

FEDERAL COMMUNICATIONS COMMISSION
Washington 25, D. C.

6197

June 16, 1961

INTER-OFFICE MEMORANDUM

Item No. _____
Complaints and
Compliance Agenda
Commission Action
June 28, 1961

FOR: Complaints and Compliance Agenda **

TO: The Commission

FROM: Broadcast Bureau (Joseph N. Nelson, Chief, Renewal and Transfer Division, and John C. Harrington, Chief, Complaints and Compliance Division).

SUBJECT: Payola Investigation of WINS, New York City

RECOMMENDED ACTION: See paragraphs 44 and 45.

- REFERENCES: (a) Item No. 5, Renewal Agenda, May 25, 1960 (Mimeo. 88246).
- (b) Item No. 2, Complaints and Compliance Agenda, March 29, 1961 (Mimeo. 1946).
- (c) Inter-Office Memorandum dated June 6, 1961 to the Commission from the Broadcast Bureau for the private information of Commissioners.

BACKGROUND

1. The application for renewal of license of WINS for the period ending June 1, 1963, was deferred on May 25, 1960. Subsequently, an application was filed to assign the license for WINS to Storer Broadcasting Company. Action on this application has been withheld pending disposition of the renewal. Three former employees of WINS have been indicted in New York for violation of the commercial bribery law, i.e., receipt of payola without the knowledge of the station licensee. Mel Leeds, Program Director from September 1957 to January 1960, has been accused of accepting \$9,500 from record companies during 1958 and 1959, but FTC information indicates there were additional payments not included in the indictment. It is understood that only those payments which were susceptible of documentary proof (checks or clear bookkeeping entries) were included in the indictment, and that many cash payments not provable by documentary evidence were not included. Alan Freed, disc jockey at WINS from 1954 to May, 1958, is the subject of two separate indictments, one for accepting \$10,000 in February, 1958, and the other including a count

for accepting \$750 while employed at WINS and many counts totaling approximately \$20,000 in 1958 and 1959 while employed at WABC. Ronnie Granger, Record Librarian at WINS from May 1957 to June 1959, was accused of accepting \$7,500 during 1958 and 1959. The trials of these three are not scheduled until the Fall of this year.

2. Reference (b) described the various points which had been explored during the investigation up to March 29, 1961, and in paragraph 77 made the following recommendations:

". . . In view of the above, it is the staff's recommendation that the pending application for renewal of license and assignment of license of WINS be not granted at this time. It is also the staff's opinion that the Commission is not yet in a position to designate the WINS application for hearing, but that further information is necessary before appropriate issues could be prescribed. Included in the information deemed necessary before consideration is given to the applications are the following:

- a. The outcome of the conference between Mel Leeds and the District Attorney of New York County which is scheduled for March 29, 1961.
- b. Access to the testimony of Alan Freed in executive session before LOC, which testimony has not yet been made public.
- c. The talent contract between WINS and Freed.
- d. A more careful analysis of the material obtained from the WINS files as late as last Friday, in the light of material already at hand.

With respect to the section of this report "The Whistle Blown on Alan Freed" (Paragraphs 8-13) it is recommended that the material at hand be turned over to the Department of Justice and the FBI for further investigation as to whether Robert Leder and Bob Smith, or others, have submitted false

statements to the Commission. Someone, not a licensee of the Commission, has lied in this connection, and the offense is within the jurisdiction of the FBI."

3. Reference (c) outlined staff activities since March 29, 1961 and pointed out several areas of inquiry other than payola. Any developments in connection with the matters discussed therein will be orally presented to the Commission.

Developments Subsequent to March 29, 1961

1. The investigation subsequent to March 29, 1961 has included the following matters:

- a. Examination of testimony of Alan Freed in Executive Session of LOC.
- b. Examination of other material in LOC files relating to WINS and Elroy McCaw.
- c. Examination of certain SEJ files.
- d. New York City field investigation between April 6 and April 8, 1961, including a conference with the New York County Assistant District Attorney, Joseph Stone.
- e. Telephone interview on April 20, 1961, with Bruce Morrow, former WINS disc jockey now employed at a Miami radio station.
- f. New York City field investigation between April 24, 1961, and May 3, 1961, including interviews with Murray Kaufman and Jack Lacey, WINS disc jockeys; Elroy McCaw, President and 100% owner of Gotham Broadcasting Corporation; Miss Alfred, secretary to McCaw; Hap Anderson, manager of WINS; Lee Gorman, Sales Manager of WINS and former Executive Assistant to McCaw; Rick Sklar, Program Director and former Assistant to Mel Leeds; Sydney Baron, head of a public relations firm which had performed services for WINS; Ronnie Granger (in presence of his attorney, W. P. Smith), former music librarian of WINS;

and Jim Gribble, formerly associated with Creative Record Enterprises, the original complainant to WINS of payola non-performance by Granger; and the obtainment of copies of numerous WINS documents after review of the station's files.

- g. The receipt and review of four volumes of transcript (714 pages) of conferences with WINS personnel and comments on certain WINS file material on April 2 and 29 and May 1 and 2, 1961.
- h. The receipt of 8 documents from attorney Haley's office on May 15, 1961, these documents being filed as a result of the above-mentioned four days of conferences in WINS offices.
- i. A staff conference held in the Commission's offices on May 18, 1961, with attorney Haley representing Mr. McCaw.
- j. A conference on May 19, 1961, in New York City between Mr. Harrington and Mr. Stone.
- k. A staff conference in the Commission's offices on May 26, 1961, with McCaw, in the presence of his attorneys (Andrew Haley and Stanley Sporkin).
- l. A conference at McCaw's suite in the Carlton Hotel, Washington, D. C., on May 29, 1961, with McCaw, in the presence of attorney Mike Bader (associated with attorney Haley).
- m. Interview of Mel Leeds and Alan Freed in Los Angeles on June 8, 1961.
- n. Federal income tax returns for the years 1956-1959 of certain individuals and corporations were requested, copies obtained, and reviewed to determine to what extent payola may have been reflected.

