had financial arrangements with various record distributing companies which may be contrary to the provisions of section 317 of the Communications Act and the implementing rules which have been adopted by the Commission. Of those five stations, the following are in Boston: WMEX, WILD, WORL, and WHIL. The fifth station, WJBW, is located in New Orleans. Since the licenses of the four Boston stations expire April 1, the renewal applications of those stations are now before the Commission for consideration. The information before the Commission raises questions which prevent the Commission from making the public interest findings required to grant the renewal of the station licenses. We have, therefore, prepared letters as prescribed by section 309(b) of the Communications Act, looking toward the possibility of a renewal hearing in these cases. We enclose copies of those letters for your information. Your office will be kept advised of further developments in these cases.

Since the application for renewal of the New Orleans station license will not come before the Commission until about May 1961, the Commission has sent an investigator to obtain further facts in that case. Should such facts warrant it, the Commission could initiate revocation proceedings or consider requiring the early filing of the application for renewal of station license.

The Commission will, of course, keep the Department fully advised of any matters coming to the Commission's attention which appear to involve violations of the Communications Act which warrant prosecution.

By direction of the Commission :

JOHN C. DOERFER, *Chairman.*

Public Notice B
83333
January 21, 1960

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

FURTHER FCC ACTIONS REGARDING PAYOLA AND RELATED MATTERS

The Federal Communications Commission is taking the following further steps with respect to payola and other hidden radio and TV advertising:

1. It proposes to initiate rulemaking proceedings which would require broadcast licensees to take affirmative steps to prevent the broadcast of matter as a result of payola received by their employees;

2. Its processing of renewal and other applications filed by broadcast stations will include consideration of the stations' replies to the Commission's current inquiry into the above practices;

3. Where the licensee has answered question 2 (what steps he has taken to deal with the situation) and not question 1 (what unannounced matter he has so broadcast since November 1, 1958), consideration of any application will be withheld until the answer to question 1 is received (February 5 is the deadline for such filings);

4. Where no questions are raised by the replies, but information furnished the FCC by the Federal Trade Commission indicates station employee involvement in payola, the FCC will defer consideration of renewals for further study.

Meanwhile, replies to the FCC's December 2 questionnaire to the stations will not be open for public inspection. In the event the Commission takes formal action in a particular case or in connection with a particular application, all relevant material will be made part of the public record or application folder of the station involved.

Further steps may be necessary on the basis of a study of the replies and processing experience.

Of the more than 5,200 broadcast stations sent letters of inquiry, only about 300 have not replied. They have been so notified by the Commission and requested to comply.

B
FCC 60-111
83664

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

DOCKET No. 13389

IN THE MATTER OF AMENDMENT OF SECTIONS 3.119, 3.289, 3.654, AND 3.789 OF THE
COMMISSION'S RULES

NOTICE OF PROPOSED RULEMAKING

1. Notice is hereby given of proposed rulemaking in the above-entitled matter.

2. Section 317 of the Communications Act reads as follows:

"All matter broadcast by any radio station for which service, money, or any other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person."

The above statute has been implemented by Sections 3.119, 3.289, 3.654, and 3.789 of the Commission's rules. Sufficient evidence exists which indicates that as a result of valuable consideration received by station employees and others, matter has been broadcast unaccompanied by the announcements provided for in the act and the rules. Accordingly, the Commission is of the view that the public interest would be served by the adoption of a rule providing that each licensee shall adopt appropriate procedures to prevent such practices.

3. It is proposed to amend the above-captioned rules by the addition thereto of subparagraph (f) reading as follows:

"(f) All licensees and operating permittees shall adopt procedures to prevent the broadcasting of any matter for which service, money or other valuable consideration is, directly or indirectly, paid or promised to, or charged or accepted by, any officer, employee or independent contractor of the station, unless at the time the same is so broadcast it is announced as being paid for or furnished by such person."

4. Any interested party who is of the view that the proposed amendment should not be adopted, or should not be adopted in the form set forth herein, may file with the Commission on or before March 1, 1960, a written statement or brief setting forth his comments. Comments in support of the proposed amendment may also be filed on or before the same date. Comments or briefs in reply to the original comments may be filed within 10 days from the last day for filing said original comments.

5. Authority for the adoption of the amendment proposed herein is contained in Sections 4(i), 303(r), and 317 of the Communications Act of 1934, as amended.

6. In accordance with the provisions of Section 1.54 of the Commission's Rules, an original and 14 copies of all statements, briefs, or comments shall be furnished the Commission.

FEDERAL COMMUNICATIONS COMMISSION,
MARY JANE MORRIS, *Secretary*.

Adopted: February 5, 1960.
Released: February 8, 1960.

Public Notice-B
84833
February 18, 1960

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

FURTHER LIAISON BETWEEN FCC AND FTC

The Federal Communications Commission today made public the attached exchange of letters between it and the Federal Trade Commission establishing further liaison between those agencies relating to unannounced sponsorship of broadcast matters.

FCC 60-145
83853
3400

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., February 17, 1960.

Mr. EARL W. KINTNER,
Chairman, Federal Trade Commission,
Washington, D.C.

DEAR MR. KINTNER: This is to confirm the understanding reached between our respective staffs at an informal conference held on February 5, 1960, with respect to further liaison relating to unannounced sponsorship of broadcast material.

The FCC has requested all broadcast licensees to submit information to it with respect to sponsored programs which were not so announced. This information will be available for inspection by authorized representatives of the FTC. In addition, the FCC will bring to the attention of the FTC, in writing, any evidence contained in the above material which appears to be of interest to the FTC.

The FTC will advise the FCC in writing of instances where its files contain information from which it may appear that broadcast licensees or their employees have been involved in the unannounced sponsorship of broadcast material. The FTC will make available for inspection by authorized representatives of the FCC its investigatory files containing such information.

In the event that either the FTC or the FCC desires copies of materials in the files of the other, such copies will be furnished. Request therefor shall be directed in writing to the Secretary of FTC or to the Secretary of FCC.

Information or the source thereof, which is made available by either agency to the other, and which is not a matter of public record, shall be solely for the internal use of the recipient thereof and shall not be made public without the consent of the agency furnishing the information. Requests to use the information for other than internal purposes or to make it public shall be directed in writing to the respective officials mentioned above.

We shall appreciate an early response from you as to whether the above extension of the existing liaison agreement between our agencies meets with your approval.

By direction of the Commission :

ROSEL H. HYDE, *Acting Chairman.*

FEDERAL TRADE COMMISSION,
Washington, D.C., February 18, 1960.

Mr. ROSEL H. HYDE,
Acting Chairman,
Federal Communications Commission,
Washington, D.C.

DEAR MR. HYDE: This Commission has reviewed your letter of February 17, 1960, in which you set forth the details of a proposed supplemental working liaison arrangement relating to unannounced sponsorship of broadcast material.

The Federal Trade Commission approves the proposal as set forth in the communication and considers the arrangement in operation as to this date.

You may expect the full cooperation of this Commission and its staff in carrying out their part of this joint undertaking.

By direction of the Commissioner.

EARL W. KINTNER, *Chairman.*

FCC 60-193
84119

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION,
WASHINGTON, D.C.

DOCKET NO. 13420

IN THE MATTER OF AMENDMENT OF SECTIONS 3.34, 3.218, 3.518, AND 3.630 OF THE COMMISSION'S RULES RELATING TO LICENSE PERIODS FOR STANDARD BROADCAST, FM BROADCAST, NONCOMMERCIAL EDUCATIONAL FM BROADCAST, AND TELEVISION BROADCAST STATIONS

NOTICE OF PROPOSED RULEMAKING

1. Notice is hereby given of proposed rulemaking in the above-entitled matter.
2. The Commission has under consideration the above-enumerated provisions of its rules. Although relating to different broadcast services, these rules are identical in substance. The Standard Broadcast Rule provides, in pertinent part, as follows:

§ 3.34 Normal license period.

(a) All standard broadcast licenses will be issued for a normal license period of three years. Licenses will be issued to expire at the hour of 3:00 a.m., Eastern Standard Time, in accordance with the following schedule and at three years thereafter.

3. As here applicable, Section 307(d) of the Communications Act of 1934, as amended (47 U.S.C. § 307(d)), provides: "No license granted for the operation of a broadcasting station shall be for a longer term than three years * * *. Upon the expiration of any license, upon application therefor, a renewal of such license may be granted from time to time for a term of not to exceed three years in the case of broadcasting licenses, * * * if the Commission finds that public interest, convenience, and necessity would be served thereby."

4. The above provisions of the rules provide for a three-year term for initial licenses and subsequent renewals of three years each. In order to conform these implementing rules to the statute and to make clear that the Commission may, in appropriate circumstances, issue an initial license or a

renewal of license for a lesser term. It is proposed to amend these rules in the manner set forth in the attached appendix.

5. Authority for the adoption of the proposed amendments is contained in Sections 4(i), 303(r), 307(d), 308(a), and 309 (a) and (d) of the Communications Act of 1934, as amended.

6. Any interested party who is of the view that the proposed amendment should not be adopted, or should not be adopted in the form set forth herein, may file with the Commission on or before April 1, 1960, a written statement setting forth his comments. Comments supporting the proposed amendment may also be filed on or before the same date. Comments in reply to original comments may be filed within 10 days from the last day for reply to original comments. The Commission will consider all comments filed hereunder prior to taking final action in this matter provided that, notwithstanding the provisions of Section 1.213 of the Rules, the Commission will not be limited solely to the comments filed in this proceeding.

7. In accordance with the provisions of Section 1.54 of the Rules, an original and 14 copies of all written comments shall be furnished the Commission.

FEDERAL COMMUNICATIONS COMMISSION,
MARY JANE MORRIS, *Secretary*.

Adopted: March 2, 1960.

Released: March 3, 1960.

APPENDIX

1. Paragraph (a) of Section 3.34 is amended to read as follows:

§ 3.34 Normal license period.

(a) Licenses for standard broadcast stations ordinarily will be issued for a period of three years and, when regularly renewed, at three-year intervals thereafter: *Provided, however*, That, if the Commission finds that the public interest, convenience, and necessity will be served thereby, it may issue either an initial license or a renewal thereof for a lesser term. When regularly issued or renewed, licenses will be issued to expire at the hour of 3:00 a.m. Eastern Standard Time, in accordance with the following schedule, and at three-year intervals thereafter.

2. Corresponding changes are made in the language of § 3.218(a) relating to the license period for FM Broadcast Stations.

3. Corresponding changes are made in the language of § 3.518(a) relating to the license period for Noncommercial Educational FM Broadcast Stations.

4. Corresponding changes are made in the language of § 3.630(a) relating to the license period for Television Broadcast Stations.

The CHAIRMAN. Does that conclude your statement, Mr. Doerfer?
Mr. DOERFER. It does.

The CHAIRMAN. In connection with your statement, Mr. Doerfer, that you had requested 5,249 broadcast licensees for certain information concerning alleged payola, how many responses did you get?

Mr. DOERFER. We got between 4,900 and 5,000 responses.

The CHAIRMAN. In other words, there are some 300 that did not respond?

Mr. DOERFER. Yes. And we are following up on those 300, or whatever the balance is.

The CHAIRMAN. Without asking you to name any of the stations at this time, did you get any replies indicating that such practice was or had been engaged in by that station or its personnel?

Mr. DOERFER. The answer is "Yes."

The CHAIRMAN. Out of the 5,200-plus, how many advised your Commission that such practices had been engaged in by either the station licensees or personnel of the station?

Mr. DOERFER. We do not have the count as to how many reported violations, but those who had reported this practice have indicated that it has been on the part of their employees; and I am familiar

with four stations who have admitted receiving funds for airing or broadcasting material which was not announced as paid for—excuse me, I probably overstated it, and I have just been corrected. They have not admitted it, but I think there is sufficient evidence there to indicate a hearing and, accordingly, we have sent out 309(b) letters to four of them.

The CHAIRMAN. Yes. But what I would like to know, if you have the information and can give it out, out of the 4,900-plus replies that you have had to the questionnaire, how many of those stations had such practice been engaged in either by the licensees themselves or personnel of the station? How many stations had such practice been engaged in?

Mr. DOERFER. We do not have that information, Mr. Chairman. Our procedures are, as you know, when the license renewal comes up—and they come up each month—the staff is instructed to comb the replies to see whether or not there is any connection between some of these practices at the time that we are considering these renewal applications.

