

FEDERAL COMMUNICATIONS COMMISSION
Washington 25, D. C.

October 9, 1961

INTER-OFFICE MEMORANDUM

FOR: Limited Distribution

TO: The Commission

FROM: John C. Harrington
Chief, Complaints and Compliance Division

- SUBJECTS: (1) Application for renewal of license of Station WINS, New York City, filed by Gotham Broadcasting Corporation (BR-211).
- (2) Application for assignment of license of Station WINS to WINS, Inc., owned by Storer Broadcasting Company (BAL-4038). Contract expires October 10, 1961. (Extended twice)

1. I am in agreement with the general conclusions of Mr. Edward Brown and Mr. Joseph Nelson that there is substantial (but not undisputed) evidence that Mr. McCaw and Gotham either had actual knowledge of payola at WINS or should have had such knowledge. I also agree that at a hearing there may be considerable difficulty in proof since in vital areas the evidence consists of conflicting statements (without documentation) by persons whose veracity is hard to evaluate. I do not agree that nothing further would be developed at a hearing, for two reasons:

- a. The sentencing of Peter Tripp (a disc jockey at WMGM, who was found guilty of accepting payola in the Spring of this year) has definitely been scheduled for October 16, after several postponements. If Tripp receives a jail sentence, as has been recommended, it may be expected that Leeds and Freed may volunteer further information, as they did after the Tripp trial.
- b. After designation for hearing it may be expected that witnesses, who have been reluctant to come forward or even discuss the matter when contacted, will be encouraged by the Commission action to speak more freely.

2. I also disagree with many of Mr. Brown's preliminary conclusions as to his evaluation of the materiality and weight to be given to certain of the evidence. I am prepared to discuss these orally.

3. It is also my opinion that on the basis of the evidence and knowledge of payola and lack of candor in this case as compared to the evidence in any other case, designation for hearing could not justifiably be construed as a singling out of this licensee for the imposition of sanctions. It is my own view that the sharply contradictory statements in this case require a hearing in order to clear the air. My opinion is based in part upon consideration of what may happen in other tribunals. For example, the trial of Alan Freed is now planned for late this month. Although the bulk of the counts in his indictment relate to his employment at ABC, it may be expected that there will be some testimony as to one payment while he was employed by WINS. As for Leeds, his case may never come to trial, there being indications that his case will be dismissed, partly on the ground of knowledge by Gotham.

John C. Harrington
John C. Harrington
Chief, Complaints and
Compliance Division

Noted:

J. N. Nelson
Joseph N. Nelson

JCHarrington: fis/c&c: B

INTER-OFFICE MEMORANDUM

TO: Joseph N. Nelson
Chief, Renewal and Transfer Division

John C. Harrington
Chief, Complaints and Compliance Division

FROM: Edward J. Brown

SUBJECT: Inquiry into the affairs of Gotham Broadcasting Corporation, licensee of Station WINS, New York, New York (Renewal application, File BR-211).

SUMMARY AND CONCLUSIONS: See Paragraphs 189-197.

REFERENCE ITEMS:

- (1) Item No. 2, Complaints & Compliance Agenda, March 29, 1961, Mimeo No. 1946.
- (2) Item No. 4, Complaints & Compliance Agenda, June 28, 1961, Mimeo No. 6197.
- (3) Item No. 6, Renewal Agenda, July 6, 1961, Mimeo No. 6755, and associate no. 6, Renewal Agenda, July 6, 1961, Mimeo No. 6782.

1. Background. After a careful consideration of the material presented in Reference Items No. 1 and 2, the Commission, on June 28, 1961, instructed the staff to submit for Commission consideration an Order setting for hearing, on issues based on information relating to "payola" practices of Gotham Broadcasting Corporation and its principals, the renewal application of Station WINS, New York City. On July 6, 1961, the Commission considered, among other things, the petition of Gotham requesting that "the Commission defer action in designating the above-entitled application for hearing until it has given the applicant an opportunity to reply to a pre-hearing notice specifying the grounds and reasons which are deemed to make a hearing necessary" and adopted a letter directed to said licensee setting forth the questions then existing with respect to "payola" matters (Reference Item No. 3).

2. On August 7, 1961, Gotham Broadcasting Corporation filed its response to the Commission's letter of July 6, 1961; the response is subscribed by J. Elroy McCaw, president of the licensee, based upon "his knowledge, information and belief." On August 8, 1961, Gotham filed certain exhibits which supplement its response. The response comprises forty-one (41) pages; exhibits total ninety-eight (98) pages.

3. In its response, Gotham stated that certain of the statements and assertions in the Commission's letter of July 6 were new to the licensee; that the facts concerning such matters had not been presented to the licensee during the Commission's inquiry; and that, therefore, the licensee could respond to these matters only in a general manner. On August 22, 1961 the staff submitted a letter, supplementing its July 6, 1961, letter, setting forth the substance of the information in its possession with respect to these particular allegations and assertions. The licensee was requested to reply within fifteen (15) days and its "Response" was filed with the Commission on September 6, 1961.

4. In light of the voluminous amount of material which has been gathered by the Commission concerning this matter, the nature of the representations made by Mr. McCaw on behalf of the licensee in the above-mentioned responses and the understanding between the Complaints & Compliance Division and the licensee that the latter would be fully informed, as far as is practicable, of the allegations with respect to itself and its operations and be afforded the right to reply thereto before a report is made, the Broadcast Bureau is of the view that a complete review of all the material now in its possession should be made. Accordingly, a full review, de novo, has been undertaken, and is submitted below. This Agenda Item discusses all material relating to Mr. McCaw and Gotham Broadcasting Corporation which relate to the questions which have been raised concerning possible payola questions.

I. The Licensee's Knowledge of "Payola" at Station WINS.

5. There are certain factual matters and allegations which have been made which may suggest that the licensee and its officers knew or should have known that certain of its employees were alleged to have been engaged in "payola" practices. The information may also suggest that Mr. McCaw, specifically, knew or should have had knowledge of "payola" existing in the station. The following paragraphs will discuss in detail the factual matters and allegations relating to this facet of the inquiry.

6. Gotham Broadcasting Corporation became the licensee of Station WINS in January, 1954. J. Elroy McCaw has been president of the licensee since that time, holding 75% of the stock at first (John Keating holding the remaining 25%), and acquired 100% of the stock in November, 1959.

7. Mr. McCaw's Knowledge of "Payola" As Early As 1954.

Mr. McCaw has stated, in Gotham's response to the Commission's letter of July 6, 1961 and in certain affidavits which he has submitted in connection with this inquiry, that he was aware of the practice of payola at least from the time that he first acquired Station WINS in 1954 and was vigilant to prevent it. In certain testimony by Mr. McCaw, he has stated the nature of

that knowledge and he re-affirms his testimony in his Response to the Commission's letter of July 6, 1961. In his reply, Mr. McCaw states: "It should be clearly understood that the licensee's early actions to prevent payola were not based upon any specific knowledge of payola practices in broadcasting, or any ascertions that payola existed at WINS." On May 1, 1961, Mr. McCaw testified (Tr., pp. 410-411):

"Somewhere along the line we became aware of the fact that payola could happen. It was not a big issue. I must make this point clear. When you said a while ago, 'Were you aware of payola payments back in 1955,' as you put it, I must say I was not aware of them. I was aware of a lot of talk about them. We, at that time, were certainly at the beginning, a station that was so unimportant that rating-wise or anything else in the market -- that this was not a thing where we immediately came into a thing where it was a problem at the station."

On the following day, May 2, 1961, Mr. McCaw has the following to say with respect to his early concern with payola and the inclusion of an anti-payola clause in certain WINS talent contracts commencing in 1955 (Tr., pp. 565-567):

"MR. McCAW: * * * I would like to make a point right here. Is it fair to point out that at the time the obvious purpose of having such a clause was to protect the station? It was not constructed in terms of all of the other significance that later was to be attached to it. It was not at that time construed as something that a failure to be -- to pay any attention to payola was a matter of lazy irresponsibility and I am sure you will find a vast number of contracts of many stations maybe still don't contain such a clause because I have seen many others of different people, of different stations, I have asked the questions, I have asked the questions of other station managers, did they have it, and they have said, well, they didn't have it before, but they do now, and therefore it would not have been construed as irresponsibility if we didn't show great attention to it; we became aware of it and we felt firmly, we established it not to satisfy someone else, not to merely get some self-serving item in a contract to protect ourselves only in terms of saying, 'See, we had it,' but it was to protect us.

"We considered anything that any of the effect that payola would have [been] tremendously detrimental to the station itself, to any company. Just as if in a hotel, the reason, as I understand it, for the commercial bribery statute in the State of New York was that many employees were being victimized because the chefs in hotels would buy meat, maybe inferior grades, or pay much too much for it, and be taking a payoff from the people selling the meat.

"I once owned a hotel. I had the case where I found out that our chef was having liberal supplies of everything delivered to his home. Well, we felt pretty strongly about that. We felt that this was a highly detrimental thing. It was extremely costly to us. It was a thing that is essentially vicious and something which, if any outside factor such as that can influence the operation, and we consider this an important operation, we consider that we would be the most stupid and shortsighted people in the world, if we were, strictly from a self-interest standpoint, to tolerate such a thing;..."

8. Mr. McCaw's knowledge of specific instances of payola practices that concern WINS will be set forth in the discussion of those particular incidents.

9. Alan Freed - Arthur Freeman Matter - In the August 25, 1954 issue of Variety at page 39, there appears the following item with respect to payola. While it does not mention the name of the dee jay nor the station involved, it refers to Alan Freed and Station WINS. The item states:

"Variety's current editorial focus on the payola situation in the music biz in recent issues sparked a novel press conference in New York last week. Art Freeman, head of Benart Distributing in Cleveland, called the meeting to blow the whistle on a Cleveland disk jockey who allegedly has made a tieup with a rival Cleveland Distrib.

According to Freeman, this dee jay put pressure on several diskers to switch their distribution affiliation from Benart to the competitive company. Bait was that the jockey would give them spins and the threat was that if they didn't switch this jockey would ban spins of their releases. Freeman also produced a letter from this jockey in which he frankly asks the distrib for a regular monthly stipend to plug certain disks.

Freeman raised the issue in New York because this Cleveland jockey is launching a show on a N. Y. indie outlet. Reps of this station were present at the conference and squaked at not being notified in time to straighten out any differences. Freeman stated that the differences between himself and the jockey have resulted in a \$100,000 loss to him and hinted that he would take legal action to clip this jock's operations."

10. In an interview in Cleveland, Ohio, Mr. Arthur Freeman confirmed the facts that he had received a letter from Alan Freed in 1954 demanding payola and that, as a result thereof, he, Freeman, had set up a meeting sometime during the summer of 1954 with the press in New York City in order to expose Freed's payola practices. Mr. Freeman stated that he could not now recall where, or in whose offices, in New York City, the meeting took place, but that he does remember that there were present at the subject meeting representatives from Variety and Billboard Magazines and from Radio Station WINS, although he cannot now remember any of their names, and that, during the course of the meeting, he showed the letter from Freed to all of the interested parties, including the

executive from WINS. Mr. Freeman further stated the letter Freed had written to him had been burglarized from his apartment sometime in 1956 and that, unfortunately, he did not retain a copy of the letter nor did he make or retain any notes or memoranda with respect to the meeting he had held. Finally, upon further questioning, Mr. Freeman stated that, although he cannot be sure now, he believes that the WINS executive who was present at the meeting was a Mr. Robert Leder.

11. Mr. Robert Smith stated that he did not know, at the time, nor does he know now, anything about any part of the incident, but that he does remember reading some vague stories about the so-called meeting, several years ago, in the trade press. However, at the time, he considered those stories to be just "copy" and he doubts, now, as he did then, that any such meeting ever really took place.

12. Mr. Robert Leder is currently the Vice President and General Manager of Radio Station WOR, New York City (RKO). A sworn statement was recently obtained from Mr. Leder to the following effect:

That he was employed at Radio Station WINS from March 1954 to February or March, 1956, as the General Manager of said station; that sometime in the late spring or summer of 1954, with the authorization of Mr. Elroy McCaw, he hired Alan Freed as a disc jockey at WINS; that sometime after Freed was hired, WINS received a letter from Arthur Freeman, stating that he, Freeman, was in possession of certain evidence unfavorable to Freed, which would be of interest to WINS; that he, Leder, was of the opinion that this letter was a typical 'crank' letter because of its origin and expression; that, although he was distressed by Freeman's letter he considered the contents thereof to be merely innuendo since no substantiating evidence was offered; that, coincidentally with the receipt of Freeman's letter, Leder was contacted by a record distributing firm in New York City named 'Tico,' informing Leder that Freeman had documentary evidence in the form of a letter written by Alan Freed to Freeman, which letter could be made available to WINS; that thereupon Leder initiated the calling of a meeting at the offices of Tico Record Distributors in New York City so as to meet Freeman personally and to examine the documentary evidence which was claimed by Tico to be in Freeman's possession; that, when he arrived at the Tico offices, Leder found various representatives of the trade press present; that, seeing all the members of the press present, and feeling that the whole meeting was some kind of publicity stunt, Leder left the offices of Tico without meeting Freeman and without personally seeing the documentary evidence in the form of the letter from Freed; that after the

lack of success in instituting a meeting with Freeman alone, Leder laid aside the entire matter; that during this period, which, as best as Leder can recall, was prior to December, 1954, Mr. Elroy McCaw had not become active by that time in the day-to-day operations of Station WINS, and, Leder does not recall that Mr. McCaw had any knowledge of Freeman's letter to the station; and finally, according to Leder, there were others at Station WINS during the subject period who knew about Freeman's letter to the station and that one of these persons was Robert Smith, then the Program Director.

13. Memoranda between McCaw and Robert Leder during 1954 and 1955, when Leder was station manager of WINS, was examined. Although reference is made to the hiring of Feed by Leder, there was nothing noted to indicate that Leder had brought McCaw's attention to Freed's alleged reputation as a payola taker, or to a letter Leder states was sent to WINS by Arthur Freeman, President of an Ohio record distributing company, offering to furnish documentary evidence that Freed requested \$200 monthly (or any other sum) to play Freeman's records, or to a meeting Leder attended at the offices of Tico Record Distributors in New York City. However, there was no correspondence from Leder to McCaw during the critical period -- August and September, 1954 -- and none was later discovered. McCaw disclaimed knowledge of such letter or meeting and stated that if the Leder folder did not contain the letter to WINS he did not know what other file it might be in, assuming that such a letter had been received.

14. In order to check out Mr. Leder's sworn statement, a visit was made to the present offices of Tico Record Company (now an affiliate of Roulette Record Company), at 1631 Broadway, New York City. There, a Mr. Ralph Serjo, currently the A and R Director of the said company, was interviewed. Mr. Serjo stated that, although he was just a shipping clerk at the company at the time, he remembers very well the meeting which Mr. Arthur Freeman held at the company offices with respect to Alan Freed, in the summer of 1954. Mr. Serjo stated that he, himself, was not present at the said meeting, but that Mr. George Goldner, then the President of Tico Records, was present throughout the meeting and would most likely remember the details with respect thereto.

15. On March 21, 1961, Mr. George Goldner was interviewed by his offices at 1650 Broadway, New York City. Mr. Goldner is presently the President of Gone and End Record Companies of New York. During the course of the interview, Mr. Goldner made, in effect, the following statements:

That sometime in the late spring or summer of 1954 Arthur Freeman telephoned him and asked if he, Freeman, could use his offices at Tico in order to hold a meeting with the trade press to reveal a letter which he, Freeman, had received from Alan Freed requesting payola; that Mr. Goldner agreed to furnish his offices at Tico for this purpose, which offices, at the time, were located at 220 W. 42nd Street, New York City; that prior to the scheduled time of the subject meeting, Mr. Goldner attempted to

contact Alan Freed, feeling that Freed would want to be present at the meeting where such charges would be levelled against him; that, being unable to get in touch with Freed, because of the fact that he was vacationing in Miami, Mr. Goldner contacted Mr. Robert Leder, the General Manager of WINS, to see if Mr. Leder might wish to be present at the subject meeting to protect the interests of Freed and WINS; that Mr. Leder did, in fact, attend the subject meeting at the offices of Tico, and definitely stayed through the said meeting during which time the damaging letter which Mr. Freeman had received from Alan Freed was shown to all of the interested parties present, including Leder; that Mr. Leder was accompanied by two assistants, one of which Mr. Goldner believes was Bob Smith and the other of which was a young colored man, whose name Mr. Goldner cannot now remember; that also present at the subject meeting, as best as Mr. Goldner can now remember it, were the following persons: Norman Orleck, the Managing Editor of Cash Box Magazine; Irving Marcus, of Peacock and Duke Records; Bess Burman of Apollo Records; Harry Apostoleris, of Alpha Distributing Company and two representatives from Billboard and Variety Magazines, respectively.

16. In December, 1959 an article appeared in The New York Post newspaper referring to the above items in Variety and commenting on the payola taking of Alan Freed. In the article, it is reported, among other things, that while in Cleveland Freed had been closely associated with Lance Distributing Co. of Cleveland, named after Freed's son and operated by Freed's brother and by a Chicago record manufacturer; that in 1954 Cosnat bought Lance Distributing Co.; and that Freeman's company was a competitor of Lance Distributing Co. It is also pointed out in the article that "At the time the letter to Freeman was written Freed was broadcasting over a Cleveland station. But even then he was being heard in the New York area by tape over WNJR in Newark."

17. Mr. McCaw testified on March 14, 1961 with respect to the hiring of Mr. Freed about September of 1954 as follows: (Tr., p.91)

Q. Well, do you know who hired Alan Freed?

A. Mr. Leder.

Q. Mr. Leder. Was it discussed with you?

A. No, sir. Well, I should say that I don't recall any particular discussion because that was in an area in which he proceeded more or less on his own and there may have been some discussion, but I believe he had been brought in there at the time I first discussed with him.

Q. You mean Alan Freed had been brought in at the time you discussed the matter with Leder?

- A. At least, they were pretty well along in their discussions with him.
I don't recall at this time what the timing was and the compensation was discussed with me somewhere along the line.

Mr. McCaw testified that he did not have any knowledge of the August 1954 meeting at the time of the meeting (Tr., p. 92) and that to his recollection neither Mr. Leder nor any other representatives of WINS discussed the matter with him at that time (Tr., p. 93). When asked whether the Variety or Post articles or the alleged meeting in August of 1954 were called to his attention, Mr. McCaw testified (Tr., pp. 92-93):

- A. It was called to my attention -- the only time that I would call was by Mr. Joe Stone, who was assistant district attorney in New York, who showed me a photostat of a page in "Variety" dated back about 1954 of '55 about that meeting.
I don't recall having seen any reference to it in the New York Post, but there were so many stories on that subject that it could well have been mentioned there.
But my first knowledge of it was the photostat which Mr. Stone showed to me.
- Q. I will show you the story in the Post. I think the reference starts at the bottom.
- A. I believe I did see this item but I don't recall it for sure.
- Q. It is continued in greater detail there.
- A. Yes, I believe I have seen this along the line, but I don't recall specifically, but there was so much on the same subject.
What was the date of this one?
- Q. I don't think the date appears there but I believe that was in December of 1959, after the exposures of some of the people. And so I mentioned that Mr. Stone showed me that. Mr. Stone has shown that to me. Someone else showed me that clipping in "Variety", and when I first saw it it was the first time that I recall having seen it, and that was during the last year or so.
But I am not positive whether it was Mr. Stone, his assistant, or someone else. */

18. In the licensee's reply of August 7, 1961, it is pointed out that "the president of the licensee denied any knowledge of Freed having engaged in payola practices prior to coming to Station WINS." It is also stated that:

*/ It appears that there is an error in the transcript and that so much of the "Q" as follows the first sentence is, in fact, the answer of Mr. McCaw. Counsel for Gotham are in accordance with this view.

"Further discussion of this matter at the May 1, 1961 conference (Tr., pp. 233-236) developed that the Commission's staff apparently had some indication that one Freeman had written a letter to the station containing something concerning Freed and that some members of the staff of WINS may have been aware of this letter in August, 1954. The substance of the information thought to have been in the letter has never been stated by the Commission's staff. In fact, Mr. Harrington stated that he had never seen the alleged letter. (Tr., p. 245). The Chief of the Complaints and Compliance Division, moreover, explicitly indicated that his alleged information "about four people that would have or should remember the letter coming in" (ibid.) did not include Mr. McCaw. At one point Mr. Harrington admitted that "I am not certain that there was any letter from Freeman to Mr. Leder, although he said there was such a letter". (May 2, 1961 Transcript, p. 562) (Emphasis by applicant)

The licensee has been unable to locate any such letter and it is abundantly clear from the transcript that there has at no time been any indication that the existence of any such letter or its contents were communicated to Mr. McCaw who, indeed, was away at the time the Commission's staff conjectures that the supposed letter was received (id., pp. 228-247).