Staff Actions on March 29, 1961 Recommendations

5. With respect to the conference between Mel Leeds and the New York District Attorney in March 1961, Leeds' statements to the District Attorney indicate a knowledge by McCaw, or careless disregard, of payola existing at WINS. McCaw is alleged to have said, after Leeds informed him on November 18, 1959, of accepting less than \$10,000 from record companies, "Is that all. I thought it was \$150,000" and "I realized you were making some money, I didn't realize to what extent." McCaw is also alleged to have said, about October 1958 when Fearnhead asked for a raise for Leeds, "What's the sense of giving him a raise, he's probably making extra money from record companies." The latter statement has been discussed in paragraphs 24 through 30 of reference (b). The first statement conforms with Leeds' statements in his affidavit of January 14, 1961, regarding his November 1959 conversation with McCaw. McCaw, in effect, has denied the first statement (pages 129-132 of March 14, 1961 transcript) and in various interviews has stated that he does not remember making the alleged remark to Fearnhead but that if he did the remark must have been facetious as he had no knowledge at that time of Leeds accepting money from record companies.

6. Leeds has related a conversation with Peter Tripp tending to incriminate Art Tolchin of Station WGM. The matter of the furnishings in Tolchin's house, we have been advised, was investigated by the New York District Attorney in connection with the recent Peter Tripp trial and it was determined that Tolchin had receipted bills of sale for such furnishings which had been paid for with Tolchin's personal funds.

7. Leeds has also alleged that McCaw got a fee for arranging the sale of Station WGM. McCaw, in an affidavit dated May 29, 1961, categorically denies that allegation. When originally questioned concerning this matter, McCaw stated that this rumor must have been started as a joke, and that shortly after the WGM sale had been announced many persons had facetiously mentioned to him that he ought to get a cut because he had established a high selling price for New York stations.

8. Leeds, on April 4, 1961, telephoned Stone and stated that he had talked to Keating in Honolulu the night before and that Keating wanted Leeds to convey to Stone certain information. We are advised that subsequent to April 4, 1961, Keating visited Stone in New York and made known his information personally, part of which relates to matters covered in reference (c).

9. Examination of Alan Freed's testimony in executive session of the LOG revealed that he had given no testimony related to his employment at WINS, but that his testimony related only to his employment at WABG.

10. Examination of the LOG files did not disclose any documents or information of any materiality which were not already available. Most of the evidence related to material connected with a 1956 investigation by the Commission.

11. 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 2 1/2 hours a week. The proposed 1955 contract increased the guarantee to \$20,000. Neither the executed talent contract nor the 1955 proposed contract contain 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 each 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.

12. 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 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.

13. With respect to the analysis of material obtained from the WINS files up to March 29, 1961, it was determined that further interviews with WINS personnel, including McCaw, Gorman, and Anderson, and further examinations of WINS files were necessary.

April 28, 29 and May 1 and 2, 1961 Conferences

14. Having notified McCaw that two of the Commission's investigators would be at the station on April 28, 1961, the investigators were met by McCaw's attorney, Stanley Sporkin (with attorney Haley's office) and advised that, if there was no objection, McCaw desired to have whatever was said taken down by a certified reporter. A transcript consisting of 714 pages has been furnished the Commission of what transpired on April 28 and 29 and May 1 and 2, 1961.

15. The transcripts, with minor exceptions, give a verbatim account of the various interviews with WINS personnel enumerated in preceding paragraph 14. The interviews covered many of the matters previously discussed in reference (b) and included items such as further information and documentation of the WINS talent meeting alleged to have occurred on November 18, 1959; further details concerning WINS music policy; McCaw's statement to Fearnhead when a raise for Leeds was requested in 1958; the payment of Freed's line charges by a record company; the intended meaning of that part of Anderson's memo of November 2, 1959, to Leeds, regarding tying into record company profits with a percentage to Leeds; and whether the letter of January 16, 1960, alleged by McCaw as being sent to WINS employees was a fabrication or was actually sent, each of which items needed clarification as indicated in reference (b).

November 18, 1959 Talent Meeting

16. With respect to a meeting having occurred on November 18, 1958, in which McCaw is attempting to determine to what extent the station's personnel are involved in payola, any question (see paragraph 73 of reference (b)) 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.

WINS Music Policy

17. With respect to WINS music policy (see discussions in paragraphs 4 and 5 of reference (b)), some clarification has been obtained. The station now, and since approximately February 1960, retains the dj'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. In an interview with Ronnie Granger on April 26, 1959, he stated that both Lacey and Freed more or less determined their own programs prior to June 1959 but that other dj's were required to stick to the top 40 list, "pick hit of the week," and albums. Indicative of the control by the program director and librarian 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." (The name "Rick" is referring to Rick Sklar who was Leeds' assistant and later became Program Director.)