The CHAIRMAN. You mean that you have not, that is, the Commission has not, analyzed the questionnaires that have been returned to determine how widespread this practice might be?

Mr. DOERFER. Yes; we have an idea with respect to how widespread it is. As I indicated before, it is mostly the employees or those designated as diskjockeys.

The CHAIRMAN. Yes; I fully realize that, but what I would like to know is: Can you supply it? In how many facilities of the broadcasting business have such practices been carried on?

Mr. DOERFER. Well, that would take a considerable time to tabulate.

The CHAIRMAN. Well, if you have not tabulated it, why, of course, you just say so.

Mr. DOERFER. No; we have not.

The CHAIRMAN. You have not tabulated it.

Mr. DOERFER. Not according to that basis. Not on that basis. Mr. Chairman, you have to analyze all the answers, because as you know, there are two questions, and after you analyze the questionnaire, you probably have to classify the various answers, because some of them are qualified, before you can take a tabulation, if that were deemed necessary.

The CHAIRMAN. It would seem to me that would be a very important bit of information which the subcommittee should have, if we are going to effectively investigate and study this particular practice, considered to be contrary to the public interest, at this time.

Do you have any program underway to make such an analysis to determine whether there have been a half-dozen or ten or twenty or fifty or a hundred stations or a thousand stations where such practice has been going on?

Mr. DOERFER. Well, let me say this: that the Commission has been primarily concerned, at least I have, with ascertaining the number of licensees, because our jurisdiction goes by the provisions of section 317, to the licensee.

This other information, there is sufficient information available in our shop and what you have uncovered up here to warrant us taking the action that we did. Without stopping to make a com-

prehensive analysis, we suggested and recommended the adoption of an amendment to the criminal act which would reach these people outside the scope of our jurisdiction, and we have initiated rule-making which would impose upon the licensee himself the exercise of due diligence, the duty to inaugurate internal checks or controls in order to catch it before it is aired and to effectively eradicate it.

And we are coordinating with the Federal Trade Commission.

The CHAIRMAN. Yes; I am fully aware of that, as you have so fully explained here. Certainly the Commission is to be complimented for any action it has taken in this regard, though some might think it a belated action.

It would seem to me, and I would suggest it for your consideration, that in order to help with the entire problem, that these returns shall be analyzed to find out just where this practice has been carried on. I would like to have a tabulation of that questionnaire.

Now, it has been questioned as to whether the practice was a widespread one.

It has been publicly stated, and I think appropriately so, that the entire industry is not infiltrated with this practice, and certainly the entire industry should not be condemned for it. However, if there are substantial widespread practices going on, which we have been led to believe exists in various sections throughout the country, then it would seem to me that we should find out just where it is being practiced.

The Federal Trade Commission was here this morning, and from their report, there were 250 diskjockeys in 56 cities of the country engaged in payola.

Well, obviously, that must be the major markets in which it has happened.

It would seem to me that the stations, themselves, throughout the nation would be interested in knowing, and I imagine they are, and I have a feeling that they have looked into it pretty deeply. Some of them have been most cooperative and have taken action on it.

But we are trying to find out, in order that all the facts can be brought to light, just how widespread this is. It is not limited to Boston, it is not limited to Cleveland. There was extensive testimony this morning, and a question asked by Mr. Springer, brought to light the practice in Chicago. The Federal Trade Commission advised us that they had sent you information showing I believe, using their language, at least seven station licensees received similar favors. I assume you got that information from your questionnaire, did you not?

Mr. DOERFER. Well, we only have five. The other two were unearched, that information was sent to us, as of either yesterday or the day before yesterday.

The CHAIRMAN. Then you have definitely established that there were at least five stations where the station licensees were engaged in payola or deceptive practices?

Mr. DOERFER. Well, it looks pretty much like it. We have the complaints, and there seems to be enough there to warrant a 309 procedure.

The CHAIRMAN. But you have no information from all of these replies, as to whether there has been 40 or 50 or 100 or 1,000 stations where such has been practiced by the employees?

Mr. DOERFER. No. The information I have received from my staff, upon inquiry, was that of all of the replies to the questionnaire, the stations themselves or the station licensee, which engaged in this practice to the extent that you are indicating, is very small.

The CHAIRMAN. That is what we are trying to establish. It would appear to me from what I thought was a very appropriate approach to the problem, taken by your Commission, that such could be established. I would like to suggest that you have those analyzed to see if the information you have conforms to the information which we received from the Federal Trade Commission, and which we, in the subcommittee, are obtaining through current investigations.

I did not intend to get into all the questions to start with.

Mr. DOERFER. Well, it is a proceeding and it may take some time. As I have indicated, the evidence, no doubt, would be cumulative, so that we felt, at least I did, that a prompt step to prevent it from occurring in the future, to secure the necessary laws and rules in order to stop it, would be—

The CHAIRMAN. Oh, yes, I agree with that.

Mr. DOERFER (continuing). Would be of primary importance.

The CHAIRMAN. We are all doing it now. We have been working on it and the Federal Trade Commission is working on it and your Commission is working on it, trying to see that it does not occur in the future. Also, I know that there is a pretty strong feeling in certain places to keep as much of it suppressed as we can, certainly among those in the business, and I know how they feel about it, for it is a sensitive thing. But the only way to get at this evil, whatever evil there is, is to acknowledge that it happened and proceed to find out where it happened and then move on to do something about it.

Mr. DOERFER. And that is what we are engaged in. It may be a long process. I assure you if we can get you the statistical information without seriously discommoding some of the more important work we are doing on a staff level, we shall do so, and if not—

The CHAIRMAN. We are certainly not asking you to do that, that is, to let this interfere with the conduct of your established responsibility from day to day. But if you do not have the staff and personnel to do it with, I will certainly be one of the first to make a move here to go before the Appropriations Committee of the House to get it for you. I think that is information that ought to be known and made available to the American people.

Mr. Springer.

Mr. SPRINGER. Mr. Chairman, as I understood you to say, at the present time, as best information you have, there are possibly as many as five or possibly seven licensees that had been guilty of some form of payola.

Mr. DOERFER. Yes.

Mr. SPRINGER. Is that about a reasonable figure that has been revealed thus far?

Mr. DOERFER. It all depends, Congressman Springer—on how we regard, classify, their answers. I would say where there has been evidence similar to that which has been unearthed here, where the licensee himself has taken money, and broadcast material, and did

not announce it, I think there is every indication, so far as I have been able to ascertain, it is relatively small.

Mr. SPRINGER. I would want to be sure to pin this figure down was my first point, Mr. Doerfer. Is that about the figure that you have in your files now of licensees who have admitted this?

Mr. DOERFER. Well, they have not admitted the violation, but the evidence which they have furnished indicates a violation.

Mr. SPRINGER. All right. Now, my second question: I understood you to say that there are approximately 5,000 licensees of radio and television stations; is that correct?

Mr. DOERFER. That is correct.

Mr. SPRINGER. So that the number of violators that you have reasonable evidence on at the present time, is either 5 or 7 as against 5,000 or 4,900?

Mr. DOERFER. Well, those are the five or seven that the Federal Trade Commission has alerted us to, and with respect to the others that the Broadcast Bureau is processing, I just cannot answer.

Mr. SPRINGER. What I am trying to find out truthfully for the record, Mr. Doerfer, is the number of those who have violated, as against the number of actual licensees. Are my figures as to 5 or 7 as against 4,900 presently in your files; is that about the ratio?

Mr. DOERFER. The ratio might be a little higher than that, but I do not think substantially.

Mr. SPRINGER. You would say that is somewhere in a reasonable area?

Mr. DOERFER. Yes.

Mr. SPRINGER. Of the proportion of violators as against what you would classify as those licensees who are abiding by the law and have abided by the law?

Mr. DOERFER. Yes, so far as we know now.

Mr. SPRINGER. Do you have any reasonable record at the present time of, say, the number of diskjockeys that there are in the country?

Mr. DOERFER. No; we do not have any record of that.

Mr. SPRINGER. What I am trying to find out, is that 5,000 or 10,000 or 15,000 or 20,000?

Mr. DOERFER. I have no idea, Congressman Springer. I think there are over 50,000 employees in the broadcast industry—

Mr. SPRINGER. A figure has been suggested here of approximately 3,000 diskjockeys. Is that a reasonable figure?

Mr. DOERFER. I think that some where around that figure would be reasonable as an estimate.

Mr. SPRINGER. There was evidence here this morning by the Federal Trade Commission, that possibly, approximately, 250 to 255 diskjockeys had been guilty of payola. Do you have indication of approximately that many diskjockeys in your file who are guilty of payola?

Mr. DOERFER. My staff advises me that would be too preliminary. They have not reached that point, but I would say from my own experience, that most of these violations occurred in the major markets. That the smaller radio stations, many times, as we have indicated, have not been the beneficiary of even a free record.

The CHAIRMAN. Will the gentleman yield at that point before you leave it?

Mr. SPRINGER. Yes, sir.

The CHAIRMAN. I would like to point out from the record of this morning that Mr. Kintner testified before the subcommittee, and I quote again:

Our investigational files in the 60 cases where complaints have been issued or approved reveal that they have been made by manufacturers or distributors to 255 diskjockeys in 56 cities.

Of course, that is only in 60 cases, and not the entire industry.

Mr. DOERFER. May I try to enlighten the subcommittee on my reaction to that. I am assuming that the Federal Trade Commission would obviously investigate the major markets.

Now, the major markets of this country, depending on how you classify them, probably are in the neighborhood of 60 or 70. I base that on the fact that the advertisers in television attempt to buy up about 50 or 60 exposures, I mean 50 or 60 cities within which to expose it. So using that as a basis, I would say that is the major market and I would not be a bit surprised but that most of the disk-jockey type of thing of the nature that you are concerned with occurred there.

Now, with respect to the free records, well, I don't know. I suppose that that might be a good deal more extensive. But whether or not that constitutes a willful violation of the law sufficient to convince a jury, or a court, I am very doubtful.

Mr. SPRINGER. Mr. Chairman, I would like to come now to the meat of this report which you have made.

From the reading of the report, and as I have taken one by one, I believe that you have tabulated a total here of eight separate recommendations. I would like to read these to you.

First, page 2, and you can just listen to what I have to say:

Accordingly, on February 5 we adopted a notice of proposed rulemaking to deal with fixed quiz and other nonbona fide contest programs involving intellectual skills. These rules would prohibit the broadcasting of such programming unless accompanied by an announcement. * * *

That is the first recommendation you have made, am I right?

Mr. DOERFER. Yes.

Mr. SPRINGER. That is No. 1.

Now, going to paragraph 2, the first line:

We have also felt that this sort of conduct should be prohibited by statute.

That is the second recommendation that you have made, am I correct?

Mr. DOERFER. Yes.

Mr. SPRINGER. Now, going to the last paragraph on page 2, as a part of your whole reforming program, you sent out a questionnaire to all of the licensees of radio and television?

Mr. DOERFER. Yes.

Mr. SPRINGER. To find out how widespread the practice was of payola. That was the third constructive act you took subsequent to your appearance before this subcommittee in October 1959?

Mr. DOERFER. Yes.

Mr. SPRINGER. Now, going to page 3, the last paragraph:

The Commission's staff has been instructed that any applications for additional facilities, renewal of station license, or transfer of broadcast stations

filed by existing licensees must not be acted upon without a check against the "payola" information in the Commission's files.

That is recommendation No. 4—action that you have taken by changing the rule; right?

Mr. DOERFER. That is right.

Mr. SPRINGER. Now, go to page 5, the last paragraph:

In the light of the foregoing information, the Commission proposed on February 5 that a new section be added to the Commission's rules which would require the licensee of radio broadcast stations to adopt appropriate procedures to prevent the practice of payola amongst his employees.

You have also approved on February 11 the language of the proposed amendment to title 18 which would impose criminal penalties for failure to announce sponsored programs such as payola and others involving hidden payments or other considerations. That is act No. 5 which the Commission has taken?

Mr. DOERFER. I think that would be act No. 5 and 6. There are two separate things.

Mr. SPRINGER. I had No. 6 as the following sentence:

This proposal looks toward amending the United States Code to provide fines up to \$5,000.

That is another thing that would have to be undertaken by us, but that is a recommendation is it not?

Mr. DOERFER. That is correct.