In sum, it is evident that the supposition that the licensee was aware of some undefined information concerning Alan Freed in 1954 rests upon a conjecture that some letter containing such information was received by the station and communicated to its president. Against this unsupported conjecture is the explicit denial of Mr. McCaw and the statement of the Commission's staff that Mr. Leder (the only person recalling such a letter) indicated he had not communicated information concerning it to Mr. McCaw. (May 1, 1961 Transcript, pp. 236, 564)

The extended investigation (See, e.g. Tr., pp. 228-247, 561-565) of this most remote and conjectural point about possible information as to payola in 1954 is illustrative of the extraordinary lengths to which this inquiry has gone. The Commission, recognizing that emphasis on payola practices was of recent origin, had limited its December 2, 1959 payola inquiry to matters occurring since November 1, 1958, yet the present inquiry has placed great emphasis upon an incident which, if it occurred, took place more than four years prior to the cut-off date and the existence of which rests upon admittedly vague information."

19. The files of the Commission reflect that at the time of the interview Mr. Freeman was a very reluctant witness because of the friendship of his family with the family of Mr. Freed; and he refused to give a written statement to the Commission investigators. Mr. Goldner, after consulting with his counsel, would not give any more information and upon the advice of his attorney, refused to give a written statement to the Commission. The testimony of Mr. Smith would serve no useful purpose.

20. Preliminary conclusions. With respect to the foregoing information standing alone, it appears that the management of Gotham, in the person of Mr. Leder, WINS station manager, was put on notice at or about the time he was hiring Mr. Freed that there was information detrimental to Mr. Freed relating to the latter's "payola" practices. It also appears that Mr. Leder's knowledge was not communicated to Mr. McCaw and that at the time of the Variety article, Mr. McCaw was not active in the management of the station. There is no information in the Commission's files concerning the presence or absence of knowledge of this matter on the part of Mr. Keating (25% stockholder and officer of Gotham). Moreover, had Mr. McCaw or Mr. Keating read the article in Variety, it appears unlikely that, without other information, either would have been alerted to the fact that it referred to Mr. Freed and Station WINS.

21. Except for Mr. Leder's statement, no proof exists of the supposed letter from Mr. Freeman to Mr. Leder. The licensee's files do not disclose the letter. In fact, it is conjectural that there ever was such a letter, for Mr. Freeman does not assert that he wrote the letter ascribed to him (he does not appear to have been asked the direct question) and if he had authored the letter it is reasonable to assume that he would have mentioned it. Additionally, **Mr. Goldner**, who seems to have a considerable recollection of the meeting, makes no reference to the letter. It also would seem that had Mr. Smith seen the letter or had knowledge of its existence, he would have had a different reaction to the entire matter.

22. Finally, the events occurred in 1954, seven years ago, and are remote in time. This fact, when considered in connection with the fact that there is considerable conjecture and speculation concerning what the facts of the matter are, and the categorical denial of knowledge by Mr. McCaw of the incident strongly indicates that no reliance should be placed on this point. Additionally, it does not add any substance to any charge that Mr. McCaw should have been aware of the tendency of Mr. Freed to seek out and/or accept "payola".

23. Payola Clause in Talent Contracts. Concerning Mr. McCaw's awareness of the practice of payola from the time he first acquired WINS in 1954, in an affidavit of January 7, 1961, he stated, "All talent contracts as one example which were entered into at various times after the acquisition of Station WINS by me contained specific provisions prohibiting any form of payola." The provision referred to, as set out in the contract of Jack Lacy executed on July 1, 1955, is as follows:

"K. Cancellation

This contract may be cancelled:

* * * * *

(2) -a- By Corporation alone, absolutely at its option, immediately upon acquiring knowledge that Artist has received or has prepared or agreed or has contracted for or has negotiated

to receive any pay, emolument, bonus, present or any remuneration or promise of remuneration of any kind, whether actual or implied, in money or any other form, including a chose or choses in action, for playing, 'plugging' or otherwise promoting or advertising the song or songs or record or records or composition or compositions of any publisher or of any phonograph and/or similar or other company or organization of any kind or character, or of any composer or of any groups of any organization of composers;"

24. With respect to the talent contract between WINS and Freed, a copy of an executed contract, dated August 10, 1954, and a copy of a proposed contract, dated September 6, 1955, were obtained. Also obtained were copies of an executed contract dated August 10, 1954, and proposed contracts dated September 27, 1954, September 28, 1954, and October 19, 1955, between Freed and WINS with respect to syndication and network rights to Freed's exclusive presentation of radio broadcasts for WINS. Under the 1954 talent contract Freed was to receive 25% of the ". . . net income derived by WINS from the performance by Artist. . ." with a minimum guarantee of \$15,000 annually and broadcast 24 hours a week. The proposed 1955 contract increased the guarantee to \$20,000. Neither the executed talent contract nor the 1955 proposed contract contains a payola prohibition clause. Under the 1954 syndication contract Freed was to receive \$5,200 yearly for expenses and 50% of net income from such syndication profits. The proposed syndication contract of 1955 provided for incorporation under the name Gotham-Freed, Inc. with capitalization of \$1,000. It was proposed that both WINS and Freed would receive \$5,200 annually for expenses, and have equal shares in all of the income and royalties, and each holds 50% of the stock of the corporation. A payola prohibition clause does not appear in the executed or proposed syndication contracts.

25. McCaw in various interviews has contended that he was aware of payola in the industry as far back as 1954 and that, upon acquisition of WINS in 1954, all talent contracts (later acknowledging an exception in the case of Freed) have contained a payola clause. McCaw has stated that the omission of such a clause in the Freed contracts was inadvertent. It was determined by examination of the Lacey contracts with WINS that an "approved copy" of a contract with Lacey dated January 3, 1955, did contain such payola provision; however the photostat does not show Lacey's signed acceptance. An executed contract with Lacey dated July 1, 1955, included the payola clause.

26. Mr. McCaw has insisted that he has always had a firm policy against payola and has attempted to be vigilant for any signs of its existence. In addition to the cancellation provision in talent contracts, he has offered in support of his assertion a statement prepared by Mel Leeds on November 20, 1959, which is as follows:

"With reference to the investigation of the 'Payola' situation, I would like to state the position of the management of WINS.

The policy of WINS has always been a firm one against our personnel accepting so-called payola for the playing of specific recordings, or the mentioning of certain products and plugging over the air.

If we should find evidence of these improper practices, the personnel involved are aware of the penalty of immediate dismissal.

The music policy of our station acts as a screen against outside influences, and the offering of payola. WINS being a music and news station, has adhered to a music survey formula. The music played is the result of a tabulation of record sales in the retail stores in the Greater New York Area. We also supplement our survey with the best new recordings released each week carefully listened to and selected by members of the Program Department, namely the Program Director and his assistants."

27. Preliminary Conclusions. It can be shown that the Freed contracts of 1954 were the work of Mr. Leder (and possibly with the assistance of a Mr. Johnson, who was and is sort of a house counsel to WINS) and that it is doubtful that Mr. McCaw participated in or had knowledge, at the time of the negotiations, of the content of such contracts. However, the fact is that Mr. McCaw participated in the negotiations for and had knowledge of the contents of the drafts of the 1955 Freed contracts. Mr. McCaw has stated

on May 12, 1961,
in explanation, "If a talent contract in 1955 between Alan Freed and Station WINS does exist and if such a contract does not contain the anti-payola clause the omission of such clause would be inadvertent and not with intention." It can be shown that none of the Freed contracts contains a payola clause and that, with the exception of Freed, all talent contracts executed in 1955 and thereafter contained a strict payola clause.

28. As has been indicated before, Mr. Leder had some knowledge of information detrimental to Mr. Freed with respect to the solicitation of payola at or about the time of Freed's employment at WINS. This should have alerted Mr. Leder in the drafting of Freed's contracts to the need for including an anti-payola clause, it would seem. Mr. Leder has not been asked whether he took into consideration in drafting Freed's contracts the matter of payola. Except for Mr. Leder, knowledge of information detrimental to Mr. Freed can hardly be imputed to the management of Gotham.

29. As is discussed hereinafter, the three known payola takers at WINS were Freed, Leeds and Granger. Leeds and Granger were not talent and had no talent contracts with WINS. There may be more than coincidence to the fact that Freed's contracts had no payola clause and this aspect will be discussed later in connection with his pending trial in New York.

30. Music Selection Policy. During the period 1957-1959, Station WINS was operated under a Top Forty format, with plays of the station's weekly listing of the top forty songs in the New York area, supplemented by an extra list of approximately the same number of records. The weekly Top Forty songs were compiled by personnel in the music library after polling approximately forty of the largest retail record outlets in the listening area. This method was discontinued in November, 1959, when it was discovered that record stores were receiving free copies of a record as an inducement to report that record as a best seller when polled. Thereafter, the station's top forty list was compiled from the charts of leading trade publications. The extra list was compiled by Program Director (Mel Leeds) and Music Librarian (Ronnie Granger) after listening to the approximately 250 new records submitted to the station each week, and checking the consensus of the opinions of all the record reviewers of trade publications. In an interview on April 26, 1961, Ronnie Granger stated that both Lacey and Freed more or less determined their own programs prior to June, 1959 but that other dee jays were required to stick to the Top Forty list, "pick hit of the week," and albums. Mel Leeds pointed out that Alan Freed made his own determinations of music on the Freed show and that Fernhead told Leeds that Freed was responsible for the music on his own shows. Additionally, neither Leeds nor Granger had written contracts with Station WINS, so that they were not subject to the anti-payola clause contained in WINS talent contracts. In July or August, 1959, the group selecting the new releases was enlarged by adding the Assistant Program Director and Mel Leeds' Secretary. Indicative of the control by the program director and librarian in the selection of music in 1959 is a memorandum dated October 8, 1959 to Mel Leeds from Anderson which reads: "Elroy has made a suggestion that more people be involved in the picking of music than just you and Rick. Will you please discuss this with me." "Rick" is Rick Sklar, Leeds' assistant and later the Program Director. Approximately 20 to 25 new releases were added to the extra list to replace those from the previous list which moved to the Top Forty list. The WINS Pic Hit of the Week (a selection from the new releases) was selected by a process of elimination in a conference between the Program Director, Librarian and one or two disk jockeys whose musical judgment was respected. After the group selected several of the new records as candidates, the final selection was made by the Program Director. A similar process was followed in selecting the WINS Artist of the Week, highlighting a newly released album.

31. According to a memorandum dated December 3, 1959, from Mel Leeds to Hap Anderson on the subject "Music Policy of WINS," it was stated by Mel Leeds:

"With regard to overall music policy it should be carefully noted that (except for the WINS Pic Hit of the Week) at NO TIME does the program department control the playing of specific records in the manner of a strict format station. The disk jockeys are free to play what they want, when they want to, so as to build the pace and mood of a show -- the only stipulation being that the selections they play (their music sheet) be a compilation of selections drawn from the WINS top

forty survey, the WINS extra list and the WINS album list for that particular week."

32. In the conference on March 14, 1961, Hap Anderson testified as follows (Tr., pp. 59-60):

"Q. Did WINS require disk jockeys to submit music sheets of what records they were going to play or had played?

A. No. It came from the other direction. The disk jockeys were given music sheets from the music library which were built, according to balance of male, female, vocal and instrumental by the music librarian or the music librarian's assistant from the list of selections that could be used on the station.

Q. You mean that each disk jockey was told what 14 or 16 records he should play in his hour?

A. With the exception of Jack Lacey.

Q. And when was that procedure adopted?

A. Well, frankly, as far as I can recall, sir, it was in force when I came there [May, 1959].

Q. So, with the exception of Jack Lacey, disk jockeys had no discretion in the music they were to play.

A. Well, basically, they didn't. Now, there was an area, and still is an area, that from albums they have a list which they can choose from this list, but they don't have to play a specific one at a specific session."

33. There is an inconsistency between the testimony of Anderson and the statement by Leeds in his memorandum of December 3, 1959, which was written at Anderson's request in order that the music policy (which was known to all) might be put in writing by the most logical person, the one working with it week after week (Tr. 71). An affidavit of Richard Sklar, present Program Director, dated January 7, 1961, covers a statement as to the current WINS music policy (effective date not indicated) which does describe a procedure of music sheets being made up by the music library with the assistance of disk jockeys for each show.

34. In his affidavit of January 7, 1961, Gorman, a special assistant to Mr. McCaw at WINS who was inquiring into "payola" at the station, stated:

"I was told by Mel Leeds in the latter part of November that he had been a consultant for four record companies. And yet the record companies to which he professed to be a consultant in no way showed up in any relation to the analysis that we made on what various 'pick hits of the week' we used even to

our regular working music list. As thorough an analysis as I made on all of the music charts and logs used by WINS in a year and a half period, it appeared that none of the companies with which Mel Leeds was associated had in any way been favored."

It was assumed that he had reference, among other things, to music sheets showing the records played on each program. His and Hap Anderson's testimony on March 14, 1961, supported such an assumption (TR. 20,23,59-60, 71-74,82). The music sheets allegedly had been turned over to the District Attorney together with work sheets of their analysis. It was agreed that WINS would attempt to obtain a copy of the work sheets from the District Attorney. However, it was later discovered that WINS had not maintained, music sheets as commonly understood, but that the music sheets referred to were merely the weekly lists of the Top Forty records. Hence, there is no way in which frequency of play of any specific record can be established.

35. The station now, and since approximately February 1960, retains the dee jay's lists of music played on their various programs. In addition, the station is now making and retaining a 24-hour tape recording of each day's broadcasts.

36. Preliminary Conclusions. There is an obvious inconsistency between the December 3, 1959 memorandum of Mr. Leeds and the March 14, 1961 testimony of Mr. Hap Anderson, his superior. It is also apparent that there was at least a confusion of the terms "music sheets" and the "weekly top forty lists" in the minds of the Commission's investigators and also in the minds of the witnesses for Gotham. It is not clear that the Gotham witnesses intended to create or to continue the confusion in terms and no demerit should attach to Gotham thereby.

37. In the period from 1954 to 1960, it appears that the licensee had some control over the playing of records by certain disk jockeys but the control was slight and imperfect. However, from the available information, there is no way in which the frequency of play of any specific record or records can be established during the 1957-1960 period, nor in which it could be concluded that the receipt of payola by any employee effected the frequency of play of particular records, labels or artists. More important, it is evident that at least until late 1959, there was essentially no licensee control over the record selection of Messrs. Freed, Leeds and Granger. This phase of the inquiry will be further discussed with respect to the taking of payola by these individuals. Finally, it can be concluded that since about February, 1960, adequate control over record selections has been effectuated by the licensee.

38. That Station WINS billed Alan Freed for the expense of his remote broadcasting, which bills exceeded his salary from the licensee. Gotham submitted to the Commission a statement showing the sums of money paid annually to Mr. Freed. The figures submitted are as follows:

1954	\$ 4,890.39	
- 1955	13,590.58	
1956	17,343.57	(This amount includes \$5,000 for 1958 for commissions earned in 1956)
1957	14,958.84	
1958	3,452.04	

At the time Mr. Freed left Station WINS, the books of the station showed Mr. Freed indebted to Gotham in the sum of \$6,989.58; subsequently credits have reduced this indebtedness to \$6,631.18. Mr. Soupios, treasurer of Gotham, has indicated to the investigators that Gotham believes that the indebtedness is essentially washed out by credits due to Mr. Freed for commissions earned in 1957 and 1958; but that the actual amount of the commissions earned by Mr. Freed for those years has not been determined.

39. While Alan Freed was employed at WINS and approximately between July 13, 1956 and the end of December, 1957, he habitually broadcast his programs from his home in Stamford, Connecticut. It appears that WINS billed Alan Freed -- apparently monthly -- for all additional expenses of the remote broadcast, such as line charges, long distance phone calls to Freed's home in connection with the broadcasts, payment of studio equipment, engineer's salaries, etc. We have seen invoices in amounts ranging from \$2500 to \$2800 billed to Alan Freed or to his attorney. Apparently, Alan Freed turned these bills over to a record distributing company who usually mailed a check to Alan Freed, who, in turn, deposited it in his own account and then, in turn, issued his personal check to WINS. However, two of the checks which we have seen were issued by Alpha Distributing Company, made payable to Gotham, licensee of WINS, and were endorsed by the licensee. WINS has submitted to us a statement that gross payments by WINS to Alan Freed in 1957 were approximately \$15,000. If the invoices we have seen represent monthly billings, it will be seen that WINS **charged** Alan Freed more than the amount they had paid him as salary. From the foregoing it might be inferred that Alan Freed was paying Station WINS for the privilege of working at WINS and collecting payola from other sources, which was known or should have been known to Gotham and Mr. McCaw.

40. On March 23 and 24, 1961, the accounting records of Gotham were examined by two of the Commission's investigators. The W-2 forms (Internal Revenue) conformed with Mr. Soupios' statements. The payroll ledger sheets also conformed with Mr. Soupios' statements. Numerous ~~detailed~~ work papers were furnished (but not examined in detail) from which it was alleged by Mr. Soupios that a determination had been made of commission due to Freed for certain commercials carried on his program in the year 1956, which, under arrangements with WINS, resulted in Freed being due \$5,000 and which was paid to him in 1958. (Neither the 1956 nor 1958 W-2 form reflected this \$5,000 payment).

41. Also examined was the accounts receivable ledger sheet for Freed, which reflected billings made to Freed for the services of engineers and line charges involved in Freed's broadcasts from his home in Connecticut.

These charges amount to \$13,061.41 in 1956 (six months) and \$23,692.58 in 1957 (whole year), whereas the salary record shows that Freed received as a full year's salary \$12,343.57 in 1956 and \$14,958.84 in 1957. The checks referred to above as issued by a record company and endorsed by Gotham are shown in the books as payments by Freed.

42. Mr. McCaw was questioned regarding the fact that apparently Freed was paying out approximately \$10,000 for his expenses in excess of his salary. Mr. McCaw explained this unique situation in this manner: That it was at Freed's own request that these broadcasts had been conducted from Freed's Connecticut home, whereas formerly they had been broadcast from the station's studios; that this being Freed's decision to broadcast from Connecticut, any expenses in connection therewith would be borne by Freed; that McCaw did not learn until some time later when Freed left the station, that these expenses had been in excess of his salary; that when he (McCaw) did learn of it, it gave him no concern as he understood that Freed's work for Station WINS represented only five to ten percent of his time, and that Freed was engaged in many other activities, including producing shows in theatres and conducting record hops, which netted him very substantial yearly profits.

43. In order to understand the manner in which Gotham's books were kept with respect to Freed's account, the following quotation from an affidavit of Henry G. Kirwin, filed with the Commission on May 15, 1961, by Gotham; Mr. Kirwin has been a CPA of the State of New York since 1941:

"I was employed at Station WINS from September 1950 to September 1957. During this period I was in charge of the accounting and billing for Gotham Broadcasting Corporation, licensee of Station WINS, New York. Prior to July 1956, Mr. Leder who was then the General Manager of Station WINS came to me and advised me that from that time on an announcer named Alan Freed would broadcast from his home in Stamford, Conn. The Freed show usually ran from 7:00 P.M. to 11:00 P.M. six nights a week, Monday through Saturday. Mr. Leder advised me that he had an arrangement with Alan Freed whereby Alan Freed would be charged and billed for all the expenses that were incurred by the station in setting up the facilities at Mr. Freed's residence. In addition to expenses, Mr. Freed was to reimburse for station for equipment which had to be purchased and which was used by Freed at his home. Shortly thereafter, Mr. Fearnhead became General Manager of WINS.

"Pursuant to the arrangement entered into between Leder and Freed, I then proceeded to set up accounting procedures to show the charges to Freed and to be able to carry out the arrangement. The procedure that I designed was as follows:

- (1) I directed those who worked under me and were accountable to me to segregate all expenses and other charges which were connected with the Freed operation.
- (2) At the end of every month, these expenses were itemized in detail and a bill was sent to Mr. Freed at his home.
- (3) the Freed account was maintained in the General Ledger.

"When Mr. Freed would make payments against his account, the payments would either be mailed to us by Mr. Freed or presented to us by Mr. Freed or someone associated with Mr. Freed. This was the general method of payment. I have no recollection who was the payer on any of the checks. But it is my recollection that when the Freed bill was paid, he would accompany his remittance generally with a copy of the station's invoice which was sent to him. Therefore the checks which were attached to the bill and sent back by Freed to the station in payment of his charges were applied against Freed's account. During my tenure this account was handled by me and my assistants in the regular course of our business and it was in the regular course of our business to handle the account with Freed in this manner. I never brought the manner of payment to the attention of Mr. McCaw, or Mr. Leder or Mr. Fearnhead or Mr. Keating any circumstance whatever surrounding the receipts of monies from Freed or the billing of expenses and other charges to Freed except that on occasion I would mention to Mr. Fearnhead that Freed was a little slow on payment. I was never advised nor did I have personal knowledge that any monies received on payment of Mr. Freed's bills were paid by record distributing companies. In my accounting experience, the transaction merely represented an accommodation transaction. The procedure I designed to handle the receipt of money from payments on Accounts Receivable were as follows: (1) The mail would come in and would be opened by a clerk. The checks were taken out of the envelopes by a clerk and the clerk then made up the deposit slips and attached these checks thereto. The mail room boy would then pick up the deposit slip with the checks and make the deposit at the bank. Prior to the deposit slip being made up, the clerk would enter the checks in the cash receipts book.