No Raise For Leeds

18. With respect to McCaw's statement to Fearnhead in 1958, to the effect that a raise for Leeds wasn't necessary as he was probably receiving money from record companies (see discussion in paragraphs 24-29 of reference (b)), very little of a factual nature has been developed since March 29, 1961. We have, however, obtained copies of additional correspondence between Fearnhead and Leeds indicating that in February, 1960, Fearnhead was very willing to execute the affidavit requested by Leeds, subject to his attorney's approval. We also know 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 an 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 FCC. This point of McCaw's remarks re payments to Leeds has been discussed in each of the interviews with McCaw subsequent to March 29th and in each instance McCaw has

reiterated that he does not remember making such a remark and that if he had, it was facetious. That such a remark was made is most probable in light of Fearnhead's, Leeds' and Leeds' sister's recounting of what was said about the request for a raise, the question being whether it was facetious or not. In the course of interviews with McCaw by the Commission's investigators, McCaw has shown that he is a serious, non-emotional type of person or one who maintains complete control of his emotions. On the other hand, he has made an occasional quip or facetious remark during interviews, when off the record, or in chit chat at the end of an interview. Considering that the remark is alleged to have occurred at the end of the day and that McCaw and his executives would join in a drink after five P.M. (this was personally observed by the Commission's investigators on several occasions), there may be some basis for considering the remark to be intended as facetious.

Alpha Payments

19. 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 (see paragraphs 15-23 of reference (b)), 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 (we have photostatic copies of two such checks) from record companies in payment of charges to Freed was never brought to his attention until the beginning of the payola investigation. 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. McCaw has 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 accounting employees as to record company tie-ins with firms sending checks to the station was not conducive to exposing payments which may be a form of payola. In the recent interview with Alan Freed, he has stated that Gotham (WINS) sent invoices for the line charges directly to Alpha with a copy to Freed, and that sometimes Alpha sent its check to Freed, who

deposited it in his account and drew a personal check payable to Gotham, and that on occasion Alpha drew its check payable to Gotham.

November 2, 1959 Memo

20. With respect to the intended meaning of that part of Anderson's memo of November 2, 1959 to Leeds concerning tying into record company profits (see paragraphs 47-49 of reference (b)), an additional 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. This document, however, was undated and had no salutation indicating it had ever been issued. Nothing further of a factual nature with respect to this particular memorandum has been developed. However, in his latest statement Freed has stated that one day (which was probably in 1957, but in any event not later than early 1958) he was called to a meeting with Fearnhead and McCaw, was told they knew he was getting paid and was asked if there was any way to go to the record companies and make a deal whereby they would pay the station for getting their records played. Freed told McCaw and Fearnhead that the record companies were not that big an operation and there would not be that much money involved. 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 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.

January 16, 1960 Letter to Employees

21. With respect to whether the letter of January 16, 1960 was ever sent to WINS employees or was a fabrication (see paragraphs 67-70 of reference (b)), it has now been determined that 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 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. See paragraph 42(c), infra.

Employee Payola Affidavits

22. The entire file of affidavits (approximately 55) was reviewed. All show a date of execution after January 31, 1960. Correspondence to former WINS employees not living in New York City also shows dates after January 31, 1960. In McCaw's affidavit to the Commission of February 5, 1960 it is stated that all except two of the present employees have submitted affidavits and all indicate no payola. Actually 8 of the affidavits were executed by current employees after February 5, 1960. This discrepancy has been explained by McCaw as due to the fact that affidavits were submitted by February 5th, but notarized at a later date. The two missing affidavits which were referred to by McCaw were those of Lacey and Kaufman who were on leave or vacation at the time and executed their affidavits on February 8, 1960. An affidavit to the above effect was executed by McCaw on May 12, 1961, and submitted together with affidavits by Anthony Scoupius (WINS accountant in charge of mailing out the letter and form), Frederic Johnson (WINS house counsel) regarding personal appearance of affiants before

him at time and place of notarization, and Arma Fasano (book-keeper and notary at WINS).

Bosco Incident

23. During the May 1 and 2, 1961 conference further details regarding the Bosco incident (see paragraph 78 of reference (b)), were obtained in order to verify the dates of occurrence and to determine that a vaguely worded memorandum to McCaw of activities on November 23, 1959 was referring to inquiries regarding Leeds' payola involvements and not to Bosco's discussions with Leeds. Rick Sklar had been with Leeds during his initial conversation with Bosco and had written up a report of the incident the evening of its occurrence. A copy of his six typewritten pages of notes has been obtained and is captioned "Information Relating to Unusual Incident Occurring Friday Afternoon December 18th, 1959, at Radio Station WINS and Bob Olin's Restaurant as Recalled by Richard Sklar." The first contact by Mel 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 wouldn't have cooperated with the police so readily if he had been guilty of payola, it may be assumed that Leeds having made his revelations on November 20th had nothing more to lose by cooperating with the police on December 18th.

Leder Memos

24. A folder of 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 Freed by Leder, there was nothing noted to indicate that Leder had brought McCaw's attention to Freed's reputation as a payola taker (see paragraphs 8 and 13 of reference (b)), 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 to play Freeman's records, or to a meeting Leder attended at the offices of Tico Record Distributors in New York City. However, the file contained no correspondence from Leder to McCaw during the critical period-- August and September, 1954. McCaw again 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.

WINS Files

25. 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 news-casts 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.

Completeness of Files Questioned

26. It was pointed out to McCaw during the April-May conference that, from 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 made nor charge-outs inserted when such material was furnished from his files. At a subsequent date, additional files representing WINS material furnished to the District Attorney and returned by him were examined at the Commission's offices. No new matter developed from the examination.

WINS Material in Haley Files

27. On May 29, 1961, eight folders of WINS file material which had been in Haley's office were examined in McCaw's hotel suite. Both Haley and Sporkin, McCaw's attorneys, had had violent objections when requests were made to see WINS documents in their possession. McCaw stated that he had over-ruled their objections and depudated Haley's files of WINS material. Copies of several of the documents examined were requested and have been furnished. Nothing new of particular significance was found by the examination.