Mr. SPRINGER. And it is separate. That is recommendation or act No. 6 by the Commission.

Now, going to page 6, the first paragraph:

In view of our mutual interest with the Federal Trade Commission and in order to avoid duplication of effort, we have arrived at an arrangement whereby any information obtained by the FCC which might be of interest to FTC will be called to that Commission's attention by our staff. Similarly, FTC will advise our Commission of any information or data which it acquires in the course of its investigations which might be pertinent to matters under consideration by the FCC.

That is act No. 7, am I right?

Mr. DOERFER. Yes.

Mr. SPRINGER. The next paragraph:

On Wednesday, March 2, 1960, the Commission adopted proposed rule changes which would enable it to make occasional use of shorter term licenses in the case of any broadcast station which it does not feel is entitled to a regular 3-year renewal and which merits closer observation during a shorter period of operation.

That is act No. 8 taken by the Commission, is that true?

Mr. DOERFER. Yes.

Mr. SPRINGER. Mr. Chairman, those are either acts or recommendations which the Commission has made toward eliminating payola and rigged TV since you were before this committee last fall; is that correct?

Mr. DOERFER. Yes.

Mr. SPRINGER. Are there any other recommendations or acts that have been taken by the Commission other than these since you were before the committee last fall?

Mr. DOERFER. Well, I think the program investigation as part of the overall network study would be, could be designated as additional action.

Mr. SPRINGER. All right. Would you just state the nature of that, just briefly.

Mr. DOERFER. Yes. That is the proceeding which I indicated was inaugurated or initiated starting December 2—excuse me. The notice was issued November 9, 1959, and the hearings began en banc, December 2, 1959, and continued to February 1, 1960, and consumed 19 days and about 4,000 to 5,000 pages of testimony.

Mr. SPRINGER. Mr. Chairman, has your Commission met recently, within the last 30 days, to come to a determination as to whether or not these actions, plus the recommended acts on the part of the Congress, will give you sufficient authority with which to regulate these practices in the future?

Mr. DOERFER. Well, the answer to that is, "Yes." But with this explanation: When we issue proposed rulemaking, it is sort of a procedure whereby we solicit comments, and upon consideration of those comments, that we might change, increase or add a little bit in order to perfect.

Mr. SPRINGER. Right. Now, is there under contemplation by your Commission a continuing review of this particular problem in the months that are just ahead to determine whether or not there should be rule changes and changes in the law, if necessary, to meet any situations which you have not already discovered?

Mr. DOERFER. Yes, there is.

I might indicate that, and now I am expressing my own opinion, in view of the Supreme Court's interdiction against the Commission supervising business practices, I have recommended that we confine our recommendations to rulemaking in those cases which are clearly contrary to the public interest, especially where we touch upon the programing practices. But that is a resolution which I think will be determined shortly.

Mr. SPRINGER. Mr. Chairman, just one more question: Is your legal counsel present?

Mr. DOERFER. Yes; this is Mr. FitzGerald.

Mr. SPRINGER. Would you identify yourself for the record.

Mr. FITZGERALD. John FitzGerald.

Mr. SPRINGER. Mr. FitzGerald, are you familiar entirely with what this Commission has done since you were before this subcommittee last October?

Mr. FITZGERALD. Not with every act, sir, but I am generally familiar, yes.

Mr. SPRINGER. All right. Do you believe that all that has been done by the Commission thus far meets what is necessary to do the job with reference to these practices that have been revealed to this subcommittee this last fall and up to now?

Mr. FITZGERALD. I would say, sir, considering the amount of time that has transpired, the amount of information that has come in through these questionnaires, the breadth of the problem, the necessity for going through your own transcript of hearings, that the Commission has done a great deal. I would say this: I do not believe that the Commission necessarily has completed all its consideration. I think that is obvious from the chairman's remarks. That when 5,000 and more responses to questionnaires, which may be very bulky,

require staff evaluation and then processing to the Commission, that it takes a considerable time to do that job.

Mr. SPRINGER. Just this other question: Have you made recommendations to the Commission with reference to legal procedure and otherwise to cure these practices, that have not been adopted by the Commission?

I am talking to you now as the lawyer.

Mr. FITZGERALD. Sir, I have made certain recommendations which have been discussed by the Commission, and after full consultation, actions have taken place, just as other staff members have, too.

Mr. SPRINGER. Have there been any recommendations you have made as the legal adviser to this Commission which have not been accepted by the Commission?

If there are, would you please state them.

Mr. FITZGERALD. Legal recommendations, sir?

Mr. SPRINGER. Yes.

Mr. FITZGERALD. I think not, no.

Mr. SPRINGER. Are you making a positive statement or are you thinking? I want to know positively for the record.

Mr. FITZGERALD. Sir, no recommendations that I have made to date, that the Commission has not considered and, as I recall, adopted, either in principle or literally.

I want to say, further, this is a continuing thing. My office is doing research, the Commission itself is deliberating and discussing this problem. There may be more actions and may be more suggestions that I would make or that the Commission would make.

Mr. SPRINGER. Mr. Chairman, that is all.

The CHAIRMAN. Mr. Mack.

Mr. MACK. Mr. Doerfer, did you attend the diskjockey convention in Miami?

Mr. DOERFER. No, I did not.

Mr. MACK. Are you familiar with that, with what happened at the convention?

Mr. DOERFER. No. Other than trade reports or newspaper reports.

Mr. MACK. You have read something in the newspapers about it?

Mr. DOERFER. Yes.

Mr. MACK. Have you conducted any kind of an investigation as to what happened down there?

Mr. DOERFER. No.

Mr. MACK. Well now, part of the testimony we received was to the effect that some of the participants in the convention stayed at other hotels, other than the main hotel, because they could trade advertising time for hotel space, as I understand it. Are you familiar with that?

Mr. DOERFER. No.

Mr. MACK. And you had not heard about it?

Mr. DOERFER. No, I haven't heard about that.

Mr. MACK. Well now, is that practice generally accepted in the industry?

Mr. DOERFER. I wouldn't know.

Mr. MACK. You wouldn't know whether they have the general practice of trading time on the air?

Mr. DOERFER. No. I am just not in a position to know that. I couldn't answer that question.

Mr. MACK. Well, could I ask you this: Would the Commission be interested in that general practice?

Mr. DOERFER. I think that any advertising or any programing which gets on the air and is not announced as being provided or paid for is a subject matter in which the Commission would be interested, yes. But only if the station itself participated.

The diskjockey or the people outside of the industry who would conspire to do that would certainly become the subject of Commission concern if you adopt the laws which we have indicated.

Mr. MACK. Well, I would think that is a matter that needs the immediate attention of the Federal Communications Commission, that widespread practice of their cutting rates or trading advertising time on television and radio for hotel rooms and vacations and for that matter, any other kind of commodity or property.

Mr. DOERFER. That is the reason, Congressman Mack, that we have also implemented the proposed recommendation with respect to enactment of the law, the rulemaking of which imposes upon the licensee to come up with some internal controls or procedures which would be reasonably devised to detect these things.

Mr. MACK. Then you are aware of the fact that this practice has been going on for some time?

Mr. DOERFER. You mean the payola practice?

Mr. MACK. Well, I am talking about the general practice of trade out advertising space on radio and television.

Mr. DOERFER. No, I cannot say that I have.

Mr. MACK. You never heard it before, is that correct?

Mr. DOERFER. No, I haven't. I just haven't.

Mr. MACK. I think if you will have one of your representatives follow the hearings of this subcommittee, that you will find at least two instances where this has occurred, and I would think that it would be a matter in which the Federal Communications Commission would be interested.

Mr. DOERFER. Well, as I thought——

Mr. MACK. It would appear to me that you fellows at the Federal Communications Commission sit back and take action only when it is pointed out by Congress or when we call it to your attention. This was an area in which I simply thought you might notice it would appear to be somewhat irregular and that you would take action on your own to control it.

Mr. DOERFER. Well, these are the type of things that are being studied. They come up. You asked, Congressman, whether or not I knew for some time. Well, perhaps if I am giving you the impression that the first time I heard about it was today, that is inaccurate. But I didn't hear about it until just recently, I would say maybe within a matter of, well, from November on, or whenever these things began to hit the newspapers.

Mr. MACK. Well, has it ever occurred to you that it might be advisable in order to control this, to require payment in advance for radio time, television time?

Mr. DOERFER. Well, that is a policy matter that I think the Congress of the United States would have to deal with. I am not prepared today to make a recommendation.

Mr. MACK. Do I understand that in your opinion you would not have the authority to act in that area?

Mr. DOERFER. Definitely not. Not at the moment, no.

Mr. MACK. That the Congress would have to enact legislation before you could take any action in this particular area? Assuming that to be correct, then do you not think that it would be advisable for you to call matters of this kind to the attention of Congress occasionally?

Mr. DOERFER. Yes, I think when we learn about it, if we do not have power to deal with it, and if it is a matter which is of such gravity that it requires congressional action, I think that we should.

Mr. MACK. Also, I would like to see if I have a correct understanding of this matter; you did read about the diskjockey convention in Miami in the newspapers?

Mr. DOERFER. Yes.

Mr. MACK. But your staff has never investigated or followed through to find out what actually transpired in Miami?

Mr. DOERFER. No.

Mr. MACK. And you have no plans to do so, I presume?

Mr. DOERFER. Well, we are studying the record. If there is any evidence with respect to that convention which is over and above the practice of broadcasting material unannounced, I would say that we would make recommendations to Congress accordingly.

Mr. MACK. This convention was put on by one of the licensees regulated by the Federal Communications Commission, was it not?

Mr. DOERFER. Yes.

Mr. MACK. Are you familiar with it?

Mr. DOERFER. I don't know whether it had or not. But the information or the allegation that it had has just come to my attention within a matter of days.

Mr. MACK. Did you think this was of sufficient importance to include it in the file of the licensee for consideration the next time they have a license up for renewal?

Mr. DOERFER. Well, I think I would have to break down my answer to that question. I think that you would agree that if a broadcaster wanted to conduct a convention of some kind, that in and by itself is nothing contrary to the public interest.

Mr. MACK. Well, it would be dependent upon the type of convention, would it not?

Mr. DOERFER. Well, but if the broadcaster had planned this as a vehicle to promote an illegal object or to permit unlawful conduct, it certainly would be something which the Commission should take into consideration with respect to his qualifications as a licensee.

Mr. MACK. Then you do think that the FCC should have enough interest in this affair, to at least gather some information on it?

Mr. DOERFER. I am not avoiding the responsibility of investigating or causing an investigation to be made where there is a pretty close relationship between conduct which is contrary to the laws of a State, a city, or the Federal Government.

However, conversely, if the Commission had the duty of actively policing the conduct of all broadcasters, that would be quite an undertaking. I am speaking about whether they have some private vices, things that are not connected with broadcasting, that would be quite an undertaking for us to police.

Mr. MACK. Of course, you would have to determine whether they are or are not connected with broadcasting; is that correct?

Mr. DOERFER. I would think that there should be some preliminary showing made that the practice or the conduct—

Mr. MACK. If this misconduct is associated with broadcasting, then do you think that it should be considered?

Mr. DOERFER. No, not associated with broadcasting. If it affects the character of broadcasting or affects the character of the licensee, I would say that the—involving moral turpitude to the point where the conduct of a licensee is to be reflected in the programming, I think that the Commission should call him to task for it or at least to consider it at the time of its licensee renewal. And send him what we call a 309(b) letter to explain.

Mr. MACK. If I understand it correctly, just about anything goes as long as this misconduct does not actually appear on his own program; is that correct?

Mr. DOERFER. I don't think so. I think that if there is conduct involving moral turpitude, I think that the Commission would be concerned about it, but I should think that the local police would certainly have the responsibility with respect to matters which do not affect broadcasting, but nonetheless, assuming some licensee has violated a State law that is quite shocking to the morals of society, even though it has nothing to do with broadcast, I would think that would be the time for the Commission to step in.

Mr. MACK. My point, of course, is that I thought the FCC should have interested itself in the diskjockey convention beyond just reading the newspapers and casually observing it. I think it very properly comes under the jurisdiction of your Commission. There could well have been some violations, or irregularities that would affect regulation or rulemaking procedure at some future date.

Now, I have one other question. In my State of Illinois, there is a diskjockey, I understand, who was fired for participating in payola. Now, I also understand that he is a licensee of a station in one of the neighboring States. You never consider anything of that nature when you relicense a radio station; is that correct?