"The accounts receipt book would indicate the account credited, as well as the amount received. The clerk handling the accounts receivable book and the making up of the deposit slips would handle these matters as part of her duties in the ordinary course of business.

"In early 1959 I was questioned by the Assistant District Attorney of New York City, New York concerning this arrangement between Station WINS and Alan Freed whereby Alan Freed arranged to have his nightly program broadcast from his home in Stamford, Connecticut."

44. Because this statement appears to raise a very serious question with respect to the licensee's knowledge of payola, its response to the matter, filed August 7, 1961, is given verbatim:

"It is true that in particular years the charges billed to Freed exceeded his compensation from the station. But it does not follow from this fact that it may be inferred that the disparity should have led the management of Station WINS to conclude that Freed must be taking payola.

"In the first place, it is clear that there was no way of knowing in advance whether the compensation would be greater than the line charges and equipment expenses or not. Freed worked on a percentage basis and the revenue generated in his program was to some degree a function of his own efforts. In the second place, some of the charges billed to Freed by the station were for equipment which Freed has kept. The purchase price of equipment can hardly be offset against salary. In the third place, the home broadcasting arrangement at Freed's expense was an accommodation to Freed requested by him and terminable by him at will. It was of no financial benefit to the station. To be able to broadcast from his home saved Freed much time and effort and gave him more time to spend on his outside activities. At the same time, it gave him continuous broadcast exposure, which was extremely important to his career. (Exhibit 9.) */ His total broadcast salary (without deductions for line charges) was a relatively small part of his annual income for the period in question. Finally, as the Kirwin affidavit makes clear, there was no occasion for management to compare the Freed charges with the Freed income, which were handled separately in a routine fashion. (Exhibit 8.) **/

"The following colloquy appearing on pages 402-409 of the transcript of May 1, 1961 is pertinent to an understanding of this matter:

"Mr. Hunter: Going back to the multiple interest that you said Mr. Freed had, I think in a previous conversation we had had with you, in which we pointed out Mr. Freed was drawing salary of \$14,000 a year, and yet incurring line charges of \$24,000 a year, that you, at that time, I believe explained that this caused you no problem because of his other multiple interest?

"Mr. McCaw: No, sir. There were two things. First of all I was never aware nor had I at any time monitored the Freed account, ever looked at what he owed the station until the thing was all over. In other words, until Freed had left, I never had occasion, so that I was not aware of that discrepancy at all. However, there were several mitigating factors, whether it would be me or anyone else to whose attention it might have come, although it didn't come to mine in any way, shape or form. The first is that under the arrangement that

*/ Exhibit 9 is a copy of an article in the New York Post of Wednesday, May 4, 1960 in which Mr. Freed told the Post that Station WABC officials had threatened to throw him off the air unless he kicked back \$30,000 of \$40,000 annual salary for plugging his stage shows; that under Freed's contract with ABC, \$30,000 payments were to be made to the station to buy time on his WABC shows to plug the stage presentations; and that Goldenson (of ABC) had said at the LOC hearings a day earlier that he thought the arrangement under which Freed paid ABC to promote the stage shows he ran around the country was proper, that Freed was advertising the stage shows on his program, and that ABC felt he should pay for such plugs.

**/ See para. 43, supra

he had, he concentrated on it, the \$14,000 base was something which could have been built up very significantly in terms of revenue because he had a provision where he would get 25 per cent of the revenues sold specifically for his show and had he not been doing a lot of other things and had he been concentrating on developing the thing where people came in and buy the time on the show as we did such as with 7-Up, which would have involved a contract for \$170,000 a year, that one account would have netted him 25 per cent of that amount because it was bought specifically there, at premium rates, and so.

"Now, 90 per cent of the traffic load in his show was simply the spots that would be put there basically on a run of schedule. Insofar as selling it to other people, unless you build a specialized merchandising appeal, it was very difficult to sell that show because of the rock- and roll-image, and many people, without regard to rating, they just wouldn't touch it. They would say, 'Don't put me in there,' and many times we had great difficulty getting people to let us, if they were buying like fifteen spots a week, spread them out and have some on his show. It had that sort of reaction. On the other hand, had we had the type of corporation (cooperation) that this sort of a vehicle could have created, had he concentrated on it and, again, tying it in to merchandising, as 7-Up planned to do and which, incidentally, was something that was just on the verge of signing at the time of the Boston riot, so-called, where it was tried out and merchandise specifically slanted to teenagers, where you had to get somebody to appreciate it and would buy the teenager market, but due to the kind of image that was built around the name 'rock and roll' and his name was synonymous with rock and roll, having started the name 'rock and roll', even to the point that it was copyrighted, 'Rock 'N Roll', he was synonymous with it. Furthermore, we found the problem that it tended to create in other areas even though it wasn't on his show. It was such a strong show and so much publicized that WINS, in turn, became synonymous with rock and roll, which was a real problem we had.

"Developing the answer to your question to cover all of the points, that is another facet. Certainly the contract that he had is not one in which he chose to concentrate on it and to help us get that kind of business - believe me there is the help where you need the help of the talent involved - it would have been a highly lucrative thing.

"Take the next point. At the time he signed that and with that provision, that was a really sweet contract, using that word. It was attractive. Hundreds of disk jockeys around the country would like to have that including in the city of New York.

"Now, what happened? Rock and roll, or Freed, somehow caught a certain fancy somewhere - it is impossible to anticipate this sort of thing, you can't anticipate the public - it took off like a sky rocket. When he appeared in public they would

have as many as -- well, on the front page of the New York Times there was a picture when he appeared in the Paramount; there were four hundred extra policemen and all traffic through Times Square was shut off, just for his appearance.

"In the motion picture field, allegedly, he made as much as \$300,000 in making one motion picture. He was making public appearances around the country, in which he had chartered busses in which he would go around covering the Midwest, Chicago and so on, because the publicity that surrounded his name from his broadcasts here and over some of the other stations that were syndicated, he became synonymous with that.

"The Twentieth Century Fox Film Company and another film company bid for his services to appear. Therefore, when a man is really supposed to have struck it rich from perfectly understandable and obvious and explainable sources, and in the field of talent, in which you have the fantastic remuneration that accrues to the fellow that happens to hit the public fancy -- the Pat Boones and so on and so forth - it is completely understandable as to why this would be a mere detail to him, and it was equally important despite all of the other things. What made him in the first place?

"Exposure on a major New York station, and the publicity and the constant build-up that followed. We have had many cases, as I explained to you before, where people who for one reason or another are out of the public eye and who depend upon a station in front of the public will do almost anything. Big movie names, and so on, they would like to have a disc jockey show to stay in the public eye - - not because of the money they make out of it, they would cheerfully give the money to charity. They have other income, maybe, from residuals of films, or income, but they are fading out of the public eye. Therefore is it unreasonable anything that involved so much money, the fact that he was willing to spend more in order to broadcast at his convenience where he lived out in Stamford, Connecticut, and where if he would have stayed in the studios in order to broadcast it meant, with the train schedules as they are, he would get home at 2:00, 3:00 o'clock in the morning, and with all the other things, offices in town and a real organization, apparently, going - - I was never in one of his offices, but this kind of talk you hear, I mean, that Freed is a great success.

"Mr. Hunter: From what you have already said, previous I think you said it didn't concern you because it was for his own convenience.

"Mr. McCaw: That's right. I was aware of the arrangement. Knowing those circumstances, without knowing the amounts involved or ever having compared them, it seemed a perfectly logical thing. There was a logical explanation where he would want to broadcast

in some other location but he [we] would have no objection if we would be paid for additional costs. This happens not in connection with this station only, but many people who have shows, maybe television shows, and they go out on a personal appearance, and in order to broadcast their show from another city, the network bills them for the additional cost, or the station. This is a common practice.

"Mr. Sporkin: When you spoke of an arrangement you were talking about the arrangement to broadcast from his home?"

"Mr. McCaw: Yes, sir, from his home. There is nothing unusual about it. Other people around the country had frequently had occasion to do that.

"Mr. Hunter: I deliberately brought it up because I though you would want it on the record."

45. In a statement made to the Commission investigators, Mr. Freed represented, in substance, that he had to make arrangements with WINS to pay the additional costs involved in conducting his broadcasts from his home at an approximate cost of \$2,500 per month; that his purpose in doing this was because it was convenient for him to broadcast from his home, rather than to go to the station's studio in New York City; that he was aware that the cost of this operation exceeded the salary the station paid him; and that he hired two engineers per day "in order to uphold Gotham's agreement with the union".

46. Because the foregoing matter is closely related to the following assertion by Mr. Freed, inferences and conclusions which might be drawn from the above will be considered in connection with the following matter.

47. That with respect to certain programs broadcast by Alan Freed, as such employee, at least part of the line charges and engineer's salaries were paid by a record distributor directly to the licensee. In Mr. Freed's statement to the Commission investigators, dated June 8, 1961, referred to at paragraph 45, supra, Mr. Freed also stated, in substance, that Gotham made out invoices for Freed's remote broadcast charges; that he thinks Gotham billed Alpha Distributors direct for the charges and sent him a copy of the invoice; that some of the monthly bills were paid from his personal funds by checks drawn in favor of Gotham (he had to hire two engineers per day to uphold Gotham's agreement with the union); that the source of his personal funds so used were at least partially supplied by checks received from Alpha Distributors, which agreed [apparently with Freed] to pay the line charges and the engineer's salaries; that some of the Alpha Distributors checks could have been made payable, and sent, to him, which checks he would deposit in his personal account and send his personal check to Gotham; that the New York District Attorney has about \$12,000 in Alpha's checks made payable to, endorsed and deposited by Gotham covering line charges; that "I do not know whether Gotham knew about payments to me by any other distributors. However, if they knew of one they should have known of the others."; and that all of the foregoing is in his (Freed's) testimony before the LOC in closed session.

48. At the outset, it should be pointed out that the WINS file of billing charges to Freed for remote broadcasts in 1956 and 1957 was reviewed by the Commission's investigators in a conference with Assistant District Attorney Joseph Stone in New York City on June 16, 1961. The investigators were advised that part of the Alpha records had been destroyed by fire; and that the amount of \$12,000 in Alpha's checks made payable to Gotham and in the possession of the New York District Attorney is an overstatement, as is demonstrated in the following paragraph. Also, a review of Mr. Freed's testimony before the LOC in closed session discloses that Mr. Freed was not asked about, and did not volunteer any statement concerning his acceptance of payola when he was employed at WINS.

49. As nearly as this account of Freed's can be re-constructed from the books of Gotham and other records it would appear that the following payments were made on the account:

<u>DATE OF BOOK CREDIT</u>	<u>DATE OF CHECK</u>	<u>AMOUNT OF CHECK</u>	<u>CHECK PAYEE</u>
October 9, 1956	October 9, 1956	\$ 3,471.95	Freed*
January 3, 1957	December 28, 1956	3,679.55	Gotham*
March 11, 1957	March 9, 1957	2,848.65	Gotham*
May 7, 1957	Unknown	3,286.16	Unknown
August 19, 1957	Unknown	2,340.39	Unknown
September 13, 1957	Unknown	735.94 13,762.75	Unknown Unknown

With respect to the payments noted with an asterisk, the checks were viewed by the investigators at the office of the New York District Attorney. The January 3 and March 11, 1957 payments were made by Alpha's checks payable to Gotham. The August 19, 1957 check for \$2,340.39 does not appear to have any relationship to Alpha. Rather, this sum appears to represent Gotham's 10% cut of a Freed show at the Paramount theatre. It further appears that this sum should not have been credited to this account of Mr. Freed.*/ It also appears, by inference, that it is unlikely that the September 13, 1957 payment of \$13,762.75 was made by check from Alpha made payable to Gotham, for the documentation shows that the payment was made by Freed's manager, a Mr. Hook. This leaves unaccounted for with respect to the source of the payment and the payee of the check (if payment was made by check) only the payments of May 7, 1957 in the sum of \$3,285.16 and of September 13, 1957 in the sum of \$735.94.

*/ At first, the investigators were of the view that this sum should have been income to Gotham for payment of spot announcements made by Freed on his WINS programs promoting his show and personal appearance at a Paramount theatre. This matter is discussed herein in the next succeeding section, paragraphs 58-65, infra.

50. With respect to the payment by the Alpha Distributing Company of Freed's line charges and engineer's salaries for his broadcasts from his Connecticut home, McCaw has stated that he was not aware in 1956 and 1957 of the fact that the charges to Freed were approximately \$10,000 more than Freed's WINS salary and that the station's receipt of any checks from record companies in payment of charges to Freed was never brought to his attention until the beginning of the payola investigation (see paragraph 42, *supra*). A three-page affidavit dated May 11, 1961, has been furnished by Henry G. Kirwin who was employed at Station WINS from September 1950 to September 1957 and was in charge of the accounting and billing for Gotham during this period; this affidavit describes the station's method of handling incoming checks as a clerical procedure which would not have brought such checks to Kirwin's attention (see paragraph 43, *supra*). McCaw stated that this type of situation (dj's being charged by the station for line charges and engineer's salaries) does not exist at the station now; that if it did, the station would, in light of past experience, attempt to maintain a control on receipt of payments for such charges; but that the normal processing of incoming checks and the limited knowledge of account employees as to record company tie-ins with firms sending checks to the station was not conducive to exposing payments which may be in the form of payola.

51. Mr. McCaw points out in his response filed with the Commission August 7, 1961, in addition to the matters which are set forth in the paragraph immediately above:

"Thus, the answer to this charge is essentially two-fold. To begin with the station's management did not know that a record company or record companies were paying any of the expenses incurred by Alan Freed. In this connection it must be remembered that Freed, in addition to his broadcasting activities, had interests in many non-broadcast business enterprises. It is therefore entirely understandable that when the Freed invoices were returned to Station WINS with checks attached, the book-keeping department assumed that the checks which were signed by persons other than Alan Freed were payments being made by one of the many Freed enterprises. The posting of any payment against an invoice was a routine clerical matter handled mechanically and these payments were not reported to the management.

"Secondly, in view of the fact that the two payments in question were transmitted to Station WINS, attached to the invoice of Alan Freed, it cannot be stated that the payments were made directly to Station WINS. (May 1, 1961 Transcript p. 386) In any event, the fact that Freed may have paid WINS invoices with checks from others did not occasion inquiry as to the activities of Freed which gave rise to the indebtedness to him. Freed's other activities and interests were sufficiently varied that the appearance of a name of a strange company on a check would not be a cause of comment."

52. (Preliminary Conclusions: paras. 38-51) The information at hand shows that for about 1½ years, between July, 1956 and December, 1957, Alan Freed broadcast his programs from his home in Stamford, Connecticut

rather than from the station's studios in New York City; that this was done by agreement with Gotham, apparently with the specific knowledge of Mr. Leder, then station manager, and later with the knowledge of Mr. Fearnhead, who later became station manager, (it seems to be unquestioned that Mr. McCaw knew of the arrangements from their inception); that the arrangement so to broadcast was for the convenience of Mr. Freed; that Mr. Freed agreed to reimburse Gotham for the services of engineers, line charges, long distance phone calls to his home in connection with the broadcasts, payment of studio equipment (which apparently he was buying), etc.; that the amount which Freed reimbursed Gotham for these expenses was substantially in excess of his salary from Gotham; that Mr. Leder and Mr. Fearnhead were or should have been aware of the disparity between reimbursement and salary and also of the fact that Freed was slow in payment and that such knowledge is the knowledge of Gotham; and that the only evidence with respect to Mr. McCaw's knowledge of the disparity is that he was not aware of it until Mr. Freed left the station.

53. As has been indicated, at paragraph 39, supra, it might be inferred from the foregoing facts alone that Mr. Freed was paying Gotham for the privilege of working at WINS and was collecting payola from other sources, both of which facts were known or should have been known to Gotham and to Mr. McCaw. The arguments against such a conclusion are: (1) that it could not have been known in advance, because Freed worked on a percentage basis, whether his compensation would be greater than the expenses or not; (2) that some of the charges billed to Freed were for the purchase price of equipment kept by Freed, which should hardly be offset against salary [the total of charges for this purpose is not known to the investigators]; (3) that the arrangements were to accommodate Freed at his request, were terminable by him at any time, and were no financial benefit to the station; (4) that the arrangement permitted Freed more time to spend on his outside activities, which constituted the substantial part of his income, while at the same time giving him continuous broadcast exposure; and (5) that there was no occasion for Gotham to compare the Freed charges with income, which were handled separately in a routine fashion.

54. Taking into consideration only the facts of this particular arrangement, the explanation of Gotham appears on its face to be plausible and to raise a very considerable doubt as to whether Gotham should have suspected or believed that Freed must be taking payola.

55. There is, however, the additional fact that there were only seven payments made on the Freed account and that at least two of the payments were made by Alpha's checks made payable to Gotham. Whether these checks were submitted to Gotham by Alpha has not been determined. The only evidence is that the account was handled in the normal manner by the station's accounting department. There is no evidence that Gotham's management knew of the checks from Alpha and Mr. McCaw denies that he had knowledge of the Alpha checks until after the beginning of the payola investigation. However, at this time Mr. McCaw was aware that Mr. Freed had many connections in the record business.

56. Actual knowledge of the Alpha checks on the part of Gotham's management cannot be predicated on the evidence. From all of the information available to the Commission, it appears that the existence of payola in the industry was sufficiently well known in 1957 so that a prudent licensee would have alerted its employees to the possibility of its presence in the licensee organization so that the licensee could have been informed of the indicia of its possible existence. To this extent, at least, Gotham and Mr. McCaw as its president appear to have failed to act prudently. From the manner in which the account was handled, that is, that Alpha's checks were credited to Freed's account, it can be speculated that Kirwin and the management of Gotham were aware prior to receiving the checks, perhaps at the time of the original arrangement, that Alpha or other record companies were to pay part or all of the Freed account. That is, of course, speculation and not based on any fact, for neither Freed nor Gotham nor Mr. McCaw have been questioned as to whether Freed told management of his arrangements with Alpha, and apparently, with other record companies.

57. Further consideration will be given these matters in the discussion of the over-all payola matters concerning Freed, Leeds and Granger. These matters will also be considered in the discussion of the degree of control which Gotham exercised over its programs.

58. That the licensee received ten percent of the profits of Alan Freed's promotions which were advertised over the station and that the required sponsorship identification announcements were not made. In 1957, Freed apparently conducted one show at a theatre, as reflected in a statement found among the WINS accounting records, for which the income was \$55,000. There were expenses of \$31,596.10 and a profit after expenses of \$23,403.90, on which Station WINS received a commission of ten (10) per cent, and the statement shows a check in the amount of \$2,340.39 was enclosed. Credited to the Alan Freed receivable account was a check in the amount of \$2,340.39 received and deposited on August 19, 1957 (see paragraph 49, *supra*). This check reflects the 10% commission to WINS on the \$55,000 theatre venture by Freed referred to above. Mr. McCaw stated that this check was apparently erroneously credited to the Freed account instead of being taken in as a receipt from advertising on the station.

59. When interviewed by the investigators, on May 1, 1961, Mr. McCaw stated that this arrangement with Freed was to some extent similar to a P.I. deal whereby the station carries spots for advertising without knowing exactly how much compensation it will receive, and hoping that the amount received will equal its rate card. Mr. McCaw also stated that Freed had not restricted his advertising for his numerous shows to WINS but had also placed his advertising on other New York stations. A letter from Leder to McCaw in 1955, indicates that the station will receive an estimated commission in the amount of \$5,000 under a similar arrangement with Freed. (This would indicate that Freed had a personal net income for this particular venture of \$45,000).

60. Mr. McCaw stated that, in light of his knowledge of Freed's income from his work other than that conducted for WINS, the disparity between Freed's salary and expenses created no reason for him to inquire into the matter. Mr. McCaw also stated that Freed at that time was receiving a normal compensation for a disc jockey of his calibre, and pointed out that his salary from WINS was a bread-and-butter income, that his broadcasts kept Freed's name before the public, and that it was collateral to his many other activities.

61. The interview with Freed on June 8, 1961 was the first time Freed had been questioned by the Commission as to his associations with WINS from 1954 to 1958. Freed stated that Morris Levy of Roulette Records owned 50% of the Freed promotions and that a stock interest Freed owned in End and Gone Records (Goldner companies) had been turned back to Goldner in 1958 at no profit. Freed claims that Gotham must have known of Levy being his personal manager due to Gotham getting 10% of theatre profits for Freed's appearance in New York City theatres. It should be mentioned that Freed did not mention his former interest in End and Gone Records in his affidavit of February 9, 1961 when he was asked to state, in connection with another matter, what interests he now or previously had in record companies.