Granger-Joachim Incident

28. During the week of April 24, 1961 both Ronnie Granger and Jim Gribble were interviewed. Gribble had written a letter to Maurice Joachim of Creative Record Enterprises, Inc. who had written a letter dated May 19, 1959 to McCaw stating that \$100 had been paid Granger who had not performed (see paragraphs 31-35 of reference (b)). Gribble stated that the money was paid by him to Granger in the presence of Joe Hints 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 (Gribble) 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, Gribble 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 Gribble would make it appear that Granger was hired as a consultant, Gribble's letter indicates that payola was involved when he states ". . . none of us who have monitored have heard any of the records plugged."

Sydney Baron Interview

29. 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 (see paragraph 36(c) of reference (b)). 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

which to hang much of the revamping story. However, the sale has to be a real one.

Firing of one man in top management, the inference being that he was responsible for all the evil, which would disappear with him. This is a tough one. The man in question would hardly agree to such a step, in view of the fact that his reputation would be blackened pretty thoroughly."

Baron at first stated this was written by a minor employee, Leslie Walker, and that his firm would never consider handling any such suggestion of improving WINS image by having one of WINS' employees made the scapegoat. Baron later admitted that this particular report was written by one of his best men and head of a department. Baron also stated that he had been approached by either Anderson or Gorman--he couldn't remember exactly whom--about what should be done from a public relations standpoint concerning a WINS employee who had left the station taking with him some of the station's files. Baron wasn't certain as to whether the person was a librarian or program director, but was certain that Leeds was the person being discussed. Baron also stated that McCaw had objected to being billed for December 1959 services and that the billing was changed to start in January 1960. WINS paid for three months' services (\$6,000), received Baron's report on improving WINS' image, and still owes Baron \$18,000 under their agreement.

30. The interviews with McCaw, Gorman and Anderson during April-May 1961 confirmed the fact that Baron had suggested and dictated the letter to the 600 record companies. However, each of the three denied having any knowledge of approaching Baron about any employee who had left the station taking station documents with him. A direct conflict on this point has not been resolved. Baron's statement, however, does tie in with a statement Granger had made to New York Post reporters (information obtained from LOC memos) that Mel Leeds has "incriminating information on the owners of station WINS and its present general manager, but he does not know what the information is." In this connection it will be noted that Leeds has some documents in his possession as Leeds showed a letter to the New York District Attorney concerning "a phony appraisal for tax purposes;" and produced a memorandum dated November 27, 1959, from Anderson to Leeds asking for an increase in public

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

31. 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

32. 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.

Leeds' Affidavit of June 8, 1961

33. The interview with Leeds on June 8, 1961, touched upon McCaw's remark to Fearnhead in 1958 when Fearnhead was requesting a raise for Leeds, the November 2, 1959 Anderson memo to Leeds concerning tying into record company profits, McCaw's remarks to Leeds on November 20, 1959 at the time of Leeds' revelations of his payola involvements, the meeting of November 23, 1959 where Leeds' displacement was discussed, and the Bosco incident. In addition, Leeds alleged that Judy Cross (WINS assistant music librarian) had been making inquiries attempting to tie Leeds in with payola (it was not stated at whose instructions); that Leeds had brought to McCaw's attention in the latter part of 1959 that Judy Cross was attempting to bribe Bruce Wendell (Leeds' music director) to play one of the records she had made; that in August or September 1959 McCaw had asked Leeds what connection he had to get McCaw a Hi Fi set for his office; that Leeds obtained a set from Columbia Records after telling McCaw he could get one in five minutes and McCaw saying he would like to have one; that in late November 1959, after the payola investigation started, McCaw asked Leeds to call Columbia Records and get a bill for the set and said "I wanted to pay for it, but just wanted to find out if you had connections;" that Leeds obtained a Hi Fi set for Fearnhead's office in 1958 without being requested to do so, but that Fearnhead knew that no one had paid for it; and that in 1959 Leeds obtained a refrigerator for Fearnhead from RCA at no cost after Leeds had told Fearnhead that he (Leeds) could get one at no cost for Fearnhead's personal use in his home in Mamaroneck, New York.

Freed's Affidavit of June 8, 1961

34. 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.

Freed's Allegations

35. In his affidavit of June 8, 1961 Freed alleges that Gotham (WINS) made out invoices for Freed's remote broadcast charges; that Alpha agreed to pay the line charges and engineers' salaries; that Gotham sent invoices to Alpha direct for these charges; that some of Alpha's checks could have been made payable to Freed and sent to him; that such checks would be deposited by Freed to his personal account and his personal check sent to Gotham; that the D.A. in New York has about \$12,000 in Alpha's cancelled checks which were drawn payable to and deposited by Gotham covering these charges; and that all of this is a matter of record in Freed's testimony before the LOC in closed session. We are advised that part of Alpha's records were destroyed by a fire; that the amount \$12,000 is an overstatement as to checks issued by Alpha payable to Gotham, and that Freed's testimony before the LOC did not go into payroll to Freed when he was employed at WINS.

36. Freed also alleges that Fearnhead called him into his office at WINS one day (date not stated) and in McCaw's presence Fearnhead said "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?" To this question Freed replied "These record companies are not that big an operation and there would not be that much money involved."

June 16, 1961 New York Inquiry

37. On June 16, 1961 there was a conference with Joseph Stone in New York City. The WINS file of billing for Freed's remote broadcast charges in 1956 and 1957 was gone over. Also discussed was a matter now being investigated by the District Attorney's office and which will be orally presented together with the matters referred to in reference (c).