Mr. DOERFER. I think if the Commission had knowledge of that or any complaints, it would certainly take that into consideration.

Mr. MACK. Well, would it be a fair question to ask you if you have knowledge of that?

Mr. DOERFER. It sure is a fair question. And the answer would be no.

Mr. MACK. You don't have knowledge of that?

Mr. DOERFER. No, I never heard of it.

Mr. MACK. Well, I will ask the subcommittee staff to make it available to you.

Mr. DOERFER. May I ask my staff?

Mr. Cowgill, on my right, has indicated that the States having broadcasting stations whose license is up for renewal are the ones

that get the primary consideration or examination or survey, because of the necessity of avoiding the backlog in our license renewal procedures. We renew about 1,700 licenses each year.

Mr. MACK. I understand the problem. I merely ask if the FCC would consider this conduct in granting or renewing a license at the appropriate time. And then I wanted to further inquire if you were familiar with the case.

I have no further questions.

The CHAIRMAN. Mr. Devine?

Mr. DEVINE. I have no questions.

The CHAIRMAN. Mr. Flynt?

Mr. FLYNT. Thank you, Mr. Chairman.

Mr. Doerfer, with reference to the letter referred to at the bottom of page 2, and the top of page 3, have the replies received by you been tabulated?

Mr. DOERFER. Is it page 2, did you say?

Mr. FLYNT. The bottom of page 2, the top of page 3—the letter which you sent out. You said you received between 4,900 and 5,000 replies.

Mr. DOERFER. That is right.

Mr. FLYNT. Out of approximately 5,200 mailed out.

Mr. DOERFER. That is right.

Mr. FLYNT. Have the replies been tabulated?

Mr. DOERFER. Tabulation, Congressman—I don't understand the nature of your question, because there is various information that you can get off of an answer, that you can tabulate. You can reprocess it and reprocess for any number of considerations. As I understand it, the preliminary surveys have indicated that the diskjockey practice, which is confined mostly to the major markets—that the questionnaires or the answers were surveyed for incompleteness, and in that sense, those which were not complete were tabulated for the purpose of processing for followup letters.

The answers were—I guess they are being tabulated, you might say, or classified according to States. So that where the license renewal time is at hand, the staff can have a ready source of information for Commission consideration involving payola practices, to that extent.

Mr. FLYNT. Well, your answer to my question is yes, that the answers have been tabulated?

Mr. DOERFER. No, I don't think they have been tabulated in the sense that we could tell you.

Mr. FLYNT. All right, let me ask you this. If I were sending out such a questionnaire, the first thing that I would do upon receiving the compliance to question No. 1, would put into one column "none" and list those replies which said none, and then in the next column "some", and then I would put the number of replies that indicated there had been some that came into the category of the question you asked under question No. 1. That would be the basic thing I would look for.

Mr. DOERFER. May I refer that question to Mr. Cowgill, the Bureau Chief?

Mr. FLYNT. Well, actually, I was just making the observation that if I had sent out this questionnaire, that the first thing I would do

would be to put into one column of my tabulation the number of stations, and then, of course, I would further break that down into which stations or licensees replied that they had broadcast some matter for valuable consideration without complying with the section of the Federal Communications Act that deals with it. And, apparently, there has been very little tabulation made in terms of that. Am I correct in that?

Mr. DOERFER. Mr. Cowgill advises me it is a continuing affair. It is tabulated in the sense of appraising the substantive material in the answers.

Mr. FLYNT. All right. What number did you give to Mr. Harris or to Mr. Springer, in response to their question of how many licensees indicated some matter had been broadcast over their stations for money or other valuable consideration without complying with the law?

Mr. DOERFER. Mr. Cowgill advises me we made no count, and we would just be speculating.

Mr. FLYNT. Well, did you make a reply to a question asked a few minutes ago that you had found evidence that some seven stations had done so?

Mr. DOERFER. Well, the five and the seven were the ones that we received from the Federal Trade Commission.

Mr. FLYNT. Well, now, you are aware that this subcommittee has found about that number, are you not?

Mr. DOERFER. I think probably that is the same. I don't know.

Mr. FLYNT. Has any information been ascertained by your inquiry that you could not have obtained from reading the report of our subcommittee hearings?

Mr. DOERFER. Oh, I think so. I think there is a coincidence here with respect to some of the discoveries that you made, and the manner in which the work is done.

It so happens that in the Boston area, those are the licensees which are up for renewal. So that a detailed study is being made there, because the Commission itself would have to know it before approving the renewal.

Mr. FLYNT. You don't mean to indicate that you feel that the only licensees owning stations which may have been guilty of these practices have all been uncovered by our subcommittee investigation?

Mr. DOERFER. Oh, I don't think so, no. I think that we probably will run into some more. But I think that—I don't think the practice or the number will be extensive.

Mr. FLYNT. All right. Let me ask you this, then.

If you were to tabulate the replies that you have received, and once having sent them out—I hope that they will be tabulated or else they would serve no purpose—if subsequent investigation should reveal that a licensee, in replying to question No. 1 answered "none" but subsequent investigation by either this subcommittee or the Commission of which you are Chairman indicated that there had been some matter broadcast that would call for an answer other than "none", would that false answer to your questionnaire be taken into consideration?

Mr. DOERFER. Yes, it would.

I think both the misrepresentation, if it amounts to that, plus the practice, and I think that we would probably refer that to the Department of Justice.

Mr. FLYNT. Now to whom on the staff is the responsibility for collating the replies you received delegated? To what individual or to what division did the Commission delegate the responsibility for collating the information received?

Mr. DOERFER. That would be to the Broadcast Bureau, the processing of the replies, and the carrying out of our instructions, that we get answers to these questions, and that they alert us in the order of the renewals.

Mr. FLYNT. All right, sir. Did the Commission direct the Broadcast Bureau to make any—to set up a plan for the tabulation of the replies received?

Mr. DOERFER. No. I would say that the work of that kind delegated to the Chief of the Broadcast Bureau—we don't get into the detailed operations, or supervision of his office to that extent. We call for results or information in the manner in which we desire it. It is up to him to produce it.

Mr. FLYNT. All right. Then do you feel you have obtained any results when you have received information that only about seven licensees indicated any violation that would have called for reporting under question No. 1?

Mr. DOERFER. Well, Congressman Flynt, I think it is a matter of choice as to whether or not we would hold up all of the renewals, or whether we would take those answers which we would need in order to expedite the renewals of the innocent people, and yet not be guilty of an inadvertence approving a renewal of a license where we would make a finding that is in the public interest and later find out that the information was right in our file, and we should have been a little more careful.

Mr. FLYNT. Let me go to another phase of your statement.

On page 3, the last paragraph, about the fifth line, "The licenses of all of the New England radio stations expire April 1." I assume that is April 1, 1960.

Mr. DOERFER. Yes, sir.

Mr. FLYNT. Now you addressed letters, I understand, to four Boston stations.

Mr. DOERFER. Yes.

Mr. FLYNT. Are they the only four New England stations of which the Commission has any evidence of irregularities, payola or otherwise?

Mr. DOERFER. I am advised "Not necessarily" is the answer. There may be more. We have not finished the processing of all of the licensees in the New England territory.

Mr. FLYNT. I believe you sent these letters that you referred to, and incorporated in your statement to, WHIL, WMEX, WILD, and WORL. Is there any reason why WBZ was not included as a fifth New England station to receive these letters, rather than just the four you referred to?

Mr. DOERFER. I am advised that it is still under staff consideration. They have not completed all of the problems involved in WBZ.

Mr. FLYNT. Am I to understand that all of the problems referring to these other four stations have been completed, then?

Mr. DOERFER. Sufficiently to warrant the action that we have taken.

Mr. FLYNT. And I might also inquire about station WHDH, which, I understand, is a New England station.

Mr. DOERFER. The answer would be the same.

Mr. FLYNT. All right, sir. I wonder how much more information the Commission feels it should have, when the general manager of WBZ instructed, according to his own testimony, and the testimony of two other witnesses, that they were directed to rebuild the station library without cost to the station?

Mr. DOERFER. Well, the Bureau Chief tells me that that situation is serious enough to warrant an examination of the entire record that we have. A thing like this should not be handled piecemeal. And the Commission should have the entire picture.

I assume that the Commission itself, if the Broadcast Bureau would come up and indicate that they have not completed it, the Commission would just say as a matter of orderly procedure, "Well, go on back and do the job thoroughly and then give us your information when you have completed it."

Mr. FLYNT. In order to prevent any question or misunderstanding, I am referring and reading from page 46 of the hearings of this subcommittee, of Monday, February 8, 1960, beginning at the first question on page 46.

Question by Mr. Lishman, addressed to Mr. O'Friel, the general manager of WBZ:

Mr. LISMAN. Do you recall instructing personnel of WBZ to go out and solicit the obtaining of free record albums from record distributors?

Answer. Yes, sir.

Question. To whom did you give these instructions?

Answer. Mr. William Givens.

Question. And to who else?

Answer. Mr. Givens is the management personnel, and I would give it to him directly, I think.

Question. Did you give the same information to Mr. Prescott?

Answer. I believe the instructions were given to Mr. Givens.

Question. Well, did you know that—did you ask Mr. Prescott to go to New York to attempt to get these free record donations from record distributors?

Answer. I know that he went, and went with our approval, yes, sir.

Would that require any further investigations?

Mr. DOERFER. Oh, I think, Congressman Flynt, that we are going to consider what you have there, plus any other information which we may dig up ourselves.

Mr. FLYNT. Did the staff or did the Commission make the determination to include WHIL, WMEX, WILD, and WORL, and exclude WHDH and WBZ?

Mr. DOERFER. The first part of your question?

Mr. FLYNT. Was that a staff decision, or a Commission decision?

Mr. DOERFER. The staff makes the recommendation, and the Commission makes the decision.

Mr. FLYNT. Was that the recommendation that was submitted to the Commission by the staff?

Mr. DOERFER. On the four you are speaking about, are you not? The four which went over to the Department of justice?

Mr. FLYNT. I beg your pardon?

Mr. DOERFER. You are speaking about the four? The 309(b) letter ones?

Mr. FLYNT. Yes.

Mr. DOERFER. The staff made the recommendation; yes.

Mr. FLYNT. The staff made no recommendation on WBZ or WHDH?

Mr. DOERFER. No; not yet. I am not familiar with any.

Mr. FLYNT. With regard to violations of either section 309 or any regulations issued by the Commission, pursuant to any portion of the Federal Communications Act, at what level of station or licensee employees does the Commission hold the licensee responsible?

Mr. DOERFER. Well, I think obviously the owner, and then depending upon the facts of the case, how much indirect or direct information did the owner have of the employees, or lesser officials. I think that would be a consideration.

Mr. FLYNT. Well, without regard to that refinement of it, if the general manager of a station had no part of the ownership of the station, would the Commission nevertheless determine the action of the general manager or the actual licensee?

Mr. DOERFER. I think it would depend upon the facts, sir, because we are not talking about responsibility between principal and agent. Certainly the owner and the licensee in that sense would be responsible. But we are now probing for criminal responsibility, and that requires, as you know, a determination of willfulness.

Mr. FLYNT. I am talking about the responsibility that the licensee owes to the Commission, to comply with provisions of the Federal Communications Act, and regulations issued by the Commission pursuant to that act. I am not concerned right now with criminal matter.

Mr. DOERFER. May I refer that question to the Chief Counsel?

Mr. FITZGERALD. Congressman, I think here you really raise two questions. One is the question under 317, whether the general manager is the station. The second one is whether apart from section 317 there may be some abdication of responsibility on the part of the station itself, not necessarily involving section 317, but, let's say, lack of full responsibility. And I think these questions, as the chairman has said, will depend upon the facts in the case.

Section 317 deals with the station. However, the Commission itself believes that if there is a chain under which the station itself would know of these acts of the employees, then it considers the question of whether there may or may not be a violation of 317. But if it didn't find such a violation, it still might look to the question of abdication of responsibility.

Mr. FLYNT. That is true. But in your capacity as General Counsel for the Federal Communications Commission, do you not feel that in carrying out its obligation and responsibility to the public, that in the event of any violation of either statute or regulation by management personnel of a station, that that should be attributable directly to the licensee?