62. In his response filed August 7, 1961, Mr. McCaw stated that during the May 1, 1961 conference referred to above there was some misunderstanding concerning the 10% profits of Freed's promotion; that documentary evidence located subsequently to that conference indicated that the 10% payments were not payments for advertising. The evidence consists of a contract between Gotham Broadcasting Corporation and Sieg Music Corporation dated January 1955 and the pertinent part of this contract reads as follows:

"In consideration of the aforesaid waiver and release by the GOTHAM BROADCASTING CORPORATION in favor of the SIEG MUSIC CORP. to the exclusive personal services of Alan Freed for promotions, and of the further permission and license from the GOTHAM BROADCASTING CORPORATION to the SIEG MUSIC CORP. to use the name and/or title 'ROCK 'N ROLL', 'ROCK 'N ROLL PARTY' and or similar names and titles solely in connection with, and for the sole purpose of, the Theater, Dance and Concert promotions carried on, and/or to be carried on, by the said ALAN FREED, SIEG MUSIC CORP. herein and hereby agrees to pay to the GOTHAM BROADCASTING CORPORATION ten (10%) percent of its gross profits derived or to be derived from the aforesaid Theater, Dance, Concert promotions; said gross ten (10%) percent profit to be paid prior to any other distribution of profits and/or salaries paid to its principals by the SIEG MUSIC CORP., except the salaries of TALENT, such exception immediately aforesaid excluding the salary or any other income or profit whatsoever derived or to be derived by ALAN FREED as TALENT or otherwise from the SIEG MUSIC CORP."

Mr. McCaw further represents that since the licensee was not paid for any promotion of Freed's enterprises no Section 317 announcements would have been required.

63. The Sieg Music Corp. contract corroborates the statement made by Mr. Freed that Gotham Broadcasting Corporation must have known about Levy being his personal manager, for the Sieg contract, which is in the nature of a letter addressed to Gotham, is signed for Sieg by Morris Levy, President, and was accepted by Robert Leder, Vice President of Gotham.

64. In its Response, Gotham makes the point that since the payment to it was for a partial release of its rights to the exclusive services of Freed and for granting of the right to use the name "Rock 'N Roll" in connection

with Freed's promotions and apparently was not paid for any promotion of Freed's enterprises, no sponsorship identification announcements were required under Section 317 of the Act (but that if the proposed "plugola" rulemaking is adopted, an announcement would be required.)

65. (Preliminary Conclusions) It seems apparent that this assertion in the Commission's July 6, 1961 letter cannot be sustained. However, it does point up the fact that since January, 1955 (the date of the Sieg contract-letter) Gotham had in its files evidence of a connection between Freed and an individual prominent in several record companies. This is further feature to be considered in the appraisal of the over-all Gotham-Freed payola problem.

66. That the licensee attempted to induce Alan Freed to arrange with record manufacturers and/or distributors whereby the latter would pay the licensee directly for the broadcasting of records. In a statement of June 8, 1961, Alan Freed states that Mr. Jock Fernhead called him (Freed) into Fernhead's office at WINS in New York and that Mr. McCaw was present when Mr. Freed went in. Mr. Freed states that Mr. Fernhead said to him, in the presence of Mr. McCaw, "Come on Alan, we know you are getting paid. Alan, is there any way to go to the record distributors and manufacturers and make a deal with them, whereby they can pay the radio station for getting their records played?" Mr. Freed states that he replied, "These record companies are not that big an operation and there would not be that much money involved."

67. There is no information as to the date of the occurrence of this incident. From his conversations with Mr. Freed, Mr. Schaaff thinks the incident occurred sometime during the year prior to Mr. Fernhead's leaving WINS when he purchased KPOI, Honolulu, which he believes occurred between April and July, 1959. Mr. Schaaff's interview with Mr. Freed was in question and answer form. The information on this particular incident was not elicited by a question but rather was a statement by Mr. Freed to show knowledge by Gotham and McCaw of his contracts with record companies, about which Mr. Schaaff had inquired.

68. On July 26, 1961 the Commission received a letter from Mr. Freed */, who was in New York City, concerning events which occurred there. In his letter, Mr. Freed states, in substance, that commencing about July 14, 1961, he began receiving telephone messages and calls from Morris Levy, President of Roulette Records in New York, proposing a meeting with Mr. McCaw, who would like to see Mr. Freed's copy of his statement to Mr. Schaaff (above); that Mr. Freed tried to avoid this meeting; that a meeting was held in Mr. Levy's office at Roulette Records on Tuesday afternoon, July 18th, 1961, commencing about 4 30 p.m. and lasting about 1½ hours; that Mr. McCaw and his attorney were present; that "the gist of the meeting was, from Mr. McCaw's standpoint, that I could be of service to him in regard to the sale of Gotham Broadcasting Corp. if I could 'clarify' my statement or affidavit to the F.C.C. I advised Mr. McCaw and his attorney that I had no personal animosity toward them but that the information that I had given to Mr. Schaaf (sic) was true information to the best of my knowledge and that I could see in no way any chance of my changing my testimony"; that Mr. McCaw asked Mr. Freed to call his counsel, Mr. Warren Troob, to ask whether a messenger could be sent to Mr. Troob's office to pick up the copy of Mr. Freed's statement, and that Mr. Levy, who phoned

*/ On July 19, 1961 Mr. Freed telephone Mr. Schaaff to inform him of the following information.

Mr. Troob, was informed by the latter that he could not release the statement to anyone pending Freed's "forthcoming trial on Commercial Bribery charges."

69. In its response, the licensee terms the statement made in the Commission's letter of July 6, 1961 an "unwarranted and wholly false charge." It is alleged, in substance, that in telephone conversations in mid July, 1961, between Mr. McCaw and Mr. Levy it was disclosed that a statement concerning incorrect and misleading information had been made to the Commission by Mr. Freed; that Mr. Levy stated that Mr. Freed was willing to meet with Mr. McCaw to explain the statement and the circumstances surrounding it; that on July 18, 1961, Mr. McCaw and his local attorney, Mr. Bernard Tannenbaum of the New York Bar, met with Alan Freed, his wife, and Mr. Levy at the latter's office; that at the meeting Mr. Freed stated that he had made certain erroneous statements to the Commission's staff concerning Mr. McCaw and WINS; that Mr. Freed stated he desired to right any wrong he had done but that he was concerned about what could happen to him if he corrected his statement to the Commission; that Mr. Tannenbaum stated he thought Mr. Freed ought to have the advice of his own attorney; that an appointment was made for the following morning to meet with Mr. Freed and his attorney, Mr. Warren Troob; and that neither Mr. Freed nor his attorney kept the appointment.

70. As an exhibit supplementing the licensee's response, there is the affidavit of Mr. Morris Levy concerning the above matters. The affidavit states:

"About the middle of July 1961, Mr. Elroy McCaw of WINS telephoned me and asked to look at some of the records of Sieg Music and Jackie Music companies in which my partners and I once had interests with Alan Freed. These companies handled theatre promotions and also had a contract with WINS in regard to such promotions. We made the records available for inspection.

"About the same time, Alan Freed was in New York. In a conversation with him, Alan told me that he signed an affidavit for the FCC concerning Elroy McCaw and WINS. He intimated that he was sorry he had made the affidavit. He suggested that he would like to speak to Elroy McCaw with whom I then arranged for a meeting with Alan Freed.

"The meeting was held at my office in the afternoon of July 18, 1961. Mr. McCaw, his attorney, Mr. Tannenbaum, Alan Freed and his wife, who came in later, were present. Mr. Freed made statements to the effect that he had been brainwashed by Mr. Keating and Mel Leeds who persuaded him to sign the affidavit for the FCC and that he did so because then he believed his loyalty was to Mr. Keating and Mr. Leeds, people for whom he was working. He knew when he made the affidavit that it was not true, that it was harmful to Mr. McCaw and that Mr. Keating, to whose home he had often gone, had personal differences with Mr. McCaw.

"When Mr. McCaw asked Mr. Freed, on July 18, 1961, whether he had ever asked Mr. Freed for anything, the latter said that Mr. McCaw had never asked him for anything and that he had met with Mr. McCaw only a few times. Mr. Freed said that in the affidavit for the FCC he referred to a meeting when his second wife, Jackie, and a Mr. Fernhead were present, where Mr. Fernhead was supposed to have asked

whether there was any way by which the radio station could participate with record manufacturing companies as sponsors. Mr. Freed said that his wife answered that there was not much involved in it and the matter was treated as a joke and laughed off.

"Mr. McCaw asked Mr. Freed whether he (McCaw) had ever been present at such a meeting. Mr. Freed said that Mr. McCaw had not been present at such a meeting and again stated that during the entire period of his dealings with the radio station he had met with Mr. McCaw only a few times. Mr. Freed indicated that the reason Mr. Keating was mad at Mr. McCaw was because Mr. McCaw sold him Radio Station KDAY which he (Keating) said was a "toilet" and he was losing twenty-five thousand dollars a month on it.

"Mr. McCaw's attorney, Mr. Tannenbaum, told Mr. Freed that he should consult with his own attorney about correcting the FCC affidavit where it was untruthful or incomplete.

"After Mr. McCaw and Mr. Tannenbaum left, having arranged to meet the next day with Mr. Freed and his attorney, Mr. Freed said that he could not show them the affidavit. He said that they would be mad when they read it because they would find out that he said that McCaw was present at the meeting. He then said that he didn't own McCaw anything and that McCaw did not stick by him when he (Freed) got in trouble in Boston.

"During the next few days I received telephone calls informing me that Alan Freed had said that he was going to "bury" me and Elroy McCaw. I was told that Mr. Freed had called the FCC in Washington and given them a false version of the conversation held in my office on July 18. It seems that after he left my office he talked with some people in the recording industry about the meeting.

"I called Mr. Freed and told him about these reports. He suggested that we meet at my office the next day. He come with his present wife and his attorney, Warren Troob. Present also were Mr. Inge and Mr. Tarnpol. At the time Freed used foul language in referring to Mr. McCaw saying that he would do anything he could to hurt Mr. McCaw and would "bury" him if possible. Mr. Freed said, concerning me, that he would rather hurt himself than hurt me in any way. At the time he also said, in substance, that he was going to stay in the radio business, that the FCC would look out for him. He also said that the FCC were his best friends and at this point he owed his loyalty to them. In the course of that conversation I believe he made the statement that he had to keep WINS in the picture of having knowledge of payola because it destroyed the District Attorney's case in New York City. Most of Mr. Freed's statements concerned his hate for Mr. McCaw, WINS and WABC."

71. There is also the affidavit of Mr. Tannenbaum, which states:

"The following is a report of a certain meeting which took place in the afternoon of July 18, 1961, at the offices of Mr. Morris Levy, 1631 Broadway, New York City. Present at the meeting were Messrs. Morris Levy, J. Elroy McCaw, Alan Freed, Mrs. Alan Freed (Inga) and myself.

"The purpose of the meeting was that Mr. Freed wanted to disclose the fact that he had supplied to the Federal Communications Commission an erroneous statement which he felt was very harmful to Mr. McCaw. He stated that this statement was prepared by a Mr. Schaaff, an investigator for the Commission after an interview with Freed, and signed by Freed. Freed explained the background of his having worked for Mr. Jack Keating at Radio Station KDAY in Los Angeles. He stated that he had been "brainwashed" by Mr. Keating for a year, and that Mr. Keating had it in for Mr. McCaw. Freed kept quoting Keating as having stated that he was "going to bury McCaw" and that every evening he was with Keating, even when they were out socially, he was "brainwashed for six hours" against Elroy McCaw.

"Freed said that he felt he caused an injustice to Mr. McCaw by an erroneous or misleading statement given by him to the FCC. This related to an alleged conversation in early 1958 with Jock Fearnhead, who was then General Manager of Station WINS. Freed said that his aforesaid statement alleged that Mr. Fearnhead stated to Freed something to the effect that "we know you have been taking payola so how about letting us have some of it."

"Freed said that while the statement may have been made by Fearnhead, it had been made in a light and joking manner, but that that statement he gave to the FCC failed to disclose the joking aspect of this conversation.

"Freed also stated that the conversation with Fearnhead referred to the possibility of getting some of the record companies to advertise directly on WINS, which fact he thinks was not disclosed in his statement to the Commission. Mr. Freed said that his former wife, Jackie Freed, was the only other person present while this conversation took place, and specifically stated that Mr. McCaw was not present. Mr. Freed asked if he would get in trouble if he corrected his FCC statement at this date and I advised him that I thought he would be in more trouble if he let a false affidavit stand; and advised that he consult his own attorney in this matter.

"An appointment was set up for 11:00 a.m. the following day at the office of his attorney, Mr. Warren Troub, in which he promised to produce the copy of the statement filed with the FCC, and to discuss with his attorney whether he should file a corrected statement disclosing the truth.

"Freed further stated that in the four years that he was at WINS, he believes that he saw Mr. McCaw not more than ten times, but that he dealt with Messrs. Leder, Fearnhead and Keating; in fact, he and Keating were very close with each other socially until quite recently. Freed further stated that Mel Leeds who was also employed at Radio Station KDAY (now promoted to General Manager) also hates Mr. McCaw."

72. There is also the affidavit of Mr. Nat Tarnpol concerning a meeting he attended at Mr. Levy's office during the last week in July, 1961 (see affidavit of Mr. Levy, supra), at which Mr. Freed and others were present.

The affidavit states:

"During the last week in July 1961, while at the office of Morris Levy, I met Alan Freed, who came in with his wife and his lawyer. He told Morris Levy that he (Freed) is out to bury Elroy McCaw because McCaw dropped him when Freed was in trouble in Boston. He said he would make sure that Mr. McCaw loses his radio station in New York. Freed said that he would do all he could for the FCC who are his friends and that they are not out to hurt him. He said he hated Mr. McCaw and would do all that he could to hurt him. He also said that he hated WABQ because they made him the patsy for Dick Clark. He said that he had only the highest regard for Morris Levy."

73. In its further Response filed on September 6, 1961, Gotham submits additional information concerning the matter. In an affidavit, Mr. McCaw categorically denies that he was present "during any such incident nor was any such alleged conversation ever reported to me prior to July, 1961 at which time Alan Freed acknowledged to me in the presence of others that I had not been present during any such incident." In addition, there is submitted a copy of an affidavit of H.G. Fernhead, dated August 31, 1961, the original of which was filed with the Commission on September 8, 1961, which states:

"With reference to the statement by Mr. Alan Freed I absolutely deny that at any time either in the presence of Mr. McCaw or alone with Mr. Freed that I ever referred to the fact that I knew Mr. Freed was getting paid by record companies or even referring to that fact in any way whatsoever. In order to be sure and cover the statements made in said paragraph completely, I deny that I ever made the statement in quotes attributed to me by Alan Freed and I deny that I ever said anything like that at any time to Mr. Freed or to anyone else; and I further deny that Mr. Freed made the reply also quoted in said second paragraph or anything like it in my presence or to my knowledge. I further deny that there was any such meeting as that referered to between Mr. McCaw, Mr. Freed and myself.

"In this connection and to make my statement complete on the subject of payola, which is implied in this paragraph, I want to state that at no time did I ever tolerate payola as a practice at WINS."

74. (Preliminary Conclusions). (a) Gotham contends that "A charge could hardly be refuted more conclusively." On the present state of the record, Mr. Freed's statements with respect to the statements made and the fact of the meeting are directly in conflict with and categorically denied by Messrs. McCaw and Fearnhead, who, according to Mr. Freed, were the only other persons present. There is also a sharp conflict between the report of Mr. Freed of the meetings in Mr. Levy's office and the statements contained in the affidavits of Mr. Levy, Mr. Tarnopol, Mr. McCaw and Attorney Tannenbaum. At this time, the Commission has no evidence which it might adduce for the purpose of impeaching Messrs. Levy, Tarnopol or Tannenbaum. It is obvious that Mr. Freed, Mr. Fernhead and Mr. McCaw each have reasons which are self-serving for making the statements they have made. It is believed, however, that on balance, the testimony contrary to Mr. Freed's assertions would raise such a question as to the veracity of his statements or the substantial character of his recollection, that the subject could not be proved and that, therefore, this matter should not be pursued further.

(b) The foregoing conclusion is not to be considered as being a reflection upon the character of Mr. Freed as a proposed witness. Mr. Freed may be given credit for veracity in his statements and still a doubt may well be raised in the minds of those hearing him that his recollection was accurate in this instance. It is apparent that there are inconsistencies in the statements of Mr. Levy, Mr. Tannenbaum and Mr. McCaw. However, on the basis of the record now before the Commission and the absence of any evidence in this record which would cast suspicion upon the character of Mr. Levy and Mr. Tannenbaum, their testimony would strongly corroborate Mr. McCaw's position. Mr. Freed has not been questioned with respect to the affidavit submitted with the September 6, 1961 Response of McCaw, and additional information might obviously be developed with respect to the affidavits. But the conclusion set forth in the preceding paragraph is based upon the bare record as it stands now.

75. That officers of the licensee solicited and accepted gifts of substantial value from record companies.

a. Mr. McCaw's hi-fi:

In a statement dated June 8, 1961, Mr. Mel Leeds states, in substance, that in August or September 1959, before the payola investigation, Mr. McCaw called him into McCaw's office and asked him what connections he had to get a hi-fi set for McCaw's office; that Mr. Leeds said he could get one from Columbia or Capitol Records; that Mr. McCaw said he would like to have one; that Mr. Leeds called Columbia, told them that he wanted a set for Mr. McCaw and Columbia delivered a console set to Mr. McCaw's office; that late in November 1959, after the payola investigation, Mr. McCaw asked Mr. Leeds to call Columbia and get a bill for the set; that Mr. Leeds did so and the bill was presented in December 1959; and that Mr. McCaw had said nothing about payment until after the start of the payola investigation, when he said to Mr. Leeds, "Well, I wanted to pay for it, but just wanted to find out if you had connections."

76. Mr. Schaaff's interview was in question and answer form; the foregoing was a statement made in the course of the interview but not elicited by a question. Columbia Records did not submit information to, nor testify before, the LOC. The Commission's information from the FTC files neither corroborates nor denies the above.

77. Mr. McCaw, in his Response filed August 7, 1961, stated "that to the best of its [licensee's] knowledge and belief no present officer of licensee has, during his association with Station WINS, solicited or accepted gifts of substantial value from record companies"; and that "With respect to the five former officers of the licensee, . . . At no time during their association with Station WINS, did the licensee have any knowledge of, or reason to have knowledge of, any solicitation or acceptance of substantial gifts from record companies by any of the officers."

78. A further reply to the assertion is made by Mr. McCaw in his Response, filed September 6, 1961, and in his affidavit submitted as an exhibit thereto. Mr. McCaw states: that during the early part of November, 1959, he heard rumors that there may have been "payola" at WINS in connection with the "Pick Hit of the Week"; that the rumors came to his attention as a result of the investigation instigated by him into possible payola practices at the station; that he requested Mr. Leeds, then station program director, to get for him a recording of each pick hit of the week for the preceding 52 weeks and to have a record player in McCaw's office so that he could check the recordings selected; that a day or two later, a record player was delivered and installed in his office; that when McCaw saw it, he asked Mr. Leeds how much it cost; that Mr. Leeds' response was to the effect that he did not think Gotham would be charged for it; that McCaw instructed Mr. Leeds "immediately to arrange to determine the price and to have proper billing made"; and that Mr. Leeds checked the price and reported to McCaw that the matter had been taken care. In substantiation of his statement, Mr. McCaw submits a letter from Harvey L. Schein, General Attorney for Columbia Records, dated September 5, 1961, which, in pertinent part, states:

"At your request, I have looked into the background of our having sent a phonograph to Mr. Mel Leeds at Station WINS in New York.

"On or about November 12, 1959, Mr. Leeds requested that we send a phonograph to the station; and on or about November 13, 1959, the phonograph was transported to him at WINS. I am told that thereafter Mr. Leeds requested that we bill him for this phonograph, and we did so on or about December 4, 1959. This bill was paid sometime in March of 1960."

Also submitted is a copy of what purports to be a duplicate invoice from Columbia billing to "Mel Leeds, c/o WINS," what is represented to be a phonograph, billed at \$114.67; the invoice is dated December 4, 1959 and shows a payment stamp of January 29, 1960. Mr. McCaw further states that on November 20, 1959 the WINS investigation culminated in the admission to him by Mel Leeds that he had accepted money from record companies; that on the same day, Mr. McCaw left New York for Seattle, where he remained until December 7, 1959; and that the sole purpose of ordering the player was for use in connection with the payola investigation being conducted by Gotham.