Gaveat as to Evaluation of Information

38. In evaluating information supplied by various individuals it is necessary to bear in mind the following relationships. J. Elroy McCaw is a former business associate of Jack Keating. Their relationship cooled, leading to a dissolution of all association in broadcast stations by an exchange of interests consummated in November, 1959. Since

the formal dissolution, their relationship has become even more strained because of incidents in connection with liquidation of some of their joint enterprises, and Keating would like to see McCaw crushed. Herbert (Jock) Fearnhead, Mel Leeds, and Alan Freed were employed at WINS during the joint ownership of McCaw (75%) and Keating (25%). Before coming to WINS Fearnhead had managed KYA (San Francisco), when it was owned by McCaw and Keating. In early 1959 he acquired 100% of KPOT (Honolulu) with the assistance of Keating, and now owns 25% of the station. He is a neighbor of Keating in Honolulu, and was instrumental in having Mel Leeds and Alan Freed employed at Keating's Station KDAY in Santa Monica (Los Angeles). While at WINS, Fearnhead was closely associated with McCaw, and still visits and corresponds with him. However, he now is apparently closer to Keating than to McCaw, but, although he is revealing information adverse to McCaw in other respects, he has not given any adverse information insofar as payola or station operation is concerned. It appears (but this is by no means certain) that he is controlled by the fear that any information adverse to McCaw which he reveals would also implicate himself. 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 June 30, 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.

39. On the other hand, statements by present and past employees are not above suspicion. As indicated in reference item (b) at paragraph 3, page 3, 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. See example cited at paragraphs 57-66 of reference item (b). Further illustrative of the basis for this impression is an exchange of correspondence between McCaw and LeMieux, Sales Manager for WINS, in November, 1959. In a memorandum dated November 25, 1959, McCaw stated:

"Since you were not in the office when I called, I asked Hap to talk with you with respect to any discussion on the 'payola' matter.

As you know I have mentioned to you several times that I feel sometimes you are a little too generous in your willingness to discuss some matters with the wrong people or in the wrong places.

I was naturally disturbed when I learned that you had talked with Mel and volunteered to him an unflattering opinion of Lee Gorman. It is, of course, your privilege to have your own opinions about any one but broadcasting them about might be highly detrimental.

The main purpose in writing now, however, is to urge you to discourage any unnecessary talk about the matter now under investigation. The normal human frailty of loving to gossip is greatly stimulated at times like this. We must not let it disrupt the organization or result in unjust speculation about individuals who may be involved.

As a key man in the organization I would like to feel free to discuss matters with you without having to worry about the possibility of having you thoughtlessly pass it on in the wrong places. Sometimes it might be important that I apprise you of some circumstances or situation but would not want you to even indicate that you were aware of it if somebody mentioned it to you outside of my office.

I am sure that you understand and appreciate the importance of everyone conducting themselves in a mature and responsible manner at all times. We do not want to create an image of ourselves as our organization that is not favorable. This applies to the image held by people within the organization as well as without."

In response, LeMieux 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 two 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. The following paragraphs outline the evidence at hand in two areas: (1) the pattern indicating knowledge of payola practices at WINS by McCaw and top management and (2) the pattern of misrepresentation and lack of candor in the response to the Commission's payola inquiry and in subsequent statements. The possibility of further development is indicated where appropriate.

Pattern of WINS Payola

41. The various factual matters and allegations which have been made which could lead to a conclusion that the management of WINS and/or McCaw had knowledge or should have had knowledge of payola existing at the station may be restated chronologically as consisting of the following:

- a. The hiring of Freed in 1954 although he had a reputation as a payola taker and the apparent disregard of Freeman's attempts to inform WINS management of such fact (paragraphs 8-13 of reference (b)). McCaw disclaims any knowledge of Freed's reputation as a taker, of a letter being sent to WINS bringing this matter to management's attention, or of Leder attending a meeting in 1954 at Tico concerning this matter. The letter from Freeman addressed to WINS has not been located and no correspondence between Leder and McCaw during the pertinent period has been produced. Regardless of whether Leder's or Goldner's story is believed as to the conference at Tico Records at which Freed was exposed, the fact remains that Leder (Station Manager and Executive Vice President of Gotham at the time) admits the receipt of a letter from Freeman making the same charge with respect to Freed.
- b. The fact that, despite Freeman's letter to Leder and McCaw's contention that payola prohibition clauses were inserted in talent contracts upon his acquisition of the station in 1954 (paragraphs 6-7 of reference (b)), the Freed contract executed in 1954 and various drafts prepared in 1955 for negotiation purposes contain no such provision. McCaw in an affidavit executed May 12, 1961 stated "If a talent contract executed in 1955 between Alan Freed and Station WINS does exist and if such a contract does not contain an Anti-Payola clause, the omission of such a clause would be through inadvertence and would not be intentional." With the exception of Freed, talent contracts executed in 1955 and thereafter contained a strict anti-payola clause.