Mr. FITZGERALD. I would say this, Mr. Congressman, it would be one that would be looked at extremely closely, because at this point you get very close to the ownership, the directorate. But I do believe that these must be left for closing examination under the facts

as they appear and, moreover, I would also like to say this, and I know you will fully appreciate it—that it is a little bit difficult for us here today to speak too directly to any specific cases, because if we—if the Commission goes over them, takes and starts definitive actions, these cases they may be looking at in terms of hearings later.

Mr. FLYNT. I understand that.

Now, Mr. Doerfer, I want to come back to this, and say that the basis for this particular line of questions is found in the last three or four lines on page 5 of your statement, in which you say—

The Commission now has no direct jurisdiction over the employees of the broadcast station with respect to this type of activity.

That is from your statement. You do, however, have a very powerful indirect jurisdiction over the employees by virtue of the very powerful direct jurisdiction that you have over the licensees, don't you?

Mr. DOERFER. Yes, the answer is definitely "Yes." And that is the reason that a licensee will no longer be given an opportunity to plead ignorance when we implement the rule that we have. That is designed to place upon the licensee to exercise due diligence with respect to an area of conduct which this committee has uncovered, and which needs correction.

Mr. FLYNT. Then would you agree with me that any licensee engaging employees who have, on a widespread scale, been engaged in this type of activity, and has done nothing about it prior to these hearings, either condones it or is indifferent to it?

Mr. DOERFER. Well, he is definitely in hot water.

Mr. FLYNT. And if such licensee either condones it or is indifferent to it, wouldn't you say that he is not interested in serving the public interest?

Mr. DOERFER. I would personally come to that conclusion.

Mr. FLYNT. One more question.

Mr. DOERFER. May I qualify it, because, after all, I may have to sit on a case just exactly like it. There may be extenuating circumstances. But I am assuming where the condemnation, or the failure to act, was so grossly negligent, so we could spell out willfulness as required under the act it would have to be about that.

Mr. FLYNT. I have two or 3 more questions, but I am going to conclude with this.

We have been told on many occasions by you and your predecessor as chairman, and by other members of the Commission, that in comparative hearings the one criteria taken into consideration is integration of management and ownership. Am I correct in that?

Mr. DOERFER. In comparative cases, yes.

Mr. FLYNT. Do you also feel that the criteria of management—the criteria of the integration of management and ownership might well be applied in considering renewals?

Mr. DOERFER. In considering what?

Mr. FLYNT. Renewals of licenses.

Mr. DOERFER. Well, it is not a basic qualification. I don't know whether—

Mr. FLYNT. That isn't what I asked. I asked if it might well be considered.

Mr. DOERFER. Well, let me say this, Congressman Flynt. Certainly where the owner takes an active participation in the management, there is less of an inclination to not record all of the receipts. Of course if he is going to try to defraud in the income tax department, or something like that, we would, upon discovery, have to take that into consideration.

The embezzlement, or whatever you want to call it, generally takes place with an employee who has no particular interest in the business. So that is why we have that criteria. I mean not that reason, but that is one of the benefits.

Mr. FLYNT. I agree with you completely. But I don't think that answers my question. The question was, Do you think that in determining whether the public interest, and the interest of the community, are both being served, that—and I know that the Commission takes that into consideration—that when licenses come up for renewal, the Commission might take into consideration whether the ownership of a station concerns itself with management?

Mr. DOERFER. I think I understand your question. We have no authority to deny a license under those circumstances. And before giving you my opinion, I would like to study that rather carefully.

May I suggest that some of the best operating stations are not necessarily run by the owners? That the know-how is in training personnel who will integrate itself with the community? I am talking about the physical presence of the owner at all times in station operations. He can do that remotely, and sometimes do a very effective job.

Mr. FLYNT. Well, Mr. Doerfer, that statement would be a bit more persuasive if it were not for the fact that in the hearings, conducted by this subcommittee, the record is replete with instances of fraud and deceptive practices, of payola practices, and in nearly every instance where this was found there has been an almost complete divorcement between ownership and management. We feel that in each—in many of the instances that have been discussed during the past few weeks this is also true. My only question was whether the Commission had begun to give any thought to the fact that divorcement of ownership from management might bring about a great many of these abuses that I think this subcommittee, and I hope the Commission, too, is getting pretty tired of.

Mr. DOERFER. Well, Congressman Flynt, this is an off-the-cuff opinion. You appreciate, of course, that where there are large capital commitments required, that stock is sold and stockholders are the actual and nominal owners. Many stockholders do not know the first thing about running the company.

It depends upon the board of directors, the active officers, who carry out their trust to the stockholders, and to the public to see that they get people who can perform a good job.

Now, these people, if they had to be owners before they could be put in jobs of that responsibility, we just wouldn't—I don't know—you couldn't—you would be denying a lot of capable people of opportunity to exercise and demonstrate their skill and their integrity and their ability to run these things.

Not all people, of course, as you appreciate, have got the investment necessary to acquire ownership.

Mr. FLYNT. Well, Mr. Doerfer, you must have misunderstood my questioning. I think that you would include an officer of a corporate licensee in the category, in the same category with an owner or a part owner, from the standpoint of practical management if nothing else. I am not talking about a holder of one share of stock in a million share corporation such as CBS or NBC being responsible for that.

I do think there should be a very close control over broadcast license activities by those who own it in the case of individual ownership, or those who comprise the board of directors and the general management officers of a large corporation.

Mr. Chairman, I yield to other members who have questions.

The CHAIRMAN. Mr. Bennett?

Mr. BENNETT. I have no questions at this point.

The CHAIRMAN. Mr. Moss?

Mr. Moss. Mr. Doerfer, I was rather interested in some recent speeches you made, reported in the press. And I have here before me a CBS affiliate's speech. I think it was the occasion of the making of the speech. I note that you say that:

Now, I might also add that before Congress undertakes to command the Commission to monitor programs in the field, or to have extensive hearings involving an appraisal of programing, records, or even having hearings with respect to the sale, transfer, and assignments of stations, to determine whether or not the transferee gives promise of programing in accordance with some preconceived ideas as to what constitutes balance. I submit that at first at least the very first thing that should be determined would be the constitutionality of any such legislation.

Would you enlighten me as to the procedure for securing that type of ruling in advance of the writing of a law?

Mr. DOERFER. Congressman Moss, does that have a page number?

Mr. Moss. It is page No. S-7, at the bottom, the beginning of the last paragraph, continued on S-8.

Mr. DOERFER. Well, I don't have a copy of that at present, and I will try to answer that as best I can.

I think that I was referring to a recommendation of the Oversight Committee.

Mr. Moss. Yes.

Mr. DOERFER. Could I have time to take a look at that specific recommendation?

Mr. Moss. Well, I think that the question I asked goes to the very interesting suggestion, "I submit that at first at least the very first thing that should be determined would be the constitutionality of any such legislation."

My question was, Could you please tell us by what procedure we could get a determination of the constitutionality of legislation in the advance of writing it?

Mr. DOERFER. I think that Congress would have to, with respect to any law on which it had some doubts—that it would obtain, I hope, competent—and I know—competent legal opinion with respect to the constitutional aspects.

Mr. Moss. Well, now, wouldn't you also anticipate that being responsible legislators, we had consulted competent legal opinion in the advance of writing the recommendations contained in our report?

Mr. DOERFER. Well, I wasn't familiar with it. I don't know that you had. I would be quite interested in knowing who they were.

Mr. Moss. I won't undertake to enlighten you. I think it is an assumption that we consult proper legal talent before we make recommendations for legislation. And I won't undertake to answer to you which ones they were. I think that the very suggestion is somewhat amazing, that we would have to.

I might suggest, however, that if you read our recommendations and the report of the very distinguished Attorney General of the United States to the President of the United States, that you would find that his report encompasses in spirit most of the recommendations which we made. I would regard him as competent.

Mr. DOERFER. Well, I wasn't aware that he gave an opinion directly on that point.

Mr. Moss. Well, I don't think anyone gave an opinion directly on the point as to how we would be able to determine in advance of legislating the constitutionality of the legislation. I assume we try to write sound laws. Wouldn't you?

Mr. DOERFER. Well, I assume that—I meant to consider carefully. This was not a prepared speech. This was off the cuff. I am not even sure that I was correctly reported. But assuming that I am, I would as leave elaborate.

Mr. Moss. Well, then, if the CBS affiliate speech is off the cuff, and there is a question of the correctness of the reports, we will set it aside, and go to the speech which was made to the State presidents, I believe, of broadcast organizations.

Now, this subcommittee has, in its study of payola, held hearings which touched primarily on one city, and in that one city, we uncovered at least four instances—I believe it was four—where the broadcast licensee, or the operator, was involved directly in payola. Now, admittedly, we have not concluded our investigation. A few months ago we investigated the major quiz programs which had been put over the air for roughly a 5-year period, and we found that in connection with those programs there were certainly a great number of instances of rigging or fixing.

Now, we covered most of the programs, and we had some very experienced witnesses—I think that one, a Mr. Ed Jurist, who told the subcommittee under oath that the rigging of shows of that type went back even to the days of the Quiz Kids, and he had intimate knowledge because he participated in the production of Quiz Kids.

Let us go from there into payola. We have just concluded our work in one city, touching on a section only because of the multiple licensees. Then this morning we heard the testimony of the Chairman of the Federal Trade Commission who tells us that in 56 cities some 61 complaints, I believe, have been issued, and 95 others are docketed for investigation, and that there is an involvement of 255 diskjockeys—would you say that that is at all widespread?

Mr. DOERFER. Well, that may be widespread.

Mr. Moss. Is it?

Mr. DOERFER. I don't know the location of the communities. I think that the way you put the question—

Mr. Moss. Would 56 communities be widespread?

Mr. DOERFER. Yes; I think if there are 56 communities, I would say that is widespread.

Mr. MOSS. I am interested in why you, who must sit in a very responsible and impartial position, tell a group of broadcasters that you are aware, of course, of the grave charges of widespread corruption and deception in the broadcast industry, "These are, in my opinion, canards." Why? Isn't it widespread?

Mr. DOERFER. Now, Congressman Moss, the question, or the answer, that Chairman Kintner made, and his belief, was not the same as mine, I was speaking about grave charges of widespread corruption and deception in the broadcasting industry.

Mr. MOSS. That is what I am talking about.

Mr. DOERFER. Well, when I say—and I agree that the deception is widespread—I do not mean to concede that it is widespread corruption and deception in the broadcasting industry.

Mr. MOSS. What is corruption? Is it corruption when people in the industry go to teenagers and youngsters who have not even reached their teens and tell them to lie under oath to the grand jury in New York? Is that corruption? When more than 100 of the 150 witnesses appearing according to the testimony of the district attorney committed perjury? Is that not corruption?

Mr. DOERFER. I agree. But I don't think that—

Mr. MOSS. You don't think it is widespread?

Mr. DOERFER. I don't think that many members of the broadcasting industry suborned perjury.

Mr. MOSS. Well, what is the industry? Would you define it for me?

Mr. DOERFER. Well, I think that the industry is made up of licensees. That is all that I deal with.

Mr. MOSS. Only?

Mr. DOERFER. Well, I suppose—

Mr. MOSS. I think broadcasting licensees constitute a part of the broadcasting industry. It is a very large—a very complex industry.

Mr. DOERFER. Well, Congressman Moss, that, of course, is a question of opinion. The manner in which I use it—I had in mind licensees because that is all that the FCC regulates.

Mr. MOSS. You have implicit faith, then, that if we permit this industry its own head and more time, then all of these problems will be cleared up?

Mr. DOERFER. No.

Mr. MOSS. What do you think other than the two recommendations contained in your statement today—the one that we give you regulation affording greater flexibility in suspending or taking action against a licensee, and that we enact a statute making it a criminal offense to engage in these rigging or these payola practices—other than those, what do you think we should do?

Mr. DOERFER. Well, I think that that would be a salutary weapon to combat the type of deception you are talking about—outside of the fold of the licensees per se. I do wish to point out that we also recommended rules. I certainly do not have implicit faith that without corrective measures these will disappear. And that is why I and my fellow Commissioners made the recommendations we did.

Mr. MOSS. What was that? I didn't get that last.