79. In light of the foregoing facts, Mr. McCaw contends that from the time Mr. Leeds was requested to obtain the record player it was always his (McCaw's) intention that it be paid for by Gotham and that this is demonstrated by the circumstances and dates surrounding the purchase, billing and payment for the record player; that "The implication that Mr. McCaw asked Mr. Leeds to get a bill for the record player in late November, 1959, as a belated afterthought in light of the payola investigation is an inaccurate as the information that the record player was requested by Mr. McCaw in August of September, 1959 . . . In order to give any credence to the information relied upon by the Commission, the assertedly belated decision of Mr. McCaw to have the station billed for the Columbia record player necessarily would have to be made prior to November 20, 1959, since after that date Mr. McCaw was in Seattle, Washington and did not return to New York until after the billing had occurred. From the documentary evidence, . . ., it is clear that the charge that Mr. McCaw 'solicited and accepted' this record player as a gift is obviously without foundation."

80. (Preliminary Conclusions) Except for the general denial (paragraph 77, supra) nowhere in his Response does Mr. McCaw specifically deny that Mr. Leeds obtained for him and had installed a console hi-fi set from Columbia Records in August or September, 1959, or at any other time. Mr. McCaw refers only to a record console.

81. If Mr. Leeds and Mr. McCaw are talking about the same transaction, then upon the documentation submitted by Mr. McCaw, it appears that Mr. Leeds' facts are in some material respects in error, that the inferences drawn by him from the facts does not necessarily follow, and that the inferences contended for by Mr. McCaw can and do regularly flow from the facts. The only caveat to this conclusion is that McCaw, in his statements concerning the investigation of payola, has made no mention of listening to the pick hits.

82. The Commission has no information corroborating Mr. Leeds statements. Other assertions by Mr. Leeds are discussed in the paragraphs immediately following and more light is shed on such assertions.

b. Mr. Fearnhead's hi-fi:

In a statement dated June 8, 1961, Mr. Mel Leeds states, in substance, that in 1958 he obtained a hi-fi set from Capitol Records for Mr. Fearnhead's office; that Mr. Fearnhead did not ask him to do so but Mr. Fearnhead knew that no one had paid for it and he accepted it for his office; and that later Mr. McCaw gave the set to his secretary, Miss Alfred, as a present for her personal use.

83. Mr. Schaaff's interview was in question and answer form; the foregoing was a statement made in the course of the interview but not elicited by a question. The FTC investigation of Capitol Records included the main office and the Chicago office only and the files contain no information concerning New York stations; no mention of Mel Leeds or Jock Fearnhead was contained in the FTC files regarding Capitol Records, and no payola reference concerning WINS appeared therein. The FTC investigation of Capitol Records did not include the New York office and operations of the firm. Correspondence in the LOC files indicates that Capitol Records declined to file information with the subcommittee on the ground that such action would be onerous and burdensome to the firm, which stated that it had already furnished similar data to the FTC. After some negotiation the matter was dropped and no list of items was ever received from Capitol Records by the subcommittee. A file of the LOC regarding Leeds was reviewed, but contained no data involving Mr. Fearnhead. There is no LOC file relating to Mr. Fearnhead.

84. Concerning this assertion, Mr. McCaw, in his Response of September 6, 1961, refers to the August 31, 1961 affidavit of Mr. Fearnhead. With respect to this matter, Mr. Fearnhead states in the affidavit,

"With reference to . . . the alleged statements by Mr. Leeds regarding a Hi-Fi set in my office, it is true that a Hi-Fi set was delivered to my office at WINS in, I believe, November of 1958, but I could be wrong as to this exact date. This set was delivered without any authorization from myself and without any knowledge at that time. Upon questioning Mr. Leeds as to the origin of the Hi-Fi set, he told me that he had obtained it from Capitol Records and that it was a gift to the radio station."

Also, Mr. McCaw's Response states, with respect to his own activities at this time:

"It should be noted that in November 1958, when Fearnhead indicates the set was delivered to Station WINS, Mr. McCaw, shortly before, had been released from the hospital, and was in Seattle, Washington, recuperating from very serious injuries received in an automobile accident, which occurred in the latter part of September, 1958. As a result of the injuries received from this accident, Mr.

*/ On September 22, 1961, Mr. Leeds stated to a Commission investigator that the hi-fi set was a gift to the station; that he did not request or receive authorization from Fearnhead to obtain it; and that it was to be a surprise by Mr. Leeds.

McCaw was not able to return to his New York office until after the first week of December, 1958. It should also be noted that the Hi-Fi set served no function at the station. Early in 1959, long before any investigation of payola practices had commenced, the unwanted Hi-Fi set was given by the licensee to the invalid sister of a secretarial employee of Station WINS."

85. Gotham contends that the evidence does not establish that any officer of the licensee "solicited and accepted" the hi-fi set. This is true. However, it is established that hi-fi set was a gift to the station, that at about the time the gift was made by Capitol Records the fact that it was a gift was known to Mr. Fearnhead, then vice-president of Gotham, who used it in his office. It does not appear that Mr. McCaw inquired into the acquisition of the set by the station, although later he gave it away. Late in 1958 and early in 1959, Gotham and Mr. McCaw should have been aware that the circumstances under which the station received the gift suggested the possibility of payola.

c. Mr. Fernhead's refrigerator:

In a statement dated June 8, 1961, Mr. Mel Leeds states, in substance, that in 1959, when Mr. Fernhead was in the process of buying a refrigerator for use in his home, Mr. Leeds told him that he (Leeds) could get one from RCA for nothing for him; that Mr. Fernhead did not ask Mr. Leeds to obtain the refrigerator for him, but Mr. Leeds did so and RCA sent the refrigerator to Fernhead's home; and that Mr. Fernhead knew that the refrigerator was secured from RCA for his personal use without cost. Mr. Schaaff's interview was in question and answer form; the foregoing was a statement made in the course of the interview but not elicited by a question. LOC records show that a refrigerator, cost \$300.65, was given to Mr. Fernhead on December 12, 1958. (Bruno-New York, Inc., invoice no. 16960).

86. Concerning this assertion, Mr. McCaw, in his Response of September 6, 1961, refers to the August 31, 1961 affidavit of Mr. Fearnhead, which states:

"Further . . . , I wish to clarify exactly what happened with reference to the refrigerator, that in late 1958 in, I believe, the month of October while Mr. and Mrs. Leeds were visiting my home in Mamaroneck, we were comparing notes on the furnishings of our homes; that in the course of the conversation I mentioned that among other things, we were buying a refrigerator; that Mr. and Mrs. Leeds said that they had a refrigerator on order from RCA but that they no longer needed it; that they had long admired one of our Oriental rugs, and Leeds said to me that if I would give him the rug, he would give me the refrigerator in trade. Nothing was said by Mr. Leeds about his getting the refrigerator for nothing and I assumed at that time and always have assumed that he had bought the refrigerator, but no longer had any use for it himself. The trade was made . . . I gave him the rug and he gave me the refrigerator. The rug, incidentally, being a Nichols Oriental rug, was valued by us at between \$400 and \$500, and I believe this was about the same evaluation as placed on the refrigerator. I certainly would not have given Mr. Leeds a rug

of this value if I hadn't believed I was receiving in return a refrigerator which had cost him approximately the same amount. I further categorically deny that I knew that the refrigerator was obtained from RCA for my use without cost, and it was definitely my understanding that Leeds either had bought the refrigerator or had it on order and had no further use for it.

"Also I have been informed recently by Mr. Leeds' present employer, Mr. Keating, that when Leeds was confronted with the fact that I have stated above regarding the exchange of the rug for the refrigerator, Mr. Leeds admitted to Mr. Keating that this was the truth and said that he had forgotten all about the rug incident when he made his affidavit."

87. From the foregoing, it is Gotham's contention that "..., no charge of an officer of the licensee soliciting and accepting a gift from a record company can be established. In the first place, no gift of any kind was involved because Mr. Fearnhead paid full consideration for the refrigerator. In addition, Mr. Fearnhead denies under oath any knowledge that the refrigerator was obtained by Mr. Leeds from RCA without cost. Indeed, Mr. Fearnhead states that it was his definite understanding that 'Leeds either had bought the refrigerator or had it on order and had no further use for it'. And that "The licensee is not in a position to state with certainty what the motives or precise conduct of Mr. Leeds or RCA may have been in this matter. It does appear, however, that the transaction reflects no discredit on Mr. Fearnhead and certainly reflects no discredit upon the licensee which was wholly unaware of the matter."

88. Subsequent to the September 6, 1961 Response of Gotham, the Commission has received further information respecting this matter. Harry Becker, Esq., counsel for Mr. Fearnhead, has submitted a letter dated September 22, 1961 from Joy G. Fearnhead, wife of H. G. Fearnhead. The letter states:

"In corroboration of my husband's statement regarding the rug incident I'd like to also recount the situation as I recall it.

"That sometime in October 1958 Mel and Virginia Leeds were visiting us at our home in Mamaroneck, New York. And during the evening while we were discussing furniture in general, we mentioned that we were about to trade in our refrigerator for a new one.

"Mel and Virginia being newlyweds had been furnishing their apartment, including many antique accents, and in the living-room had blue in their color scheme.

"Although I cannot remember just now how it was brought up, I believe Mel said that they had a refrigerator on order for which they now had no use, and that they had long admired an antique blue Chinese rug that we had, and asked us if we would consider exchanging the rug for the refrigerator.

"As the values were about the same, the rug being valued at about 400 dollars, this seemed to answer both our problems, and we were happy to make the exchange. I believe, as a matter of fact, that they took the rug with them that same evening.

"I certainly do not remember either on that evening or at any other time, Mel saying anything about getting the refrigerator for nothing. Nor did he refer at any time to any deal that he had with RCA. It seemed a natural thing to do, this exchanging of rug and refrigerator, as Ginny and I were close friends and I knew that their livingroom had blue in the color scheme into which our rug fitted perfectly.

"As you know, we are at present on vacation in a little Hawaiian fishing village named Keahou Bay, and there is no way of having this statement notarized until we return to Honolulu at the end of the month. If it is necessary that this be notarized, please let me know and I will arrange to have it done at that time."

89. On September 29, 1961, the Commission received the following further statement from Mr. Leeds:

"It is true: that the occasion upon which the matter of the acquiring of a refrigerator for Mr. Fearnhead arose on a date when both my wife and I were visiting Mr. Fearnhead's home and it could well be on or about October, 1958. It is also true that Mr. Fearnhead mentioned at that time that he was having trouble with the present refrigerator in use at his home and was shopping for a new one. However, it is not true that either I or my wife on that evening during the visit said to Mr. or Mrs. Fearnhead that we had a refrigerator on order from RCA and no longer needed it. As a matter of fact, we had just been married on June 29, 1958 and at that time my wife and I moved into a brand new apartment at 37 Riverside Drive, New York, which, as a part of the rental cost, plus an extra \$4.00 per month compensation paid by me to the rental agent, supplied as part of the lease agreement a brand new refrigerator. The refrigerator supplied by my landlord was a white, General Electric, approximate size between eight and nine cubic feet, whereas, the refrigerator delivered to the Fearnhead residence was a RCA Whirlpool, approximately 14 cubic feet in size, much larger than the one in my apartment, which kitchen space could not accommodate a refrigerator larger than the one supplied by my landlord. In any event, the records of the RCA distributor in New York, doing business under the name of Bruno of New York, located on West 34th Street in Manhattan, will indicate that the refrigerator was ordered in the name of and for Mr. Fearnhead, delivery to be made to his home in Mamaroneck, New York. They will also indicate that at no time was this refrigerator, or any other refrigerator, on order for myself. At the time when this refrigerator was ordered for Mr. Fearnhead, from the above mentioned Bruno of New York, I was not the owner of, nor did I have on order, any refrigerator with any other firm in the city of New York.

"When Mr. Fearnhead mentioned that he had to go out and buy a refrigerator because the one he was presently using was giving him trouble, I told him, "Why buy one when I can get you one for nothing?" He wanted to know from whom and I told him RCA-Victor would be happy to give him a refrigerator at no cost because of his position with the station as Vice-President. I contacted Mike Berello, promotion man for the RCA Records distributor, and Dick Maxwell, field representative for RCA-Victor Records, and informed them that I would like to get a refrigerator for Mr. Fearnhead, Vice-President of WINS. Dick Maxwell suggested the Fearnheads visit one of the local appliance stores and select the model number, two color preferences and size instructions and when Mr. Fearnhead gave me the necessary information I then called Dick and gave him the specifications. At no time did I advise Mr. Fearnhead that this refrigerator had ever, or would ever, cost me money. He was fully informed that I intended to obtain this from RCA for nothing.

"With reference to the matter of the transfer of a rug from Mr. Fearnhead to me, I wish to state as follows:

"During our early conversation on this visit, Mr. and Mrs. Fearnhead both had mentioned that they were considering selling some of their furnishings and replacing them with others. My wife and I then asked about the items that they were intending to sell. There was an uncertainty as to some of them but they were definite about disposing of the rug in question. We were told the rug was some thirty odd years old. They mentioned a selling price they would ask for the rug but I can't recall the exact amount; however, it was around the \$200.00 figure. We saw the rug, which was a blue, oriental, approximate size eight by five, on the floor of their guest room. We then offered to buy the rug, and also a desk which I admired, and asked them what price they would want from us. They said they were not considering selling the desk and as for the price on the rug Mr. Fearnhead said, "We'll get together on the price. Don't worry about it." I assumed he did not intend to ask us the same price he would normally have asked in selling it to a stranger. The matter was then dropped. It was later in the evening when the discussion of the refrigerator came up and I mentioned that I could get the refrigerator from RCA without cost. Mr. Fearnhead then said, "If you get us a refrigerator you won't have to buy the rug, you and Ginny can have it as a gift from us."

"In reference to the probable value of the rug, when I was closing my home here in Los Angeles, I offered the said rug for sale and the best offer I got was \$75.00 from a rug dealer who made this bid. At that time, he said that he would be lucky if he could get \$125.00 for this rug. The rug is still in my possession.

"When I offered to get the refrigerator for Mr. Fearnhead, I did not do so in consideration for the rug. This offer on my part, to try to secure a refrigerator for him, was done as a personal favor between two friends and not as a business transaction. The inference

that the rug was an exchange for the refrigerator is a matter of misinterpretation. Mr. Fearnhead offered the rug after I told him I could secure the refrigerator for him. This I believed to be an act of graciousness on the part of Mr. Fearnhead. A few weeks after delivery of the refrigerator Mr. Fearnhead brought the rug to the office for us. It is important to note that my offer to get him the refrigerator had nothing whatsoever to do with securing the rug, for I was prepared to buy the rug from him when a price was established.

"It should be noted that the relationship between the Fearnheads and the Leeds at that time was on a very close and personal basis and consequently, a number of gifts were exchanged between the families. As a matter of fact, at the time the rug was offered to us Mrs. Fearnhead said that she was quite happy about giving us the rug for it had a great sentimental value to her and she felt by us having the rug it would still be in the family.

"In answer to Mr. Michael Sullivan's question as to whether I showed my previous statement given to Mr. LeRoy Schaaf, of the F.C.C., to Mr. John D. Keating and/or Mr. Fearnhead, I wish to state as follows:

"It is true that subsequent to my signing the statement made to LeRoy Schaaf, on June 9, 1961, a copy of this statement was given by me to Mr. Keating; however, I myself never showed such statement to Mr. Fearnhead. My last contact with Mr. Fearnhead was on his return to Honolulu when he stopped off in Los Angeles after leaving Washington, D.C. after appearing before the Federal Communications Commission sometime in the early part of 1961.

"When Mr. Keating discussed the rug incident with me at length over the telephone a short while ago he inquired as to the circumstances surrounding it. I then tried to explain the manner in which it was received and the way it was offered. Mr. Keating then related to me Mr. Fearnhead's version of my receiving the rug and wanted to verify whether I did receive the rug in exchange for the refrigerator. In the final analysis, I told Mr. Keating that I did receive the rug after the delivery of the refrigerator and also said, in reference to Mr. Fearnhead's version of the incident, "Well, that's one way of looking at it." My forgetfulness in not including the rug incident in my previous statement to Mr. Schaaf, of the F.C.C., was because I did not consider receiving the rug as payment in securing the refrigerator, and, furthermore, I never expected to receive payment of any kind for securing the refrigerator as both Mr. Fearnhead and I knew that I was getting it for nothing."

90. There is a direct conflict in the statements of Mr. Leeds and Mr. Fearnhead as to whether Mr. Fearnhead knew that the refrigerator was a gift by RCA. The facts set forth by Mr. Leeds are very plausible and constitute a believable transaction. At the time the RCA distributor reported to the LOC, it considered the refrigerator to be a gift and to be made to Mr. Fearnhead. Information in the possession of the Commission investigators (which has not been documented) suggests that it was subsequent to this transaction when the Fearnheads had their rugs appraised and that they may not have known the value of the rug when they were dealing with Leeds. This casts doubt on the Fearnhead's recollection of the transaction.

91. Mr. McCaw denies knowledge of the incident and it is true that the fact are divorced from the operations of the station itself. A demerit can hardly attach to Gotham or Mr. McCaw merely on the basis of this allegation.

92. However, these three instances, occurring between the fall of 1958 and the fall of 1959, each having suggestions of the acceptance of payola by Leeds should have required an inquiry into each instance by Gotham and Mr. McCaw concerning Leeds. It appears that the ownership and management of Gotham, which acknowledges awareness of the prevalence of payola at the time, was not prudent in the manner in which it viewed these transactions. This lack of prudent management will be considered with the other aspect of the payola pattern of Mr. Leeds.

93. Assertions by Mel Leeds. The following paragraphs discuss information submitted to the Commission by and/or concerning Mel Leeds. No Raise for Mel Leeds Because of Payola. The Commission investigators received information from time to time which indicated that about June of 1958 Mel Leeds, then program director at WINS (he is currently awaiting trial on commercial bribery charges in New York), requested Herbert Fearnhead, then general manager and vice president at WINS, to ask Mr. McCaw for an increase in salary for Leeds; that sometime subsequent thereto, Mr. Fearnhead had told Leeds that he had conferred with Mr. McCaw with respect to the desired raise, but that Mr. McCaw had refused to give Leeds an increase at the time and stated to Mr. Fearnhead that the reasons was that he knew that Leeds was receiving substantial money from record companies and didn't need a raise; and that Mr. Fearnhead so reported to Leeds.

94. It should be here pointed out that (1) according to Mr. Leeds, he was not present during the alleged meeting and conversation between Fearnhead and McCaw; and (2) no mention was made to Leeds might have been jokingly made.

95. Corroborative of the statement of Mr. Leeds is the affidavit of his sister, Florence Leeds Zolkind of New York City. The affidavit, dated February 24, 1961, states, in pertinent part:

"that sometime during the summer of 1958, her brother told her that he had had a discussion with Herbert Fearnhead about an increase in salary and that Mr. Fearnhead has assured him that he would be getting an increase but that he would have to clear it first with Mr. Elroy McCaw; that, at a later date, sometime during the latter part of 1958, her brother informed her that Mr. Fearnhead had advised him that Mr. McCaw had refused to give him

a raise because he was getting an income from the record companies; and, finally, that, in the early part of 1960, Florence Leeds was informed by her brother that Mr. Fearnhead would be willing to execute an affidavit with respect to his meeting with Mr. McCaw if Mr. Fearnhead's attorney would okay same; but that later she learned that Mr. Fearnhead's attorney had advised Mr. Fearnhead not to execute such an affidavit."

96. Also corroborative of the fact that there was a conversation of the sort related to Mr. Leeds are the copies of certain correspondence between Mel Leeds and Mr. Fearnhead, on the one hand, and between Mel Leeds and his former attorney, Louis Bender, on the other hand, which correspondence indicates that Mel Leeds was, in the early part of 1960 (well before the criminal information filed against him in New York), close to obtaining an affidavit from Mr. Fearnhead concerning the conversation with Mr. McCaw. Of particular note is a letter from Louis Bender to Mel Leeds, dated March 2, 1960, wherein Mr. Bender stated that he understood that he would have an affidavit from Mr. Fearnhead in the next few days from that time. Also of importance is a letter, dated February 15, 1960, from Mel Leeds to Mr. Fearnhead, wherein Leeds stated to Mr. Fearnhead that it was most important that Leeds or his attorney receive from Mr. Fearnhead an affidavit covering the conversation between Mr. Fearnhead and Mr. McCaw. In connection with Mel Leeds' request, in his February 15, 1960 letter to Mr. Fearnhead to furnish the affidavit, Mel Leeds placed the date of the subject meeting between Messrs. Fearnhead and McCaw as being approximately October, 1958. It appears that in February or March, 1960 Mr. Fearnhead was willing to give an affidavit to Mr. Leeds about this matter, subject to his attorney's approval.