- c. The lack of control by management of the Freed programs in 1957 and 1958 and of the Lacey programs in 1957-1959 as alleged by Granger when interviewed on April 26, 1961 and by Leeds (paragraph 5 of reference (b)). McCaw's memo of October 8, 1959 (preceding paragraph 17) shows the control of music selection resting solely with the program director and librarian as of that date. Neither Leeds nor Granger had written contracts, so that they were not subject to the anti-payola clause of the talent contracts. The station has now established controls which appear to be effective.
- d. The fact that Freed's expenses for remote broadcasts exceeded his revenue from WINS (paragraphs 14-23 of reference (b)). McCaw disclaims any knowledge of this fact until a later date and stated that these charges were incurred as a convenience to Freed and in light of Freed's numerous promotions and considerable other income it gave him no concern when he learned of it. However, the ledger card for Freed's account indicates slow payment, so that he soon owed more than \$10,000. The affidavit of Kirwan (in charge of accounting at the time) indicates that he called the delinquency to the attention of Fearnhead (Manager and Executive Vice President) from time to time. Although Freed's expenses exceeded his revenues from WINS, it should be pointed out that under the conditions of Freed's contract there was a potential revenue which could have exceeded the expenses by a considerable amount. But, according to McCaw, Freed made no effort to sell time for his show.
- e. The allegations by Freed (preceding paragraph 35) that WINS billed Alpha directly for Freed's remote broadcast expenses (line charges and engineers' salaries) and that "the District Attorney in New York has about \$12,000 in Alpha's cancelled checks which were drawn payable to and deposited by the Gotham Broadcasting Company covering these line charges." The allegation of

direct billing by Gotham to Alpha has not been checked out by interviewing WINS book-keeping employees, interviewing Alpha personnel, and examination of Alpha's accounting records, some of which may have been destroyed by fire. A subpoena may be necessary to examine the Alpha records. All of the billings for Freed's expenses have been examined and all show the billing to Freed and not to Alpha. However, there may have been arrangements for the originals or copies of the Freed billings to be sent to Alpha. With respect to Alpha's checks for Freed's expenses (preceding paragraph 19) copies of two checks in the amounts of \$3,679.55 dated December 28, 1956 and \$2,848.65 dated March 9, 1957, drawn by Alpha payable to Gotham, and one check in the amount of \$3,471.85 dated October 9, 1956 drawn by Alpha payable to Freed, have been obtained. The amounts of these checks coincide with Gotham's balances on the Freed account as shown by invoice No. 4139, dated November 30, 1956; No. 4799, dated February 4, 1957; and No. 3263, dated September 30, 1956, respectively. McCaw has denied any knowledge of the receipt of direct payments by Alpha for Freed. Kirwan, in charge of WINS accounting department from 1950 to September 1957, and Soupios, in charge since 1957 to the present date, deny any knowledge of such direct payments. Kirwan, in an affidavit of May 11, 1961 describes the handling of incoming checks and stated "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.* If a determination is made that WINS' accounting personal had received instructions to bill Alpha directly or to send copies of Freed's billings to Alpha, such instructions would necessarily indicate a knowledge of this form of payola by WINS management.

- f. Freed's allegations that Gotham knew that Morri. Levy of Roulette Records had a 50% interest in Freed's promotions (paragraph 19 of reference (b) and preceding paragraph 34). This allegation is based on the fact that Gotham received 10% of the profits on Freed's promotions which were advertised on WINS. It has not been determined whether WINS management knew of Levy's interest in the Freed promotions. McCaw was aware of the fact that Jack Lacey (WINS d.j.) has a manager with an interest in Jubilee Records.
- g. Freed's recent allegation that, in the presence of McCaw, Fearnhead stated that it was known that Freed was getting money from record companies, and that Fearnhead was seeking a means for the station to benefit (preceding paragraph 36). This matter has not been checked into. It will be noted that this is a second instance (the other being McCaw's statement to Fearnhead in the latter part of 1958, preceding paragraph 18 and paragraphs 24-30 of reference (b), when a raise for Leeds is being requested) where a knowledge of payola at WINS is alleged with respect to McCaw and Fearnhead. It will also be noted that the allegation of seeking a means for WINS to benefit from payments by record companies is greatly similar to what may have been the intended meaning of that part of the November 2, 1959 memorandum from Anderson to Leeds (preceding paragraph 20 and paragraphs 47-49 of reference (b)), which requests Leeds to determine a means of tying into record company profits with a percentage to himself. McCaw has claimed that the November 2, 1959 memo was intended to initiate action by Leeds to sell time to record companies through Leeds' contacts and receive a commission similar to a salesman for the station. Neither McCaw nor Fearnhead has been questioned concerning the conversation between Freed and Fearnhead. McCaw claims he does not remember making the alleged statement to Fearnhead in 1958 about Leeds receiving payola and that if he did, it was facetious. In this connection, a copy of a letter from Fearnhead to Leeds has been obtained in which Fearnhead asks Leeds what form of affidavit does he want.

- h. Leeds' recent allegation (preceding paragraph 17) that in 1958 he obtained a free refrigerator from RCA and a Hi-Fi set from Capital Records for Fearnhead, the latter being obtained without request from Fearnhead but with knowledge by Fearnhead that it had not been paid for. This matter has not been checked out.
- i. Leeds' recent allegation (preceding paragraph 33) that in August or September 1959 he obtained a Hi-Fi set for McCaw at his request, the bill for which was not requested by McCaw until after the payola investigation started in late November, at which time McCaw is alleged to have said "I wanted to pay for it, but just wanted to see if you had connections." Inquiries concerning this matter have not been made.
- j. The fact that in May 1959 McCaw personally received a letter from a record company calling his attention to the payment of \$100 to Granger for which services had not been performed (paragraphs 31-35 of reference (b)). Although McCaw advised the Commission that he had made a thorough investigation of the matter, it was determined that the investigation consisted of several uncompleted phone calls by McCaw and the transfer of Granger from his position of librarian to the news department at a raise in salary. McCaw has stated that Leeds was called in and wanted to confront Granger with the letter. However, it was decided that Leeds would acknowledge the letter and that Granger would be transferred to the news department (where he would not be exposed to payola) upon his return from his honeymoon without bringing the letter to his attention. McCaw stated that this decision was made in part due to the fact that Granger is a negro and this solution would avoid other problems which might be created. Both Granger and Gribble (the contact man for Creative Records Enterprises) have stated (preceding paragraph 28) that the payment was the first of an intended series of payments for consultant

services; however, the letter to McCaw from Joachim, the president of the record company, and Gribble's letter to Joachim, which in part states "none of us who have monitored have heard any of the records plugged," negate the consultant contention. In connection with McCaw's statement that his attempted telephone contacts with Joachim were unsuccessful, it should be mentioned that the offices of WINS and of Joachim were about four short blocks apart at the time.