Mr. DOERFER. I thought that your question used the expression that I had implicit faith that, by doing nothing, except in these two things which you mentioned, everything would clear up by itself. I am trying to answer and say "No"; I do not have that implicit faith, and that is why I made the recommendations with my fellow Commissioners with respect to the amendment of the laws, plus the promulgation of rules to implement the laws, plus the fact that the staff is bringing all this material up, and we have directed and we are conducting further investigations.

Mr. Moss. Mr. Chairman, what single case or fact constituting a part, either of rigging of quiz shows or of the payola scandals, was developed in or by the Federal Communications Commission?

Mr. DOERFER. Well, I think that the action of the Commission in addressing, through its usual procedure, communications to the networks in the fall of 1958—I think the dates are September of 1958—and the fact that all the rigged quiz shows that were known about at that time were promptly taken off the air, is the action which the Commission should get credit for.

Mr. Moss. I thought they were taken off the air because of the leaking, the talking by some of the contestants, the protesting of the shows, the fact that there were leaks to the press and public indignation started to become evident, and that brought about the removal of the shows. And that is the record, as I recall it.

Mr. DOERFER. That might be with respect to some.

Mr. Moss. What fact did you develop?

Mr. DOERFER. The fact that these shows went off the air was one fact.

Mr. Moss. That is the only fact. I am saying in the development or the exposé of these things which are certainly symptomatic of something wrong in the industry, what single one of them was developed by the FCC?

Mr. DOERFER. Congressman Moss, I think that if I could explain the limited jurisdiction of the Commission, with respect to its powers—if the Commission had supervisory powers, you may very well lay on its door responsibility for not having discovered this beforehand. But the Commission has no supervising powers over business practices. In the absence of that, it must rely upon complaints. Things must be leaked to it.

Mr. Moss. Mr. Chairman, I feel maybe it has no supervisory power over business practices, but I will not concede for one moment that it does not have a supervisory power over the broadcasting business. If you are constituted to regulate, the only possible reason for regulation is the practice of the broadcasting itself. What other purpose is there? The public interest.

Mr. DOERFER. Congressman Moss, I think that that is the very purpose of this hearing: to probe extensively the power of the Commission, and what power it should have, what powers can constitutionally be given to it, what powers could wisely be given to it.

Mr. Moss. Mr. Doerfer, may I again take and express sharp disagreement? As I understand it, we are trying to develop the facts. We are not sitting as a supreme court to determine the scope of the authority of the Commission and the constitutionality of what they do. That is not the role of this subcommittee. I hope that one of

the byproducts will be a more vigorous, a more effective type of regulation.

Now, we have, I think, in the case of the first charges involving rigging of quiz shows, a letter from the Commission to the networks, and an assurance that nothing was wrong. That is, as I recall, the original steps.

Mr. DOERFER. I couldn't dispute it. But my recollection is that the first letter to the network was with respect to an affidavit which had been filed by one of the—

Mr. Moss. May I read to you from the Attorney General's report to the President of the United States?

The Federal Communications Commission's attention was first officially drawn to the possibility that a television quiz program may have been conducted in a deceptive manner on July 31, 1958, when it received an affidavit from a contestant to the effect with respect to "Dotto," a CBS program produced by an independent company. The Commission then sent letters of inquiry to the network concerned, and took no further action when assured by the network that it had no previous knowledge of the practice.

Now, you have sent letters to some 5,000 licensees of the Commission. Have we correctly established the fact that at the moment the responses have not been analyzed nor tabulated?

Mr. DOERFER. May I answer that first question with respect to what the Commission did?

Mr. Moss. Yes.

Mr. DOERFER. On July 31, 1958, Hilda Meyers affidavit, no address given, was submitted by Jack LaGrady of the New York Post. On August 15, 1958, Hilda Meyers whereabouts were ascertained and statements and affidavit confirmed. On August 11, 1958, the Commission directed a letter to the Columbia Broadcasting System re the program "Dotto." On August 13, 1958, Thomas K. Fisher, CBS general attorney, contacted the Commission's staff by telephone, and confirmed that the program "Dotto" was under investigation. On August 14, 1958, there was a letter to Mr. Fisher pursuant to the above telephone conversation. On August 21, 1958, the CBS letter informing the Commission that program "Dotto" was removed from the air, as of August 16, 1958. On August 21, the Commission letter to CBS requesting the extent, if any, the network had participated in the production, supervision, and control of "Dotto," and on September 18, 1958, the CBS replied informing the Commission that no employees or officials of the network had any knowledge that the program "Dotto" was rigged and that the program was independently produced. And on August 19, 1958, "Dotto" went off the CBS network.

Mr. Moss. Yes. There is still nothing there to show any action by the Commission other than the writing of letters. No independent investigation at all.

Mr. DOERFER. Well, I think that the statement I made before, that the overall network programming practices are still under consideration—as you know, it is a terrifically complicated job, and an extensive one. We have been interrupted from time to time, with our limited staff, to divert their attention to other things, such as payola. Nonetheless, all of the information that I have had to date indicates that this was the result of the machinations of independent program packagers, and that is the aspect of the investigation which the Commission is continuing.

Mr. Moss. Well, sir, then you buy the statement of the many who appeared here from the networks at all levels, that they had no knowledge of this, even though the knowledge in the industry was so general that a producer hiring a new employee did not even have to advise him that the show was rigged—they just assumed it was, and worked on that basis. That is the sworn testimony of person after person appearing here.

Mr. DOERFER. No, I cannot say that I buy that. However, the very fact that we are continuing the investigation, plus the fact that nothing has been unearthed or uncovered which would indicate that the officials did have knowledge of the rigging.

I think, Congressman Moss, that this subcommittee is to be commended for its action. On the other hand, I do think that you must remember that the Commission, when it moves against someone, must move in a very thorough fashion and must know precisely. It must have enough to support it, if it does make a direct move for revocation, which you admit would be vigorously contested.

Mr. Moss. I think extraordinary developments require extraordinary measures. We have the involvement of a number of broadcasters in the Boston area. I understand quite a number of New England licenses will be up this year, and that a review of all of them will be undertaken.

Now, it can be, as it is normally, almost an automatic matter, or it can be after a hearing. That is, the renewal of licenses.

But I would suggest that it might be in order for the Commission to take the unusual steps of actively investigating more thoroughly these applicants for renewal, even if they have to adopt a temporary extension of the licenses.

I had some cases involving Bureau of Land Management back in December, and I had to take the unusual step of asking the Secretary of the Interior to freeze action on all final disposals, clear across this Nation, and I got a lot of heat from it. But I still think that the action was certainly warranted, and I think an unusual step here might be warranted by the Commission, where we have only touched upon one community and find four who are involved in payola—I do not know what we would find if we went to 10 communities. Maybe we would come out with 40. I do not think we should prejudice here without any basis. And I submit there is no basis that this is not widespread. Nor should we conclude that of necessity it is widespread.

Mr. DOERFER. Well, all I can say to that, Congressman Moss, we are doing it, we are examining all of the answers to the inquiries.

Mr. Moss. How?

Mr. DOERFER. Well, the staff. I did not mean the Commissioners personally.

Mr. Moss. Why was not a better procedure adopted here? Cannot the Commission, in cooperation with the Bureau of the Budget, devise a questionnaire which can be included on IBM cards, and the tabulation completed in a very short period of time?

Mr. DOERFER. No, because I think there is too much—the question is too discretionary. I think you have to view the questionnaire we got out in the light of getting a questionnaire out promptly. I doubt very much whether we would have the questionnaire out today if we tried to get a comprehensive—

Mr. Moss. What good does it do you to get it out if you do not use the material which comes back?

Mr. DOERFER. Well, I think that in the main the evil has been corrected as of today. Our big job now—

Mr. Moss. You are far more confident that I am.

Mr. DOERFER. Well, it may be that some of it is continuing. We will have to ferret it out. But I think that our big problem now is the question of sanctions—ascertaining the facts upon which to base sanctions. And that is one of the reasons that this Commission endorsed, or rather I did—I do not think the Commission got to it—and that is the reason that I publicly endorsed another proposal of your Legislative Oversight Subcommittee, that something less than revocation be granted to the Commission.

Mr. Moss. I concur. And I am perfectly willing as a member of this subcommittee to vote for the legislation, as I voted for the recommendation. But now, this question of always assuming. I think there is a tendency to assume there is nothing wrong until it is proven that there is. And if this subcommittee acted on that basis, we would not have had much of an investigation.

But I have before me hearings before the Antitrust Subcommittee, Subcommittee No. 5 of the Committee on the Judiciary, House of Representatives, 84th Congress 2d session, for the period of June roughly through September 27, 1956—the questioning of Mr. Sarnoff, a gentleman whom I think is quite well identified.

This is almost 3½ years ago.

Mr. PIERCE. Are you familiar with the practice called payola, or product plug, which apparently results in some loss of revenue to NBC?

Mr. SARNOFF. I think I know what you are referring to. Free plugs on the air of merchandise.

They go on and discuss it. And then there is a report, a memorandum submitted by Mr. Carl Watson to a Mr. Helfridge. It was dated July 14, 1955, and the subject was payola and the product plug. This was placed in the record of this subcommittee of the House of Representatives, the published record.

Now, certainly this did not dawn on the industry as a revelation as of the last few months, as a great surprise. It may have surprised the public. It may have surprised some of us not associated with broadcasting. But certainly it did not fall as a surprise on the broadcasting industry.

Now, what steps were taken even by the industry or by the Commission to deal with this, which appeared to be common knowledge back in 1954 and 1955?

Mr. DOERFER. Well, I would like to have the benefit of that report.

Mr. Moss. I would be happy to request of Congressman Celler that he send a copy to your office.

Mr. DOERFER. I think that I had in mind the specific report which you referred to.

Mr. Moss. That is the specific report. It is included in the record.

Now, I notice in your statement today you say—

A small number of stations state that they believe they are complying with the requirement that an announcement be made indicating receipt of valuable consideration by announcing the name of the recording company issuing the record, where a free record is played on the air.

Is that compliance?

Mr. DOERFER. Well, I think that there is a difference of opinion as to what constitutes compliance. I think that you can draft a rule which requires a very strict interpretation of a statute—that the material broadcast be announced—what is the language of the statute—is paid for or furnished.

Mr. MOSS. Well, then, let us ask the question another way. What would you think of a licensee who would permit a diskjockey to acknowledge over the air that he was being paid for plugging a record on the air?

Mr. DOERFER. That the diskjockey would announce over the air that he himself was being paid for it?

Mr. MOSS. Well, yes—or the station.

Mr. DOERFER. And by whom? And the diskjockey would announce by whom?

Mr. MOSS. The diskjockey what?

Mr. DOERFER. Would announce also by whom he was being paid?

Mr. MOSS. Yes.

Mr. DOERFER. I think that is a compliance with 317.

Mr. MOSS. You think that is compliance. You think it is all right for the stations to sell stuff not on their rate card?

Mr. DOERFER. We do not have any jurisdiction over that.

Mr. MOSS. You do not have any jurisdiction over limiting the right to broadcast only that music which is paid for?

Mr. DOERFER. I think that if I understood your question correctly, if there is an announcement over the air, identifying a sponsor—

Mr. MOSS. Not a sponsor. He did not pay off the rate card. He paid to have a record played.

Mr. DOERFER. Well, you could have sustaining programs.

Mr. MOSS. Could you have a sustaining program and sell every single recording on it?

Mr. DOERFER. Oh, no, that would not be a sustaining program.

Mr. MOSS. Well, if you sell it, it is not sustaining, is it?

Mr. DOERFER. Maybe we do not understand each other.

By definition, as I understand it, a sustaining program is one that is not sponsored. Now, it might be that some philanthropist would put on—

Mr. MOSS. Well, let us go back to this question, Mr. Chairman.

If he announced the name of the recording company, does that meet the requirements of 317?

Mr. DOERFER. I think that if there is sufficient indication that the material broadcast was furnished and paid for, regardless of how—

Mr. MOSS. That is not what I asked, and that is not what you say in your statement.

Mr. DOERFER. Well, I am sorry I misunderstood your question.

Mr. MOSS. The last sentence of the second paragraph:

By announcing the name of the recording company issuing the record.

In other words, if we have the playing of "Nausea" by X company, then that would constitute an acknowledgment within the meaning of 317?

Mr. DOERFER. Would you identify the paragraph for me?

Mr. MOSS. Second paragraph on page 4, last sentence. That is in our prepared statement of today.

Mr. DOERFER. Well, all I can say is that if they announce—by sponsoring, I am assuming who furnished it.