97. In the course of the Commission's inquiry, Mr. McCaw submitted to the investigators a transcript of an alleged taped conversation during a meeting at WINS on February 3, 1960 between Mr. Louis Bender, Leeds' attorney and Mr. McCaw. The matter of the Fearnhead-McCaw conversation, among other things, was brought up. Mr. McCaw states that the only person he discussed Leeds' pay with was Mr. Fearnhead, who was always pushing for more money for Leeds; that he cannot conceive that he made such a remark and does not recall it, the last discussion [apparently of a raise for Leeds] being over a year previous, but if such a remark was made, "it would have been in jest." There is no information as to whether there were other conversations between Bender and McCaw.

98. Subsequently, Mr. Leeds retained the services of H. John Gluskin, Esq., a New York attorney, who submitted to the investigators an affidavit, dated December 24, 1960, which, in pertinent part, states:

"that sometime shortly after June of 1960 in reviewing with Mel Leeds his criminal case (the Commercial Bribery charges), Mr. Gluskin was told by Leeds of the meeting and conversation between Mr. Fearnhead and Mr. McCaw, in connection with Leeds' request for a raise, and particularly the report by Mr. Fearnhead to Leeds that Mr. McCaw had refused to grant a raise to Leeds because he was receiving substantial amounts from the record

companies; that, realizing the significance of such a statement, on Mr. McCaw's part, Mr. Gluskin endeavored to arrange an appointment with Mr. Fearnhead to ascertain directly the facts of the matter; that, finally on September 27, 1960, Mr. Gluskin met with Mr. Fearnhead in New York City, at which time Mr. Gluskin did inquire as to the subject meeting and conversation between Mr. Fearnhead and Mr. McCaw; that Mr. Fearnhead stated that he did ask Mr. McCaw for a raise for Mel Leeds, and that Mr. McCaw turned down the raise and stated that Leeds was making all kinds of money from the record companies and, therefore, was not entitled to a raise, but that Mr. Fearnhead was not sure now whether Mr. McCaw was serious or was jesting when he referred to Mel Leeds' income from the record companies; that Mr. Gluskin asked Mr. Fearnhead to execute an affidavit embodying the facts surrounding subject conversation with Mr. McCaw; that Mr. Fearnhead replied that he would do so only if his attorney, Mr. Henry Hofheimer, would approve same; that Mr. Gluskin contacted Mr. Hofheimer at his office in New York City and was informed by him that he would not permit Mr. Fearnhead to sign such an affidavit and that Mr. Fearnhead would always be available to give his testimony. And that Mr. Gluskin in October, 1960 arranged a meeting with Mr. McCaw and met him at his office on a Saturday about noon; that he asked Mr. McCaw whether he had such a conversation with Mr. Fearnhead concerning Mel Leeds request for a raise and McCaw's refusal to give it; and that although Mr. McCaw did not specifically deny having had such a conversation, Mr. McCaw said he had no present recollection of same."

99. Mr. McCaw has submitted to the investigators a transcript of an alleged taped talk during a meeting at WINS on November 12, 1960 (a Saturday) between Mr. Gluskin and Mr. McCaw. According to the transcript, Mr. Gluskin stated that Mr. Fearnhead had as definite a recollection of the McCaw-Fearnhead conversation concerning Leeds' raise as any man's recollection could be; Mr. McCaw stated, "In any case, no such reference ever was made and I don't remember and I don't think Jock [Fearnhead] does"; it appears from the transcript that subsequent to his conversation with Mr. Gluskin, Mr. Fearnhead had discussed it with Mr. McCaw, for Mr. McCaw said to Mr. Gluskin "I think he [Fearnhead] went on to say that he thought it might have been joking", to which Mr. Gluskin replied, "He didn't know whether you were serious or you said it in jest."; it also appears from the transcript that some effort had been made by Mr. Fearnhead or Mr. Gluskin at their meeting to have a three-way conversation which would have included Mr. McCaw and that subsequently, after a conversation between Mr. Fearnhead and Mr. McCaw, Mr. McCaw had telephoned to Mr. Gluskin, but the substance of the latter conversation is not apparent; Mr. McCaw makes the statement that when Mr. Fearnhead had earlier talked with the District Attorney on the phone before Leeds' indictment, Fearnhead then could recall no such conversation; Mr. Gluskin's statements suggest that he may have had from the district attorney a different version of Mr. Fearnhead's statement to the D.A.; and throughout the conversation, Mr. McCaw denies recalling the meeting and conversation with Fearnhead about Leeds' raise and states that if it ever occurred, it would have been in jest.

100. From the foregoing, it appears that Mr. Gluskin's conversation with Mr. Fearnhead occurred on September 27, 1960; that at that time some effort was made to arrange a meeting among them and Mr. McCaw; that at about that date, Messrs. Fearnhead and McCaw discussed the above meeting and conversation and the subject of the alleged Leeds' request for a raise; that thereafter Mr. McCaw contacted Mr. Gluskin by phone, apparently at Mr. Fearnhead's suggestion, but the nature of the conversation between McCaw and Gluskin is not known; and that in October, 1960, Mr. Gluskin arranged for a meeting with Mr. McCaw. To complete the chronology of events, it should be pointed out that, prior to the November 12, 1960 meeting between Mr. Gluskin and Mr. McCaw, Mr. Fearnhead appeared in the Commission offices in Washington, D.C. on November 7, 1960 and testified concerning the refusal of the Leeds' request for a raise, among other things.

101. Mr. Fearnhead was advised that his statement would be treated as though made under oath, under the authority of 18 U.S.C. 1001. The Commission investigators had been interested in the late summer of 1960 in obtaining Mr. Fearnhead's version of his meeting with Mr. McCaw and in late October, 1960 had contacted Mr. Fearnhead's counsel in New York to see whether a statement could be obtained from Mr. Fearnhead. Mr. Fearnhead stated, on November 7, 1960, that when contacted by his attorney he ". . . was not sure of the exact date involved, and also that the circumstances surrounding this meeting had happened two years before, and [he] felt that in all honesty [he] could not give an accurate recording of what had exactly been said."; that he had ". . . a dim recollection of such a meeting, but that it had been handled in a very jocular fashion, and that McCaw had laughed when Leeds asked for a raise, and said in essence, 'You are probably getting money from the record companies and I don't see why I should give you any more.'" Fearnhead continued his testimony on November 7, 1960, stating essentially as follows:

"that Mel Leeds has asked him, Mr. Fearnhead, for a raise on two or three occasions, and he had passed these requests on to Mr. McCaw; that, each time, he reported back to Leeds that Mr. McCaw was not disposed at that time to give Leeds "any such raise"; that he finally suggested to Leeds that the best thing for him to do would be to go in and see Mr. McCaw himself; that, sometime in 1958, after 5:00 o'clock, one evening, while he was discussing with Mr. McCaw certain phases of the WINS operation, Mel Leeds came into Mr. McCaw's office, joined him and Mr. McCaw in a drink, and while all three men were present, Leeds introduced the subject of a raise for himself, to Mr. McCaw; that Mr. McCaw laughed and said, "Well, you are probably making so much money from the record companies that I don't think you need any more money from me"; that Mel Leeds also treated this as a joke at the time, and the subject was then dropped; and, finally, that sometime subsequent to the aforementioned conversation, Leeds did receive an increase in salary although Mr. Fearnhead cannot recall the date of said increase."*/

*/ According to Mr. Anthony V. Soupios, the Secretary-Treasurer of the Licensee of WINS, Leeds has the following salary history at WINS: (1) he started September, 1957 at \$8,400 per annum; (2) he was increased in November, 1957 at \$9,180 per annum; (3) he was increased in March, 1958 to \$14,340 per annum and, finally, he was increased in March, 1959 to \$17,966.40 per annum.

In his testimony, Mr. Fearnhead acknowledges that several months prior to the end of August, 1960, but subsequent to Leeds' indictment, Leeds had tried to get an affidavit from Fearnhead relating to the Fearnhead-McCaw meeting about Leeds' raise. It also appears that Leeds asked for such an affidavit late in August or early September, 1960. Mr. Fearnhead also states that at the time he saw Mr. Gluskin (September 27, 1961) he was in New York for two weeks; and that he refused to give Mr. Gluskin an affidavit, ". . . , the reason being that I was too hazy about the language that was being used, and I was not prepared, and I didn't know the date, moreover, and I would just rather not do it." Mr. Fearnhead states that he saw Mr. McCaw twice in September at this time: that they had breakfast one day, that they met at WINS probably that or the next day, and he thinks they had dinner the night he left. Mr. Fearnhead had talked on the phone from Washington, D.C., with Mr. McCaw on November 6, 1960, but the substance of the conversation is not reported.

102. In an affidavit filed with the Commission on January 16, 1961, Mr. Leeds states, with respect to Mr. Fearnhead's reporting to Leeds of the conversation with Mr. McCaw, that, when Mr. Fearnhead reported the foregoing to Leeds, there was absolutely no mention by Mr. Fearnhead of the possibility that Mr. McCaw was joking when he alluded to the record company payments; and that, in short, the subject conversation was relayed to Leeds by Mr. Fearnhead in dead seriousness at the time in question and was reported as the only reason why Mr. McCaw would not give Leeds an increase at that time.

103. The Commission has been informed that Fearnhead's attorney was negotiating in March and April of this year with the District Attorney for Fearnhead to come to New York to make a statement, which would be contrary to that given to the FCC, his appearance being conditioned upon the arrangement that Fearnhead would receive immunity from the FCC. When advised that such an arrangement could not be made, Fearnhead appeared before the District Attorney in early June and gave a statement exactly the same as given to the FCC.

104. The matter has also been discussed with Mr. McCaw at conferences commencing with March 14, 1961. He has consistently maintained: that he does not specifically remember Mr. Fearnhead's having asked him for a raise on behalf of Mel Leeds; that, if Fearnhead did ask him, or even if Leeds asked him direct, he does not remember making any statement about Leeds' income from the record companies; and that, furthermore, if he did make any statement about Leeds' record company income, said statement must have been made in jest; that kidding about payola was done all the time and is still being done.

105. The subject matter discussed above has not been specifically pointed out to Mr. McCaw or Gotham either in the Commission's letter of July 6, 1961 or August 22, 1961, and there is no statement by the licensee concerning this matter in either of its responses. However, the matter has been fully discussed with Mr. McCaw and it is not believed that further comment on his part is a necessity.

106. The issue which is questioned here (knowledge by WINS of payments received by Mel Leeds in the nature of payola) is crucial in the New York proceedings against Leeds and for which he has been indicted. The Commission had information that Leeds has continually tried to secure a dismissal of his indictment on grounds of knowledge on the part of WINS and he and his counsel have appeared before the District Attorney on several instances for questioning with respect to such knowledge.

107. That there was a meeting between Mr. Fearnhead and Mr. McCaw, either with or without the presence of Mr. Leeds, appears to be indisputable in light of the statements of Leeds' sister and Mr. Fearnhead. One of the questions which remains is whether the remark by Mr. McCaw was made in a facetious manner or not. In evaluating the information before the Commission consideration should be given to the fact that Mr. McCaw's remarks were alleged to have occurred at the end of the day and in an off-hand manner. For these reasons there is a basis for consideration that the remark was intended to be facetious. On the other hand, in the course of interviews with Mr. McCaw by Commission investigators, the investigators are of the view that he is serious type of person who maintains complete control of himself and his emotions although he has made a funny quip or facetious remark during interviews when talking off the record or in chit-chat at the end of the interviews. If not made facetiously such a remark tends to show that Mr. McCaw in 1958 at least suspected that Mel Leeds was accepting payola, and that he was attempting to draw out Mel Leeds concerning the matter of payola. In either of the latter statements, the remarks of Mr. McCaw tend to show an awareness in 1958 of the problem of payola and specifically with respect to Mel Leeds.

108. That the licensee attempted to induce Mel Leeds to arrange for participation in the profits of record companies for the mutual benefit of Leeds and the licensee. Tying Into Record Company Profits. In a memorandum dated November 2, 1959, from Hap Anderson to Mel Leeds referring to a meeting on that morning, the following paragraph appears:

Record Companies: Elroy would like to have you set up ways and means of tying into record company profits. He has suggested that this be done so that a percentage of the profits would accrue to you.

In explaining the meaning of this paragraph Hap Anderson in his affidavit of January 7, 1961, described the paragraph as referring "to WINS securing Record Company advertising", and in a separate detailed explanation stated:

"For several months prior to the above date, we had held many discussions regarding the possibility of Payola being present in radio stations in general and Radio Station WINS in particular. To the best of our knowledge, we knew of no existing cases. However, we felt we should take every precaution to insure against the possibility of its occurrence.

"It was in the light of these past discussions that we again delved into preventative measures in a meeting held Friday evening, October 30, 1959. At that meeting it was suggested that means be developed for diverting record company promotional funds into

normal advertising channels. Since Mel Leeds, by virtue of his position as program Director, knew the promotion personnel of the record companies, it was decided that he would be the logical sales contact man for our station. As such, he would be paid the regular sales percentage commission on any promotional budgets which could be converted into regular radio spot advertising.

"A copy of this memo (November 2, 1959) was given to Mr. Joseph Stone, Assistant New York City District Attorney, together with a full explanation of the background and meaning of its contents. In addition the subject was covered in my testimony before the Grand Jury."

On March 14, 1961, Anderson testified similarly and stated (Tr. 56):

x x x The terminology I used, apparently, was very unwise, but in light of the meetings that we had had prior to this time I could see no area of misunderstanding on Mel's part in just recounting item by item what we had gone over in the meeting the Friday before.

A memorandum for November 2, 1959, from Anderson to McCaw, dated November 3, 1959, was located in the WINS files and in part states "Went over the various programming features you were interested in with Mel Leeds . . . The analyzation of the record business and to how we could share in their profits." Another document was found containing instructions for the establishing of rate card charges for the sale of time to record companies. The document, however, was undated and had no salutation indicating it had ever been issued. Hap Anderson's daily report to Mr. McCaw for November 17, 1959, contains this paragraph:

"Record Company Formula

Spoke with JEM regarding a formula and statement for the purpose of charging record companies a set amount for the playing of their records and the plugging of the same."

109. According to the testimony of Mr. McCaw and Mr. Gorman on March 14, 1961, and subsequent statements by past and present staff members of WINS, there had been staff discussions as to the best method of legitimatizing the record company promotional funds by the sale of broadcast time. These discussions began in early September shortly after an article on payola appeared in Broadcasting magazine for August 31, 1959, */ in which a reference was made to the attempt by KDAY (in which McCaw then had an interest) to sell time to record companies. When McCaw was asked to explain the meaning of that part of the November 2 memorandum which reads "He has suggested that this be done so that a percentage of the profits would accrue to you," he stated that Leeds had the contacts with record companies and their representatives; that due

*/ "KDAY, incidentally, is one of those stations that have tried to skirt the payola possibility by selling time outright to record companies and letting them program it with their releases. Mr. Phillips hasn't had much success on that score, but he thinks this is because he hasn't had much time to work on it. He still feels it would work if someone took the time to pitch it to major manufacturers."

to Leeds' contacts Leeds was in a position to negotiate the sale of time to record companies; and that if such sales were made Leeds would receive a commission in the same manner as a WINS salesman. McCaw admitted that Leeds had never acted for the station previously as a salesman.

110. In its Response, Gotham submits, in addition to the foregoing documentation, a copy of Mr. Anderson's daily report for February 9, 1960 [apparently typed on February 15, 1960] which states, in part:

D.A.

"JEM, Lee Gorman and Albert Felix and myself met with Mr. Stone and his two assistants, Davidowitz & Hammer. We discussed as clearly as possible the chronological events concerning the payola situation as pertains to WINS. At this time they were advised of the memorandum of Nov. 2 which I wrote to Mel regarding the cooperation of Mel in obtaining advertising monies from the record companies. Mr. Stone asked Mr. Felix to provide him with such a memo. At that time it was set up for JEM and myself to appear before the Grand Jury on Thursday. the 11th."

Additionally, Gotham refers to the following statement made by Mr. Anderson when he testified on March 14, 1961, referred to above (Tr. p. 54):

"The next one [meeting] that I recall, of a meeting of any importance, was after the story came out following the Todd Storz Music Jamboree or some sponsored music jamboree in Florida when there were a lot of accusations made, and I think it was on booze, broads, and I forgot what the other 'B' was, but there were three B's on it, and at that time Elroy McCaw brought to our attention the fact that in KDAY, in Los Angeles, which he owned, they tried to circumvent the possibility of payola by instituting a payment on the regular rate card as a regular advertiser by the record companies, which eventually didn't work out but it gave us a start on trying to think of some way in which we could divert money, if there was this much money going around, or why shouldn't we have it through legitimate channels, accruing to the ownership and the station?"

"I think the next time we got into the payola bit, that I recall, was the 30th of October, which was a Friday night just before Mr. McCaw left for Seattle in which he, Mel Leeds, and myself had a discussion on several items and which was followed up by the memo which you have on Monday, November 2nd.

"And, again, it was a case of trying to explore the possibility of approaching the record companies to buy spots, plugging their label, plugging their stars, and keeping it on a legitimate basis.

"Naturally, with Mel being the program director, he knew the record promoters better than anyone else. So it was deemed wise that he would be the contact man with these people and to use the exact same rate card we used for every other advertiser, and to be paid on the same basis of what the salesmen were for any business which resulted in this."

"Unfortunately, before we go implementing it everything else broke loose and nothing was done on it by mail."

Reference is also made to this further testimony of Mr. Anderson on March 14, 1961:

[Harrington] "I will show you a memo, dated November 2, 1959 from you to Mel Leeds and you will notice one paragraph on the record companies --"

[Anderson] "Right. This is the one I was referring to."

[Harrington] "Yes. Was the discussion that you have just given to us in the explanation for that paragraph?"

[Anderson] "Yes. Yes, it was. The terminology I used, apparently, was very unwise, but in light of the meetings that we had had prior to this time I could see no area of misunderstanding on Mel's part in just recounting item by item what we had gone over in the meeting the Friday before."

[Harrington] "Yes. Mel Leeds was at that meeting the Friday before?"

[Anderson] "Yes, sir."

[Harrington] "Had he been in on any of the other discussions as to selling of time to record companies?"

[Anderson] "Yes. In the latter part of August or the first part of September, when Elroy brought up the recounting of KDAY's attempt to sell time, that was related in this payola story in broadcasting."

Commencing at page 75, Mr. Hunter and Mr. Harrington of the Commission's staff pursued this same line of questioning:

[Hunter] "Now, I would like to go to the meetings that you held prior to November 2nd, 1959, of that memorandum, in which you, I understood you to say, had discussed how you could channel moneys into ownership by record companies."

[Anderson] "That is through advertising, yes."

[Hunter] "Through advertising. Actually, how many meetings were there prior to that November 2nd memorandum?"

[Anderson] "Well, the one full scale meeting was around the first of September. Again, following this article of Broadcasting which outlined what KDAY Station was doing in Los Angeles.

"Prior to that and following that, it was mentioned on several occasions but not that deeply, such as Elroy asking me:

'Have you figured out what type of a packaged plan to set up in selling advertising?'

'Have you figured out whether it would be best to have the advertising appear before the record of that same company or completely independent?'

"I mean, questions such as this. I can't pin point the dates."

[Hunter] "Can you pin point who else, other than yourself and Mr. McCaw, attended these meetings?"

[Anderson] "Yes. Lee was there on occasion, as I recall. Mel, I know, was. There was one meeting whereby Charles LeMieux, who was the then sales manager of the station, was brought into the discussion from the standpoint of setting it up in the sales department."

[Hunter] "Mr. Leeds was there at the same time that Mr. LeMieux or whatever his name is --"

[Anderson] "LeMieux."

[Hunter] "-- was also there?"

[Anderson] "Yes."

[Harrington] "Was that meeting after November 2nd?"

[Anderson] "No. That was prior to November 2nd. That was after a long, full scale meeting we had around the first of September or somewhere in that area."

[Hunter] "Can you pin point who was at the full scale meeting? I assumed this involved more people than some of the other meetings?"

[Anderson] "Yes, and over a long period of time. You must understand, and I am sure you do, after being out there, that we are subject to interruption quite frequently, and go back into session and it is pretty hard to pin point who was there at one time and who was there at the other."

would be omitted; that it was no more than a direction to Leeds as program director to develop ways whereby record promotion money could be channeled into regular advertising budgets; and that Leeds, as program director, would receive a regular sales percentage commission on the resultant time sales. In essence, to have Leeds seek to establish a method whereby WINS could sell time to record companies so that their new record releases would receive broadcast exposure, thus minimizing any incentive for possible payola practices. It is also pointed out that this type of format was not new to the licensee who had experimented with a similar plan at Station KDAY. And, finally that in view of the extensive discussion of that matter it is believed that any interferences which might have been drawn from the WINS file, standing alone, have been considerably disregarded.