- k. The fact that Granger's wedding in June, 1959, and his European honeymoon were not in keeping with Granger's salary as Librarian. McCaw has stated that he was quite impressed with the lushness of Granger's wedding which he had attended. It will be noted that following the wedding the first inquiries of WINS personnel regarding payola were made by Gorman and Anderson. However, these inquiries were not a direct questioning of an employee as to whether he was accepting payola, but were limited to asking whether the person knew of some other person accepting payola. Inquiries subsequent to the talent meeting on November 18, 1959, appear to have been limited to asking about payola to Leeds and the questioning of persons in the industry by Gorman was done in a manner whereby a negative answer could be given, i.e., whether the individual personally had made payments to Leeds. This attitude on Gorman's part was probably due to the fact that Gorman did not want to do such investigating. Gorman, at pages 8 and 9 of the March 14, 1961 transcript, recites a conversation, with McCaw saying, "I, therefore, appoint you as special investigator for WINS on payola." Gorman then stated "And I thanked him very much for the compliment and asked him to please give the assignment to somebody else, and I was then told it was an order."

1. McCaw's admitted suspicions of payola at WINS. 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 (paragraph 75 of reference (b)). In answer to the question as to whether these events created suspicions in McCaw's mind of Leeds accepting payola, McCaw stated (pages 141 and 142 of March 18, 1961 transcript) "I had recurring suspicions as far as Mr. Leeds was concerned. And every 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 various things, I was watching all the time. I mean, I was never completely satisfied on the score, but everytime that someone would say that this was supposed to be the case at WINS, that payola did exist, and you tracked it down to the person who was supposed to have said it, you would always end up in the same place, that either they would deny having meant it that way, or would say they were joking, or that they had heard it from someone else." On all fours with McCaw's statement is Gorman's statement on March 14, 1961 (page 9 of transcript) when he was describing his activities after being ordered by McCaw to make an investigation: "Now, at that point, I then started to chase these ghosts through any and every avenue I could, which included examining music sheets, having meetings with publishers, having meetings with record distributors, talking to our music librarians, and I did this on an activity basis, for, perhaps 6 weeks. And at no time could I ascertain any positive documentation of payola to any member of the staff at WINS, either a disk jockey, music librarian, program director or any other associated personnel."
- m. Leeds' recent allegation that, in the latter part of 1959, he brought to McCaw's attention Judy Cross attempting to bribe Bruce Wendell to get one of her records played (preceding paragraph 33).

This matter has not been checked out. If this incident did occur, considering that Judy Cross was apparently working with Gorman at that time on the payola investigation, it may have been a planned attempt to trap Wendell or Leeds.

Misrepresentations and Lack of Candor

42. As stated in preceding paragraph 39, misrepresentations and a lack of candor by McCaw, officials, and present and past employees of WINS in their affidavits and statements made to the Commission and its investigators are evident, as shown by the following examples:

- (a) In his affidavit of December 30, 1959, submitted in response to the second question of the payola questionnaire (procedures adopted for prevention of payola in the future), Mr. McCaw stated in part: "A formal investigation is being conducted with present and former employees to determine to what extent any such practice may have existed in the past." No evidence was found of any formal investigation of past or present WINS personnel at that time, i.e., December 30, 1959. Lee Gorman, designated as the WINS payola investigator, was not interested in past employees, but only current personnel during his investigation from September through November (Transcript of March 14, 1961, pp. 13 - 14, 16), WINS did on December 4, 1959, send a letter to 600 record companies requesting information with respect to payments to any WINS personnel at any time, but no follow-up was made. A form of affidavit seeking information as to payola was mailed to some former employees on February 2, 1960, but this action was not decided upon until February 1, 1960.

- (b) In McCaw's affidavit of February 5, 1960, responding to the first question in the Commission's inquiry (knowledge of payola) it was stated in part:

"On January 16, 1960 all present and former personnel were sent the attached questionnaire and requested to furnish an affidavit, the form of which is attached. All but two parties (and they are on vacation) answered and supplied affidavits, and all affiants responded in the negative to question 3. Some former personnel have not answered the request as yet."

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 21), and eight (rather than two) current employees had not executed their affidavits by February 5, 1960 (see preceding paragraph 22). As to the erroneous date, lapse of time and faulty memory can not 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.

McCaw's explanation as to the error in the number of employees who had not executed their affidavits by February 5, 1960, is more plausible. The union objections had been re-

solved on February 4, and a new form had been prepared. McCaw left for Washington fairly early on that day, and on the 5th had called New York as to the status of the affidavit forms. It is possible that in the telephone conversation the distinction between properly notarized forms and forms not notarized was not realized, i.e., the conversation might have dealt only with signed forms that had been returned.