Mr. MOSS. Then it would not be sufficient to merely identify the recording company. It would have to be an acknowledgment of sponsorship.

Mr. DOERFER. I think that if you say "This is being furnished by the X company," that is tantamount to indicating the sponsorship. Now, I think that is a compliance with 317.

Mr. MOSS. Well, I am interested in your reaction. I do not agree.

Mr. DOERFER. Well, Congressman Moss—

Mr. MOSS. I think somewhere along the line we are entitled to protect the public in this whole operation. And I just cannot feel that that has been the end result of regulation to date. I think it is the only reason, the only justification for regulation. If we did not have to protect the public, we would let this thing battle out, and the strong would survive and the weak would fall by the wayside.

There is no parallel to broadcasting. If you do not regulate it, you have nothing of value. If you do not regulate in this field, you have nothing of value. And the public has invested many millions of dollars over the years to regulate it, to create something of value. And they are entitled to have their case very, very carefully considered as the dominant case.

Now, Mr. Chairman—

Mr. DOERFER. Well, I think, Congressman Moss, you are getting into industry practice. I think you are getting into a field where there may be a difference of opinion. I respect your opinion. But if I get the full implications of it, there are some points with which I do not agree.

Mr. MOSS. I recognize that. You do not agree.

Mr. DOERFER. I think we are both in agreement in trying to promote the public interest. The question is how we get there.

Mr. MOSS. I certainly hope that that is the case. That is my desire. And I feel that we must protect that public interest, even if it requires monitoring of programs to see if the station operator has kept the promises made when he applied for his license. And I do not regard that this has tied to it even the tiniest shadow of the question of censorship. Nor do I regard it as being at all germane when we talk of standards imposed on an industry. I see no censorship there. In fact, we do impose certain standards already. We impose standards on our advertisers already. The question of the authority of the FTC is based again on public interest and the necessity to prevent unfair advantages and misleading statements.

I recognize censorship for what it is—specific prior restraint of content.

Mr. DOERFER. Congressman Moss, I think there are a lot of people who feel the way you do. But I might suggest there are others who disagree. And there is language, and I can cite you Supreme Court cases which indicate that censorship is a little bit more than that.

Mr. MOSS. Pardon?

Mr. DOERFER. Censorship is a little bit more than what you have indicated.

Mr. MOSS. Well, I do not know of a committee in this Congress, or an agency in this Government, that has studied the question of

ensorship and compiled a more exhaustive list of the many interpretations, judicial and otherwise, than the Subcommittee on Government Information of which I am privileged to chair. I have researched those cases with extreme care, and with the advice of a very competent and skilled counsel, and I cannot find the type of interpretations which I see emerging from some of your comments—and the comments, incidentally, of Dr. Stanton and others of the industry.

But we will agree that we disagree.

Now we move on.

We had a recommendation in the report of the committee filed on April 4, 1958, which goes to the question of the conduct of the Commissioners of the Federal Communications Commission. And we talk of the propriety of some of this conduct in the opinion of the subcommittee, and we talk of unusual hospitality in general.

Now, I was very frankly amazed two mornings ago to read what started then as the first of a series of versions of a vacation trip, which you are reported to have taken to Florida. And I would like to hear your version.

Mr. DOERFER. What version?

Mr. Moss. Well, as to whether you were aboard the yacht of a man who owns quite a number of stations subject to the jurisdiction of the Federal Communications Commission.

Mr. DOERFER. Yes, I was.

Mr. Moss. And this is the same gentleman whose hospitality you accepted back at the time of our first hearings, when you related a trip to Miami, where you were checking upon the quality of broadcast reception?

Mr. DOERFER. Yes, that is the same gentleman. But the circumstances were somewhat different.

Mr. Moss. Well, let us go on down to what happened here. Did you travel in any way as the guest of this gentleman in any kind of a conveyance other than the yacht?

Mr. DOERFER. Yes, I did.

Mr. Moss. And what was the other conveyance?

Mr. DOERFER. If you will permit me, I will give you the entire picture.

Mr. Moss. Certainly. I think that would be quite proper.

Mr. DOERFER. If you want me to go back as to why I decided to take a vacation—

Mr. Moss. I would assume, Mr. Chairman, that the general knowledge in Washington of the demands placed upon regulatory commissions would make that unnecessary.

Mr. DOERFER. Well, in addition to that, there were some special circumstances.

I had been prevailed upon by some of my friends to split my vacation from 30 days in the summertime to 2 weeks at a time. They had been somewhat concerned about my health. One reason I do not think is material. But there was another one. It has been verified by some information which has recently been compiled, to the effect that the Commission in the past has had 11 chairmen—1 died in office, 3 died immediately after leaving office, and 2 became incapacitated seriously. That is a rather high mortality rate.

I, myself, did not feel any differently than I probably should have, but nonetheless I had been persuaded to break up the vacation.

Of course, I do not have the means to sojourn in the South. That became known to some friends in Wisconsin who had absolutely no broadcasting interest. They have a place in Fort Lauderdale. They asked me to seriously consider spending some time there. And I did. Some of the plans were delayed and postponed. But I did.

I spent 16 days in Fort Lauderdale, or in Florida, 10 days with my friends, and parts of 6 days with Mr. Storer, and nights, on the yacht. They were not necessarily consecutive. Some of them were in company with friends. And for the most part, the daytime, I was not on the yacht. The yacht, for the most time, was tied to a dock. There was one occasion when we went down the inland waterway.

We played some golf at a course that is not too crowded. We played again the next day. The third day we ran into some weather difficulties. As you know, the inland waterway is very shallow, draws about 8 feet of water. We could not get back because of weather conditions. And after, I think it was, 2 or 3 days from that point we returned to Miami.

At no time was this yacht out on a cruise, other than these few hours—maybe around the bay on occasion. There was no trip to any remote islands, to the Bahamas or Bimini or Nassau.

I journeyed from Fort Lauderdale in the evening to play bridge with Mr. Storer, and on some occasions stayed there. There were sleeping quarters. There are two rooms. Mrs. Doerfer was with me. She occupied the room with me.

Now, Mr. Storer met my friends. We played golf together. At no time did I go fishing with Mr. Storer in Mr. Storer's boat. I did go fishing with my friends and on occasion with Mr. Storer. We chartered these fishing boats. One fishing trip with Mr. Storer lasted I think less than an hour, because of the weather conditions.

I think that that is perhaps the full extent of my visits with Mr. Storer.

Now, I might say this: I ascertained that Mr. Storer has no matter pending before the Commission of an adjudicatory nature.

I have indicated to this committee, I have indicated in talks before law schools and others, that I do not think that a Commissioner should be a second-class citizen, that insofar as he complies with the proprieties of not accepting hospitality from anyone who is before him in an adjudicatory capacity, he complies with it.

I have, therefore, concluded that my right to pick my friends and my social activities is as free as a judge's. I do not agree that the fact that I am the head of a regulatory agency, where among the various multitudinous duties we have about 502,000 licensees, we have over 2 million authorizations outstanding, that it is realistic to assume that a man should cloister himself, other than in those circumstances where there is a matter of an adjudication pending before him.

Mr. MOSS. Well, now, how long have you known Mr. Storer?

Mr. DOERFER. About 7 years.

Mr. MOSS. Did you know him before coming to Washington as a member of the Federal Communications Commission?

Mr. DOERFER. I did not.

Mr. MOSS. You had met him then in the role of a Commissioner, and he as a licensee?

Mr. DOERFER. I think that that is probably fair.

Mr. MOSS. Does he have a fairly active television-radio operation?
I mean—

Mr. DOERFER. Well, all the television and radio operations which the Commission allows, up to 14, Mr. Storer had before I came on the Commission.

Mr. MOSS. Well, he has made some changes, has he not—licenses?

Mr. DOERFER. Oh, yes.

Mr. MOSS. He might be one of those whom the committee had in mind when it suggested that we slow down this transfer of licenses.

Mr. DOERFER. Might very well be.

Mr. MOSS. A recommendation which you do not like.

Mr. DOERFER. No; I do not.

Mr. MOSS. Did you use any transportation other than the yacht?

Mr. DOERFER. Yes. I secured airplane tickets on the Northeast Airlines. I was to leave on Sunday. Mr. Storer apparently through the trade papers heard I was going to be down there, as had some of my Wisconsin friends, and others, and invited me to play golf, or to visit with them. I did not accept all of the invitations. I told Mr. Storer when I was going to be down there and where I was going to be, and gave him the telephone number, and that I would arrive Sunday.

He prevailed upon me to go Saturday, because he was passing through Washington. I said, "Only upon the condition that you accept my tickets." And he said, "Well, all right, that's a deal."

Mr. MOSS. Now, let me get it straight. He picked you up and flew you down in his plane.

Mr. DOERFER. From Washington to Fort Lauderdale.

Mr. MOSS. And you gave him your tickets on Northeast?

Mr. DOERFER. No. The tickets, of course, were out in my name, and Mrs. Doerfer's name. And I sent in the other day and got—not the other day—when I got back. And I got the refund.

Mr. MOSS. Well, have you sent him the refund?

Mr. DOERFER. I communicated with Mr. Storer this morning. I might say this: I got the refund the day before yesterday. And I do not really know at the moment—I did not know where to mail them. I thought I would mail it to his office in Miami, or he has got one in New York. But that is the understanding.

Mr. MOSS. You might get him in trouble. He is not a licensed airline.

Mr. DOERFER. Well, there was some indication that he would turn it over to one of the foundations that he has founded. He has founded a heart fund. Also a hospital for the eyes. And I said, "Well, I don't care what you do with it."

Mr. MOSS. Did he fly you back?

Mr. DOERFER. Under the same circumstances.

Mr. MOSS. On what date did you send him the money?

Mr. DOERFER. I said I did not send him the money. I wanted this committee to see that I had the tickets, and that I got the refund check. I got it the day before yesterday. If the committee wants to see it, it is on the Northeast Airlines. It is a check for the full amount of the passenger fare, and the tax included, from Washington to Fort Lauderdale.

Mr. Moss. Well, now, other than the round trip to Florida, was there any other air transport supplied by Mr. Storer?

Mr. DOERFER. The only transportation was supplied when we were socked in with the storm. I could not take the boat back. I had some other commitments. And so did Mr. Storer. Mine were merely social. I started to motor back. In the meantime, the airplane got through the storm and picked us up at some point south of Miami and flew us into Miami.

Mr. Moss. Is Mr. Storer the owner of a station which had to discharge a diskjockey for payola?

Mr. DOERFER. I understand that he did—in November of 1951 there was a diskjockey discharged. I got that information from the staff.

Mr. Moss. Have you established whether or not any of his stations are involved in this?

Mr. DOERFER. Well, I do not know. I assume that that will undergo the same investigation as anything else that we have in the shop. And I assume that there might be any person that would come before the Commission. There may be any person in the United States. I simply cannot avoid any social engagements on the strength that sometime in the future somebody may come before this Commission.

Mr. Moss. Well, aren't we faced with a greater certainty, that sometime in the future Mr. Storer would come before the Commission? Isn't it a fact that Mr. Storer must come before the Commission, with 13 licenses, some of which expire next year?

Mr. DOERFER. Yes. But there is no indication at all that he will come before the Commission in an adjudicatory capacity.

Mr. Moss. Is there any that he won't?

Mr. DOERFER. I would say this, Congressman Moss: No doubt thousands of people today—I might even know a few of them who will be before the Commission with an application for a license. I don't know how an official, dealing with such extensive work, could possibly set up a rule of conduct which would insulate him from all possible applicants before the Commission. I think that the adoption of the judicial code of ethics, whereby you do not—or you observe the proprieties that are well understood—where you have litigants before your court; but where they are not litigants, and are not in an adjudicatory capacity, I just do not see anything wrong with it. And in that capacity, I might say there are others, ranging all the way from judges to professors of law schools.

Mr. Moss. If this is a matter upon which we may regard as being in every sense proper, and which would constitute a proper standard for all future instances—why did both you and Mr. Storer in the original press contacts deny that this was more than an incidental meeting?

Mr. DOERFER. Well, let me explain—

Mr. Moss. Both.

Mr. DOERFER. Well, now, there was no conference with Mr. Storer.

Mr. Moss. I did not say there was any conference. I am interested in the denial by both of you.