112. (Preliminary Conclusions) In view of the facts as to payola and the threat of impending investigations both in Congress and by the FCC, it is difficult to believe that WINS at this time was embarking on a plan to obtain payola for the station itself. Hence, the explanation that the plan was to legitimate promotional funds by selling time is a reasonable one. Except for the fact that Mel Leeds has stated that his interpretation of the paragraph was that it gave him carte blanc authorization to make such deals and benefit the station financially as well as himself, the Commission has no testimony or documentation which would appear to controvert successfully the construction placed on this matter by the licensee. It appears that except as this matter may tend to indicate some knowledge on the part of the licensee that Leeds was accepting payola, the matter ought not to be pursued further.

113. Other matters concerning Mel Leeds. In order to submit to the Commission all information which may be pertinent with respect to Mr. Leeds, the following are of interest. Leeds and the Thunderbird. In 1958 (while H. G. Fearnhead was General Manager of WINS), Mel Leeds acquired a new Thunderbird. In supporting his claim of vigilance against "payola," Mr. McCaw stated (Tr. 137-141) that he was suspicious as to how Mel had obtained the car and asked Fearnhead to find out whether Mel had bought it or what. At Fearnhead's request, Mel brought in to Mr. McCaw evidence to show that he was financing the purchase of the car with a bank loan. Mel Leeds has a different story as to this incident which negates McCaw's interest in checking on payola at WINS. Mr. Leeds stated that at a party given by friends of Mr. McCaw (Mr. and Mrs. Rosenthal), Mrs. Rosenthal told Leeds that McCaw had mentioned to her that Leeds had a new Thunderbird. Leeds resented the apparent inference that the car represented payola, and on his own initiative he showed the bank loan papers to both Fearnhead and McCaw.

114. At the conference on March 14, 1961, McCaw told of visiting Leeds' apartment and questioning him about the apparent expensive furnishings. McCaw also discussed Leeds' acquisition of a new Thunderbird which resulted in Leeds explaining to McCaw the purchase arrangements. In answer to the question as to whether these events created suspicions in McCaw's mind of Leeds accepting payola, McCaw stated "I had recurring suspicions as far as Mr. Leeds was concerned. And very time anything would seem to come up, some reasonable explanation would be made about it. As I say, just the way he handled the Granger situation, just the expression on his face and the

Leeds with the police was made on this same day. The definite date stated of December 18, 1959 negates the thought that the November 23rd memo was referring to the Bosco incident. As opposed to McCaw's inference that Leeds would have cooperated with the police so readily if he had been guilty of payola, it may be assumed that Leeds having made his revelations to Gotham on November 20th had nothing to lose by cooperating with the police on December 18th.

117. The Bosco incident took place in December, 1959. Bosco was indicted, pleaded guilty, and was sentenced in May, 1960. According to Mr. Joseph Stone, Assistant District Attorney, when Mel Leeds made his complaint at the precinct he was brought over to Mr. Stone and questioned by him in the same room where an accountant working on the payola investigation was at work. While Mr. Stone was interviewing Mel Leeds, the accountant interrupted and asked Mel Leeds questions relating to payola. Mr. Stone moved his interview of Mr. Leeds to another room and when he later asked the accountant the reasons for his interruptions the accountant advised that Mel Leeds' name appeared in many of the record companies' books as a recipient of payola. Hence, Mr. Stone received information of the Bosco case and the fact that Mel Leeds was actually receiving payments from record companies on the same day and, of course, Mr. Stone denies ever making the statements attributed to him by Mr. McCaw.

118. There is, of course, a direct conflict in the statements of Mr. McCaw and Mr. Joseph Stone. It may be pointed out that in the transcript of the conversation between Mr. Gluskin, attorney for Leeds, and Mr. McCaw that Mr. Gluskin indicates he was of the opinion after talking with Mr. Stone concerning the Bosco incident that Mr. Stone may have had a better subjective reaction to WINS at the time Leeds talked with him. The precise reasons for Mr. Gluskin's view is not given in the transcript.

119. It is, of course, possible to speculate that the Bosco incident resulted from the hiring of the public relations concern in October or November by Gotham for the purpose of improving the image of WINS. This matter is discussed in (para. 158, et seq., infra.) There is indication that WINS may have considered making Leeds the scapegoat for payola at the station and that this was one of the steps to make him the scapegoat. On the other hand, it can be speculated that by having Leeds turn in a would be "payola blackmailer", the status image of the station would be improved. However, on the other hand, on the basis of information before the Commission at this time, these are strictly speculative matters and are not susceptible of proof.

120. That the licensee had been informed that Ronnie Granger had been paid by a record manufacturer for the "plugging" of its records. In the latter part of May, 1959 Mr. McCaw received a letter dated May 19, 1959 from Maurice Joachim. It stated:

"We regret to have to bring to your attention a matter which involves Ronnie Granger, music librarian at your station.

"The attached letter to the undersigned from Jim Grubble who contracts radio stations for the airing of our records,

"I took Mr. Ronnie Granger to lunch in March of this year and gave him copies of all Sentry and Nostalgic releases and suggested that we would be glad to have him serve in an advisory capacity with Creative Record Enterprises, Inc. and help us in the selection of masters, in distribution and other pertinent matters. For this service, he was offered a part interest in the company. He said because of his coming marriage he would rather have money than an interest in the company. And we would pay him monthly for plugs on WINS and also to meet with us from time to time. We have set several appointments with him which he didn't keep and also none of us who have monitored have heard any of the records plugged.

"Mr. Joe Hintz and I called on Mr. Granger on April 12, 1959 and gave him \$100 in cash. We both have taken records to him also have set appointments with him which were not met even after several telephone calls."

121. Granger-Joachim Incident. Both Ronnie Granger and Jim Grubble were interviewed by Commission investigators. Grubble stated that the money was paid by him to Granger in the presence of Joe Hintz in the offices of WINS for consultation services by Granger such as giving advice on the merit of their company's records and certain tapes and that he (Grubble) was so naive as to payola at that time that he didn't know he was doing anything wrong and didn't attempt to conceal the payment. Granger in his interview gave the same account of the services he was to perform but places the payment elsewhere with no one else present. Due to lack of interest on Granger's part, Grubble made no more payments although it was to have been a continuous arrangement each week with offices and a secretary furnished to Granger. Granger claims this was the sole payment as additional records and tapes were not made available to him. Although both Granger and Grubble would make it appear that Granger was hired as a consultant, Grubble's letter indicates that payola was involved when he states ". . . none of us who have monitored have heard any of the records plugged."

122. On May 22, 1959 Mr. McCaw wrote to Mr. Joachim:

"Thank you for your letter of May the 19th. We are naturally disturbed by the information contained therein and intend to investigate the matter.

"We will be in touch with you shortly."

In a letter dated June 16, 1959, Mr. Joachim writing to Mr. McCaw stated (Exhibit 3):

"I received your letter of May 22nd and am wondering if there are any further developments in regard to the matter of the money paid to your music librarian.

"You advised that you would be getting in touch with me shortly, hence this letter.

"I would appreciate an early reply."

in Granger and confront him with it." *** and I said that I would prefer not to tip our hand at that point, but he was under suspicion and I would like to find out what other indications that there might be whether this might be true in this case or in any other case. I don't recall these specific people we checked with. I do know that we made it a subject of some discussion and some calls to try to find out if there was anything else to indicate a similar pattern of conduct.

Q. Who made these calls or contacts?

A. Well, I made at least one call on it.

Q. Was that in an attempt to reach Joachim or some other person?

A. Yes, to call Mr. Joachim and then I referred it to Mr. Leeds.

* * * *

Yes, sir, but I do not recall that we felt that the thing to do was to - and Mr. Leeds recommended this course of action himself - was that we move him out of the position where he could be in any position to take payola if he were.

We were very reluctant to, first of all accuse him of it or fire him because of it for a couple of reasons. One of them was that his being colored and having had the previous experience with the touchiness of NAACP, we were not about to fire him, because whatever the reasons, we would be subject to a barrage of the same kind of thing that we had before when we failed to hire somebody.

And I felt that the moving away from that would be the easiest and best way to do it when you couldn't conclusively prove that he had been guilty. The letter itself was very vague. It said, first of all, that they had given him money. They mentioned the fact that he was supposed to consult with them and also to give them some plugs, and that he had not consulted with them and that he had not had any plays on the air.

* * * *

Q. Now, you, in effect, turned it over to Mel Leeds. Is that a proper characterization of the steps you took?

June 6, 1959, and did not return to the station until two weeks later; that immediately after his return, he was transferred from the Music Department to the News Department; and that on July 8, 1959, he resigned.*/ Gotham states that six weeks after WINS was advised that its record librarian might be involved in payola, the record librarian was no longer with the station.

(b). It is Gotham's view that upon the information before it, the licensee must be deemed to have acted properly in the handling of the Granger matter; that a responsible employer does not dismiss summarily an employee who has performed his job and duties adequately on the unsupported statement of a complete stranger; and that the licensee cannot be criticized where he acts promptly and effectively to transfer an employee from a sensitive position upon the word of others. That although Granger had contact with station's music programming, the licensee had no knowledge that he influenced that preparation or presentation of the broadcast material or that he received money or other valuable consideration from sources outside the station. That in view of the corrective measures taken by the licensee, it would seem that the "Granger incident" has been definitely resolved.

129. In a notarized letter of August 6, 1960, addressed to the Commission, McCaw stated with respect to the Granger-Joachim incident:

"Sometime in May or June of 1959, we received an indication that Mr. Granger may have accepted payments from a record supplier. We promptly undertook an investigation of the matter but were unable to substantiate this charge in any degree which would have justified the man's discharge."

In an affidavit of January 7, 1961, stated with respect to the same incident:

"Upon receipt of the correspondence from Mr. Joachim I attempted to investigate the charges. An effort was made to contact the persons who wrote the letters. The efforts failed because no one answered the telephone at the addresses and places listed on the letterheads."

McCaw's testimony on March 14, 1961 (Tr., pp. 99-104) was similar to his statements in the affidavit of January 7, 1961, and he stated that it was not the intent of the August 6, 1960 letter to imply that a broad investigation had been made and that it was not the intent to try to develop a case which we could use to bring charges against him. (Transcript, pp. 104-105).

*/ Mr. McCaw, who attended Granger's wedding, stated that he was impressed with the lushness of it. The fact is that Granger's wedding and European honeymoon were not in keeping with the salary has a WINS employee. He received the following salary: in 1957 -- \$4,699.34; in 1958 -- \$4,712.97; in 1959 (to July 8, 1959) -- \$2,627.00.

II. Other Payola Investigations by WINS in 1959 - 1960; and Inconsistencies and Possible Misrepresentations.

131. In an affidavit executed on January 7, 1961, Mr. McCaw stated that during the fall of 1959, Mel Leeds informed him that he had been receiving consultant's fees from certain record companies, and that, as a result of this disclosure by Leeds, Mr. McCaw and other executives at WINS investigated the possibility of payola with respect to Leeds in particular.

132. Mr. Leon P. Gorman, assistant to the President of WINS, executed an affidavit on January 7, 1961, to the following effect:

that sometime in September of 1959, he was specifically assigned the task of making a definite and personal investigation regarding payola amongst any members of the WINS staff; that during the course of this investigation, he talked with executives of such New York record companies as ATCO, Jet, Laurie, London, Joy, Atlantic, Decca, and others; and that, as a result of his personal contact with the executives of the aforementioned record companies, Mr. Gorman was unable to document any instances of payola to any present member of the WINS staff, but that he did see documentation of a payment to a former employee, later identified as Granger.

133. Finally, Mr. Harold E. (Hap) Anderson, General Manager of WINS, executed an affidavit on January 7, 1961, wherein, among other matters, he stated that, the week following November 20, 1959, he contacted management people at London, Carlton, Atlantic, and RCA Records in an attempt to determine whether they had ever paid payola to any members of the WINS staff, and that the answers from each executive at the respective companies was the same, namely, that they had never at any time paid any employee of WINS to have a record played or selected as the hit of the week."

134. Shortly after January 7, 1961, executives of ATCO, Atlantic (same as ATCO), Laurie, London, Joy, and Decca Record Companies were interviewed in New York City, to ascertain whether and/or when Mr. Leon Gorman, or any other representative from WINS, personally contacted any of them as to possible payments made by the said companies to Mel Leeds, Ronnie Granger, or any other personnel at WINS. In each case, the executives stated (most of them in affidavit form) that at no time had a representative from WINS management or in particular Mr. Leon Gorman, ever personally contacted, by telephone or otherwise, any executive of their respective

previous position the only one I reported to was me and at the end of the day I talked—I didn't get into the habit of doing it. It is unfortunate, but I know at one stage there I did quite a series of daily reports that I gave to the Secretary and it could very well be that there will be some written specifics on it. (Tr. 36)

Q. But you do recall making some notes of your conversations with record distributors and manufacturers which you, at this point, have not determined whether you still have those notes or that you think you do have them?

A. I have not determined whether I have them or not, but I think I may have them." (Tr. 36)

136. Although not reflected as a specific request in the transcript it was agreed to by all parties that Mr. Gorman would make a check of station files and his personal records and furnish a copy of items bearing upon his payola inquiry and showing names of persons and companies contacted by him.

137. On March 20, 1961, Mr. Michael H. Bader, an attorney for Elroy McCaw, called a member of the staff of the Complaints and Compliance Division and stated that Mr. Gorman had just inspected his personal diary and had found therein the names of some record company people whom he had personally contacted during his payola investigation for Mr. McCaw at WINS. According to Mr. Bader, these names which Mr. Gorman found in his diary caused Mr. Gorman's memory to be refreshed and, after "racking his brains" he was able, in turn, to recall certain other names in addition to those which appeared in his diary. In sum, the names which Mr. Gorman came up with were the following:

- (1) Ben Rosner - RCA Victor Records
- (2) Irwin Garr - ABC Paramount Records
- (3) Roberta Kravits - Arliss Records
- (4) Joe Rene - Belltone Records
- (5) Roy Kohn - Robbins Fiest (music publishing)
- (6) Bernie Lawrence - Praise Records
- (7) Bill Brando - Glartone Records

Bader was unable to state what the ~~dates~~ or contacts were, which names had come from Gorman's notes or diary, or that these were all personal contacts (not by phone) but that from what Gorman had said Bader believed that the contacts had not been made by telephone. Mr. Bader also stated that the names furnished were ones with respect to which Mr. Gorman was definitely certain as to his contacts.

personally visited her and propounded the question; and (3) according to Mr. Rene, he accidentally saw Mr. Gorman in a recording studio at another record company, in August of 1959, and it was there that Mr. Gorman asked him the question; furthermore, at the time, Mr. Rene was connected with Claro Records, not Balltone. It should be noted that each of these four record people interviewed were specifically asked if he or she had discussed this matter with Mr. Gorman or any other WINS executive since the reported conversations with Gorman. Each replied in the negative.

141. At the conference on March 14, 1961, Gorman also listed Jack Waltzer and Irving Spice of W.S.F., Inc., Wizz Records, and Mohawk Records as persons he had interviewed during his investigation. It was from them that he saw the evidence of a payment to Granger (Tr. 9, 10-14, 15-16, 38-41). Waltzer has given us an affidavit that the visit by Gorman was in May or June, 1959, which would place it at the time of the Granger-Joachim incident. However, he was uncertain as to the date, and both Mel Leeds, Gorman (Tr. 11) and Gorman's diary place the visit in October.

142. While Mr. Hunter and Mr. Curtis were in New York a station file pertaining to "Payola Investigation" was examined on March 22, 1961, and included a copy of a letter dated March 17, 1961, from Mr. Gorman to attorney Bader which is reproduced here in toto. This is with further reference to Mr. Bader's phone call to Commission investigators on March 20, 1961. The letter is as follows:

that he was certain of from memory. As Mr. McCaw had not been present during the latter part of this interview, Gorman's attention was not directed to his letter of March 17 at this time and he left the room.

145. Mr. McCaw was then questioned concerning the March 17 letter and stated that he had not seen the letter before it was sent; that he had read it in going through his review of current station activities; that he had noticed the reference in the letter to a personal diary, and that he had been curious about the diary but had not discussed it with Gorman. Mr. McCaw was then advised of the conflict between the statements made by Gorman during the interview and the contents of his letter to Bader. Mr. Gorman was recalled and in the presence of McCaw the notation made of his answer during the interview was read back to him and he again affirmed that he had no notes or diary. Mr. Gorman was then confronted with the copy of his March 17 letter. Gorman then stated "You didn't show me this before," and "I don't know why I said that" (referring to the diary reference in the letter). At this point Mr. Gorman was reminded of his having read Section 1001 of Title 18 of the Criminal Code on March 14, 1961 and that his replies should be governed accordingly. Mr. Gorman then stated that, in fact, he had no diary other than a diary maintained three or four years ago concerning tax matters; that his reference in his letter to a diary was completely in error; and that if he were put under oath, he would swear that he had no diary. At this point it was requested that Mr. Gorman submit a sworn statement to the Commission explaining the apparent complete contradiction in his answers to the Commission's investigators and his March 17 letter.

146. The following day, March 23, 1961, a meeting was held in Mr. McCaw's office at his request. The events and conversation which occurred at this particular meeting, as reported in Mr. Hunter's and Mr. Curtis' notes, follows verbatim:

Present were Mr. McCaw, Anderson, Gorman, Bader (attorney for Gotham), Curtis, and Hunter. Mr. Bader stated that Mr. Anderson had sent him a memorandum (or letter) which described what occurred and the gist of conversations when he had visited the D.A.'s office on Friday, March 17, 1961 and that he (Bader) was claiming confidential privilege with respect to this communication as it might involve personalities into which his client should not be involved. In lieu of the communication an affidavit was prepared by Mr. Anderson which recited his attempting to locate a one-page summary of music sheets in the D.A.'s files and certain other subjects which had been discussed. (This affidavit was furnished later.) Next Mr. Bader stated that he would

149. Anderson's Affidavit and Testimony on Contact with Record Companies.

In his affidavit of January 7, 1961, Hap Anderson stated that he had contacted the four record companies (London, Carlton, Atlantic and RCA) for whom Mel Leeds had stated he worked as a consultant, in order to determine whether they had paid consideration to any members of the WINS staff. He stated, "The answer from each was the same--that they had never at any time paid any employee of WINS to have a record played or selected as the hit of the week." However, in his testimony on March 14, 1961, Anderson stated that London and Carlton had said Mel Leeds worked for them on a straight consultant basis and had nothing to do with the play of records, but that Atlantic and RCA told him their records had been subpoenaed and they were not interested in talking to anyone (Tr. 64-65). He did not mention inquiring about others of the WINS staff.

150. Other Payola Investigations by WINS in 1959. In the WINS response to the Commission's payola inquiry of December 2, 1959, Mr. McCaw stated in part:

"WINS has maintained continuously strict controls to enable the station to ascertain the possible existence at WINS of the practices described in paragraph one of the inquiry. * * * As an example of the application of these controls the handling of the Granger-Joachim incident is recited.

Based upon the licensee's experience in applying these controls and based on investigations made by station WINS, as described below, we have found no evidence that any matter was broadcast by WINS in violation of Section 317 of the Act. In support of the foregoing statement the information set out below is presented:

1. WINS management on November 18, 1959 held a meeting of program personnel at which it was explained to the announcers, music librarians, program director and other personnel concerned that the station must know of any instance where 'payola' practices exist or are proposed. All personnel were asked then to state whether they knew of any such activities, and no such activities were reported. Each person was then asked individually whether he knew of such activities, and none were reported. Key disc jockeys were specifically questioned, and no information was obtained as to the existence of such practices."

as to whether such a meeting did occur on that date has been eliminated based upon statements made by the persons interviewed and reference to the meeting in a memorandum dated November 19, 1959, for November 18, 1959, from Anderson to McCaw and in a record of McCaw's schedule of appointments or meetings for that day. In this connection it was also verified, from a review of WINS files, that McCaw did depart for Seattle on November 20, 1959; that Gorman, LeMieux, and Anderson had made an investigation of Leeds' payola involvements on November 23, 1959 (the Monday following McCaw's departure on the preceding Friday), and that McCaw was kept advised by several phone calls.

152. Mel Leeds Revelations. On November 20, 1959, Mr. Leeds made certain representations to Mr. McCaw concerning his activities relating to payments received by him from record companies. In Gotham's reply to the Commission's December 2, 1959 letter, the following is stated with respect to this matter:

9. Mel Leeds, former program director of WINS, stated that he had received consulting fees for advisory services from four record manufacturers. The management of WINS asked that he furnish evidence of the actual performance of such services, of the agreement pursuant to which such services were rendered, and a list of persons to whom he had rendered such services. Mr. Leeds advised that he would furnish such data, which as yet has not been received. However, he was ill for a considerable period of time and has subsequently resigned. His attorney assures us that Mr. Leeds can amply substantiate the fact that services were performed for the compensation received which he stated was quite nominal. He further stated that the record companies involved have stated under oath that substantial and adequate services were performed by Mr. Leeds.