(c). In his affidavit of May 12, 1961, explaining the preparation, distribution and execution of the employee affidavits, Mr. McCaw stated in part:

"Sometime during December, 1959, we developed a proposed affidavit, copy of which is attached and we submitted a copy to AFTRA. After the Union raised objections, I attempted to get in touch with Mr. Kenneth Groot, Executive Secretary of the New York local of AFTRA to determine how the matter could be reconciled. According to our records, I called him originally on December 10, 1959 and attempted to reach him both at the office and at home. On December 12, 1959 another attempt was made to reach him without success. Again on December 14, 1959, he was called but not reached. I finally reached him on December 15, 1959, which was two days prior to my leaving for Seattle. No conclusion was reached. Immediately after returning to New York on January 4, 1960, I called him again at which time I talked with his assistant, Mr. Irving Lewis. We were still unable to get a definitive answer with respect to the acceptability of our proposed affidavit. The matter had still not been reconciled at the time I departed for Seattle on the night of January 15, 1960."

Although the WINS files indicate considerable thought and activity with respect to the preparation of an affidavit for submission to employees, during the latter part of November and early December, 1959, and although records examined indicate telephone calls to AFTRA on the dates mentioned by 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 (Transcript 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 (Transcript 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" (Transcript p. 697), as to the date when a proposed employee affidavit was first submitted (Transcript 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 not 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 to wait until JEL 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.

(d) In a notarized letter of August 6, 1960, addressed to the Commission, McCaw stated with respect to the Granger - Joachim incident (paragraphs 31 - 35 of reference (b) and preceding paragraph 28):

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 (Transcript 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).

(e) In his affidavit of January 7, 1961, McCaw stated in part:

"We have always had a firm policy against permitting any payola and have attempted to be vigilant for any signs of its existence. 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. As an example of the exact contractual provision in one of the principal talent contracts there is attached hereto an excerpt from the contract dated July 1, 1955 between Station WINS and Jack Lacy, one of the performers on WINS."

However, the 1954 Alan Freed contract did not contain the payola clause, and neither did the 1955 drafts of a proposed contract with Freed. McCaw has stated that the omission was inadvertent. See preceding paragraphs 11 and 12.

(f) In his affidavit of January 7, 1961, McCaw also stated:

"The ownership and management of Station WINS maintain supervision over the program content and other aspects of the station's operation and have done so throughout the period that Gotham has held the license for WINS.

However, it is clear that no controls were exercised over the music played by Alan Freed, and, to a lesser degree, leeway was permitted to other disc jockeys.

(g) On March 14, 1961, McCaw stated (Transcript pp. 344 O 345):

"I mean this has been almost a fetish with me, I want to say that, to the point that up until the last couple of days we even permitted ourselves to have skull sessions, so-called, when we went over the memos -- the copies of which were made for you and for us -- indicating the possible areas of your interests, and then to go through them and discuss them in detail, to try to refresh our own minds as to any circumstances relating to these points because again, in leaning over backwards not to discuss it or influence what a person might say when asked, we have refused to have those kinds of discussions even among ourselves except in a sporadic way. Anyone will tell you, I think, that is the way we have approached it."

However, Mel Leeds has stated that a WINS employee recently told him that McCaw was coached by an attorney before McCaw, Anderson and Gorman appeared at the FCC on March 14, 1961. There were other indications in the many conferences that the WINS officials had talked over in advance the various facets of the case.

Storer Letter of April 10, 1961

43. On April 10, 1961, the Storer Broadcasting Company, Gotham Broadcasting Corporation and WWVA, Inc. sent a joint letter to the Commission pointing out that certain of their applications had been on file for nearly six months; stating that "The Commission is aware of the adverse effects on the management, staff and financial operations that occur during the period an application for assignment of license is pending;" and requesting "...that the Commission take cognizance of the demoralizing effect on the stations involved, the adverse position in which the station employers are placed, and the financial injury to the stations, and that every effort be made to expedite consideration of the applications." In this connection McCaw, during his last interview at the Carlton, mentioned the drop in WINS revenues and announced that Anderson has resigned to accept a position as general manager of a South Carolina TV station and that Gorman had resigned to set up his own representative firm. In Anderson's written announcement of his resignation to McCaw he stated that three other key employees of WINS were seeking other employment. It is reported that Tom O'Brien, director of WINS' news department and Union Shop Steward has resigned and accepted a position at WABC effective June 12, 1961 (Broadcasting Magazine of June 12, 1961, page 89).

Conclusions

44. It cannot be positively stated that McCaw or Gotham had knowledge of or participated in payola. In view of the statements of Leeds, and especially the recent statement of Freed, and the indications of a pattern under which there should have been a knowledge of payola, it likewise can not be concluded that McCaw or Gotham is in the clear. Further, although the misrepresentations or inconsistencies may individually be reasonably explained away, collectively they indicate a pattern which can reasonably be inferred was deliberately developed to mislead. In view of the above and the considerations discussed in reference item (c), the staff can not recommend a grant of the renewal application.

45. On the basis of the information now at hand, the Commission would be justified in designating the application for hearing on issues relating (1) to the knowledge of Gotham and McCaw as to payola at WINS, and (2) the misrepresentations by and lack of candor of Gotham and McCaw. With respect to the knowledge of payola, the case could collapse because of the necessity of relying upon the testimony of Leeds and Freed and the uncertainty as to what Fearnhead's testimony would be at a hearing. Further development may obtain corroboration of Freed's recent allegation as to McCaw's or Gotham's knowledge of payola at WINS, and establish further misrepresentation on the part of McCaw. Therefore, rather than designating the renewal application for hearing at the present time, it is recommended that a letter be sent to Gotham and Storer advising them that action will not be taken on their pending applications for renewal and assignment of license until further investigation is completed. It is anticipated that the contemplated further investigation could be completed by the middle of July and the matter re-submitted to the Commission before the August recess if desired.

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