Mr. DOERFER. Well, I do not know what Mr. Storer said, so I am speaking for myself.

I might say this—that the newspaper profession will contact you by phone and tell you what is appearing in a newspaper or a story, and they will ask you what your comment is.

Now, I might say that the first impression, or the first representation that was made to me was to the effect that I had taken a luxurious cruise in the southern waters of the Atlantic Ocean, and I had been on the yacht for 7 days and 7 nights. And I said there was absolutely nothing to that, that I had been on the yacht when it was tied to the dock, and I tried to give a few explanations, and some reporters signed off with that, and others were a little more persistent.

I might say that notwithstanding my being entitled to a little rest, I was answering telephone calls from 7:30 the other night until 4:30 in the morning.

Mr. Moss. Mr. Chairman, if it gives you any consolation, I can tell you that I was doing almost the same thing, and have been, continuously, since this first developed.

Mr. DOERFER. Well, I am sorry to hear that. I think until I can establish in the minds of the press my position, until I am told and convinced that that is wrong, I think they will just have to sustain one shock after the other.

Mr. Moss. I recognize the difficulty of commenting on a wire story when someone calls and says "This is on the wire. What is your comment." And I have experienced that. I think everyone does. After all, news has to be currently evaluated. There is a tremendous competition in getting the news and keeping it timely.

Mr. DOERFER. I might say some reporters called me and indicated an inconsistency, and I took the time to be much more detailed, and I think I have satisfied every reporter that called me.

Mr. Moss. But the reports indicated a denial of staying overnight.

Mr. DOERFER. No. I cannot—

Mr. Moss. Well, let me point out—

Mr. DOERFER. I don't know about that.

Mr. Moss. I have the press clippings here.

Mr. DOERFER. Well, that might be. I have not seen all the press clippings.

Mr. Moss. And the interesting thing is that the New York Times, Washington Evening Star, AP, UP, all seem to have made the same mistake.

Mr. DOERFER. Well, I don't know about that. I would say—

Mr. Moss. Independently reporting and writing on your comments.

Mr. DOERFER. I cannot answer that any other than to say that in the manner that the question was put to me, it was quite possible that there was a misunderstanding on the part of the reporter, or even in my mind. I was denying categorically that I spent 7 days continuously, as was implied in the representation which was made to me, on the yacht.

Mr. Moss. Well, why wasn't there an immediate correction saying, "No, it was not 7—it was 6," rather than the reporting of denials?

Mr. DOERFER. I will tell you frankly—I did not see some of these reports until a few hours before I came down. I do not subscribe to all of these newspapers.

Mr. Moss. If they were calling me about myself, I would be just as interested in going out and purchasing the papers as I was when

they called me about you, because I wanted to know what in the world I was commenting on.

Mr. DOERFER. Well, sir, I feel that if I could have gotten out from my snowbound home, my first duty would have been to go to the office. I cannot possibly catch up with all of the stories that are circulated about me. There are 1,700—

Mr. MOSS. There was news on the radio about this, too.

Mr. DOERFER. Well, I can tell you that I heard one comment. Maybe I was just fortunate in picking the right one. He wound up by saying, "Some people think there is something wrong about it. Some people think it is all right. I am one that thinks it is all right."

Mr. MOSS. Of course, that is his privilege.

Mr. DOERFER. Well, it shows you a difference of opinion with respect to the practice.

Mr. MOSS. And I think we should certainly foster the opportunity to permit the expression of those differences of opinion.

I cannot quite quite go with you, frankly—in view of the clear discussion of this by the committee in its report of 1958, and the concern expressed by it.

Mr. DOERFER. Well, Congressman Moss, I would suggest this. It is certainly within the province of the committee and of Congress if they wish to lay down a code of conduct of that kind—they should really implement it into law. I was perfectly frank in indicating my position. And if the Congress of the United States were opposed to that, certainly it is within their power to make it illegal and to frown upon it, or make it a disqualifying factor.

Mr. MOSS. You think we should only observe that type of a code if the Congress acts by statute to make it illegal?

Mr. DOERFER. I have indicated publicly several times that I feel myself bound by the code of judicial ethics. I have examined it. And what I have just told you, in my opinion, complies with it.

Mr. MOSS. Those are all the questions I have, Mr. Chariman.

The CHAIRMAN. Any further questions?

Mr. MACK. Mr. Chairman, I would like to speak on this point. I think I was one member of this subcommittee who did not feel that it was necessary to have a code of ethics and certainly not to enact it into law, originally. And I think that the earlier testimony will reveal that I said it should be up to the judgment of the individual in cases of this kind; that grown people should not have to have certain guidelines and say this is right and something else is wrong.

So I want to at least express a personal opinion that, if I understood you correctly, that this was right because there was no law prohibiting it—I certainly would not want to legislate a code of ethics for our Commissioners in the regulatory agencies to that degree. I do not think it should be necessary at all.

Mr. DOERFER. I would not wish Congress to enact it. It is not contrary to the code of ethics.

Mr. MACK. Well, I do not think it should be a question of the code of ethics, or having that clearly defined in law. I think it should be up to the individuals to decide what is proper and what is not proper. And in my humble opinion, I would differ with the radio commentator who saw nothing wrong in it, and that would be consistent with my earlier view concerning the trip that you took 2 years

ago. In this instance, it seems a repetition of the same thing that happened 2 years before. And for the life of me I cannot understand how you can express the opinion today that, short of having a law prohibiting it, there is nothing wrong with accepting gratuities from a man who has got some 13-odd stations under your jurisdiction.

Mr. DOERFER. Well, Mr. Congressman, I certainly do not wish to assume the role of a crusader, but I do think that I would like to provoke a contest in Congress on this. I would like to come up and tell Congress that I do not think that it should go beyond the code of judicial ethics. I do not think that you can get men to serve on the regulatory commissions if they have to practically cloister themselves for fear that some of the subjects over which they have regulatory powers may involve individuals who sometime in the future may be before them in an adjudicatory capacity.

Mr. MACK. Well, the thing which we discussed thoroughly some 2 years ago had to do with the fact that you were receiving these gratuities from the regulated industry. And you are not bothered by receiving gifts from people who are not regulated. They do not heap gifts upon you. It comes from the regulated industry, the industry that you are working with. And I think that this follows the same pattern as some of the diskjockeys who said that they were close friends, friendly with the distributors, and so forth, and therefore accepted automobile payments and things of that nature.

Mr. DOERFER. Well, this was no acceptance of gratuities. I do not know how you can evaluate some of the —

Mr. MACK. Well, I think when you spend at least one-third of your vacation, or almost half of your vacation, as a guest of Mr. Storer, it would indicate that he was making a substantial contribution to your entertainment during your vacation.

Mr. DOERFER. Well, I do not think so. I had all of the accommodations that I would require. I just cannot discuss it any more, other than to say that I think that I am entitled to select my social acquaintances and spend some of my time with people of my own choosing, so long as I do not violate or endanger my independent judgment.

It is a question of opinion, I know. I know some people do not agree with that. I started to say before, there are some people that see nothing wrong with it. It does not strike them as being unconscionable. As far as my conscience is concerned, it is absolutely clear.

Mr. MACK. Well, Mr. Chairman, I hesitated to take the time today, except that I took such an active part in the proceedings some 2 years ago. And I thought we had completely solved our problem at that time. I must say that in my opinion, when you receive a trip down to Florida and a trip back home, and entertainment for 6 days, while you are down there, that that is a substantial contribution.

That is all I have to say.

The CHAIRMAN. Mr. Springer.

Mr. SPRINGER. Mr. Chairman, I do not want to go over these matters, but my recollection was that some 2 or 3 years ago you went down to Miami at the request of Mr. Storer to make an investigation of the UHF-VHF situation at Miami—is that true?

Mr. DOERFER. Well, substantially, excepting that I had planned a trip down to Myrtle Beach, and it becomes customary in Washington, people in my position, when they are going to take a vaca-

tion—people ask where you are going. That information got back to Mr. Storer. He knew that I was opposed to the deintermixture of the UHF markets. He asked me to come down and make an extensive survey with him. And I did.

Mr. SPRINGER. And were you entertained by him at that time?

Mr. DOERFER. Well, I think that you could call that entertainment.

Mr. SPRINGER. Now, Mr. Chairman, later on did a matter come before the Commission involving Mr. Storer's interests at Miami?

Mr. DOERFER. Yes, it did.

Mr. SPRINGER. What was your vote on that?

Mr. DOERFER. My vote was negative. And as I recall, it was the decisive vote.

Mr. SPRINGER. Was this a vote directly affecting Mr. Storer's interest?

Mr. DOERFER. Not directly. He had participated in the general UHF comments, and indirectly, specifically, if that general rule-making had taken place, it would have included Miami and, in that sense, his interest.

Mr. SPRINGER. And you voted against his interest after going to Miami.

Mr. DOERFER. Yes, I did.

Mr. SPRINGER. That is all, Mr. Chairman.

The CHAIRMAN. Anything further? Does that conclude your testimony, Mr. Doerfer?

Mr. DOERFER. Yes, sir.

The CHAIRMAN. I think we should let the record show that in addition to the members of the staff—Mr. Cowgill and Mr. Fitzgerald—the other members of the Commission are here this afternoon: Commissioner Hyde, Commissioner Bartley, Commissioner Lee, Commissioner Ford. I had a message at noon from Commissioner Craven that he was unable to get here, because he could not get in. And we all know the reason for it—the impact of the weather. I also had a message from Commissioner Cross at noon that he was out of the city on an engagement that had been made some time ago.

Mr. DOERFER. Mr. Chairman, I failed to mention that I had promised both Commissioner Craven and Commissioner Cross that I would make their apologies, and I am sorry that I forgot it.

I forgot another thing. I would like to offer for the committee quite a comprehensible work involving the history of transfers and assignments. I think it would be a very worthwhile staff study for this committee to have. The Commissioners themselves are studying it very carefully. I would recommend this to this committee. We will see that you have ample copies. I would like to have this identified and submitted at this time.

The CHAIRMAN. The committee will receive it for its files. Thank you, Mr. Chairman.

I would also like to call to the attention of the Commission for its consideration the testimony in the record and the report of the staff members, in particular Mr. McMahon, in the last Congress, dealing with the same subject.

Mr. DOERFER. We considered that.

The CHAIRMAN. Yes. With reference to the discussion of the impropriety of the incident of your experience in Florida, I might

say that the committee has legislation pending on the subject, along with several other items developed now in its work in the last Congress. Hearings will get underway on those proposals and related matters on March 15. I believe part 1 of the bill refers to your Commission, Mr. Chairman. And of course we will start off the hearings that morning with either you or someone else the Commission designates to present its views on it.

On behalf of this subcommittee, I want to thank you and the other members of the Commission who are here this afternoon, and your associates, for your appearance and the report you have given of your activities during these last several months.

Mr. DOERFER. Thank you very much, Mr. Chairman.

The CHAIRMAN. The subcommittee will stand adjourned.

(The following material was later received for the record:)

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., April 4, 1960.

In reply refer to 8410.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN HARRIS: As you may know, I have been invited to address the convention of the National Association of Broadcasters, scheduled for the week of April 4, 1960. In the course of my address, I propose to make reference to a preliminary tabulation which has been prepared of the responses to the Commission's letter of December 2, 1959, concerning unannounced sponsorship of broadcast matter.

During the hearing conducted by your Subcommittee on Legislative Oversight on March 4, 1960, you indicated your interest in a tabulation such as the one I am preparing to cite. I am enclosing for your information three copies of that tabulation.

Sincerely yours,

FREDERICK W. FORD, *Chairman.*

Tabulation of responses to the Commission letter of Dec. 2, 1959, concerning unannounced sponsorship of broadcast matter

Total AM, FM, and TV stations on the air.....	4,842
Responses received.....	4,673
Unaccounted for.....	169

Category	Responses	
	Number	Percentage, nearest 0.1 percent
None alleged.....		
Cash received by station.....	2,757	59.0
Cash received by employee.....	18	.4
Records received by station and/or employee.....	50	1.1
Other consideration received by station and/or employee.....	1,374	29.4
Incomplete response.....	447	9.5
	27	.6
Total.....	4,673	100.0

¹ Includes some noncommercial educational stations and licensees who failed to submit separate responses for each AM, FM, and TV license.)

(Whereupon, at 5:05 p.m. the hearing was recessed subject to call of the Chair.)

X