153. In its Response, filed August 7, 1961, Gotham states, in substance, that ". . ., on November 20, 1959, Mel Leeds came to see the president of the licensee as the latter was preparing to leave for Seattle, Washington. During the discussion of general station matters, Leeds became very emotional and actually broke down in tears. Leeds indicated that he might have done something which, in the light of the various payola investigations, might look very bad and which he regretted. Leeds stated that he had received money as consulting fees for advisory services from four record manufacturers but denied that such fees were paid to influence his decisions as WINS program director. Leeds at this meeting was upset and depressed. He stated that his life was over and that his whole world had been shattered. Leeds maintained that he had never done anything with any intent to harm the station." Gotham adds that, "In view of Leeds' excellent employment record at the station and his contention that he had performed services for the outside compensation he receive which in no way influenced his decisions as Program Director of Station WINS, Leeds was afforded the opportunity to furnish evidence of the actual performance of such services, of any agreement pursuant to which such services were rendered,

employees by the record companies and distributors. A substantial number of these groups have answered an inquiry and stated that they gave no such compensation to WINS employees. Many firms have not answered the inquiry, however. */

158. The following information will serve to give the Commission some background information concerning this letter. Sydney Baron Interview. On April 25, 1961 two of the Commission's investigators interviewed Sydney Baron, head of a public relations firm. This firm has many large national accounts and handles public relations for the New York State Democratic Committee. Baron made all of his files concerning WINS immediately available. Baron stated that he had no special connections with the District Attorney's office which would have been helpful to WINS in the matter of the District Attorney's payola investigation. Baron had known and had been on friendly terms with Lee Gorman for over a year, each having a business interest in the Anheuser Busch account. Baron's firm was hired by WINS to improve the WINS image, including public relations affected by the D.A. payola investigation, at \$2,000 a month for a period of 12 months. Baron had suggested and dictated the December 4, 1959 letter sent by WINS to 600 record companies. Several meetings of Baron's staff with Anderson and Gorman occurred getting the picture of WINS' present activities and **aspirations.** WINS, according to one of Baron's assistants, Herb Lanzet, wanted to put on lots of public service, but also retain all their commercials. A memorandum dated January 11, 1960, was found in the Baron files which in part reads:

"There remain some ideas for overcoming the negative elements in the present WINS corporate image. These include:

Going through the motions of a sale of the station by McCaw to McCaw, involving a complete reorganization of the corporation, its personnel, etc. This would give us the proper news peg on

*/ This letter of inquiry was mailed at the suggestion of public relations counsel, and replies were received from approximately 60 - 65 companies of the 600. One distributor which is charged in the indictment with paying Granger \$100 per month for a year answered the question in the negative.

service announcements so as to insure renewal of the station's license. When Leeds was questioned on June 8, 1961, as to whether he had taken any station files with him when he resigned from WINS he replied:

"No, I took only some information regarding programming which was my personal property. This material dealt with programming ideas and promotion. Any memos addressed to and received by me while employed at WINS from McCaw or Hap Anderson I took with me and same are now in the hands of my personal attorney in New York City (John Gluskin, 100 William Street, New York, N. Y., Phone Digby 4-4340). There may be information in these memorandums relative to payola and McCaw."

Baron's Allegation

160. During the afternoon session of the June 1, 1961 conference at WINS' offices, Stanley Sporkin, McCaw's attorney, stated that he had interviewed Sydney Baron at noon that day in the presence of Anderson and Gorman. Baron is alleged to have said (page 339 of transcript) that when interviewed by the Commission's investigators he was ". . . instructed at that time not to talk to anybody from WINS about anything. . . that he is a government witness, and that if McCaw wanted to find out anything about anything else, that we would have to subpoena Mr. Baron." Both Anderson and Gorman confirmed Sporkin's statement.

Denial of Baron Allegation

161. The Commission's two investigators, who had interviewed Baron, were present when Sporkin made the above statement and denied giving such instruction to Baron. When Baron was interviewed he wanted to refresh his recollection by discussing the matter with Gorman. Baron was told that it was preferable to get his version first; that there was nothing to stop him from discussing the matter with anyone, and that he would be contacted later to see if there were any corrections he desired to make. After Baron related his associations with WINS, he stated he would contact Gorman in the next few days. Baron was telephoned on April 27th and his secretary stated that Baron had met with Gorman at 3:30 that afternoon and left the message that his statements during the interview were substantially correct. A letter dated May 4, 1961 from Baron has been received restating part of his April 25th comments but making no reference to any WINS employee leaving the station taking files with him nor any reference to having contacted Gorman or to Sporkin's visit to his office on May 1, 1961.

162. WINS January 16, 1960 letter to present and past employees. In its reply to the Commission's December 2, 1959 letter Gotham also stated:

165. An obvious purpose in concealing the true date of the letter would be to obviate an impression that the response might have been prepared hurriedly without a "complete and thorough investigation." The exchange of memoranda does indicate that little thought was given to the response by management until the deadline was at hand.

166. Subsequently, it was determined by the investigators that the said letter was sent but not on January 16th. The affidavit form was not mimeographed until February 1, 1960. The form was distributed late on that day or early on the next to station personnel and was mailed with the letter dated January 16, 1960 to former employees and to employees who were on vacation. The Union had objections due to the inclusion of an independent contractor clause, and most of the programming staff would not sign the first affidavit. On February 4, 1960, the Union advised

that objections to the affidavit would be cleared if the independent contractor clause was deleted. This was done and a revised affidavit form was prepared and distributed on February 4, 1960, and some of programming personnel executed the revised affidavit on February 5, 1960. McCaw was in Washington at the time preparing his payola response and received information from New York by phone. At the recent conferences in New York on May 1 and 2, 1961, McCaw and other WINS personnel explained the delay in distribution of the affidavit by the fact the affidavit form had been submitted to the Union for advance approval, and attempts were made to obtain a statement from the Union as to the date of submission. We were to receive a copy of the Union's statement. No such statement has been furnished us and it is assumed that no such statement was made by the Union. An affidavit executed by McCaw on May 12, 1961, indicates that a long form affidavit (different than either of the forms distributed) was submitted to the Union in early December, 1959. This statement is supported solely on the basis of WINS records showing phone calls by McCaw to a Union executive during December. There is considerable doubt as to the validity of the statement.

167. In fact, the letter dated January 16, 1960, and the affidavit form were not distributed to current employees until February 1 and 2 (the affidavit form was not prepared until February 1) and were mailed to past employees on February 2, 1960 (see preceding paragraph 165) and eight (rather than two) current employees had not executed their affidavits by February 5, 1960 (See preceding paragraph). As to the erroneous date, lapse of time and faulty memory cannot be an excuse for McCaw's misstatement, since his affidavit of February 5, 1960, was executed only four days after the form of the employees' affidavit was prepared and at a time when McCaw was busily engaged in preparing his response to the Commission's inquiry. It should be mentioned that Andy Haley has stated that it may have been the fault of his office for not definitely ascertaining when the letter dated January 16 was mailed before permitting the statement to appear in McCaw's affidavit. Consideration should be given to Anderson's statement that he handled Union matters and that it was not Gotham's practice to submit matters to the Union in advance.

and although records examined indicate telephone calls to AFTRA on the dates mentioned by Mr. McCaw, there is considerable doubt that a proposed affidavit was submitted to the Union for approval in December, 1959, for the following reasons: (1) Anderson (General Manager) stated that, he, not McCaw, handled Union negotiations and that he did not get into negotiations with the Union on a payola affidavit until after February 1, 1960 (Tr. of May conference, pp. 296, 297, 674, 675, 683, 689, 690, 693); (2) Anderson stated that ordinarily a document prepared for submission to employees would not be cleared in advance with the Union, but would be released, leaving it to Union to object as was done on February 1, 1960 (Tr. for May 2, 1961, pp. 690, 691); (3) the contract between WINS and AFTRA expired on February 15, 1960, and McCaw's calls to AFTRA could have related to arrangements for negotiations for a new contract, or perhaps to a call from AFTRA to Hap Anderson on December 8, 1959, regarding more charity tickets for a memorial dance, Anderson having told the AFTRA caller that he "would have to check this one through"; (4) during the May conference attempts were made by McCaw and Anderson to get a statement from AFTRA, which kept "pretty detailed files" (Tr. p. 697), as to the date when a proposed employee affidavit was first submitted (Tr. pp. 220, 221, 366, 444, 521, 522, 640, 657, 697); no statement from AFTRA has been submitted; and (5) various memoranda, in WINS files indicate that no decision as to whether an affidavit should be requested from employees was made by December 10, 1959. See Anderson's Daily Report for December 1, 1959, indicating that the public relations counsel had suggested the obtaining of a payola affidavit from employees, but that the suggestion should be held "in abeyance until a decision was made at the proper time"; Anderson's Daily Report for December 4, 1959, stating that the public relations counsel felt that in light of the FCC questionnaire it was imperative that WINS have its employees sign an affidavit, and that public relations counsel was told that this would have it wait until JEM arrived on Monday (December 7, 1959); Anderson's Daily Report for December 10, 1959, stating that public relations counsel had called from Miami asking if we had decided on the affidavit as yet, and that, after Anderson and Gorman had talked to public relations counsel, McCaw also talked to him and a tentative date was set after his return from Miami; Gorman's Daily Report for December 14, 1959, indicating on that date he had lunch with McCaw and public relations counsel. **By late December the Commission extended the time for reply to this part of its letter.**

171. WINS Summary Statement Concerning the Investigation. Finally, in describing its payola investigation, Gotham states in reply to the December 2, 1959 letter of the Commission:

"In sum, station WINS has consistently forbidden the acceptance of 'payola' in connection with the station's broadcasts. The station has investigated several unfair and false rumors as to the existence of the forbidden practices among personnel at WINS, and the station has determined that such rumors had no basis in fact. WINS's programs are not surreptitiously influenced by outside sources. The station staff has cooperated in enabling WINS to make a complete and thorough investigation. WINS has endeavored to be extremely careful not to harm any innocent individuals and to wait until we have all facts before making any decision which might affect a person's career, reputation

department; and on July 8, 1959 he resigned. It appears from the information filed by the New York District Attorney against Mr. Granger that he is charged with 26 counts of soliciting and accepting payola from ten record companies commencing April 25, 1958 through July 7, 1959, in amounts ranging from \$50 to \$2,300, the total being \$9,650.00; from the wording of the information, it appears likely that Mr. Granger received at least one check each month during the period covered in the information.

176. In its reply to the Commission's December 2, 1959 letter, the licensee had this to say about Mr. Granger:

"8. According to press accounts published on December 23, 1959, a former employee of station WINS, Ronald Granger, has stated that record manufacturers gave him sums of money at various times. Mr. Granger was music librarian for WINS until the summer of 1959. In July and August of 1959 Mr. Granger was reported to have been given a sum of money by a record manufacturer. This came to the attention of Station WINS, and the station transferred him from the music librarian's position to another position in the news department of WINS, pending investigation of the incident. Mr. Granger resigned a few days after being transferred, and station WINS has not employed him since August of 1959. Mr. Granger was asked to prepare and sign an affidavit in the form attached. He has not yet done so."*/

In its August 7, 1961 Response, Gotham asserts that prior to May 1959 it had no knowledge which would indicate that Mr. Granger had a financial arrangement with record companies or record distributors.

176. (c) Mel Leeds. Mr. Leeds was hired as program director of WINS in August 1957 and resigned on January 26, 1960. It appears from the information filed by the New York District Attorney against Mr. Leeds that he is charged with 40 counts of soliciting and accepting payola from five record companies commencing April 22, 1958 through November 3, 1959, in amounts ranging from \$75 to \$1,000, the total being \$9,675.00; at least one payment each month was received during this period, except for the months of July, 1958 and January, 1959.

177. In its reply to the Commission's December 2, 1959 letter, Gotham states:

"9. Mel Leeds, former program director of WINS, stated that he had received consulting fees for advisory services from four record manufacturers. The management of WINS asked that he

*/ Gotham's account of this matter is in error with respect to the dates. We have previously discussed the Granger-Joachim incident which commenced with the May 19, 1959 letter from Mr. Joachim to Mr. McCaw and terminated with the resignation of Mr. Granger on July 8, 1959.

180.. The Commission's letter also states that "payments made to the licensee's employees by the record manufacturers and/or distributors were known or should have been known, to the licensee and constituted payment or other consideration, directly or indirectly to the licensee for the purpose of having certain recorded material broadcast by Station WINS and for other purposes." With respect to this assertion the licensee states as follows:

"Licensee emphatically denies that it knew or should have known that its employees were accepting payola. This charge is completely unsubstantiated by the facts on the basis of what now appears in the extensive record that has been developed during many months of rigorous investigation. After these many months of investigation, there remain but three cases of individuals purported to be involved with payola at Station WINS. These revolve around the activities of Ronald Granger, Mel Leeds and Alan Freed. As has been established above, the licensee acted with diligence with respect to Granger and Leeds when facts first came to its attention suggesting payola activities. Evidence as to Freed was not developed until after he had left the station's employ in 1958.

"The licensee made a full and proper disclosure as to Leeds and Granger in its response to the Commission's December 2, 1959 payola inquiry. No disclosure as to Freed was appropriate because his connection with the station ended long prior to the time period covered by the inquiry.

"By any reasonable standard, the assertion that the licensee condoned payola is refuted by the results of the Commission's own investigation. Surely, if the licensee condoned payola, there would have been more evidence of its existence at Station WINS than three isolated cases. If the licensee condoned payola then certainly the climate existing at Station WINS would have been considerably different from that which led to the Granger and Leeds resignations.

"Licensee's actions with respect to payola practices demonstrate that it acted diligently in taking corrective action to eliminate payola problems when they arose and to prevent possible recurrences. The facts which have been developed through this long investigation lead clearly to this conclusion.***"

181. Gotham, in its "Summation", states:

"Since the acquisition of the station in 1954 by the licensee, WINS has been brought from mediocrity to the position of one of the leading stations in the United States. The achievement has been the direct result of the efforts of an ownership and staff which have been responsive to the needs and aspirations of the community the station serves.

"The Commission must have already spent thousands of dollars in connection with this investigation. There are a vast number of exhibits already on file and nearly a thousand pages of testimony have been transcribed of the questioning by the Commission's staff of the licensees' officers and employees. In addition to the transcribed proceedings there were many preliminary conferences.

"In the timely speech of the Commission's Chairman on May 9, 1961, it was said:

"I think it would be foolish and wasteful for us to continue any worn-out wrangle over the problems of payola, rigged quiz shows, and other mistakes of the past. There are laws on the books which we will enforce. But there is no chip on my shoulder. We live together in perilous, uncertain times; we face together staggering problems; and we must not waste much time now by re-hashing the cliches of past controversy. To quarrel over the past is to lose the future."

A long and costly hearing on the WINS renewal application would not contribute in any material way to the information which has already been so completely and carefully gathered and which is now before the Commission. Such a hearing cannot be deemed in the public interest when it can only be a forum for "rehashing the cliches of past controversy."

182. Caveat re: WINS Files. It should be mentioned that there are many files at WINS. McCaw's secretary, Miss Alfred, has three 4-drawer file cabinets in her office. The sales, programming, accounting, and news departments have their own files. In addition, a vault and two storerooms in the basement of the WINS premises were sighted. As an indication that McCaw is a "string-saver," it is pointed out that the basement files include program logs and newscasts dating back to his acquisition of WINS in 1954. Such files as are kept at other McCaw stations and at his Seattle home have not been examined. McCaw has stated that he has made available from his Seattle files anything which might be considered to have any connection with payola. It must be stated that McCaw offered to make any of his files available for examination to the Commission investigators.

183. It was pointed out to McCaw during the April-May conference that, from the statements he had made, it appeared that some part of his files may not have been available for our examination, namely, file material furnished the District Attorney's office or Haley's office and which material had not been receipted for, records made of, nor copies

187. As for Leeds and Freed, they are both facing trials for payola (at which knowledge by McCaw would be a defense), and are now employed by Keating. Since the trial of Peter Tripp (at which it was revealed that record companies were not going to support a defense that disc jockeys were paid for serving as consultants), both Leeds and Freed have shown a stronger inclination to reveal information as to McCaw's knowledge of payola. If Peter Tripp should be given a jail sentence (his sentencing is scheduled for October 15, 1961), this inclination will be stronger. At present they are apparently controlled by opposing forces: a desire to avoid a trial on payola, a dislike of McCaw and an appreciation of the employment offered by Keating on the one side, and on the other, a desire to return to New York and a belief that they would be put on an industry blacklist if they implicated McCaw.

188. On the other hand, statements by present and past employees are not above suspicion. The staff has received the impression that officials and present and past employees have been less than candid in their statements, and that it appeared that stories have been made up well in advance. Further illustrative of the basis for this impression is an exchange of correspondence between McCaw and ~~LeMaux~~, Sales Manager for WINS, in November, 1959. In a memorandum dated November 25, 1959, McCaw stated:

"Thank you so much for your note of 11/25. I feel that you do appreciate, as we have discussed many times before, my eagerness to hide nothing and generate integrity among everyone.

* * * * *

As of this morning I have completely forgotten all that has gone before, and will never mention to anyone what has transpired. My only concern is to further dedicate myself to your service, and to continue to help build WINS as the top radio station in the world."

* * * * *

LeMieux has apparently kept his promise, for he has given a statement touching in part upon a meeting of November 23, 1959, which led to the McCaw criticism, as follows:

"During the month of November we had numerous management meetings. I do not recall any special meeting on November 23rd. I may have been in Chicago on this date. If I had been present, I have no specific recollection of the subjects discussed."

40. In view of the considerations outlined in the preceding paragraphs, every effort has been made to obtain corroboration of the various statements and allegations, preferably by documentary evidence. The staff has not always been successful in this endeavor.

known record companies and individuals who were officers or employees of the record companies; (b) the obtaining from a record company by Leeds of the hi-fi set for WINS which was placed in Fearnhead's office; (c) the fact that Leeds could obtain gratis from a record company the hi-fi or phonograph for McCaw; (d) the circumstances concerning the handling of Leeds' request for a raise in 1958; (e) McCaw's knowledge of the manner in which Leeds was living; (f) the allegation that Granger had been paid in 1959 by a record manufacturing company for the plugging of its records.

(6) That the Gotham investigation of payola commencing probably in September, 1959 was not well considered and was not carried out in the manner in which the Commission had a right to expect; that the investigation by Gorman and Anderson was a superficial one; that the December 4, 1960 WINS letter of inquiry to record companies was not followed up; and that the obtaining of affidavits from past and present employees concerning payola payments was not well conceived.

191. However, it appears that, upon the facts divulged in the inquiry, the following ultimate conclusions could not be proved:

(1) There being no way to determine the frequency of play of any specific record or records during the period prior to 1960, it cannot be concluded that the receipt of payola by any employee effected the frequency of play of particular records, labels or artists.

(2) That Gotham or McCaw in the ultimate disposition of the employment of Freed, Leeds and Granger acted in an irresponsible manner, but, to the contrary, it appears that their actions were reasonable under the particular circumstances of each case.

(3) That with respect to payola, Gotham or McCaw's actions involved wilfulness, misrepresentation (except as is set forth hereinafter) or serious neglect of their duties as a licensee of the Commission.

192. Inconsistencies, misrepresentation and/or lack of candor:
Upon the basis of the record, the following propositions appear to be provable:

(1) That there are many inconsistencies in the testimony and statements of McCaw and the witnesses for Gotham, as in the handling of the Granger-Joachim matter, the dates of its occurrence, the testimony of Hap Anderson with respect to his contacts with record companies and the information he received.

195. I am of the view that the dereliction of Gotham and McCaw in handling payola is best characterized as demonstrating that conditions existed at WINS and were known to Gotham and McCaw which would have alerted a prudent licensee to the probability of the existence of payola at the stations and that such prudent licensee would have taken affirmative steps to ascertain the actual situation and to assure that the licensee's control over the records played and the station's programming. That Gotham and McCaw did not in either respect act as the Commission would expect of a prudent licensee. However, while not prudent in these matters, it cannot be said that the picture presented is one of gross neglect on the part of Gotham and McCaw, nor that their actions approached that degree of neglect. I am also of the view that wilfull misrepresentation cannot be made out of the facts developed in the investigation with respect to Gotham and McCaw, but that in two instances McCaw was very careflles in his statements and characterization of what Gotham had done and that in these instances McCaw's behavior is close to lack of candor.

196. By reason of the foregoing, I am further of the view that the Commission would not deny a renewal after hearing and therefore does not recommend a hearing on the renewal application. The licensee has introduced corrective measures which appear to make it unlikely that the problems will recur. It would be consistent with prior Commission action to grant the renewal on a short term license.

197. Recommendation: Accordingly, grant of the renewal application for one (1) year and the adoption of an appropriate letter to the licensee is recommended.

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EJB:cg/r&t:B

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